

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL 322
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Short Title: 2021 Revenue Laws Changes.

(Public)

Sponsors:

Referred to:

March 22, 2021

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE; TO MAKE VARIOUS TECHNICAL, ADMINISTRATIVE, AND CLARIFYING CHANGES TO THE REVENUE LAWS AS RECOMMENDED BY THE DEPARTMENT OF REVENUE; TO REDUCE THE IMPACT OF THE FEDERAL STATE AND LOCAL TAX DEDUCTION CAP; TO MODIFY THE EXCISE TAX ON PREMIUM CIGARS; TO EXTEND THE TIME TO COMPLETE AN ELIGIBLE PROJECT UNDER THE MILL REHABILITATION TAX CREDIT PROGRAM; TO LIMIT THE GROSS PREMIUMS TAX ON SURETY BONDS; TO PROVIDE TAX PARITY FOR SHORT-TERM VEHICLE RENTALS; TO GRADUATE LATE PAYMENT PENALTIES; AND TO CREATE A SEPARATE STATE NET LOSS CALCULATION FOR INDIVIDUAL INCOME TAX PURPOSES.

The General Assembly of North Carolina enacts:

PART I. IRC UPDATE

SECTION 1.1.(a) G.S. 105-228.90(b)(7) reads as rewritten:

"(7) Code. – The Internal Revenue Code as enacted as of May 1, 2020, April 1, 2021, including any provisions enacted as of that date that become effective either before or after that date."

SECTION 1.1.(b) G.S. 105-153.5(a)(2)b. reads as rewritten:

"b. Mortgage Expense and Property Tax. – The amount allowed as a deduction for interest paid or accrued during the taxable year under section 163(h) of the Code with respect to any qualified residence plus the amount allowed as a deduction for property taxes paid or accrued on real estate under section 164 of the Code for that taxable year. For taxable years 2014 through 2020, 2021, the amount allowed as a deduction for interest paid or accrued during the taxable year under section 163(h) of the Code with respect to any qualified residence shall not include the amount for mortgage insurance premiums treated as qualified residence interest. The amount allowed under this sub-subdivision may not exceed twenty thousand dollars (\$20,000). For spouses filing as married filing separately or married filing jointly, the total mortgage interest and real estate taxes claimed by both spouses combined may not exceed twenty thousand dollars (\$20,000). For spouses filing as married filing separately with a joint obligation for mortgage interest and real estate taxes, the deduction for these



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items is allowable to the spouse who actually paid them. If the amount of the mortgage interest and real estate taxes paid by both spouses exceeds twenty thousand dollars (\$20,000), these deductions must be prorated based on the percentage paid by each spouse. For joint obligations paid from joint accounts, the proration is based on the income reported by each spouse for that taxable year."

SECTION 1.1.(c) G.S. 105-153.5(c2) reads as rewritten:

"(c2) Decoupling Adjustments. – In calculating North Carolina taxable income, a taxpayer must make the following adjustments to the taxpayer's adjusted gross income:

(1) For taxable years 2014 through ~~2020~~, 2025, the taxpayer must add the amount excluded from the taxpayer's gross income for the discharge of qualified principal residence indebtedness under section 108 of the Code. The purpose of this subdivision is to decouple from the income exclusion available under federal tax law. If the taxpayer is insolvent, as defined in section 108(d)(3) of the Code, then the addition required under this subdivision is limited to the amount of discharge of qualified principal residence indebtedness excluded from adjusted gross income under section 108(a)(1)(E) of the Code that exceeds the amount of discharge of indebtedness that would have been excluded under section 108(a)(1)(B) of the Code.

...

(18) For taxable ~~year 2020~~, years 2020 through 2025, a taxpayer must add the amount excluded from the taxpayer's gross income for payment by an employer, whether paid to the taxpayer or to a lender, of principal or interest on any qualified education loan, as defined in section 221(d)(1) of the Code, incurred by the taxpayer for education of the taxpayer. The purpose of this subdivision is to decouple from the exclusion for certain employer payments of student loans under section 2206 of the CARES ~~Act~~, Act or under the Consolidated Appropriations Act, 2021.

...

(20) A taxpayer must add the amount of any expense deducted under the Code to the extent ~~that payment of the expense results in forgiveness of a covered loan pursuant to section 1106(b) of the CARES Act, and the income associated with the forgiveness is excluded from gross income pursuant to section 1106(i) of the CARES Act. The term "covered loan" has the same meaning as defined in section 1106 of the CARES Act.~~ the expense is allocable to income that is either wholly excluded from gross income or wholly exempt from the taxes imposed by this Part.

(21) For taxable years 2021 and 2022, a taxpayer must add an amount equal to the amount by which the taxpayer's deduction under section 274(n) of the Code exceeds the deduction that would have been allowed under the Internal Revenue Code as enacted as of May 1, 2020. The purpose of this subdivision is to decouple from the increased deduction under the Consolidated Appropriations Act, 2021, for business-related expenses for food and beverages provided by a restaurant.

(22) For taxable years 2021 through 2025, a taxpayer must add the amount excluded from the taxpayer's gross income for the discharge of a student loan under section 108(f)(5) of the Code. The purpose of this subdivision is to decouple from the exclusion from income for the discharge of a student loan under section 9675 of the American Rescue Plan Act of 2021.

(23) For taxable year 2020, a taxpayer must add the amount excluded from the taxpayer's gross income for unemployment compensation received by the

taxpayer under section 85(c) of the Code. The purpose of this subdivision is to decouple from the exclusion from income for unemployment compensation under section 9042 of the American Rescue Plan Act of 2021."

SECTION 1.1.(d) G.S. 105-130.5(a)(32) reads as rewritten:

"(32) The amount of any expense deducted under the Code to the extent that payment of the expense results in forgiveness of a covered loan pursuant to section 1106(b) of the CARES Act and the income associated with the forgiveness is excluded from gross income pursuant to section 1106(i) of the CARES Act. The term "covered loan" has the same meaning as defined in section 1106 of the CARES Act. the expense is allocable to income that is either wholly excluded from gross income or wholly exempt from the taxes imposed by this Part."

PART II. REVENUE LAWS TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES

SUBPART A. PERSONAL INCOME TAX CHANGES

SECTION 2A.1. G.S. 105-153.5(b) reads as rewritten:

"(b) Other Deductions. – In calculating North Carolina taxable income, a taxpayer may deduct from the taxpayer's adjusted gross income any of the following items that are included in the taxpayer's adjusted gross income:

...

~~(14)~~(15) The amount granted to the taxpayer during the taxable year under the Extra Credit grant program. This subdivision expires for taxable years beginning on or after January 1, ~~2021~~2022."

SECTION 2A.2. G.S. 105-153.5(c2) reads as rewritten:

"(c2) Decoupling Adjustments. – In calculating North Carolina taxable income, a taxpayer must make the following adjustments to the taxpayer's adjusted gross income:

...

(17) For taxable years 2019 and 2020, a taxpayer must add an amount equal to the amount by which the taxpayer's interest expense deduction under section 163(j) of the Code exceeds the interest expense deduction that would have been allowed under the Internal Revenue Code as enacted as of January 1, 2020. An add-back under this subdivision is not required to the extent the amount was required to be added back under another provision of this subsection. The purpose of this subdivision is to decouple from the modification of limitation on business interest allowed under section 2306 of the CARES Act.

(17a) A taxpayer who made an addition under subdivision (17) of this subsection may deduct twenty percent (20%) of the addition in each of the taxable years 2021 through 2025.

...."

SECTION 2A.3. G.S. 105-153.9(a)(2) reads as rewritten:

"(2) The fraction of the gross income, as modified as provided in ~~G.S. 105-134.6A, G.S. 105-153.5, G.S. 105-153.5~~ and G.S. 105-153.6, that is subject to income tax in another state or country shall be ascertained, and the North Carolina net income tax before credit under this section shall be multiplied by that fraction. The credit allowed is either the product thus calculated or the income tax actually paid the other state or country, whichever is smaller."

SECTION 2A.4. G.S. 105-163.7(b) reads as rewritten:

"(b) Informational Return to Secretary. – Every employer shall annually file an informational return with the Secretary that contains the information given on each of the employer's written statements to an employee. The Secretary may require additional information to be included on the informational return, provided the Secretary has given a minimum of 90 days' notice of the additional information required. The informational return ~~is due on or before January 31 of the succeeding year and~~ must be filed in an electronic format as prescribed by the Secretary. ~~If Secretary and is due on or before January 31 of the succeeding year or, if the employer terminates its business or permanently ceases paying wages during before the close of the calendar year, the informational return must be filed within 30 days of the last payment of remuneration.~~ on or before the last day of the month following the end of the calendar quarter in which the employer terminates its business, but no later than January 31 of the succeeding year. The informational return required by this subsection is in lieu of the report required by G.S. 105-154."

SECTION 2A.5. G.S. 105-163.8 is amended by adding a new subsection to read:

"(c) If a withholding agent fails to file a return and pay the tax due under this Article or files a grossly incorrect or false or fraudulent return, the Secretary must estimate the tax due and assess the withholding agent based on the estimate."

SECTION 2A.6. G.S. 105-241.6(b)(5) reads as rewritten:

"(5) Contingent Event. – The period to request a refund of an overpayment may be extended once as provided in this subdivision:

...

b. Other Event. – If a taxpayer contends that an event has occurred that prevents the taxpayer from filing an accurate and definite request for a refund of an overpayment within the period under this section, the taxpayer may submit a written request to the Secretary seeking an extension of the statute of limitations. The taxpayer must file a written request to the Secretary prior to expiration of the statute of limitations under this section. The request must establish by clear, convincing proof that the event is beyond the taxpayer's control and prevents the taxpayer from timely filing an accurate and definite request for a refund of an overpayment. The Secretary's decision on the request is final and is not subject to administrative or judicial review. If the Secretary agrees to the request, the period to file a request for a refund of an overpayment is six months after the event concludes."

SECTION 2A.7. G.S. 105-252.1 reads as rewritten:

"§ 105-252.1. Use of a TTIN.

A TTIN may not be used on any return, statement, or other document required to be filed with or furnished to the Department unless specifically authorized ~~in this Chapter by the Secretary.~~

SUBPART B. CORPORATE INCOME TAX CHANGES

SECTION 2B.1.(a) G.S. 105-83(d) reads as rewritten:

"(d) This section does not apply to the following:

(1) ~~corporations liable for the tax levied under G.S. 105-102.3 or to savings Banks.~~ For purposes of this subdivision, the term "bank" has the same meaning as defined in G.S. 105-130.7B(b).

(2) Savings and loan associations."

SECTION 2B.1.(b) This section is effective when it becomes law and applies retroactively for taxable years beginning on or after July 1, 2016.

SECTION 2B.2. G.S. 105-130.5(a)(31) reads as rewritten:

"(a) The following additions to federal taxable income shall be made in determining State net income:

...
(31) For taxable years 2019 and 2020, a taxpayer must add an amount equal to the amount by which the taxpayer's interest expense deduction under section 163(j) of the Code exceeds the interest expense deduction that would have been allowed under the Internal Revenue Code as enacted as of January 1, 2020, as calculated on a separate entity basis. An add-back under this subdivision is not required to the extent the amount was required to be added back under another provision of this subsection. The purpose of this subdivision is to decouple from the modification of limitation on business interest allowed under section 2306 of the CARES Act."

SECTION 2B.3.(a) G.S. 105-130.7B(b)(4) reads as rewritten:

"(4) Qualified interest expense. – The amount of net interest expense paid or accrued to a related member in a taxable year with the amount limited to the taxpayer's proportionate share of interest paid or accrued to a person who is not a related member during the same taxable year. This limitation does not apply to interest paid or accrued to a related member if one or more of the following applies:

...
e. The proportionate amount of interest paid or accrued to a related member that has already been disallowed by the application of section 163(j) of the Code."

SECTION 2B.3.(b) This section is effective when it becomes law and applies retroactively for taxable years beginning on or after January 1, 2018.

SECTION 2B.4. G.S. 105-130.8A(c) reads as rewritten:

"(c) Mergers and Acquisitions. – The Secretary must apply the standards contained in regulations adopted under sections 381 and 382 of the Code in determining the extent to which a loss survives a merger or an acquisition. For mergers and acquisitions occurring prior to January 1, 2015, the Secretary must apply the standards under G.S. 105-130.8 for taxable years beginning before January 1, 2015, and the standards of this section for taxable years beginning on or after January 1, 2015."

SECTION 2B.5. G.S. 105-251(a) reads as rewritten:

"(a) Scope of Information. – A taxpayer must give information to the Secretary when the Secretary requests the information. The Secretary may request a taxpayer to provide only the following kinds of information on a return, a report, or otherwise:

- (1) Information that identifies the taxpayer.
- (2) Information needed to determine the liability of the taxpayer for a tax.
- (3) Information needed to determine whether an item is subject to a tax.
- (4) Information that enables the Secretary to collect a tax.
- (5) Financial or tax documentation required to determine the appropriate adjustment under G.S. 105-130.5A. If such information is not timely provided as required under G.S. 105-130.5A(a), the Secretary may propose any adjustment allowable under Part 1 of Article 4 of this Chapter.

~~(5)~~(6) Other information the law requires a taxpayer to provide or the Secretary needs to perform a duty a law requires the Secretary to perform."

SUBPART C. SALES AND USE TAX CHANGES

SECTION 2C.1.(a) G.S. 105-164.13E(a)(7) reads as rewritten:

"(7) Any of the following animals:

- a. ~~Baby chicks and poults.~~ Fowl.

b. Livestock."

SECTION 2C.1.(b) This section is effective retroactively to July 1, 2020, and applies to purchases made on or after that date.

SECTION 2C.2. G.S. 105-259(b) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person except as provided in this subsection. Standards used or to be used for the selection of returns for examination and data used or to be used for determining the standards may not be disclosed for any purpose. All other tax information may be disclosed only if the disclosure is made for one of the following purposes:

...

(5b) ~~To furnish to the finance officials of a city a list of the utility taxable gross receipts and piped natural gas tax revenues attributable to the city under G.S. 105-116.1 and G.S. 105-187.44 or under former G.S. 105-116 and G.S. 105-120.~~

...."

SUBPART D. EXCISE TAX HEARINGS CHANGES

SECTION 2D.1. G.S. 105-113.4B reads as rewritten:

"§ 105-113.4B. Cancellation or revocation of license.

...

(a1) ~~Revocation.~~ Summary Revocation and Procedure. – The Secretary may summarily revoke a license issued under this Article when the Secretary ~~finds~~ determines that the licensee is incurring liability for the tax imposed under this Article after failing to pay a tax when due under this Article. The Secretary must send a revoked licensee a notice of the revocation and a notice of hearing. The hearing must be held within 10 days after the date of the notice of revocation unless the revoked licensee requests, before the day of the hearing, that the hearing be rescheduled. Upon receipt of a timely request, the Secretary must reschedule the hearing and provide at least 10 days' notice of the rescheduled hearing. The revocation is not stayed pending the hearing decision. A notice of hearing under this subsection must be in writing and indicate the date, time, and place of the hearing. A hearing must be conducted as prescribed by the Secretary. The Secretary must issue a final decision and notify the revoked licensee in writing within 10 days of the hearing. The final decision must state the basis for the decision. The statement of the basis of a revocation does not limit the Department from changing the basis.

(a2) ~~In addition, the Non-Summary Revocation.~~ – The Secretary may revoke the license of a licensee that commits one or more of the following acts after holding a hearing on whether the license should be revoked; affording the licensee an opportunity to have a hearing as provided in subsections (a3) through (b2) of this section:

- (1) Fails to obtain a license in a timely manner or for all places of business as required by this Article.
- (2) Willfully fails to file a return required by this Article.
- (3) Willfully fails to pay a tax when due under this Article.
- (4) Makes a false statement in an application or return required under this Article.
- (5) Fails to keep records as required by this Article.
- (6) Refuses to allow the Secretary or a representative of the Secretary to examine the person's books, accounts, and records concerning tobacco product.
- (7) Fails to disclose the correct amount of tobacco product taxable in this State.
- (8) Fails to file a replacement bond or an additional bond if required by the Secretary under this Article.
- (9) Violates G.S. 14-401.18.
- (10) Fails to meet or maintain the requirements set out in G.S. 105-113.4A(b).

- (a3) Notice of Proposed Revocation. – The Secretary must provide a licensee with a notice of proposed revocation that includes all of the following information:
- (1) The basis for the proposed revocation. The statement of the basis for the proposed revocation does not limit the Department from changing the basis.
 - (2) The effective date of the revocation, which must be one of the following:
 - a. Forty-five days from the date of the notice of proposed revocation if the licensee does not file a timely request for hearing.
 - b. The tenth day after the date an adverse final decision is issued if the adverse final decision is mailed.
 - c. The date an adverse final decision is delivered if the adverse final decision is delivered in person.
 - (3) The circumstances, if any, under which the Secretary will not revoke the license.
 - (4) An explanation of how the licensee may contest the proposed revocation.
- (a4) Request for Hearing and Decision. – A licensee may contest a proposed revocation by filing a written hearing request within 45 days of the date the notice of proposed revocation was mailed, if the notice was delivered by mail, or delivered to the licensee, if the notice was delivered in person. A hearing request is considered filed as provided under G.S. 105-241.11(b). If the licensee does not file a timely hearing request, the license is revoked as provided in the notice of proposed revocation, and the revocation is final and not subject to further administrative or judicial review.
- (b) Hearing Procedure. – ~~The Secretary must send a person whose license is summarily revoked a notice of the revocation and must give the person an opportunity to have a hearing on the revocation within 10 days after the revocation.~~ The Secretary must give a person whose license may be revoked after a hearing at least 10 days' written notice licensee who filed a timely hearing request in accordance with subsection (a4) of this section at least 20 days' written notice of the date, time, and place of the hearing. A notice of a summary license revocation and a notice of hearing must be sent by certified mail to the last known address of the licensee. If the person whose license may be revoked fails to attend the noticed hearing, the license revocation is effective 15 days after the noticed hearing, unless the Department and the licensee agree to a shorter period. A hearing must be conducted as prescribed by the Secretary. The Secretary must issue a final decision and notify the licensee in writing within 60 days of the hearing. The Department and the licensee may extend this time by mutual agreement. Failure to issue a final decision within the required time does not affect the validity of the decision. The final decision must state the basis for the decision and, if the final decision includes revocation of the license, the effective date of the revocation in accordance with subdivision (2) of subsection (a3) of this section. The statement of the basis of a revocation does not limit the Department from changing the basis.
- (b1) Delivery of Notice. – The Secretary must deliver a notice in accordance with G.S. 105-241.20(b). In lieu of providing notice by United States mail, the Secretary may give notice by email or other electronic means if the licensee has consented to receiving notices via electronic means.
- (b2) Return of Credentials. – If a license is revoked, the revoked licensee must return to the Secretary, within 10 days of the issuance of the final decision, all licenses previously issued. If a license is unable to be returned, the revoked licensee must include a written statement of the reasons, satisfactory to the Secretary, why the license cannot be returned.
- (c) Release of Bond. – When the Secretary cancels or revokes a license and the licensee has paid all taxes and penalties due under this Article, the Secretary must take one of the following actions concerning a bond or an irrevocable letter of credit filed by the licensee:
- (1) Return an irrevocable letter of credit to the licensee.

(2) Return a bond to the licensee or notify the person liable on the bond and the licensee that the person is released from liability on the bond."

SECTION 2D.2. Article 36B of Chapter 105 of the General Statutes is amended by adding the following new section:

"§ 105-449.47B. Revocation of license.

(a) Revocation. – The Secretary may revoke a license or a decal when a motor carrier fails to comply with this Article or Article 36C or 36D of this Subchapter after affording the motor carrier an opportunity to have a hearing as provided in this section.

(b) Notice of Proposed Revocation. – The Secretary must provide a licensee with a notice of proposed revocation that includes all of the following information:

(1) The basis for the proposed revocation. The statement of the basis for the proposed revocation does not limit the Department from changing the basis.

(2) The effective date of the revocation, which must be one of the following:

a. Forty-five days from the date of the notice of proposed revocation if the licensee does not file a timely request for hearing.

b. The tenth day after the date an adverse final decision is issued if the adverse final decision is mailed.

c. The date an adverse final decision is delivered if the adverse final decision is delivered in person.

(3) The circumstances, if any, under which the Secretary will not revoke the license.

(4) An explanation of how the licensee may contest the proposed revocation.

(c) Request for Hearing and Decision. – A licensee may contest a proposed revocation by filing a written hearing request within 45 days of the date the notice of proposed revocation was mailed, if the notice was delivered by mail, or delivered to the licensee, if the notice was delivered in person. A hearing request is considered filed as provided under G.S. 105-241.11(b). If the licensee does not file a timely hearing request, the license is revoked as provided in the notice of proposed revocation, and the revocation is final and not subject to further administrative or judicial review.

(d) Hearing Procedure. – The Secretary must give a licensee who filed a timely hearing request in accordance with subsection (c) of this section at least 20 days' written notice of the date, time, and place of the hearing, unless the Department and the licensee agree to a shorter period. A hearing must be conducted as prescribed by the Secretary. The Secretary must issue a final decision and notify the licensee in writing within 60 days of the hearing. The Department and the licensee may extend this time limit by mutual agreement. Failure to issue a final decision within the required time does not affect the validity of the decision. The final decision must state the basis for the decision and, if the final decision includes revocation of a license or a decal, the effective date of the revocation in accordance with subdivision (b)(2) of this section. The statement of the basis of the revocation does not limit the Department from changing the basis.

(e) Delivery of Notice. – The Secretary must deliver a notice in accordance with G.S. 105-241.20(b). In lieu of providing notice by United States mail, the Secretary may give notice by email or other electronic means if the licensee has consented to receiving notices via electronic means.

(f) Return of Credentials. – If the license is revoked, the former licensee shall return to the Secretary, within 10 days of the issuance of the final decision, all licenses and decals previously issued. If the licenses or decals are not returned, the credentials are subject to seizure or removal from the motor vehicle or defacement. If a license or decal is unable to be returned, the licensee must include a written statement of the reasons, satisfactory to the Secretary, why the license or decal cannot be returned."

SECTION 2D.3. G.S. 105-449.76 reads as rewritten:

"§ 105-449.76. Cancellation or revocation of license.

(a) Cancellation. – The Secretary may cancel a license issued under this Article upon the written request of the licensee. The licensee's request must include a proposed effective date of cancellation and must return the license to the Secretary on or before the proposed effective date. If the licensee's request does not include a proposed effective date of cancellation, the license is cancelled 15 days after the Department receives the written request. If the license is unable to be returned, the licensee must include a written statement of the reasons, satisfactory to the Secretary, why the license cannot be returned. The Secretary shall notify the licensee when the license is cancelled.

(a1) ~~Revocation.~~ Summary Revocation and Procedure. – The Secretary may summarily revoke a license issued under this Article when the Secretary ~~finds~~ determines that the licensee is incurring liability for the tax imposed under this Article after failing to pay a tax when due under this Article. The Secretary must send a revoked licensee a notice of the revocation and a notice of hearing. The hearing must be held within 10 days after the date of the notice of revocation unless the revoked licensee requests, before the day of the hearing, that the hearing be rescheduled. Upon receipt of a timely request, the Secretary must reschedule the hearing and provide at least 10 days' notice of the rescheduled hearing. The revocation is not stayed pending the hearing decision. A notice of hearing under this subsection must be in writing and indicate the date, time, and place of the hearing. A hearing must be conducted as prescribed by the Secretary. The Secretary must issue a final decision and notify the revoked licensee in writing within 10 days of the hearing. The final decision must state the basis for the decision. The statement of the basis of a revocation does not limit the Department from changing the basis.

(a2) ~~In addition, the Non-Summary Revocation.~~ – The Secretary may revoke the license of a licensee that commits one or more of the acts listed in G.S. 105-449.120 after ~~holding a hearing on whether the license should be revoked.~~ affording the licensee an opportunity to have a hearing as provided in subsections (a3) through (b2) of this section.

(a3) Notice of Proposed Revocation. – The Secretary must provide a licensee with a notice of proposed revocation that includes all of the following information:

(1) The basis for the proposed revocation. The statement of the basis for the proposed revocation does not limit the Department from changing the basis.

(2) The effective date of the revocation, which must be one of the following:

a. Forty-five days from the date of the notice of proposed revocation if the licensee does not file a timely request for hearing.

b. The tenth day after the date an adverse final decision is issued if the adverse final decision is mailed.

c. The date an adverse final decision is delivered if the adverse final decision is delivered in person.

(3) The circumstances, if any, under which the Secretary will not revoke the license.

(4) An explanation of how the licensee may contest the proposed revocation.

(a4) Request for Hearing and Decision. – A licensee may contest a proposed revocation by filing a written hearing request within 45 days of the date the notice of proposed revocation was mailed, if the notice was delivered by mail, or delivered to the licensee, if the notice was delivered in person. A hearing request is considered filed as provided under G.S. 105-241.11(b). If the licensee does not file a timely hearing request, the license is revoked as provided in the notice of proposed revocation, and the revocation is final and not subject to further administrative or judicial review.

(b) ~~Hearing Procedure.~~ – ~~The Secretary must send a person whose license is summarily revoked a notice of the revocation and must give the person an opportunity to have a hearing on the revocation within 10 days after the revocation. The Secretary must give a person whose license may be revoked after a hearing at least 10 days' written notice of the~~ request in accordance with subsection (a4) of this section at least 20 days' written notice of the

date, time, and place of the hearing. ~~A notice of a summary license revocation and a notice of hearing must be sent by certified mail to the last known address of the licensee. If the person whose license may be revoked fails to attend the noticed hearing, the license revocation is effective 15 days after the noticed hearing.~~ hearing, unless the Department and the licensee agree to a shorter period. A hearing must be conducted as prescribed by the Secretary. The Secretary must issue a final decision and notify the licensee in writing within 60 days of the hearing. The Department and the licensee may extend this time by mutual agreement. Failure to issue a final decision within the required time does not affect the validity of the decision. The final decision must state the basis for the decision and, if the final decision includes revocation of the license, the effective date of the revocation in accordance with subdivision (2) of subsection (a3) of this section. The statement of the basis of a revocation does not limit the Department from changing the basis.

(b1) Delivery of Notice. – The Secretary must deliver a notice in accordance with G.S. 105-241.20(b). In lieu of providing notice by United States mail, the Secretary may give notice by email or other electronic means if the licensee has consented to receiving notices via electronic means.

(b2) Return of Credentials. – If the license is revoked, the former licensee shall return to the Secretary, within 10 days of the issuance of the final decision, all licenses and decals previously issued. If a license or decal is unable to be returned, the licensee must include a written statement of the reasons, satisfactory to the Secretary, why the license or decal cannot be returned.

(c) Release of Bond. – When the Secretary cancels or revokes a license and the licensee has paid all taxes and penalties due under this Article, the Secretary must take one of the following actions concerning a bond or an irrevocable letter of credit filed by the licensee:

- (1) Return an irrevocable letter of credit to the licensee.
- (2) Return a bond to the licensee or notify the person liable on the bond and the licensee that the person is released from liability on the bond."

SECTION 2D.4. G.S. 119-19 reads as rewritten:

"§ 119-19. Authority of Secretary to cancel or revoke a license.

(a) ~~Reasons.~~ Cancellation. – The Secretary of Revenue may cancel a license issued under this Article upon the written request of the licensee. The licensee's request must include a proposed effective date of the cancellation and must return the license to the Secretary on or before the proposed effective date. If the licensee's request does not include a proposed effective date of cancellation, the license is cancelled 15 days after the Department receives the written request. If the license is unable to be returned, the licensee must include a written statement of the reason, satisfactory to the Secretary, why the license cannot be returned. The Secretary must notify the licensee when the license is cancelled.

(a1) Summary Revocation and Procedure. – The Secretary may summarily revoke a license issued under this Article or under Article 36C or 36D of ~~Chapter 105 of the General Statutes~~ this Chapter when the Secretary ~~finds~~ determines that the licensee is incurring liability for the tax imposed by this Article after failing to pay a tax when due under this Article. The Secretary must send a revoked licensee a notice of the revocation and a notice of hearing. The hearing must be held within 10 days after the date of the notice of revocation unless the revoked licensee requests, before the day of the hearing, that the hearing be rescheduled. Upon receipt of a timely request, the Secretary must reschedule the hearing and provide at least 10 days' notice of the rescheduled hearing. The revocation is not stayed pending the hearing decision. A notice of hearing under this subsection must be in writing and indicate the date, time, and place of the hearing. A hearing must be conducted as prescribed by the Secretary. The Secretary must issue a final decision and notify the revoked licensee in writing within 10 days of the hearing. The final decision must state the basis for the decision. The statement of the basis of a revocation does not limit the Department from changing the basis.

1 (a2) Non-Summary Revocation. – The Secretary may revoke the license of a licensee who
2 files a false report under this Article or fails to file a report required under this Article after
3 holding a hearing on whether the license should be revoked. Article after affording the licensee
4 an opportunity to have a hearing as provided in subsections (a3) through (b2) of this section.

5 (a3) Notice of Proposed Revocation. – The Secretary must provide a licensee with a notice
6 of proposed revocation that includes all of the following information:

7 (1) The basis for the proposed revocation. The statement of the basis for the
8 proposed revocation does not limit the Department from changing the basis.

9 (2) The effective date of the revocation, which must be one of the following:

10 a. Forty-five days from the date of the notice of proposed revocation if
11 the licensee does not file a timely request for hearing.

12 b. The tenth day after the date an adverse final decision is issued if the
13 adverse final decision is mailed.

14 c. The date an adverse final decision is delivered if the adverse final
15 decision is delivered in person.

16 (3) The circumstances, if any, under which the Secretary will not revoke the
17 license.

18 (4) An explanation of how the licensee may contest the proposed revocation.

19 (a4) Request for Hearing and Decision. – A licensee may contest a proposed revocation
20 by filing a written hearing request within 45 days of the date the notice of proposed revocation
21 was mailed, if the notice was delivered by mail, or delivered to the licensee, if the notice was
22 delivered in person. A hearing request is considered filed as provided under G.S. 105-241.11(b).
23 If the licensee does not file a timely hearing request, the license is revoked as provided in the
24 notice of proposed revocation, and the revocation is final and not subject to further administrative
25 or judicial review.

26 (b) Hearing Procedure. – The Secretary must send a person whose license is summarily
27 revoked a notice of the revocation and must give the person an opportunity to have a hearing on
28 the revocation within 10 days after the revocation. The Secretary must give a person whose
29 license may be revoked after a hearing give a licensee who filed a timely hearing request in
30 accordance with subsection (a4) of this section at least 10-20 days' written notice of the date,
31 time, and place of the hearing. A notice of a summary license revocation and a notice of hearing
32 must be sent by certified mail to the last known address of the licensee-hearing, unless the
33 Department and the licensee agree to a shorter period. A hearing must be conducted as prescribed
34 by the Secretary. The Secretary must issue a final decision and notify the licensee in writing
35 within 60 days of the hearing. The Department and the licensee may extend this time by mutual
36 agreement. Failure to issue a final decision within the required time does not affect the validity
37 of the decision. The final decision must state the basis for the decision and, if the final decision
38 includes revocation of the license, the effective date of the revocation in accordance with
39 subdivision (2) of subsection (a3) of this section. The statement of the basis of a revocation does
40 not limit the Department from changing the basis.

41 (b1) Delivery of Notice. – The Secretary must deliver a notice in accordance with
42 G.S. 105-241.20(b). In lieu of providing notice by United States mail, the Secretary may give
43 notice by email or other electronic means if the licensee has consented to receiving notices via
44 electronic means.

45 (b2) Return of Credentials. – If the license is revoked, the former licensee shall return to
46 the Secretary, within 10 days of the issuance of the final decision, all licenses previously issued.
47 If a license is unable to be returned, the licensee must include a written statement of the reasons,
48 satisfactory to the Secretary, why the license cannot be returned.

49 (c) Release of Bond. – When the Secretary cancels or revokes a license and the licensee
50 has paid all taxes and penalties due under this Article, the Secretary must either return to the

licensee the bond filed by the licensee or notify the person liable on the bond and the licensee that the person is released from liability on the bond."

SECTION 2D.5. This Part becomes effective January 1, 2022, and applies to summary revocations and non-summary revocations initiated by the Department on or after that date.

SUBPART E. OTHER EXCISE TAX CHANGES

SECTION 2E.1. G.S. 105-113.8 is recodified as G.S. 105-113.4H.

SECTION 2E.2.(a) G.S. 105-113.11 is recodified as G.S. 105-113.4I.

SECTION 2E.2.(b) G.S. 105-113.4I, as recodified by subsection (a) of this section, reads as rewritten:

"§ 105-113.4I. Licenses required.

~~After the effective date of this Article, no~~ A person ~~shall~~ may not engage in business as a ~~distributor~~ distributor, wholesale dealer, or retail dealer in this State, without having first obtained from the Secretary the appropriate license for that purpose as prescribed ~~herein~~. ~~Any in this Article. A~~ license required by this Article ~~shall be~~ is in addition to any ~~and all~~ other licenses ~~which that~~ may be required by law."

SECTION 2E.3.(a) G.S. 105-113.29 is recodified as G.S. 105-113.4J.

SECTION 2E.3.(b) G.S. 105-113.4J, as recodified by subsection (a) of this section, reads as rewritten:

"§ 105-113.4J. Unlicensed place of business.

It is unlawful for a person to maintain a place of business within this State required by this Article to be licensed to engage in the business of selling, offering for sale, or possessing with the intent to sell ~~cigarettes or other tobacco~~ products without first obtaining ~~the licenses~~. all licenses required by this Article."

SECTION 2E.4. G.S. 105-113.33 is recodified as G.S. 105-113.4K.

SECTION 2E.5. G.S. 105-113.18(2) reads as rewritten:

"(2) Use Tax Report. – ~~Every other~~ A person who is not a licensed distributor and has acquired non-tax-paid cigarettes for sale, use, or ~~consumption~~ consumption, subject to the tax imposed by this Part ~~shall~~, must, within 96 hours after receipt of the cigarettes, file a report in the form prescribed by the Secretary showing the amount of cigarettes so received and any other information required by the Secretary. The report ~~shall~~ must be accompanied by payment of the full amount of the tax."

SECTION 2E.6. G.S. 105-113.35(d) reads as rewritten:

"(d) Manufacturer's Option. – A manufacturer who is not a retail dealer and who ships tobacco products other than cigarettes to either a wholesale dealer or retail dealer licensed under this Part may apply to the Secretary to be relieved of paying the tax imposed by this section on the tobacco products. ~~A manufacturer who is not a retail dealer and who ships vapor products to either a wholesale dealer or retail dealer licensed under this Part may apply to the Secretary to be relieved of paying the tax imposed by this section on the vapor products shipped to either a wholesale dealer or retail dealer.~~ Once granted permission, a manufacturer may choose not to pay the tax until otherwise notified by the Secretary but is not relieved from filing a report as required by this Part. To be relieved of payment of the tax imposed by this section, a manufacturer must comply with the requirements set by the Secretary.

Permission granted under this subsection to a manufacturer to be relieved of paying the tax imposed by this section applies to an integrated wholesale dealer with whom the manufacturer is an affiliate. A manufacturer must notify the Secretary of any integrated wholesale dealer with whom it is an affiliate when the manufacturer applies to the Secretary for permission to be relieved of paying the tax and when an integrated wholesale dealer becomes an affiliate of the

1 manufacturer after the Secretary has given the manufacturer permission to be relieved of paying
2 the tax.

3 If a person is both a manufacturer of cigarettes and a wholesale dealer of tobacco products
4 other than cigarettes and the person is granted permission under G.S. 105-113.10 to be relieved
5 of paying the cigarette excise tax, the permission applies to the tax imposed by this section on
6 tobacco products other than cigarettes. A cigarette manufacturer who becomes a wholesale dealer
7 after receiving permission to be relieved of the cigarette excise tax must notify the Secretary of
8 the permission received under G.S. 105-113.10 when applying for a license as a wholesale
9 dealer."

10 **SECTION 2E.7.** G.S. 105-113.37 reads as rewritten:

11 **"§ 105-113.37. Payment of tax.**

12 (a) Monthly Report. – Taxes levied by this ~~Article-Part~~ are payable by a licensed
13 wholesale dealer or licensed retail dealer when a report is required to be filed. A report is due on
14 a monthly basis. A monthly report covers tobacco ~~products-products, other than cigarettes,~~ sold,
15 shipped, delivered, or otherwise disposed of in this State occurring in a calendar month and is
16 due within 20 days after the end of the month covered by the report. A report ~~shall-must~~ be filed
17 on a form provided by the Secretary and ~~shall-must~~ contain the information required by the
18 Secretary.

19 (a1) Use Tax Report. – A person who is not a licensed wholesale dealer or licensed retail
20 dealer and has acquired non-tax-paid tobacco products, other than cigarettes, for sale, use, or
21 consumption, subject to the tax imposed by this Part must, within 96 hours after receipt of the
22 tobacco products, file a report in the form prescribed by the Secretary showing the amount of
23 tobacco products received and any other information required by the Secretary. The report must
24 be accompanied by payment of the full amount of the tax.

25"

26 **SECTION 2E.8.** G.S. 105-113.83 reads as rewritten:

27 **"§ 105-113.83. Payment of excise taxes.**

28 ...

29 (b) Malt Beverage and Wine. – The excise taxes on malt beverages and wine levied under
30 G.S. 105-113.80(a) and (b), respectively, are payable to the Secretary by the resident wholesaler
31 or importer who first handles the beverages in this State. ~~The excise taxes levied under~~
32 ~~G.S. 105-113.80(b) on wine shipped directly to consumers in this State pursuant to~~
33 ~~G.S. 18B-1001.1 must be paid by the wine shipper permittee.~~ The taxes on malt beverages and
34 wine are payable only once on the same beverages. Unless otherwise provided, the tax is due on
35 or before the 15th day of the month following the month in which the beverage is first sold or
36 otherwise disposed of in this State by the wholesaler or importer. When excise taxes are paid on
37 wine or malt beverages, the wholesaler or importer must submit to the Secretary verified reports
38 on forms provided by the Secretary detailing sales records for the month for which the taxes are
39 paid. The report must indicate the amount of excise tax due, contain the information required by
40 the Secretary, and indicate separately any transactions to which the excise tax does not apply. ~~A~~
41 ~~wine shipper permittee shall submit verified reports once a year on forms provided by the~~
42 ~~Secretary detailing sales records for the year the taxes are paid. The verified report is due on or~~
43 ~~before the fifteenth day of the first month of the following calendar year.~~

44 (b1) Brewery and Winery Option. – A brewery or winery may be relieved of paying the
45 tax levied under G.S. 105-113.80(a) and (b) if all of the following apply:

- 46 (1) The brewery or winery holds a permit issued under G.S. 18B-1101, 18B-1102,
47 or 18B-1104.
48 (2) The brewery or winery transfers malt beverages or wine to a wholesaler
49 permitted under G.S. 18B-1107 or G.S. 18B-1109.
50 (3) The wholesaler agrees in writing to be responsible for the tax due on the
51 transferred malt beverages or wine.

(4) The brewery or winery files a report when the tax would otherwise be due reporting the transfer of malt beverages or wine to the wholesaler.

(b2) Backup Tax Liability. – If a brewery or winery is relieved of paying the excise tax as provided under subsection (b1) of this section, the wholesaler receiving the malt beverages or wine is liable for any tax due under this section.

(b3) Wine Shipper Permittee. – A wine shipper permittee must pay the excise tax levied under G.S. 105-113.80(b) on wine shipped directly to consumers in this State pursuant to G.S. 18B-1001.1. A wine shipper permittee must submit verified reports once a year on forms provided by the Secretary detailing sales records for the year taxes are paid. The verified report is due on or before the fifteenth day of the first month of the following calendar year.

...."

SECTION 2E.9. G.S. 105-113.86 reads as rewritten:

"§ 105-113.86. Bond or irrevocable letter of credit.

(a) Wholesalers and Importers. – A The Secretary may require a wholesaler or importer must file with the Secretary to furnish a bond in an amount of that adequately protects the State from a wholesaler's or importer's failure to pay taxes due under this Article. The amount of the bond shall not be less than five thousand dollars (\$5,000). The amount of the bond must be proportionate to the anticipated tax liability of the wholesaler or importer.

(a1) Distilleries. – The Secretary may require a distillery to furnish a bond in an amount that adequately protects the State from a distillery's failure to pay taxes under this Article. The amount of the bond shall not be less than two thousand dollars (\$2,000).

(a2) Periodic Review. – The Secretary should periodically review the sufficiency of the bonds required under this section. The Secretary may increase the proportionate amount required, not to exceed fifty thousand dollars (\$50,000), if the bond furnished no longer covers the taxpayer's anticipated tax liability. The Secretary may decrease the proportionate amount required when the Secretary determines that a smaller bond amount will adequately protect the State from loss. The bond must be conditioned on compliance with this Article, payable to the State, in a form acceptable to the Secretary, and secured by a corporate surety.

(b) Nonresident Vendors. – The Secretary may require the holder of a nonresident vendor ABC permit to furnish a bond in an amount not to exceed two thousand dollars (\$2,000). The bond must be conditioned on compliance with this Article, payable to the State in a form acceptable to the Secretary, and secured by a corporate surety.

(c) Letter of Credit. – For purposes of this section, a wholesaler or importer or importer, a nonresident vendor or vendor, or a distillery may substitute an irrevocable letter of credit for the secured bond required by this section. The letter of credit must be issued by a commercial bank acceptable to the Secretary and available to the State as a beneficiary. The letter of credit must be in a form acceptable to the Secretary, conditioned upon compliance with this Article, and in the amounts stipulated in this section."

SECTION 2E.10.(a) G.S. 105-236(a)(2) reads as rewritten:

"(2) Failure to Obtain a License. – For failure to obtain a license before engaging in a business, trade or profession for which a license is required, the Secretary shall assess a penalty equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, not to exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars (\$5.00). In cases in which the taxpayer, after written notification by the Department, fails to obtain a license as required under G.S. 105-449.65 G.S. 105-113.4I, G.S. 105-449.65, or G.S. 105-449.131, the Secretary may assess a penalty of one thousand dollars (\$1,000)."

SECTION 2E.10.(b) This section becomes effective January 1, 2022, and applies to penalties assessed on or after that date.

SECTION 2E.11. G.S. 105-449.45 reads as rewritten:

"§ 105-449.45. Returns of carriers.

...

(d) ~~Penalties.~~ **Failure to File Penalty.** – A motor carrier that fails to file a return under this section by the required date is subject to a penalty of fifty dollars (\$50.00).

(d1) **Failure to Pay Penalty.** – A motor carrier that fails to pay a tax when due is subject to a penalty of fifty dollars (\$50.00), or ten percent (10%) of the tax due, whichever is greater. The Secretary shall not assess this penalty if the motor carrier files or pays in accordance with G.S. 105-236(a)(4)a. or b.

(d2) **Penalty Waiver.** – The Secretary may reduce or waive a penalty as provided under G.S. 105-449.119.

...."

SECTION 2E.12.(a) G.S. 105-449.60 reads as rewritten:

"§ 105-449.60. Definitions.

The following definitions apply in this Article:

...

(20a) **Fuel grade ethanol.** – Ethanol meeting the standard for the American Society Testing Materials Specification D 4806, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel," or ethanol, regardless of how it was produced, denatured in accordance with 27 C.F.R. § 19.746 as of January 1, 2021.

(21) **Gasohol.** – A blended fuel composed of gasoline and fuel grade ethanol.~~alcohol~~ or gasoline and ethanol.

...."

SECTION 2E.12.(b) This section becomes effective January 1, 2022.

SECTION 2E.13.(a) G.S. 105-449.115 reads as rewritten:

"§ 105-449.115. Shipping document required to transport motor fuel by railroad tank car or transport truck.

...

(d) **Duties of Transporter.** – A person to whom a shipping document was issued must do all of the following:

(1) Carry the shipping document in the conveyance for which it was issued when transporting the motor fuel described in it.

(2) Show the shipping document to a law enforcement officer upon request when transporting the motor fuel described in it.

(2a) Maintain a copy of the shipping at a centralized place of business for at least three years from the date of delivery.

(3) Deliver motor fuel described in the shipping document to the destination state ~~printed-designated~~ on it unless the ~~person-person~~, in a manner prescribed by the Secretary, does all of the following:

a. ~~Notifies the Secretary, in a manner designated by the Secretary,~~ Secretary before transporting the motor fuel into a state other than the printed-destination state that the person has received instructions since the shipping document was issued to deliver the motor fuel to a different destination state designated on the shipping document.

b. ~~Receives from the Secretary, in a manner designated by the Secretary,~~ Secretary a confirmation number authorizing the diversion-shipment of motor fuel to a state other than the state designated on the shipping document.

c. ~~Writes-Contemporaneously notes~~ on the shipping document the change in destination state and the confirmation number for the diversion-received from the Secretary.

(4) ~~Give~~ Upon delivery, provide a copy of the shipping document to the distributor or other person to whom the motor fuel is delivered.

(e) Duties of Person Receiving Shipment. – A person to whom motor fuel is delivered by railroad tank car or transport truck may ~~not only~~ accept delivery of the motor fuel if the destination state shown on the shipping document for the motor fuel is ~~a state other than North Carolina. To determine if the shipping document shows North Carolina as the destination state, the person to whom the fuel is delivered must examine the shipping document and must keep a copy of the shipping document.~~ Carolina or has been changed to North Carolina in accordance with subdivision (3) of subsection (d) of this section. The person must ~~keep~~ maintain a copy of the shipping document for at least three years from the date of delivery and must maintain a copy of the shipping document at the place of business where the motor fuel was delivered for 90 days from the date of delivery and must keep it at that place or another place for at least three years from the date of delivery. A person who accepts delivery of motor fuel in violation of this subsection is jointly and severally liable for any tax due on the fuel.

...."

SECTION 2E.13.(b) G.S. 105-449.115A reads as rewritten:

"§ 105-449.115A. Shipping document required to transport fuel by tank wagon.

...

(b) Duties of Transporter. – A person to whom an invoice, bill of sale, or shipping document was issued must do all of the following:

(1) Carry the invoice, bill of sale, or shipping document in the conveyance for which it is issued when transporting the motor fuel described in it.

(2) Show the invoice, bill of sale, or shipping document upon request when transporting the motor fuel described in it.

(3) ~~Keep~~ Maintain a copy of the invoice, bill of sale, or shipping document at a centralized place of business for at least three years from the date of delivery.

(4) Deliver motor fuel described in the shipping document to the state designated on it unless the person, in a manner prescribed by the Secretary, does all of the following:

a. Notifies the Secretary before transporting the motor fuel into a state other than the state designated on the shipping document.

b. Receives from the Secretary a confirmation number authorizing the shipment of motor fuel to a state other than the state designated on the shipping document.

c. Contemporaneously notes on the shipping document the change in destination state and the confirmation number received from the Secretary.

(5) Upon delivery, provide a copy of the shipping document to the person to whom the motor fuel is delivered.

(b1) Duties of Person Receiving Shipment. – A person to whom motor fuel is delivered by tank wagon may only accept delivery of the motor fuel if the destination state shown on the shipping document for the motor fuel is North Carolina or has been changed to North Carolina in accordance with subdivision (4) of subsection (b) of this section. The person must maintain a copy of the shipping document for at least three years from the date of delivery and must maintain a copy of the shipping document at the place of business where the motor fuel was delivered for 90 days from the date of delivery. A person who accepts delivery of motor fuel in violation of this subsection is jointly and severally liable for any tax due on the fuel.

...."

SECTION 2E.13.(c) This section becomes effective January 1, 2022.

SECTION 2E.14.(a) G.S. 105-449.123 reads as rewritten:

"§ 105-449.123. Marking requirements for dyed fuel storage facilities.

(a) Requirements. – A person who is a retailer of dyed motor fuel or who stores both dyed and undyed motor fuel for use by that person or another person must mark the storage facility for the dyed motor fuel as follows provided in this subsection and in a manner that clearly indicates the fuel is not to be used to operate a highway vehicle. The storage facility must be marked "Dyed Diesel, Nontaxable Use Only, Penalty For Taxable Use" or "Dyed Kerosene, Nontaxable Use Only, Penalty for Taxable Use" or a similar phrase that clearly indicates the fuel is not to be used to operate a highway vehicle. ~~A person who intentionally fails to mark the storage facility as required by this section is subject to a civil penalty equal to the excise tax at the motor fuel rate on the inventory held in the storage tank at the time of the violation. If the inventory cannot be determined, then the penalty is calculated on the capacity of the storage tank.~~ The marking requirements are:

- (1) The storage tank of the storage facility must be marked if the storage tank is visible.
- (2) The fillcap or spill containment box of the storage facility must be marked.
- (3) The dispensing device that serves the storage facility must be marked.
- (4) The retail pump or dispensing device at any level of the distribution system must comply with the marking requirements.

(a1) Penalty. – A person who fails to mark the storage facility as required by subsection (a) of this section is subject to a civil penalty of two hundred fifty dollars (\$250.00). Each inspection that results in a finding of noncompliance constitutes a separate and distinct offense.

(b) Exception. – The marking requirements of this section do not apply to a storage facility that contains fuel used only for one of the purposes listed in G.S. 105-449.105A(a)(1) and is installed in a manner that makes use of the fuel for any other purpose improbable."

SECTION 2E.14.(b) This section becomes effective January 1, 2022, and applies to penalties assessed on or after that date.

SUBPART F. LOCAL GOVERNMENT TAX CHANGES

SECTION 2F.1.(a) G.S. 105-278(a) reads as rewritten:

"(a) Real property designated as a historic property by a local ordinance adopted pursuant to former G.S. 160A-399.4 or designated as a historic landmark by a local ordinance adopted pursuant to G.S. 160D-945 or former G.S. 160A-400.5 is designated a special class of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution. Property so classified shall be taxed uniformly as a class in each local taxing unit on the basis of fifty percent (50%) of the true value of the property as determined pursuant to G.S. 105-285 and 105-286, or 105-287."

SECTION 2F.1.(b) This section is effective June 19, 2020.

PART III. REDUCE IMPACT OF FEDERAL SALT CAP BY ALLOWING CERTAIN PASS-THROUGH ENTITIES TO ELECT TO PAY TAX AT THE ENTITY LEVEL

SECTION 3.1.(a) G.S. 105-131(b) reads as rewritten:

"(b) For the purpose of this Part, unless otherwise required by the context:

...

(11) "Taxed S Corporation" means an S Corporation for which a valid election under G.S. 105-131.1A(a) is in effect."

SECTION 3.1.(b) G.S. 105-131.1 reads as rewritten:

"§ 105-131.1. Taxation of an S Corporation and its shareholders.

(a) An S Corporation shall not be subject to the tax levied under G.S. 105-130.3. A taxed S Corporation shall be subject to tax under G.S. 105-131.1A.

(b) ~~Each~~ Except with respect to a taxed S Corporation, each shareholder's pro rata share of an S Corporation's income attributable to the State and each resident shareholder's pro rata share of income not attributable to the State, shall be taken into account by the shareholder in the

manner and subject to the adjustments provided in Parts 2 and 3 of this Article and section 1366 of the Code and shall be subject to the tax levied under Parts 2 and 3 of this Article."

SECTION 3.1.(c) Part 1A of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-131.1A. Taxation of S Corporation as a taxed pass-through entity.

(a) Taxed S Corporation Election. – An S Corporation may elect, on its timely filed annual return required under G.S. 105-131.7, to have the tax under this Article imposed on the S Corporation for any taxable period covered by the return. An S Corporation may not revoke the election after the due date of the return including extensions.

(b) Taxable Income of Taxed S Corporation. – A tax is imposed for the taxable period on the North Carolina taxable income of a taxed S Corporation. The tax shall be levied, collected, and paid annually. The tax is imposed on the North Carolina taxable income at the rate levied in G.S. 105-153.7. The North Carolina taxable income of a taxed S Corporation is determined as follows:

(1) The North Carolina taxable income of a taxed S Corporation with respect to such taxable period shall be equal to the sum of the following:

a. Each shareholder's pro rata share of the taxed S Corporation's income or loss, subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6, attributable to the State.

b. Each resident shareholder's pro rata share of the taxed S Corporation's income or loss, subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6, not attributable to the State with respect to such taxable period.

(2) Separately stated items of deduction are not included when calculating each shareholder's pro rata share of the taxed S Corporation's taxable income. For purposes of this subdivision, separately stated items are those items described in section 1366 of the Code and the regulations under it.

(3) The adjustments required by G.S. 105-153.5(c3) are not included in the calculation of the taxed S Corporation's taxable income.

(c) Tax Credit. – A taxed S Corporation that qualifies for a credit may apply each shareholder's pro rata share of the taxed S Corporation's credits against the shareholder's pro rata share of the taxed S Corporation's income tax imposed by subsection (b) of this section. An S Corporation must pass through to its shareholders any credit required to be taken in installments by this Chapter if the first installment was taken in a taxable period that the election under subsection (a) of this section was not in effect. An S Corporation shall not pass through to its shareholders any of the following:

(1) Any credit allowed under this Chapter for any taxable period the S Corporation makes the election under subsection (a) of this section and the carryforward of the unused portion of such credit.

(2) Any subsequent installment of such credit required to be taken in installments by this Chapter after the S Corporation makes an election under subsection (a) of this section and the carryforward of any unused portion of such installment.

(d) Tax Credit for Income Taxes Paid to Other States. – With respect to resident shareholders, a taxed S Corporation is allowed a credit against the taxes imposed by this section for income taxes imposed by and paid to another state or country on income taxed under this section. The credit allowed by this subsection is administered in accordance with the provisions of G.S. 105-153.9.

(e) Deduction Allowed for Shareholders of a Taxed S Corporation. – The shareholders of a taxed S Corporation are allowed a deduction as specified in G.S. 105-153.5(c3)(1). This adjustment is only allowed if the taxed S Corporation complies with the provisions of subsection (g) of this section.

(f) Addition Required for Shareholders of a Taxed S Corporation. – The shareholders of a taxed S Corporation must make an addition as provided in G.S. 105-153.5(c3)(2).

(g) Payment of Tax. – Except as provided in Article 4C of this Chapter, the full amount of the tax payable as shown on the return of the taxed S Corporation must be paid to the Secretary within the time allowed for filing the return. In the case of any overpayment by a taxed S Corporation of the tax imposed under this section, only the taxed S Corporation may request a refund of the overpayment. If the taxed S Corporation files a return showing an amount due with the return and does not pay the amount shown due, the Department may collect the tax from the taxed S Corporation pursuant to G.S. 105-241.22(1). The Secretary must issue a notice of collection for the amount of tax debt to the taxed S Corporation. If the tax debt is not paid to the Secretary within 60 days of the date the notice of collection is mailed to the taxed S Corporation, the shareholders of the S Corporation are not allowed the deduction provided in G.S. 105-153.5(c3)(1). The Secretary must send the shareholders a notice of proposed assessment in accordance with G.S. 105-241.9. For purposes of this subsection, the term "tax debt" has the same meaning as defined in G.S. 105-243.1(a).

(h) Basis. – The basis of both resident and nonresident shareholders of a taxed S Corporation in their stock and indebtedness of the taxed S Corporation shall be determined as if the election under subsection (a) of this section had not been made and each of the shareholders of the taxed S Corporation had properly taken into account each shareholder's pro rata share of the taxed S Corporation's items of income, loss, and deduction in the manner required with respect to an S Corporation for which no such election is in effect."

SECTION 3.1.(d) G.S. 105-131.7 is amended by adding a new subsection to read:

"(g) Taxed S Corporation. – Subsections (b) through (f) of this section do not apply to an S Corporation with respect to any taxable period for which it is a taxed S Corporation under G.S. 105-131.1A."

SECTION 3.1.(e) G.S. 105-131.8(a) reads as rewritten:

"(a) ~~For~~ Except as otherwise provided in G.S. 105-153.9(a)(4) with respect to a taxed S Corporation, for purposes of G.S. 105-153.9 and G.S. 105-160.4, each resident shareholder is considered to have paid a tax imposed on the shareholder in an amount equal to the shareholder's pro rata share of any net income tax paid by the S Corporation to a state that does not measure the income of S Corporation shareholders by the income of the S Corporation. For purposes of the preceding sentence, the term "net income tax" means any tax imposed on or measured by a corporation's net income."

SECTION 3.2.(a) G.S. 105-153.3 reads as rewritten:

"§ 105-153.3. Definitions.

The following definitions apply in this Part:

...

(18a) Taxed partnership. – A partnership for which a valid election under G.S. 105-154.1 is in effect.

(18b) Taxed pass-through entity. – A taxed S Corporation or a taxed partnership.

(18c) Taxed S Corporation. – Defined in G.S. 105-131(b).

...."

SECTION 3.2.(b) G.S. 105-154(d) reads as rewritten:

"(d) Payment of Tax on Behalf of Nonresident Owner or Partner. – If a business conducted in this State is owned by a nonresident individual or by a partnership having one or more nonresident members, the manager of the business shall report information concerning the earnings of the business in this State, the distributive share of the income of each nonresident owner or partner, and any other information required by the Secretary. The distributive share of the income of each nonresident partner includes any guaranteed payments made to the partner. The manager of the business shall pay with the return the tax on each nonresident owner or partner's share of the income computed at the rate levied on individuals under G.S. 105-153.7.

The business may deduct the payment for each nonresident owner or partner from the owner or partner's distributive share of the income of the business in this State. If the nonresident partner is not an individual and the partner has executed an affirmation that the partner will pay the tax with its corporate, partnership, trust, or estate income tax return, the manager of the business is not required to pay the tax on the partner's share. In this case, the manager shall include a copy of the affirmation with the report required by this subsection. The affirmation must be annually filed by the nonresident partner and submitted by the manager by the due date of the report required in this subsection. Otherwise, the manager of the business is required to pay the tax on the nonresident partner's share. Notwithstanding the provisions of G.S. 105-241.7(b), the manager of the business may not request a refund of an overpayment made on behalf of a nonresident owner or partner if the manager of the business has previously filed the return and paid the tax due. The nonresident owner or partner may, on its own income tax return, request a refund of an overpayment made on its behalf by the manager of the business within the provisions of G.S. 105-241.6. This subsection does not apply to a partnership with respect to any taxable period for which it is a taxed partnership."

SECTION 3.2.(c) Part 2 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-154.1. Taxation of partnership as a taxed pass-through entity.

(a) Taxed Partnership Election. – A partnership may elect, on its timely filed annual return required under G.S. 105-154(c), to have the tax under this Article imposed on the partnership for any taxable period covered by the return. A partnership may not revoke the election after the due date of the return, including extensions. This election cannot be made by a publicly traded partnership that is described in section 7704(c) of the Code or by a partnership that has at any time during the taxable year a partner who is not one of the following:

- (1) An individual.
- (2) An estate.
- (3) A trust described in section 1361(c)(2) of the Code.
- (4) An organization described in section 1361(c)(6) of the Code.

(b) Taxable Income of Taxed Partnership. – A tax is imposed for the taxable period on the North Carolina taxable income of a taxed partnership. The tax shall be levied, collected, and paid annually. The tax is imposed on the North Carolina taxable income at the rate levied in G.S. 105-153.7. The North Carolina taxable income of a taxed partnership is determined as follows:

- (1) The North Carolina taxable income of a taxed partnership with respect to such taxable period shall be equal to the sum of the following:
 - a. Each partner's distributive share of the taxed partnership's income or loss, subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6, attributable to the State.
 - b. Each resident partner's distributive share of the taxed partnership's income or loss, subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6, not attributable to the State with respect to such taxable period.
- (2) Separately stated items of deduction are not included when calculating each partner's distributive share of the taxed partnership's taxable income. For purposes of this subdivision, separately stated items are those items described in section 702 of the Code and the regulations adopted under it.
- (3) The adjustments required by G.S. 105-153.5(c3) are not included in the calculation of the taxed partnership's taxable income.

(c) Tax Credit. – A taxed partnership that qualifies for a credit may apply each partner's distributive share of the taxed partnership's credits against the partner's distributive share of the taxed partnership's income tax imposed by subsection (b) of this section. A partnership must pass

through to its partners any credit required to be taken in installments by this Chapter if the first installment was taken in a taxable period that the election under subsection (a) of this section was not in effect. A partnership shall not pass through to its partners any of the following:

(1) Any credit allowed under this Chapter for any taxable period the partnership makes the election under subsection (a) of this section and the carryforward of the unused portion of such credit.

(2) Any subsequent installment of such credit required to be taken in installments by this Chapter after the partnership makes an election under subsection (a) of this section and the carryforward of any unused portion of such installment.

(d) Deduction Allowed for Partners of a Taxed Partnership. – The partners of a taxed partnership are allowed a deduction as specified in G.S. 105-153.5(c3)(3). This adjustment is only allowed if the taxed partnership complies with the provisions of subsection (f) of this section.

(e) Addition Required for Partners of a Taxed Partnership. – The partners of a taxed partnership must make an addition as provided in G.S. 105-153.5(c3)(4).

(f) Payment of Tax. – Except as provided in Article 4C of this Chapter, the full amount of the tax payable as shown on the return of the taxed partnership must be paid to the Secretary within the time allowed for filing the return. In the case of any overpayment by a taxed partnership of the tax imposed under this section, only the taxed partnership may request a refund of the overpayment. If the taxed partnership files a return showing an amount due with the return and does not pay the amount shown due, the Department may collect the tax from the taxed partnership pursuant to G.S. 105-241.22(1). The Secretary must issue a notice of collection for the amount of the tax debt to the taxed partnership. If the tax debt is not paid to the Secretary within 60 days of the date the notice of collection is mailed to the taxed partnership, the partners of the partnership are not allowed the deduction provided in G.S. 105-153.5(c3)(3). The Secretary must send the partners a notice of proposed assessment in accordance with G.S. 105-241.9. For purposes of this subsection, the term "tax debt" has the same meaning as defined in G.S. 105-243.1(a).

(g) Basis. – The basis of both resident and nonresident partners of a taxed partnership shall be determined as if the election under subsection (a) of this section had not been made and each of the partners of the taxed partnership had properly taken into account each partner's distributive share of the taxed partnership's items of income, loss, and deduction in the manner required with respect to a partnership for which no such election is in effect."

SECTION 3.3. G.S. 105-153.5 is amended by adding a new subsection to read:

"(c3) Taxed Pass-Through Entities. – In calculating North Carolina taxable income, a taxpayer must make the following adjustments to the taxpayer's adjusted gross income:

(1) A taxpayer that is a shareholder of a taxed S Corporation may deduct the amount of the taxpayer's pro rata share of income from the taxed S Corporation to the extent it was included in the taxed S Corporation's North Carolina taxable income and the taxpayer's adjusted gross income.

(2) A taxpayer that is a shareholder of a taxed S Corporation must add the amount of the taxpayer's pro rata share of loss from the taxed S Corporation to the extent it was included in the taxed S Corporation's North Carolina taxable income and the taxpayer's adjusted gross income.

(3) A taxpayer that is a partner of a taxed partnership may deduct the amount of the taxpayer's distributive share of income from the taxed partnership to the extent it was included in the taxed partnership's North Carolina taxable income and the taxpayer's adjusted gross income.

(4) A taxpayer that is a partner of a taxed partnership must add the amount of the taxpayer's distributive share of loss from the taxed partnership to the extent it

was included in the taxed partnership's North Carolina taxable income and the taxpayer's adjusted gross income."

SECTION 3.4.(a) G.S. 105-153.9(a) reads as rewritten:

"(a) An individual who is a resident of this State is allowed a credit against the taxes imposed by this Part for income taxes imposed by and paid to another state or country on income taxed under this Part, subject to the following conditions:

...

(4) Shareholders of a taxed S Corporation shall not be allowed a credit under this section for taxes paid by the taxed S Corporation to another state or country on income that is taxed to the taxed S Corporation. For purposes of allowing the credit under this section for taxes paid to another state or country by a taxed S Corporation's shareholders, a shareholder's pro rata share of the income of the taxed S Corporation shall be treated as income taxed to the shareholder under this Part and a shareholder's pro rata share of the tax imposed on the taxed S Corporation under G.S. 105-131.1A shall be treated as tax imposed on the shareholder under this Part.

(5) Partners of a taxed partnership shall not be allowed a credit under this section for taxes paid by the taxed partnership to another state or country on income that is taxed to the taxed partnership. The taxed partnership as defined in G.S. 105-153.3(18a) is entitled to a credit under this section for all such taxes paid. For purposes of allowing the credit under this section for taxes paid to another state or country by a taxed partnership's partners, a partner's pro rata share of the income of the taxed partnership shall be treated as income taxed to the partner under this Part and a partner's pro rata share of the tax imposed on the taxed partnership under G.S. 105-154.1 shall be treated as tax imposed on the partner under this Part."

SECTION 3.4.(b) G.S. 105-160.4 reads as rewritten:

"§ 105-160.4. Tax credits for income taxes paid to other states by estates and trusts.

...

(f) Fiduciaries and beneficiaries of estates and trusts who are shareholders of a taxed S Corporation are not allowed a credit under this section for taxes paid by the estates and trusts or by the taxed S Corporation to another state or country on income that is taxed to the taxed S Corporation. The taxed S Corporation is entitled to a credit under G.S. 105-153.9(a)(4) for all such taxes paid. For purposes of this subsection, the term "taxed S Corporation" is the same as defined in G.S. 105-131(b).

(g) Fiduciaries and beneficiaries of estates and trusts who are partners of a taxed partnership are not allowed a credit under this section for taxes paid by the estates and trusts or by the taxed partnership to another state or country on income that is taxed to the taxed partnership. The taxed partnership is entitled to a credit under G.S. 105-153.9(a)(5) for all such taxes paid. For purposes of this subsection, the term "taxed partnership" is the same as defined in G.S. 105-153.3."

SECTION 3.5.(a) G.S. 105-163.38 is amended by adding a new subdivision to read:

"(6) Taxed pass-through entity. – Defined in G.S. 105-153.3."

SECTION 3.5.(b) G.S. 105-163.39 is amended by adding a new subsection to read:

"(d) Taxed Pass-Through Entity. – This Article applies to every taxed pass-through entity in the same manner as a corporation subject to tax under Article 4 of this Chapter, except that G.S. 105-163.41(d)(5) shall not apply with respect to a taxable year of a taxed pass-through entity if it was not a taxed pass-through entity during its preceding taxable year."

SECTION 3.6. This Part is effective for taxable years beginning on or after January

1, 2021.

PART IV. MODIFY EXCISE TAX ON PREMIUM CIGARS

SECTION 4.1.(a) G.S. 105-113.4 reads as rewritten:

"§ 105-113.4. Definitions.

The following definitions apply in this Article:

...

(8a) Premium cigar. – A cigar that is hand rolled.

...."

SECTION 4.1.(b) G.S. 105-113.4F reads as rewritten:

"§ 105-113.4F. Delivery sales of certain tobacco products; age verification.

(a) Scope. – This section applies to delivery sales of tobacco products, other than cigars, products to consumers in this State regardless of whether the delivery seller is located inside or outside this State. For purposes of this section, the term "tobacco product" is as defined in G.S. 105-113.4, except that it does not include cigars-cigars that are not premium cigars.

...

(e) ~~Exception.~~ Exceptions. – This section does not apply to sales of tobacco products by a retail dealer who purchased the tobacco products from a licensed distributor or wholesale dealer. The age verification requirement in subdivision (2) of subsection (b) of this section and the filing requirement in subsection (c) of this section do not apply to delivery sales of premium cigars.

...."

SECTION 4.1.(c) G.S. 105-113.35(a) reads as rewritten:

"(a) Tax on Tobacco Products. – An excise tax is levied on tobacco products at the rate of twelve and eight-tenths percent (12.8%) of the cost price of the products-products, except that the excise tax levied on a premium cigar may not exceed thirty cents (30¢). The tax rate does not apply to the following:

(1) Cigarettes subject to the tax in G.S. 105-113.5.

(2) Vapor products subject to the tax in subsection (a1) of this section."

SECTION 4.1.(d) This Part becomes effective for sales of premium cigars on or after January 1, 2022.

PART V. EXTEND THE TIME TO COMPLETE AN ELIGIBLE PROJECT UNDER THE MILL REHABILITATION TAX CREDIT PROGRAMS

SECTION 5.1.(a) G.S. 105-129.71(a1) reads as rewritten:

"(a1) Credit for Rehabilitated Railroad Station. – A taxpayer who is allowed a credit under section 47 of the Code for making qualified rehabilitation expenditures of at least ten million dollars (\$10,000,000) with respect to a certified rehabilitation of an eligible railroad station is allowed a credit equal to a percentage of the expenditures that qualify for the federal credit. In order to be eligible for a credit allowed by this Article, the taxpayer must provide to the Secretary a copy of the eligibility certification and the cost certification. The amount of the credit is equal to forty percent (40%) of the qualified rehabilitation expenditures. The credit cannot be claimed for a taxable year beginning prior to January 1, 2021. The tax credit must be taken in two equal installments on returns filed for taxable years 2021 and 2022. The sum of the two installments is equal to the credit amount allowed for qualified rehabilitation expenditures incurred in taxable years 2019, 2020, and 2021. When the eligible site is placed into service in two or more phases in different years, the amount of credit that may be claimed in a year is the amount based on the qualified rehabilitation expenditures associated with the phase placed into service during that year.

For purposes of this subsection, the term "eligible railroad station" is a site located in this State that satisfies all of the following conditions:

...

(7) It is issued a certificate of occupancy for at least one phase on or before December 31, 2021."

SECTION 5.1.(b) G.S. 105-129.75 reads as rewritten:

"§ 105-129.75. Sunset and applicable expenditures.

(a) Sunset. – Except for credits allowed under G.S. 105-129.71(a1), this Article expires January 1, 2015, for rehabilitation projects for which an application for an eligibility certification is submitted on or after that date. Eligibility certifications under this Article expire January 1, ~~2023, 2025.~~

(b) Delayed Sunset and Applicable Expenditures. – For credits allowed under G.S. 105-129.71(a1), the following applies:

(1) The qualified rehabilitation expenditures must be incurred on or after January 1, 2019, and before January 1, ~~2022, 2024.~~

(2) This Article expires, and a tax credit allowed under G.S. 105-127.71(a1) may not be claimed, for rehabilitation projects not completed and placed in service prior to January 1, ~~2022, 2024.~~"

SECTION 5.1.(c) This section is effective when it becomes law.

PART VI. LIMIT GROSS PREMIUMS TAX ON SURETY BONDS

SECTION 6.1.(a) G.S. 105-228.5(b1) reads as rewritten:

"(b1) Calculation of Tax Base. – In determining the amount of gross premiums from business in this State, all gross premiums received in this State, credited to policies written or procured in this State, or derived from business written in this State shall be deemed to be for contracts covering persons, property, or risks resident or located in this State unless one of the following applies:

(1) The premiums are properly reported and properly allocated as being received from business done in some other nation, territory, state, or states.

(2) The premiums are from policies written in federal areas for persons in military service who pay premiums by assignment of service pay.

Gross premiums from business done in this State in the case of life insurance contracts, including supplemental contracts providing for disability benefits, accidental death benefits, or other special benefits that are not annuities, means all premiums collected in the calendar year, other than for contracts of reinsurance, for policies the premiums on which are paid by or credited to persons, firms, or corporations resident in this State, or in the case of group policies, for contracts of insurance covering persons resident within this State. The only deductions allowed shall be for premiums refunded on policies rescinded for fraud or other breach of contract and premiums that were paid in advance on life insurance contracts and subsequently refunded to the insured, premium payer, beneficiary or estate. Gross premiums shall be deemed to have been collected for the amounts as provided in the policy contracts for the time in force during the year, whether satisfied by cash payment, notes, loans, automatic premium loans, applied dividend, or by any other means except waiver of premiums by companies under a contract for waiver of premium in case of disability.

Gross premiums from business done in this State in the case of an insurer of bail bonds means the amounts received by an insurer from a surety bondsman during the calendar year for bail bonds written on behalf of the insurer. An insurer is subject to the definitions of gross premiums under this section for gross premiums from transacting any other line of insurance business. For purposes of this paragraph, the terms "bail bonds," "insurer," and "surety bondsman" have the same meaning as defined in G.S. 58-71-1.

Gross premiums from business done in this State for all other health care plans and contracts of insurance, including contracts of insurance required to be carried by the Workers' Compensation Act, means all premiums written during the calendar year, or the equivalent thereof in the case of self-insurers under the Workers' Compensation Act, for contracts covering

property or risks in this State, other than for contracts of reinsurance, whether the premiums are designated as premiums, deposits, premium deposits, policy fees, membership fees, or assessments. Gross premiums shall be deemed to have been written for the amounts as provided in the policy contracts, new and renewal, becoming effective during the year irrespective of the time or method of making payment or settlement for the premiums, and with no deduction for dividends whether returned in cash or allowed in payment or reduction of premiums or for additional insurance, and without any other deduction except for return of premiums, deposits, fees, or assessments for adjustment of policy rates or for cancellation or surrender of policies."

SECTION 6.1.(b) This Part is effective for taxable years beginning on or after January 1, 2022.

PART VII. PROVIDE TAX PARITY FOR SHORT-TERM VEHICLE RENTALS

SECTION 7.1.(a) G.S. 105-164.4 reads as rewritten:

"§ 105-164.4. Tax imposed on retailers and certain facilitators.

(a) A privilege tax is imposed on a retailer engaged in business in the State at the percentage rates of the retailer's net taxable sales or gross receipts, listed in this subsection. The general rate of tax is four and three-quarters percent (4.75%). The percentage rates are as follows:

...
(17) The general rate applies to the gross receipts derived from a short-term motor vehicle rental by a peer-to-peer vehicle sharing facilitator, notwithstanding G.S. 105-164.13(32).

...."

SECTION 7.1.(b) G.S. 105-164.13(32) reads as rewritten:

"(32) ~~Sales~~ Except as otherwise provided in G.S. 105-164.4(a)(17), sales of motor vehicles, the sale of a motor vehicle body to be mounted on a motor vehicle chassis when a certificate of title has not been issued for the chassis, and the sale of a motor vehicle body mounted on a motor vehicle chassis that temporarily enters the State so the manufacturer of the body can mount the body on the chassis. For purposes of this subdivision, a park model RV, as defined in G.S. 105-187.1, is a motor vehicle."

SECTION 7.1.(c) G.S. 105-164.3 reads as rewritten:

"§ 105-164.3. Definitions.

The following definitions apply in this Article:

...
(166) Peer-to-peer vehicle sharing facilitator. – A marketplace facilitator who facilitates a short-term motor vehicle rental where the marketplace seller is the registered owner of the motor vehicle who has not made an election under G.S. 105-187.5.

...
(248) Short-term motor vehicle rental. – A motor vehicle rental to the same person for a period of less than 365 continuous days.

...."

SECTION 7.1.(d) G.S. 105-187.1(a)(8) reads as rewritten:

"(8) Vehicle sharing service. – A service for which a person pays a membership fee for the right to use a motor vehicle or motor vehicles upon payment of an additional time-based or mileage-based fee. The term does not include a short-term motor vehicle rental by a peer-to-peer vehicle sharing facilitator."

SECTION 7.1.(e) G.S. 105-187.9(a) reads as rewritten:

"(a) Distribution. – ~~Of the taxes~~ Taxes collected under this Article at the rate of five percent (5%) and eight percent (8%), ~~the sum of ten million dollars (\$10,000,000) (8%) shall be credited annually to the Highway Fund, and the remainder shall be credited to the General Fund.~~

Taxes collected under this Article at the rate of three percent (3%) shall be credited to the North Carolina Highway Trust Fund."

SECTION 7.1.(f) Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read as follows:

"§ 105-164.44N. Transfer to Highway Fund of tax on peer-to-peer vehicle rentals.

The net proceeds of the tax collected on short-term motor vehicle rentals by a peer-to-peer vehicle sharing facilitator under G.S. 105-164.4 must be transferred within 75 days after the end of each fiscal year to the Highway Fund."

SECTION 7.1.(g) This Part becomes effective October 1, 2021, and applies to sales occurring on or after that date.

PART VIII. GRADUATE LATE PAYMENT PENALTIES

SECTION 8.1.(a) G.S. 105-236(a)(4) reads as rewritten:

"(4) Failure to Pay Tax When Due. – In the case of failure to pay any tax when due, without intent to evade the tax, the Secretary shall assess a penalty equal to ~~ten-two percent (10%)-(2%)~~ of the ~~tax~~ amount of the tax if the failure is for not more than one month, with an additional two percent (2%) for each additional month, or fraction thereof, during which the failure continues, not exceeding ten percent (10%) in aggregate. This penalty does not apply in any of the following circumstances:

- a. When the amount of tax shown as due on an amended return is paid when the return is filed.
- b. When the Secretary proposes an assessment for tax due but not shown on a return and the tax due is paid within 45 days after the later of the following:
 1. The date of the notice of proposed assessment of the tax, if the taxpayer does not file a timely request for a Departmental review of the proposed assessment.
 2. The date the proposed assessment becomes collectible under one of the circumstances listed in G.S. 105-241.22(3) through (6), if the taxpayer files a timely request for a Departmental review of the proposed assessment."

SECTION 8.1.(b) This section becomes effective January 1, 2022, and applies to penalties assessed on or after that date.

PART IX. CREATE SEPARATE STATE NET OPERATING LOSS CALCULATION FOR INDIVIDUAL INCOME TAX PURPOSES

SECTION 9.1.(a) G.S. 105-153.5 reads as rewritten:

"§ 105-153.5. Modifications to adjusted gross income.

...

(b) Other Deductions. – In calculating North Carolina taxable income, a taxpayer may deduct from the taxpayer's adjusted gross income any of the following items that are included in the taxpayer's adjusted gross income:

...

(15) Any amount allowed as a net operating loss deduction under the Code.

(c) Additions. – In calculating North Carolina taxable income, a taxpayer must add to the taxpayer's adjusted gross income any of the following items that are not included in the taxpayer's adjusted gross income:

...

(8) A State net operating loss as allowed under G.S. 105-153.5A.

...."

SECTION 9.1.(b) Part 2 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-153.5A. Net operating loss provisions.

(a) State Net Operating Loss. – A taxpayer's State net operating loss for a taxable year is the amount by which business deductions for the year exceed gross business income for the year as determined under the Code adjusted as provided in G.S. 105-153.5 and G.S. 105-153.6. The amount of a taxpayer's State net operating loss must also be determined in accordance with the following modifications.

(1) No State net operating loss deduction shall be allowed.

(2) The amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includable on account of gains from sales or exchanges of capital assets.

(3) The exclusion provided by Code section 1202 shall not be allowed.

(4) No deduction shall be allowed under G.S. 105-153.5(a1) for the child deduction.

(5) The deductions which are not attributable to a taxpayer's trade or business shall be allowed only to the extent of the amount of the gross income not derived from such trade or business.

(6) Any deduction under Code section 199A shall not be allowed.

(b) Deduction. – A taxpayer may carry forward a State net operating loss the taxpayer incurred in a prior taxable year and deduct it in the current taxable year, subject to the limitations in this subsection:

(1) The loss was incurred in one of the preceding 15 taxable years.

(2) Any loss carried forward is applied to the next succeeding taxable year before any portion of it is carried forward and applied to a subsequent taxable year.

(3) The taxpayer's State net operating loss deduction may not exceed the amount of the taxpayer's North Carolina taxable income determined without deducting the taxpayer's State net operating loss.

(4) The portion of the State net operating loss attributable to the carryforward allowed under subsection (f) of this section is only allowed to the extent described in subsection (f) of this section.

(c) Nonresidents. – In the case of a taxpayer that is a nonresident in the year of the loss, the State net operating loss only includes income and deductions derived from a business carried on in this State in the year of the loss. In the case of a taxpayer that is a nonresident in the year of the deduction, the State net operating loss must be included in the numerator of the fraction used to calculate taxable income as defined in G.S. 105-153.4(b).

(d) Part-Year Residents. – In the case of a taxpayer that is a part-year resident in the year of the loss, the State net operating loss includes income and deductions derived from a business carried on in this State while the taxpayer was a nonresident and includes business income and deductions derived from all sources during the period the taxpayer was a resident. In the case of a taxpayer that is a part-year resident in the year of the deduction, the State net operating loss must be included in the numerator of the fraction used to calculate taxable income as defined in G.S. 105-153.4(c).

(e) Administration. – A taxpayer claiming a deduction under this section must maintain and make available for inspection by the Secretary all records necessary to determine and verify the amount of the deduction. The Secretary or the taxpayer may redetermine a loss originating in a taxable year that is closed under the statute of limitations for the purpose of determining the amount of loss that can be carried forward to a taxable year that remains open under the statute of limitations.

(f) Federal Net Operating Loss Carryforwards. – The portion of a taxpayer's federal net operating loss carryforward that was not absorbed in tax years beginning prior to January 1, 2021,

1 may be included in the amount of a taxpayer's State net operating loss in taxable years beginning
2 on or after January 1, 2021. The federal net operating loss carryforward is only allowed as a State
3 net operating loss in tax years beginning after January 1, 2021, to the extent that it meets all of
4 the following conditions:

5 (1) The loss would have been allowed in that taxable year under section 172 of
6 the Code as enacted on May 1, 2020.

7 (2) The provisions of G.S. 105-153.5(c2)(8), (9), (10), (13), and (14) do not apply
8 to the federal net operating loss carryforward.

9 (3) The loss was incurred in one of the preceding 15 taxable years."

10 **SECTION 9.1.(c)** This section is effective for taxable years beginning on or after
11 January 1, 2021.

12
13 **PART X. EFFECTIVE DATE**

14 **SECTION 10.1.** Except as otherwise provided, this act is effective when it becomes
15 law.