2006-2007

REVENUE LAWS STUDY COMMITTEE

MINUTES

2005-2006 Revenue Laws Study Committee

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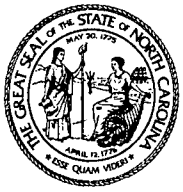
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Last Updated: 11-16-2005 at 7:06 pm



2005-2006 Revenue Laws Study Committee

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 5

HOUSE BILL 1723

Committee Substitute Favorable 7/28/05
Third Edition Engrossed 8/11/05
Senate Rules and Operations of the Senate Committee Substitute Adopted 8/24/05
Senate Rules and Operations of the Senate Committee Substitute #2 Adopted 7/27/06

Short Title: The Studies Act of 2006. (Public)

Sponsors:

Referred to:

May 12, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, STATUTORY OVERSIGHT COMMITTEES AND COMMISSIONS, AND OTHER AGENCIES, COMMITTEES, AND COMMISSIONS.

The General Assembly of North Carolina enacts:

PART I. TITLE

SECTION 1. This act shall be known as "The Studies Act of 2006."

PART II. LEGISLATIVE RESEARCH COMMISSION

SECTION 2.1. The Legislative Research Commission may study the topics listed below. When applicable, the bill or resolution that originally proposed the issue or study and the name of the sponsor are listed. Unless otherwise specified, the listed bill or resolution refers to the measure introduced in the 2005 Regular Session or 2006 Regular Session of the 2005 General Assembly. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The following groupings are for reference only:

(1) Government Regulatory Issues:
  a. Banking laws (S.B. 786 – Hoyle)

(2) Transportation Issues:
  a. Ban cell phone use while driving (H.B. 1104 – McAllister)

b. Exemptions from safety and emissions inspections (S.B. 530 – Dalton)
c. Environmental review, permitting, and mitigation process in the construction or expansion of State highways (H.B. 1761 – Dollar)

(3) Consumer Issues:
a. Credit report identity theft (H.B. 546 – Adams)
b. Personal information privacy (S.B. 996 – Cowell)
c. Mortgage payoffs (Hunt)
d. Motor vehicle repair (S.B. 952 – Lucas, Bingham, Kinnaird)

(4) Insurance Issues:
a. Assist small business health insurance (S.B. 478 – Dalton)
b. High-risk insurance (H.B. 180 – Setzer)
c. Additional sureties for public construction contracts (H.B. 2793 – Parmon, Womble, Michaux)

(5) Criminal Law Issues:
a. Exclusionary rule/good faith exception (H.B. 1439 – Stam)
b. Habitual felon statutes (H.B. 1308 – Michaux)
c. Minority incarceration (H.B. 49)
d. The provisions and penalties of G.S. 20-138.3, driving by a person less than 21 years old after consuming alcohol or drugs (Dickson)
e. Racial bias and the death penalty (H.B. 2833 – Earle)

(6) State/Local Government Employee Issues:
a. Beneficiary designation and dependent survivors of members of the Teachers' and State Employees' Retirement System (Dorsett)
b. State employee mediation and length of backlog of appeals process (Rand)
c. Mediation of State employee grievances (H.B. 716 – Coleman)
d. Severance pay changes (H.B. 703 – Crawford)
e. State employee demonstration projects (H.B. 730 – Crawford, Sherrill)
f. Prospective elimination of SPA longevity pay (H.B. 731 – Crawford)
g. Flexible benefits program centralized under OSP (H.B. 751 – Crawford, Holliman)
h. Sick leave bank and family leave (H.B. 2746 – Insko)

(7) Labor, Employment, and Economic Development Issues:
a. North Carolina National Guard Pension Fund (S.B. 573 – Atwater)
b. Validity of statistics provided by the Industrial Commission (Berger of Franklin)

c. Industrial Commission's monitoring of filing of forms (Berger of Franklin)
d. Streamline forms required by Industrial Commission (Berger of Franklin)
e. UI claims/shorten employer response time (Shaw)
f. Loss of workers' compensation for fraud (S.B. 863 – Berger of Franklin)
g. Workers' compensation and injuries to extremities (S.B. 864 – Berger of Franklin)
h. Employee work incentives under the Workers' Compensation Act (S.B. 865 – Berger of Franklin)
i. Increase cap on award for loss of organ under the Workers' Compensation Act (S.B. 866 – Berger of Franklin)
j. Small business improvement (S.B. 664 – Dalton)
k. Amendments to Workers' Compensation Act (Holliman)
l. Salaries of nonprofit directors and executives (Owens)

(8) Health and Human Services Issues:
a. Men's health
b. Peanut allergies/restaurant postings (H.B. 920 – Alexander)
c. Naturopathic registration (Kinnaird)
d. Cost control of medical services for persons in local confinement facilities (Wilkins, Wright)
e. Treatment services funding/drug treatment courts (Insko)

(9) Other:
a. Trafficking of persons (H.J.R. 1461 – Alexander; Kinnaird)
b. Nanotechnology (H.B. 641 – Faison)
c. Public building contract laws (H.B. 1547 – Parmon)
d. Unfit dwellings (S.B. 982 – Cowell)
e. Exempt builders' inventories from property tax increases (S.B. 508 – Dalton)
f. Liabilities of general contractors to subcontractors (Rand)
g. Construction indemnity agreement issues (Rand)
h. System of care common identifiers (Kinnaird)
i. Manufactured homes/good faith evictions (H.B. 1243 – Fisher)
j. Refusal rights-forced public partition sales (H.B. 1309 – Michaux)
k. Victim restitution (Holliman)
l. Agency internal auditors (Tucker)
m. Tax policy changes
n. Video conferencing (Haire)
o. Recovery of costs in civil cases (H.B. 2070 – Glazier)
p. Erroneous paternity judgments (H.B. 2143 – Moore)
q. Membership of the Wildlife Resources Commission (Williams)
r. Annexation (Glazier)

s. Construction cost threshold requirement for a general contractor's license (H.B. 2612 – Earle, Weiss, Glazier)
t. Credit enhancement services (H.B. 2836 – Earle, Barnhart, Grady, Saunders)
u. West regional facility maintenance (Church)
v. Hepatitis C (H.B. 2832 – Earle)
w. Impact of ethics legislation on local elected officials (Coleman)
x. Real estate resale dealers (H.B. 725 – Ross, Howard, Goforth, Clodfelter)
y. Tax reevaluation (Nesbitt)
z. Homestead exemption (Nesbitt)
aa. Equine industry (H.B. 1826 – Cole; S.B. 901 – Weinstein)

SECTION 2.1.(a) Superior Court Discovery (H.B. 1211 – Sutton, Rand) – The Commission may study State disclosure requirements in superior court discovery. If it undertakes the study, the Commission shall consider:

(1) The issue of identities of informants who furnished information leading to a search warrant against the defendant.
(2) The issue of personal information of the victim.
(3) The "work product" provision of G.S. 15A-904.
(4) Open discovery in noncapital postconviction cases.
(5) Any other related issues.

The Commission may make its final report to the 2007 General Assembly upon its convening.

SECTION 2.1.(b) Impact of Regulation on the Cost of Housing (Hoyle) – The Commission may study the impact of State and local government regulation on the cost of housing and recommend ways to reduce or eliminate conflicting, duplicative, outdated, or unnecessary regulations, including the consolidation or elimination of governmental agencies and programs.

SECTION 2.1.(c) Transferring the Deferred Compensation Program (Rand) – The Commission may study the feasibility of transferring the Public Employee Deferred Compensation Program established under G.S. 143B-426.24 from the Department of Administration to the Department of the State Treasurer.

SECTION 2.1.(d) Consumer Credit Counseling (Dorsett) – The Commission may study State and federal laws, rules, and policies pertaining to consumer credit counseling and debt management and may make recommendations for reforming relevant North Carolina civil, criminal, and administrative law, regulations, and policies. The Commission may examine the appropriateness of consumer protection provisions and standards for providers of services, and the adequacy of enforcement tools and practices.

SECTION 2.1.(e) Impact of Undocumented Immigrants (Justice) – The Commission may study the effects of undocumented immigrants on the State. The Commission may consider the following issues:

(1) Impacts on the State's health care, education, and social services systems.

(2) Impacts on the criminal justice system and corrections.
(3) Impacts on the State's economy, including the fiscal ramifications of compliance with federal laws requiring the provision of specific services to undocumented immigrants.
(4) Impacts on the economic and workforce development, including the provision of and the need for low-cost labor for agriculture, construction, tourism, and other industries.
(5) Any other relevant issues.

SECTION 2.1.(f) Pharmacy Benefits Manager Regulation (H.B. 1374) – The Commission may study issues regarding the regulation of pharmacy benefit management.

SECTION 2.1.(g) Local Governmental Employees Retirement System – The Commission may study issues related to establishing a higher option within the Local Governmental Employees Retirement System. The Commission may consider the following issues:

(1) Whether the higher option should include all local governmental employees.
(2) Whether the higher option would be voluntary and require each individual governing body to approve it for employee participation.
(3) Whether there should be a deadline or sunset provision for a local government to adopt the higher option.
(4) Whether "buy back credit" provisions for the time period an employee is in the lower option are feasible.
(5) Any other relevant issues the Commission deems necessary to the study.

SECTION 2.1.(h) Chapter 24 Exemptions (Brubaker) – The Commission may study issues related to authorizing the Commissioner of Banks to permit affiliates of licensees under G.S. 53-176 to be exempt from certain provisions of Chapter 24 of the General Statutes.

SECTION 2.1.(i) Effectiveness of the State Purchasing and Contract System – The Commission may study the effectiveness of the State purchasing and contract system including its accessibility and impact on the State's small businesses and the participation of minority contractors.

SECTION 2.1.(j) Red Light Camera Clear Proceeds (Goodwin) – The Commission may study the impact of the various decisions of the North Carolina courts on the definition of clear proceeds as it relates to the funding and operation of traffic control photographic systems by cities and towns in the State. The Commission may recommend to the General Assembly statutory changes that define clear proceeds in a manner that allows their use for the continued operation of these traffic control systems.

SECTION 2.1.(k) Adequate Public Facilities Ordinances (Rand) – The Commission may study issues related to the adoption of adequate public facilities ordinances by local governments. For the purposes of the study, an adequate public facilities ordinance is any ordinance, policy, guideline, or procedure adopted by a local government that ties or conditions development approval to the availability and

adequacy of public facilities and services. In particular, the Commission shall study the extent to which such ordinances increase the cost of housing and affect State and local tax revenues, employment, and economic development.

SECTION 2.1.(l) For-Profit Recycling Businesses (Rand) – The Commission may study issues related to developing strategies to protect the State's citizens from being misled into unknowingly donating goods to for-profit recycling businesses when they are attempting to aid charitable nonprofit organizations.

SECTION 2.1.(m) Post-Adoption Contact (S.B. 209 – Kinnaird) – The Commission may study the topic of post-adoption contacts and communication between an adopted child and a birth relative. In conducting the study, the Commission may consider the following:

(1) The need to establish laws for post-adoption contacts or communication between an adopted child and a birth relative.
(2) What constitutes post-adoption contacts and communication.
(3) Any effect post-adoption contacts and communication would have on existing adoption laws.
(4) The criteria for establishing post-adoption contacts and communication and the contents of any such agreement.
(5) Any other information the Commission deems relevant.

SECTION 2.1.(n) Sick Leave Bank and Family Leave (S.B. 2007 – Atwater) – The Commission may study the feasibility of the State providing family leave for employees and State policies relating to the voluntary sick leave bank for public school employees. In conducting the study, the Commission may consider the following:

(1) Evaluate the status of the State's voluntary sick leave bank for public school employees.
(2) Consider the efficacy of changes in policy designed to make the current sick leave bank more "employee friendly."
(3) Study sick leave banks and other shared leave programs in other states.
(4) Evaluate the need for a sick leave bank for teachers and State employees beyond the current voluntary program.
(5) Study the feasibility of the State providing family leave for employees including paid leave to care for a newborn, newly adopted, or foster child and paid leave due to a serious personal or family member's health problem. In the course of the study, the Commission shall consider laws from other states regarding (i) family leave, (ii) temporary disability insurance programs that provide family leave, (iii) family leave insurance programs, and (iv) consider additional sources of sick days for the sick leave bank.
(6) Review any other matter that the Commission finds relevant to its charge.

SECTION 2.1.(o) Effectiveness of the State Purchasing and Contract System (Rand) – The Commission may study the effectiveness of the State purchasing and

contract system including its accessibility and impact on the State's small businesses and the participation of minority contractors.

SECTION 2.1.(p) Requirements for Issuance of Building Permits for On-Site Business Installation or Repair of Electrical Equipment – The Commission may study the requirements of current law, G.S. 153A-357 and G.S. 160A-417, concerning issuance of building permits for on-site business installation or repair of electrical equipment. The Commission shall examine whether permits should be waived for installation and repair of electrical equipment by businesses on their own property, if the property is not intended for lease or sale, and if the business employs electricians or mechanics for the purpose of installing or repairing its own electrical equipment.

SECTION 2.1.(q) Legislative Efficiency and Operations (Graham) – The Commission may study the issues surrounding legislative efficiency and operations. The study shall include the feasibility of organizational sessions, session limits, term limits, and legislative pay.

SECTION 2.2. For each Legislative Research Commission committee created during the 2005-2007 biennium, the cochairs of the Legislative Research Commission shall appoint the committee membership.

SECTION 2.3. For each of the topics the Legislative Research Commission decides to study under this Part or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 2007 General Assembly upon its convening.

SECTION 2.4. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

PART III. JOINT LEGISLATIVE HEALTH CARE OVERSIGHT COMMITTEE STUDIES

SECTION 3.1. The Joint Legislative Health Care Oversight Committee may study the topics listed in this Part and report its findings, together with any recommended legislation, to the 2007 General Assembly upon its convening.

SECTION 3.2. Geriatric Care Providers (H.B. 183 – Nye, Clary) – The Committee may study methods to increase the number of geriatric care providers in the State.

SECTION 3.3. Medical Cost Savings (S.B. 581 – Forrester) – The Committee may study a variety of approaches to find medical cost savings and to ensure quality of medical care provided to the citizens of the State.

SECTION 3.4. Regulation of Nurse Practitioner Practice (Nesbitt) – The Committee may study the following:

(1) Issues surrounding the practice parameters of advanced practice registered nurses (APRNs).
(2) Relationship between APRNs and physicians.
(3) Whether APRNs should be regulated through the North Carolina Board of Nursing or the North Carolina Medical Board.

(4) Any other issue the Commission considers relevant.

SECTION 3.5. Community Health Centers (Kerr) – The Committee may study the need for community health centers, including federally qualified health centers, health centers that meet the criteria for federally qualified health centers, and State-designated rural health centers and public health departments. The Committee shall also study the need for and funding of free clinics, such as W.A.T.C.H. in North Carolina. In conducting the study, the Committee shall examine a range of approaches in depth, including, but not limited to, the following:

(1) Increasing access to preventative and primary care services by uninsured or medically indigent patients in existing or new health center locations.

(2) Establishing community health center services in counties where no such services exist.

(3) Creating new services or augmenting existing services provided to uninsured or medically indigent patients, including primary care and preventative medical services, dental services, pharmacy, and behavioral health.

(4) Increasing capacity necessary to serve the uninsured by enhancing or replacing facilities, equipment, or technologies.

SECTION 3.6. Hospital Systems (Rand) – The Committee may study issues related to the conversion of county-owned hospitals to private not-for-profit hospitals and the merger and acquisition of health care systems. The Committee shall consider the following issues:

(1) Long-term financial implications.

(2) Quality of care.

(3) An analysis of the effects of preferred provider organizations.

(4) The implications of government regulations.

(5) The implications of government paid medical services.

SECTION 3.7. Prescription Drug Cost Management Office (S.B. 424 – Boseman, Atwater) – The Committee may study the feasibility of establishing an Office for Prescription Drug Cost Management ("Office") in the Department of Administration or other appropriate State agency to manage the cost of prescription drugs incurred by State agencies and programs that cover or provide prescription drugs. The responsibilities of the Office shall include negotiating prescription drug price discounts with participating pharmaceutical manufacturers and pharmacists for prescription drugs paid for, in whole or in part, with State funds. As used in this section, "State agency" includes the Teachers' and State Employees' Comprehensive Major Medical Plan. In conducting the study, the Committee shall consider the following:

(1) The estimated amount that each State agency pays annually for prescription drugs, including any discounts or rebates currently in effect.

(2) Current contractual obligations of State agencies to pay for prescription drug coverage or purchase.

(3) Incentives for prescription drug manufacturers and pharmacists to participate in the State prescription drug cost management program.
(4) Formularies or other methods of containing prescription drug costs currently in effect for State agencies and programs.
(5) Necessity for and feasibility of interfacing the implementation of the prescription drug cost management program with information management systems currently used by State agencies.
(6) Experiences of other states in attempting to control prescription drug costs through multistate compacts, bulk purchasing, or negotiated discounts.
(7) Timeline and funds needed for the establishment of the Office for Prescription Drug Cost Management and implementation of a prescription drug management program.
(8) Other matters the Committee deems necessary for its study.

SECTION 3.8. Occupational Therapy Licensure Revisions (H.B. 287 – Nye, England, Barnhart, Womble) – The Committee may study the amendment of certain laws relating to the North Carolina Occupational Therapy Act.

SECTION 3.9. Alternatives to State Health Plan for The University of North Carolina (H.B. 775 – Earle, Insko; Kinnaird) – The Committee may study the alternatives to the State Health Plan for The University of North Carolina.

SECTION 3.10. Smoking in Public Places (Holliman) – The Committee may study the issue of smoking in public places. As a part of its study, the Committee may:

(1) Consider a proposal to ban smoking in all State controlled buildings, and granting local governments the authority to do the same in their buildings.
(2) Consider a proposal to ban smoking in the workplace.
(3) Consider repeal of State law that does not allow counties and cities to enact smoking ordinances more restrictive than State law.
(4) Examine the health factors associated with secondhand smoke and its effect on persons exposed to it.
(5) Examine whether the practice of separate areas for smoking and nonsmoking is adequate to protect nonsmokers from secondhand smoke.
(6) Consider whether that should be any exceptions to new smoking restrictions.
(7) Examine the effects on health and to the economy similar legislation has had in other states.
(8) Consult with interested parties, such as doctors, the American Lung Association, the Cancer Society, and similar organizations, and invite their participation in the Committee's work as experts.

SECTION 3.11. Rural Health Care Access and Needs (H.B. 797 –Pierce) – The Committee may study, in consultation with the Department of Health and Human Services, Office of Research, Demonstrations, and Rural Health Development, the

health care needs in rural areas of the State and other health professional shortage areas of the State without inpatient services and with a high percentage of uninsured residents.

PART IV. JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE STUDIES

SECTION 4.1. The Joint Legislative Transportation Oversight Committee may study the topics listed in this Part and report its findings, together with any recommended legislation, to the 2007 General Assembly upon its convening.

SECTION 4.2. Utility Relocation (H.B. 667 – Cole) – The Committee may study the use of incentives, disincentives, and other contractual measures by the Department of Transportation to expedite relocation of public utilities for highway construction projects.

SECTION 4.3. Nonbetterments (Almond, McComas) – The Committee may study issues related to nonbetterments.

SECTION 4.4. Dedicated Funding Sources for Public Transit (Coates) – The Committee may study the feasibility of a dedicated funding source for public transit and alternative forms of transportation.

PART V. JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE STUDIES

SECTION 5.1. The Joint Legislative Education Oversight Committee may study the topics listed in this Part and report its findings, together with any recommended legislation, to the 2007 General Assembly upon its convening.

SECTION 5.2. Changes in Education Districts (H.B. 1505 – Yongue, Preston, Johnson, Carney) – The Committee may study issues related to population changes in education districts.

SECTION 5.3. Raising the Compulsory School Attendance Age (H.B. 1079 – Parmon, Glazer, Womble, McLawhorn; S.B. 878 – Garrou) – The Committee may study issues related to raising the compulsory school attendance age.

SECTION 5.4. Child Nutrition Services (H.B. 696 – Inkso) – The Committee may study the impact of indirect costs associated with the child nutrition services program.

SECTION 5.5. Class Size Funding Formula for Children With Special Needs (H.B. 693 – Glazier, Parmon) – The Committee may study the need to weight the class-size funding formula to accommodate the learning needs of special populations of children.

SECTION 5.6. Track Students Throughout Education (H.B. 640) – The Committee may study the feasibility of tracking students throughout their education.

SECTION 5.7. Impact of Student Mobility on Academic Performance (H.B. 388 – Folwell; S.B. 171 – Dalton) – The Committee may study the impact of student mobility on academic performance.

SECTION 5.8. Appropriate Education for Suspended Students (H.B. 1747 – Preston, Bell, Parmon, Stam) – The Committee may study the issues concerning appropriate education for suspended students.

SECTION 5.9. Corporal Punishment Policies (H.B. 1462 – Alexander) – The Committee may study policies related to corporal punishment.

SECTION 5.10. Strategies for Targeting Educational Programs and Resources (Swindell, Lucas, Garrou) – The Committee shall study strategies for targeting educational programs and resources to improve K-12 education for all students. In the course of the study, the Committee shall do all of the following:

(1) Review existing funding formulas to ensure that resources are targeted where they are most needed and, if necessary, propose modifications to these formulas. This review shall include an analysis of local ability to pay based on measures of local wealth and local willingness to pay for K-12 education.

(2) Review existing initiatives and curricula, for early childhood through high school, and recommend ways to reduce duplicative efforts and make better use of finite resources.

(3) Explore local actions and efforts to supplement State educational resources.

(4) Examine how other states work with local governments to ensure adequate resources are available for the operational and capital needs of the public schools.

SECTION 5.11. Workforce Preparation in the Public Schools (S.B. 898 – Brown) – The Committee may study workforce preparation in the public schools.

SECTION 5.12. Community College Tuition Reciprocity (S.B. 779 – Snow) – The Committee may study issues relating to community college tuition reciprocity with other states.

SECTION 5.13. Information Requirements for School Admission/Assignment (H.B. 1480 – Folwell) – The Committee may study information requirements for school admission and assignment.

SECTION 5.14. Joint Education Leadership Team for Disadvantaged Students (Carney, Yongue; Clodfelter) – The Committee may study establishing a Joint Education Leadership Team for Disadvantaged Students.

SECTION 5.15. Education Facility Financing (H.B. 1272 – Yongue) – The Committee may study issues related to education facility financing.

SECTION 5.16. School Psychologists (Swindell) – The Committee may study issues related to the compensation of school psychologists, including annual salary supplements for licensed school psychologists who are employed by local school administrative units and certified by the National School Psychology Certification Board or other equivalent national certifying organization.

SECTION 5.17. Civics Education (H.B. 2469 – Glazier) The Committee may study issues related to civics education.

SECTION 5.18. Local School Construction Financing (H.B. 2189 –Yongue) The Committee may study issues related to local school construction financing.

SECTION 5.19. Teacher Assistant Salary Schedule (H.B. 2842 – McLawhorn) The Committee may study issues related to the teacher assistant salary schedule.

SECTION 5.20. Tax on Lottery Winnings/Community College Equipment (H. B. 1991 – Yongue, Tolson, Jeffus) – The Committee may study issues related to earmarking the tax collected on lottery winnings for community college equipment.

SECTION 5.21. Sales Tax Exemption for Local School Units (H.B. 2460 – Yongue, Carney, England, and Gibson) – The Committee may study issues related to providing for an exemption from the sales and use tax for local school administrative units.

SECTION 5.22. High School Graduation/Drop out Rate (Parmon, Weiss) – The Committee may study issues related to high school graduation and drop out rates.

SECTION 5.23. Sound Basic Education (Lucas) – The Committee may study strategies and resources that contribute to the opportunity for North Carolina students to obtain a sound basic education.

PART VI. JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE STUDIES

SECTION 6.1. The Joint Legislative Utility Review Committee may study the topics listed in this Part and report its findings, together with any recommended legislation, to the 2007 General Assembly upon its convening.

SECTION 6.2. Article 1 of Chapter 62A (H.B. 1638 – Saunders, Brubaker) – The Committee may study the following issues related to Article 1 of Chapter 62A of the General Statutes:

(1) Mechanisms for increased accountability for the collection and spending of 911 charges by local governments.
(2) Modification of what constitutes an authorized expenditure from a local Emergency Telephone System Fund.
(3) Whether to adopt a Statewide uniform 911 charge.
(4) Whether to create a State Emergency Telephone Fund and a formula for distributing those moneys to local governments.
(5) Whether to designate the Community College System as the preferred provider of training for public safety answering point staff.
(6) Any other issues related to the Article the Committee determines are relevant.

PART VII. REVENUE LAWS STUDY COMMITTEE STUDIES

SECTION 7.1. The Revenue Laws Study Committee may study the topics listed in this Part and report its findings, together with any recommended legislation, to the 2007 General Assembly upon its convening.

SECTION 7.2. Property Taxes (S.B. 623 – Jacumin) – The Committee may study the valuation of partially improved, undeveloped lots in subdivisions.

SECTION 7.3. Administrative and Judicial Review of Tax Cases (S.B. 840 – Kerr) – The Committee may study the administrative and judicial review of tax cases.

SECTION 7.4. State Business Taxation (S.B. 916 – Clodfelter) – The Committee may study reforming and simplifying State taxation of business enterprises.

SECTION 7.5. Sound Management Program for Forestland (S.B. 790 – Berger of Rockingham) – The Committee may study the need for providing owners of forestland more flexibility in demonstrating that their forestland is operated under a sound management program in order to qualify for present-use value property tax status.

SECTION 7.6. Tax Refund Donation for Prostate Cancer (S.B. 643 – Hoyle) – The Committee may study allowing taxpayers to contribute income tax refunds for prostate cancer research.

SECTION 7.7. Housing Authority Tax Exemptions (Ross, Malone, Cowell) – The Committee may study housing authority tax exemption issues.

SECTION 7.8. Tax Refund Contributions to Charitable Causes (Atwater) – The Committee may study the issue of providing space on individual income tax forms for taxpayers to make a contribution of all or part of their refunds to support various charitable causes. The study shall specifically include the following issues:

(1) A method for determining which causes shall be eligible to receive contributions of refunds and an efficient mechanism for distributing funds collected from contributions of refunds.

(2) A consideration of whether taxpayers should be able to contribute their refunds to specific charitable causes or to a fund from which contributions are distributed equally among all eligible causes.

(3) The administrative or fiscal burdens placed on the State for serving as a collection agent for contributions of refunds.

(4) The effect on rates of compliance with tax laws of expanding the tax forms to accommodate contributions of refunds.

SECTION 7.9. Income Tax Refund Contribution Election (Coleman) – The Committee may study the feasibility of creating additional income tax refund contribution elections, also known as tax "check-offs". The study shall specifically address:

(1) The amount of funds raised by any proposed refund contribution election.

(2) Experience of other states in creating similar refund contribution elections.

(3) Practical issues in creating new refund contribution elections.

(4) Pros and cons of any proposed refund contribution election.

(5) Any related issue.

SECTION 7.10 Intermodal Rail Facility (Clodfelter, Gibson) – The Committee may study the issue of creation of an intermodal rail facility in the State. As a part of its study, the Committee shall examine all of the following:

(1) The multiple logistical benefits of the project, as a way to utilize and enhance the current intermodal port, highways, and rail transportation system of the State and region.

(2) Improvements to traffic flow, transportation, safety, and air quality that the project will provide.
(3) Economic benefits of the project, including increased State tax revenue and job creation resulting from the facility.
(4) The funding contributions of private and public entities for the facility, and the current gap in needed funding for the project.
(5) Solutions to the funding gap in order to expedite construction of the facility and insure the many benefits of the project to the citizens of the State are realized.

The Committee shall complete its study, propose a funding solution for this project, and report its findings to the General Assembly by January 1, 2007.

SECTION 7.11 Sales and Income Taxes. (H.B. 1649 –LaRoque) – The Committee may study issues related to comprehensive reform and simplification of the existing State tax structure.

PART VIII. ENVIRONMENTAL REVIEW COMMISSION STUDIES

SECTION 8.1. The Environmental Review Commission may study the topics listed in this Part and report its findings, together with any recommended legislation, to the 2007 General Assembly upon its convening.

SECTION 8.2. Mercury Reduction and Education (H.B. 1531 – Harrison, Bordsen, Martin, Fisher) – The Commission may study measures to reduce the quantity of mercury that is released into the environment, that impacts natural resources, and that harms the public health of the citizens of the State, including prohibitions on the sale of certain mercury-containing products, prohibitions on the use of mercury in primary and secondary education, labeling of certain mercury-containing products, State purchase of products that contain no mercury, and public education on the hazards of mercury release and proper methods of mercury disposal. If the Environmental Review Commission undertakes this study, it may refer to the mercury reduction and education measures set out in the First Edition of House Bill 1531, as introduced to the 2005 General Assembly, and mercury reduction and education measures adopted by other states.

SECTION 8.3.(a) Abandoned Mobile Home (Haire) The Commission may study issues related to abandoned manufactured homes. The Commission may specifically study: the impacts that abandoned manufactured homes have with regard to public health and safety, the environment, and the State's scenic resources; removal and transportation issues related to abandoned manufactured homes; solid waste disposal issues related to abandoned manufactured homes, including costs of disposal, removal of hazardous substances, and opportunities for reuse and recyclability of components of deconstructed homes; design of local government programs and regional approaches for the proper disposal of abandoned manufactured homes; and the feasibility and advisability of imposing an advance disposal tax on the sale of new and used manufactured homes to fund deconstruction of abandoned manufactured homes.

SECTION 8.3.(b) Subcommittee. – In order to facilitate the conduct of this study, the Cochairs of the Environmental Review Commission may establish a subcommittee of the Commission. The subcommittee of the Commission may include nonlegislative members who have special knowledge, interest, or expertise in various aspects of manufactured homes, solid waste management, local government, affordable housing issues, and tax collection matters, appointed in consultation with the President Pro Tempore of the Senate and the Speaker of the House of Representatives. At a minimum, the Cochairs shall appoint four members at large, who may be members of the Commission, in addition to the following members:

(1) The Executive Director of the North Carolina Association of County Commissioners, or the Director's designee.
(2) The Executive Director of the North Carolina League of Municipalities, or the Director's designee.
(3) The President of the North Carolina Tax Collector's Association, or the President's designee.
(4) The Director of the Division of Waste Management of the Department of Environment and Natural Resources, or the Director's designee.
(5) The Director of the Division of Pollution Prevention and Environmental Assistance of the Department of Environment and Natural Resources, or the Director's designee.
(6) The Executive Director of the North Carolina Manufactured Housing Institute, or the Director's designee.
(7) The Executive Director of the Community Reinvestment Association of North Carolina, or the Director's designee.
(8) Secretary of the Department of Revenue, or the Secretary's designee.
(9) A manufacturer designated by the North Carolina Manufactured Housing Institute.
(10) A retail representative designated by the North Carolina Manufactured Housing Institute.

PART IX. JOINT LEGISLATIVE GROWTH STRATEGIES OVERSIGHT COMMITTEE STUDIES

SECTION 9.1. The Joint Legislative Growth Strategies Oversight Committee may study the issues of extraterritorial operations of municipal public enterprises (S.B. 858 – Clodfelter).

SECTION 9.2. Section 3.3 of S.L. 2001-491 reads as rewritten:

"**SECTION 3.3.** This Part becomes effective January 15, 2002, and expires January 16, ~~2005.~~ 2007. Prior to its expiration on January 16, ~~2005,~~ 2007, the Committee shall report to the General Assembly on its activities conducted pursuant to this Part."

PART X. HOUSE SELECT STUDY COMMISSION ON A MANDATORY COST-OF-LIVING INCREASE FOR RETIREES OF THE TEACHERS' AND

STATE EMPLOYEES' RETIREMENT SYSTEM (H.B. 1653 – B. Allen, Coleman, Farmer-Butterfield, Faison)

SECTION 10.1. There is established the House Select Study Commission on a Mandatory Cost-of-Living Increase for Retirees of the Teachers' and State Employees' Retirement System.

SECTION 10.2. The Speaker of the House of Representatives shall appoint 10 members of the House of Representatives to serve as members of the House Select Study Commission on a Mandatory Cost-of-Living Increase for Retirees of the Teachers' and State Employees' Retirement System. All 10 members of the Commission shall be members of the House of Representatives at the time of appointment. One member shall have served within the last two years as a chair, cochair, or vice-chair of the House of Representatives Committee on Pensions and Retirement. The Speaker of the House of Representatives shall designate a chair of the Commission.

SECTION 10.3. The Commission shall study the cost and feasibility of an automatic annual retirement allowance increase that equals the prior year ratio of the unadjusted 12-month (December to December) Consumer Price Index for All Urban Consumers. The Commission shall consider the benefit to retirees, the cost and actuarial soundness of a mandatory increase, and shall determine whether a mandatory increase adheres to sound retirement and pension policy. In conducting the study, the Commission shall obtain an actuarial analysis and appropriate input from the Retirement Systems Division of the Department of State Treasurer.

SECTION 10.4. The Commission may contract for consultant services as provided by G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the offices of the House of Representatives. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1. The appointing authority shall fill vacancies.

The Commission, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them and the power to subpoena witnesses.

SECTION 10.5. The Commission shall submit a final written report of its findings and recommendations on or before the convening of the 2007 General Assembly. All reports shall be filed with the Speaker of the House of Representatives and the Legislative Librarian. Upon filing its final report, the Commission shall terminate.

SECTION 10.6. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Commission established by this Part.

PART XI. DEPARTMENT OF TRANSPORTATION STUDY OF VOLUNTARY DISABILITY DESIGNATION ON DRIVERS LICENSES.

SECTION 11. The Division of Motor Vehicles of the Department of Transportation shall study a method to implement a voluntary disability designation on drivers licenses, State-issued identification cards, and vehicle registration. The method should allow persons with developmental disabilities or their families, or both, to request the placement of a designation indicating the disability or the possible presence in their vehicle of a person with a disability. The Division shall report to the General Assembly, no later than June 1, 2007, on the method developed and the schedule for implementation of the designation.

PART XII. HOUSE TASK FORCE TO REVIEW AND RESOLVE CONFLICT IN NORTH CAROLINA LAW OVER THE RECOVERY OF COSTS IN CIVIL CASES. (H.B. 2070 – Glazier)

SECTION 12.1. A House of Representatives Task Force on the Recovery of Costs in Civil Cases is established to review and recommend a resolution to the conflict in North Carolina law regarding the recovery of costs in a civil case. Specifically, the Task Force on the Recovery of Costs in Civil Cases shall study the conflict that exists between G.S. 6-20 and G.S. 7A-305, and the appellate cases interpreting those statutes, and recommend revisions to one or both statutes to resolve that conflict.

SECTION 12.2. The Speaker of the House of Representatives shall appoint to serve on the Task Force six members of the House of Representatives and three public members: one member of the North Carolina Academy of Trial Lawyers, one member of the North Carolina Association of Defense Attorneys, and one member of the North Carolina Bar Association. The Speaker shall appoint a chair from the Task Force membership. The Task Force shall meet upon the call of its chair. A quorum of the Committee shall be a majority of its members.

SECTION 12.3. Members of the Task Force shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to the Task Force to aid in its work. The Task Force may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Task Force may meet at various locations around the State to promote greater public participation in its deliberations. Subject to the approval of the Legislative Services Commission, the Task Force may meet in the Legislative Building or the Legislative Office Building. The Task Force, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4, including the

power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them and the power to subpoena witnesses.

SECTION 12.4. The Task Force shall report the results of its review and its recommended resolution to the conflict to the Speaker of the House of Representatives by December 31, 2006.

SECTION 12.5. From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this Part.

PART XIII. WILDLIFE RESOURCES COMMISSION (H.B. 505 – Sherrill, McComas, Gibson, Preston)

SECTION 13.1. The Wildlife Resources Commission shall study the issue of allowing hunting on Sundays at a limited number of State game lands. In conducting its study, the Commission shall consider, but is not limited to, the following issues:

(1) Individual game land suitability for Sunday hunting, including the status of resident wildlife species, proximity to population centers, and range of recreational opportunities available.

(2) Allowable hunting activities, including methods of taking and the use of dogs.

(3) Limiting hunting privileges to avoid conflict with religious services.

(4) The needs of persons pursuing nonhunting outdoor recreational activities, including private landowners, family picnics, hiking, canoeing, birding, horseback riding, climbing, and biking.

SECTION 13.2. In conducting the study, the Commission shall obtain input from representatives of interested parties, including landowners, the North Carolina Wildlife Federation, the Sierra Club and other conservation organizations, the North Carolina Farm Bureau and other agricultural organizations, the North Carolina Horse Council, hunting clubs and organizations, controlled hunting preserve operators, religious organizations, and other outdoor recreational clubs and organizations.

SECTION 13.3. As a part of the study, the Commission shall conduct at least one public hearing in each of its nine regions on the issue of allowing Sunday hunting on selected game lands.

SECTION 13.4. The Wildlife Resources Commission shall report its findings and recommendations, including a recommendation whether to amend, repeal, or leave intact the existing ban on Sunday hunting, to the Joint Legislative Commission on Governmental Operations no later than March 15, 2007.

PART XIV. JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES STUDIES

SECTION 14.1. The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services may study the topics listed in this Part and report its findings, together with any recommended legislation, to the 2007 General Assembly upon its convening.

SECTION 14.2. Mental Health Parity (H.B. 893 – Alexander) – The Committee may study issues related to mental health parity.

SECTION 14.3. Funding for Area and County Program Administration (Holloman) – The Committee may, in consultation with the Department of Health and Human Services, conduct an analysis of funding for administration for area and county mental health, developmental disabilities, and substance abuse services programs.

PART XV. STUDY COMMISSION ON STATE CONSTRUCTION INSPECTIONS (Owens; S.B. 192 – Hagan)

SECTION 15.1. There is created the Legislative Study Commission on State Construction Inspections. The Commission shall consist of 14 members appointed as follows:

(1) Five voting members appointed by the Speaker of the House of Representatives, one of whom is also a member of the Higher Education Bond Oversight Committee.

(2) Five voting members appointed by the President Pro Tempore of the Senate, one of whom is also a member of the Higher Education Bond Oversight Committee.

(3) Four nonvoting ex officio members as follows or their designees: the Commissioner of Labor, the Commissioner of Insurance, the Secretary of Administration, and the Secretary of Health and Human Services.

The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each appoint a cochair for the Commission. The appointing authority shall fill vacancies. The Commission shall meet upon the call of the cochairs.

SECTION 15.2. The Commission shall study the following:

(1) The scope and nature of each type of inspection of private and public construction projects performed or required by State agencies.

(2) The extent to which State inspections overlap with inspections performed by local governments.

(3) The total cost of the State's inspection of public and private construction projects.

(4) The comparative efficiencies and efficacies of each type of inspection of private and public construction projects performed or required by State agencies to determine whether:

a. The inspections can be combined to save the costs of administration and to limit any hardships on public and private entities engaged in construction projects.

b. Any inspections should be otherwise modified in scope or eliminated.

(5) The level of training of the various inspectors in the State agencies and whether the training is satisfactory for the types of inspections performed.

(6) Whether changes in the process to review plans submitted to and approved by the Commissioner of Insurance and the Department of Administration could enhance cost savings and promotion of one-time completion of projects.

(7) Any other matter related to increasing the efficiency and efficacy of the State's inspection of public and private construction projects.

SECTION 15.3. The Commission may contract for consultant services as provided by G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the offices of the House of Representatives' and the Senate's Directors of Legislative Assistants. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. Members of the Commission shall receive per diem, subsistence, and travel allowances at the rate established in accordance with G.S. 120-3.1, 138-5, and 138-6, as appropriate. The Commission, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them, and the power to subpoena witnesses.

SECTION 15.4. The Commission may report its findings, conclusions, and recommendations, including any legislative proposals by the convening of the 2007 General Assembly. The Commission shall expire on that date, or upon filing its final report, whichever occurs earlier.

SECTION 15.5. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Commission established by this Part.

PART XVI. MERGER OF ECOLOGICAL ENHANCEMENT PROGRAM AND THE CLEAN WATER MANAGEMENT TRUST FUND (Jenkins)

SECTION 16. The Environmental Review Commission and the Joint Legislative Transportation Oversight Committee shall jointly study the merger of the organization and functions of the Ecological Enhancement Program with the Clean Water Management Trust Fund. The Commission and the Committee may hire consultants to assist with the study. The final report shall be made to the 2007 General Assembly.

PART XVII. STUDY COMMISSION ON STATE DISABILITY INCOME PLAN AND OTHER RELATED PLANS

SECTION 17.1. There is established a Study Commission on the State Disability Income Plan and Other Related Plans.

SECTION 17.2. The Commission shall be comprised of 13 members as follows:

(1) Four persons appointed by the President Pro Tempore of the Senate, one of whom shall be familiar with disability issues relating to State employees, one of whom shall be familiar with disability issues relating to school employees, one of whom shall be familiar with workers' compensation issues relating to State employees or school employees, and one at-large.

(2) Four persons appointed by the Speaker of the House of Representatives, one of whom shall be familiar with disability issues relating to State employees, one of whom shall be familiar with disability issues relating to school employees, one of whom shall be familiar with workers' compensation issues relating to State employees or school employees, and one at-large.

(3) The State Treasurer or the Treasurer's designee.

(4) The Executive Administrator of the Teachers' and State Employees' Comprehensive Major Medical Plan.

(5) The Chair of the North Carolina Industrial Commission or the Chair's designee.

(6) One person appointed by the President of The University of North Carolina who is familiar with disability issues relating to university employees.

(7) One person appointed by the President of the North Carolina Community Colleges System who is familiar with disability issues relating to community college employees.

Any vacancy shall be filled by the officer who made the original appointment. The President Pro Tempore of the Senate and the Speaker of the House shall each appoint a co-chair. The Commission shall meet at the call of the co-chairs.

SECTION 17.3. The Commission shall study the plan design, funding, and administration of the Disability Income Plan of North Carolina established pursuant to Article 6 of Chapter 135 of the General Statutes, the Death Benefit Plan established pursuant to G.S. 135-5(l), and the Separate Insurance Benefits Plan for State and Local Governmental Law Enforcement Officers established pursuant to G.S. 143-166.60 to determine what changes, if any, should be made to those Plans. The Commission shall consider what changes could be made to the Plans that would enhance the efficiency of and reduce the cost of the Plans to the State and its employees.

SECTION 17.4. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall designate cochairs of the Commission from among their respective appointees. The Commission shall meet upon the call of the cochairs. Members of the Commission shall receive per diem, subsistence, and travel allowance in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. The

Commission, while in the discharge of official duties, may exercise all powers provided for under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

SECTION 17.5. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building.

SECTION 17.6. The Commission shall employ an actuary with expertise in the areas of disability income insurance and group life insurance to assist the Commission in its work pursuant to the procedure set forth in G.S. 120-32.02. This actuary shall not be a State employee or a person currently under contract with the State to provide services. If necessary, the Commission may hire other employees as provided in G.S. 120-32.02.

SECTION 17.7. The Commission may meet during a regular or extra session of the General Assembly, subject to approval of the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

SECTION 17.8. The Commission shall submit a report of the results of its study, including any legislative recommendations, to the General Assembly not later than January 1, 2007.

SECTION 17.9. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds to implement the provisions of this Part.

PART XVIII. STUDY NO-FAULT COMPENSATION FOR INJURIES TO ELDERLY AND DISABLED PERSONS (S.B. 1041 – Clodfelter)

SECTION 18. The Commissioner of Insurance, the North Carolina Industrial Commission, and the Department of Health and Human Services may jointly study the utility, efficacy, and advisability of creating a system of no-fault compensation, with such compensation based on scheduled amounts and subject to limits on total compensation paid, for injuries resulting from regular and ordinary course of care provided at nursing homes, homes for the elderly, other long-term care facilities, and assisted living facilities. If the study is conducted, the results of this study, including findings and recommendations for suggested legislation, shall be reported to the 2007 General Assembly upon its convening.

PART XIX. UNC BOARD OF GOVERNORS STUDY COMMISSION

SECTION 19.1. There is created the UNC Board of Governors Study Commission. The Commission shall consist of 10 members appointed as follows: five by the President Pro Tempore of the Senate and five by the Speaker of the House of Representatives. The Speaker of the House of Representatives shall appoint a cochair,

and the President Pro Tempore of the Senate shall appoint a cochair for the Commission. Vacancies on the Commission shall be filled by the appointing authority. The Commission shall meet upon the call of the cochairs. A majority of the members of the Commission shall constitute a quorum.

SECTION 19.2. The Commission shall continue the work of prior UNC Board of Governors Study Commissions and study the method of election or appointment of members of the Board of Governors, the length of members' terms, the number of terms a member may serve, and the size of the Board of Governors. As part of the study, the Commission may examine the governing boards of other states' institutions of higher education. The Commission shall report its findings and any recommendations to the 2007 General Assembly. The Commission shall terminate upon the filing of its final report.

SECTION 19.3. Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 19.4. Subject to the approval of the Legislative Services Commission, the Commission may meet in the State Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist in the work of the Commission. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. The Commission, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them and the power to subpoena witnesses.

SECTION 19.5. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds to implement the provisions of this Part.

PART XX. JOINT LEGISLATIVE COMMISSION ON HEALTH INSURANCE ACCESSIBILITY (Kerr)

SECTION 20.1. There is established in the General Assembly a Joint Legislative Commission on Health Insurance Accessibility.

SECTION 20.2. Membership. – The Commission shall be composed of 16 members as follows:

(1) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives.

(2) Eight members of the Senate appointed by the President Pro Tempore of the Senate.

Vacancies on the Commission shall be filled by the appointing authority. Cochairs of the Commission shall be designated by the Speaker of the House of

Representatives and the President Pro Tempore of the Senate from among their respective appointees. The Commission shall meet upon the call of the cochairs.

SECTION 20.3. The Commission shall study the legal, fiscal, and policy implications of various means of increasing accessibility to health insurance. The Commission may study the creation of a North Carolina Health Insurance Risk Pool (H.B. 1535 – Insko, Holliman) and a North Carolina Fair Share Health Insurance Access Program (H.B. 2860 – Holliman).

The study shall specifically address strategies for increasing accessibility to health insurance by small employer groups, self-employed individuals, and individuals who are employed but uninsured. The study of small employer access shall include the following:

(1) A review of the number of small employers (50 or fewer employees) in this State, grouped by industry and volume of business; the number of small employers that offer comprehensive health insurance coverage to their employees; and the average premium charged for comprehensive health insurance coverage available to small employer groups in this State, as compared to premiums for comparable coverage in the Southeast region and other areas of the United States.

(2) A review of the participation rates, premiums and cost-sharing, and coverage options offered under the North Carolina Small Employer Group Health Coverage Reform Act, Part 5, Article 50 of Chapter 58 of the General Statutes.

(3) An analysis of the Healthy New York Program administered by the State of New York, or similar program, that combines the provision of a standardized, streamlined benefit package with state-funded reinsurance in the form of a stop-loss fund that would reimburse insurers for the costs of claims within a defined claims corridor. In conducting the analysis the Commission shall review and consider the proposed committee substitute for Senate Bill 255, 2005 Regular Session of the General Assembly. The analysis shall also review the amount in state funds appropriated for the Healthy New York Program since its inception, and corresponding participation rates by employers and eligible individuals.

(4) An analysis of providing additional tax benefits for small businesses that provide health insurance coverage for their employees.

SECTION 20.4. Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. The Legislative Services Office shall provide adequate staff for the Commission. The Commission may hire consultants to assist with the study as provided in G.S. 120-32.02(b). The Commission, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them and the

power to subpoena witnesses. The Commission may meet during a regular or extra session of the General Assembly, subject to approval of the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

SECTION 20.5. The Commission shall make a final report of its findings and recommendations to the 2007 General Assembly. The interim report may and the final report shall include findings and recommendations on:

(1) Whether the State should provide for the implementation of a small employer health insurance program that is supported with State funds to ensure comprehensive coverage and affordability for small employer groups, self-employed individuals, and employed but uninsured individuals. If the Commission recommends implementation, the recommendation should specifically address strategies for avoiding adverse selection and crowd-out, eligibility factors such as family income, limitations on claims thresholds and corridors for stop-loss coverage, benefit levels and limitations, and the feasibility and advisability of establishing a State high-risk pool.

(2) An estimate of the cost to the State to support stop-loss coverage, high-risk coverage, or other approaches to ensuring small employer health insurance access and affordability.

(3) Other findings and recommendations relevant to the purposes of the study.

The Commission shall terminate upon the filing of its final report or the adjournment of the 2007 General Assembly.

SECTION 20.6. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Commission established by this part.

PART XXI. STATE FACILITIES MASTER PLAN/DIX COMPLEMENTARY USES

SECTION 21. The Dorothea Dix Hospital Property Study Commission shall study and make recommendations regarding the following:

(1) Balancing complementary public uses of open space, the adaptive re-use of existing facilities, and continued support for mental health services.

(2) The financial feasibility of the various uses.

(3) An assessment of financial mechanisms for the implementation and maintenance of the various uses.

(4) Administrative or governance structures to implement the uses.

The Commission shall report its findings and recommendations to the 2007 General Assembly by January 31, 2007.

PART XXII. COMPENSATION OF STATE ELECTED AND APPOINTED OFFICIALS STUDY COMMISSION (Rand)

SECTION 22.1. There is established the Compensation of State Elected and Appointed Officials Study Commission.

SECTION 22.2. The Commission shall consist of 15 members appointed as follows:

(1) Two members of the Senate appointed by the President Pro Tempore of the Senate.

(2) Two members of the House of Representatives appointed by the Speaker of the House of Representatives.

(3) Three members appointed by the President Pro Tempore of the Senate who are representatives of private business with experience in evaluating and establishing compensation for management and executives.

(4) Three members appointed by the Speaker of the House of Representatives who are representatives of private business with experience in evaluating and establishing compensation for management and executives.

(5) Five members appointed by the Governor. In making the appointments, the Governor shall consider representatives of private business with experience in evaluating and establishing compensation for management and executives.

The Commission shall have two cochairs, one designated by the President Pro Tempore of the Senate and one designated by the Speaker of the House of Representatives from among their respective appointees. The Commission shall meet upon the call of the cochairs. Any vacancy on the Commission shall be filled by the original appointing authority.

SECTION 22.3. The following State elected and appointed officials shall be included in the study by the Commission: the Governor and Lieutenant Governor; the Council of State; the Governors Cabinet; Members of the General Assembly; Justices of the Supreme Court, Judges of the Court of Appeals, Judges of the Superior Court, and Judges of the District Court.

SECTION 22.4. The Commission shall study the matters that impact compensation and benefits for State elected and appointed officials and may include the following:

(1) Whether the annual compensation for State elected and appointed officials is equivalent to the compensation paid to comparable members of private businesses in the State.

(2) Whether the annual compensation for State elected and appointed officials is at a sufficient level to continue to attract highly qualified individuals to commit to public service to the State without requiring those individuals to experience direct financial hardships.

(3) The impact of inflationary forces on that compensation.

(4) The effect, where appropriate, of comparable positions in the United States Government and the inclusion of established adjustments and increases in the compensation of comparable federal positions.

(5) Whether the compensation and benefits, including family leave policies, are competitive for State elected and appointed officials as compared to comparable positions in the private sector.

(6) Actions that would attract and retain State elected and appointed officials with special experience, management and leadership positions in the private sector for comparable State elected and appointed positions.

(7) Any other matters relating to the compensation of State elected and appointed officials.

SECTION 22.5. Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to the Commission to aid in its work. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Commission may meet during a regular or extra session of the General Assembly, subject to approval of the President Pro Tempore of the Senate and the Speaker of the House of Representatives. Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building. The Commission, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them and the power to subpoena witnesses.

SECTION 22.6. The Commission shall make its findings and recommendations in a final report to the 2007 General Assembly upon its convening. The Commission shall terminate upon the filing of its final report.

SECTION 22.7. From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this part.

PART XXIII. DEPARTMENT OF CULTURAL RESOURCES STUDY GRAVEYARD OF THE ATLANTIC MUSEUM

SECTION 23. The Department of Cultural Resources shall study the feasibility of designating the Graveyard of the Atlantic Museum as a State Historic Site or a Grassroots Science Museum. The Department shall submit the results of its study to the 2007 General Assembly upon its convening.

PART XXIV. JOINT LEGISLATIVE OVERSIGHT COMMISSION ON INFORMATION TECHNOLOGY STUDIES (Tolson, Malone)

SECTION 24.1. There is established the Legislative Study Commission on Information Technology. The Commission shall consist of 14 members, appointed as follows:

(1) Five members of the Senate appointed by the President Pro Tempore of the Senate.

(2) Five members of the House of Representatives appointed by the Speaker of the House of Representatives.

(3) Two members of the general public with experience in information technology appointed by the President Pro Tempore of the Senate.

(4) Two members of the general public with experience in information technology appointed by the Speaker of the House of Representatives.

Vacancies in membership shall be filled by the original appointing authority. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Commission from their appointees.

SECTION 24.2. The Commission shall review the newly revised North Carolina Education Technology Plan developed by the North Carolina State Board of Education. The Commission's review shall also include best practices for using technology to enhance teaching and learning in North Carolina schools. The Commission shall review existing research-based best practices such as the IMPACT model, NC Wise Owl, and successful 1:1 (computer to student) initiatives across the State and nation. The Commission shall receive recommendations from the Business and Education Technology Alliance, the E-Learning Commission, the business community, and the North Carolina Center for 21st Century Skills.

SECTION 24.3. The Commission, while in discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical support staff to the Commission, and the expenses relating to clerical employees shall be borne by the Commission. Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 24.4. The Commission shall submit a final written report of its findings and recommendations by February 1, 2007. All reports shall be filed with the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Legislative Librarian. Upon filing its final report, the Commission shall terminate.

SECTION 24.5. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Commission established by this part.

PART XXV. HISTORICALLY UNDERUTILIZED BUSINESS CERTIFICATION TASK FORCE (Dorsett)

SECTION 25.1. Task Force Established; Membership. – The Department of Administration shall establish a Historically Underutilized Business Task Force. The Task Force shall consist of 15 members as follows:

(1) One member appointed by the North Carolina League of Municipalities.

(2) One member appointed by the North Carolina Association of County Commissioners.

(3) One member appointed by the North Carolina School Boards Association.

(4) One member appointed by the North Carolina Institute for Minority Economic Development.

(5) Three members appointed by the North Carolina Minority and Women's Business Enterprise Coordinator's Network.

(6) Eight members appointed by the Office of Historically Underutilized Business, two of whom shall be representatives of the Office, one of whom shall be a minority business owner, one of whom shall be a female business owner, one of whom shall be a disabled business owner, and three of whom shall be public members.

Vacancies in membership shall be filled as provided in this section.

SECTION 25.2. Cochairs; Meetings. – The Task Force shall have two cochairs appointed by the Secretary of Administration from among the members of the Task Force. The Task Force shall meet at least quarterly upon the call of the cochairs.

SECTION 25.3. Quorum; Voting. – A quorum of the Task Force shall consist of five members. All action shall be taken by a majority vote.

SECTION 25.4. Duties. – The Task Force shall propose criteria and procedures for: (i) the certification of businesses under G.S. 143-48 and G.S. 143-128.2 as Historically Underutilized Businesses; (ii) the creation and maintenance of a database of the businesses certified; and (iii) any other matters related to the certification of businesses as authorized in this section. In determining ownership of a business for purposes of certification, the Task Force shall use the definitions provided in G.S. 143-48 and G.S. 143-128.2.

SECTION 25.5. Support. – The Department of Administration shall provide meeting facilities and staff support for the Task Force. The Task Force may also seek other assistance, including technical, business, and managerial assistance.

SECTION 25.6. Report. – The Task Force shall report its proposed criteria and procedures to the Secretary of Administration on or before November 1, 2007, at which time the Task Force shall terminate.

PART XXVI. SMART START AND CHILD CARE FUNDING STUDY (Hagan)

SECTION 26.1. There is established a Smart Start and Child Care Funding Study Commission.

SECTION 26.2. The Commission shall be composed of 15 members as follows:

(1) Four members of the Senate appointed by the President Pro Tempore of the Senate.

(2) Four members of the House of Representatives appointed by the Speaker of the House of Representatives.

(3) A representative of the North Carolina Partnership for Children appointed by the President Pro Tempore of the Senate.

(4) The Secretary of the Department of Health and Human Services or the Secretary's designee.

(5) A Department of Social Services County Director appointed by the Speaker of the House of Representatives.

(6) A Department of Public Health County Director appointed by the President Pro Tempore of the Senate.

(7) A representative of a Local Partnership for Children appointed by the Speaker of the House of Representatives.

(8) One representative from a private for-profit day care appointed by the President Pro Tempore of the Senate and one representative from a private not-for-profit day care appointed by the Speaker of the House of Representatives.

Any vacancy on the Commission shall be filled by the appointing authority. Cochairs of the Commission shall be designated by the President Pro Tempore of the Senate and the Speaker of the House of Representatives from among their respective appointees. The Commission shall meet upon the call of the cochairs.

SECTION 26.3. The Commission shall invite the Secretary of Health and Human Services to attend each meeting of the Commission and encourage the Secretary's participation in the Commission's deliberations.

SECTION 26.4. The Commission shall study the funding of the North Carolina Partnership for Children. In conducting the study, the Commission shall consider the following:

(1) The current funding system of the North Carolina Partnership for Children.

(2) Any strategies for achieving full funding and full service for North Carolina's young children and families.

(3) Funding equity among all counties and local partnerships.

(4) Any other information the Commission deems relevant in providing services to young children and families including child care services.

SECTION 26.5. Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to the Commission to aid in its work. The Commission may contract for professional, clerical, or consultant services.

as provided by G.S. 120-32.02. The Commission may meet during a regular or extra session of the General Assembly, subject to approval of the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The Commission shall meet at various locations around the State in order to promote greater public participation in its deliberations. Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building. The Commission, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them and the power to subpoena witnesses.

SECTION 26.6. The Commission shall make its findings and recommendations in a final report to the 2007 General Assembly. Upon the earlier of the filing of its final report or the convening of the 2007 General Assembly, the Commission shall terminate.

SECTION 26.7. From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this part.

PART XXVII. STUDY COMMISSION ON ECONOMIC DEVELOPMENT INFRASTRUCTURE

SECTION 27.1. There is created the Study Commission on Economic Development Infrastructure. The Commission shall consist of 32 members as follows:

(1) Sixteen members appointed by the President Pro Tempore of the Senate.

(2) Sixteen members appointed by the Speaker of the House of Representatives.

SECTION 27.2. At least half of the members appointed to the Commission by the President Pro Tempore of the Senate, and at least half of the members appointed to the Commission by the Speaker of the House of Representatives shall be persons who are not members of the General Assembly and who are either actively engaged in economic development or C-Level Executives of private corporations.

SECTION 27.3. The President Pro Tempore of the Senate shall appoint two cochairs of the Commission, and the Speaker of the House of Representatives shall appoint two cochairs of the Commission. The Commission may meet at any time upon the joint call of the cochairs. Vacancies on the Commission shall be filled by the same appointing authority as made the initial appointment.

SECTION 27.4. The Commission shall examine the existing infrastructure for the delivery of economic development, including the many entities involved in economic development. The Commission shall develop a plan to restructure and consolidate the infrastructure for the delivery of economic development to improve its

organization and effectiveness. The Commission shall specifically examine the role of the following in the delivery of economic development:

(1) The Department of Commerce.

(2) The regional councils of government created pursuant to G.S. 160A-470.

(3) The Economic Development Board created pursuant to G.S. 143B-434. The Commission shall consider whether the Economic Development Board, which is currently advisory in nature, should be reconstituted and given responsibility for policy development or regulatory authority.

(4) The regional planning and economic development commissions created pursuant to Article 2 of Chapter 158 of the General Statutes. The Commission shall consider whether regional planning and economic development commissions should be given greater responsibility for marketing and business recruitment.

SECTION 27.5. The Commission may also examine the feasibility of establishing a North Carolina Economic Disaster Task Force.

SECTION 27.6. The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

SECTION 27.7. Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical support staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 27.8. The Commission shall submit a final report of its findings and recommendations, including any legislative recommendations, to the 2007 General Assembly upon its convening. The Commission shall terminate upon the convening of the 2007 General Assembly.

SECTION 27.9. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Commission established by this part.

PART XXVIII. TRAINING NEEDS OF THE MOTORSPORTS INDUSTRY

SECTION 28. The State Board of Community Colleges (State Board) shall study the issues surrounding the creation of a modern multiuse motorsports specialized training program and the training needs of the motorsports industry. In conducting the study, the State Board shall create a consortium of community colleges to address the

training needs of industry members and to direct training programs to meet those needs. The consortium members shall consist of Catawba Valley Community College, Central Piedmont Community College, Davidson Community College, Forsyth Technical Community College, Halifax Community College, Rowan-Cabarrus Community College, and Wilkes Community College. Forsyth Technical Community College shall be the lead community college in the consortium for management and operations purposes. The consortium of community colleges shall focus its training efforts to provide specialized motorsports workforce training and to help create new jobs at the Advanced Vehicle Research Center located in Northampton County. If the motorsports industry finds that additional training at the university level would be beneficial to the industry, the State Board may work the with the Board of Governors of The University of North Carolina and motorsports industry to determine how to best meet those needs. The State Board shall report its findings and recommendations, including any legislative proposals, to the Joint Legislative Education Oversight Committee on or before February 1, 2007.

PART XXIX. INLAND PORT (Dalton)

SECTION 29. The Institute for the Economy and the Future of Western North Carolina University, in cooperation with the North Carolina Regional Economic Development Commission, known as AdvantageWest, shall study the feasibility of establishing an inland port within the twenty three county region of the Commission. The Commission shall complete the report and submit it to the General Assembly on or before May 1, 2007.

PART XXX. STUDY MITIGATION OF POTENTIAL FLOODING IN CERTAIN AREAS (H.B. 24 – Gillespie; Goforth, Rapp)

SECTION 30. The Department of Environment and Natural Resources shall study the causes of the flooding in Canton, Biltmore Village, Blue Ridge Paper Company, and the City of Newland to determine what measures can be taken to prevent or mitigate the flooding potential in those areas. The Department may request the assistance of the United States Army Corps of Engineers in this study. The Department of Environment and Natural Resources shall report its findings to the 2007 General Assembly.

PART XXXI. STUDY THE ORGANIZATION OF THE GENERAL COURT OF JUSTICE INTO DISTRICTS AND DIVISIONS (S.B. 173 – Bingham)

SECTION 31. The North Carolina Courts Commission shall study the current state of the General Court of Justice, focusing on workloads, case backlogs, and other issues relevant to the efficient administration of justice and determine whether the current organization of the State into judicial divisions, superior court districts, district court districts, and prosecutorial districts is in need of revision or adjustment in order to

better serve the interests of justice. The Commission shall report its findings and recommendations to the 2007 General Assembly.

PART XXXII. STUDY INHERENTLY DANGEROUS ANIMALS (S.B. 1032 – Garwood)

SECTION 32.1. The Department of Environment and Natural Resources, in consultation with the North Carolina Zoological Park and the Wildlife Resources Commission, shall study the need to protect the public against the health and safety risks posed by inherently dangerous animals and propose a means of best providing that protection to the public while also protecting the welfare of inherently dangerous animals. In developing recommendations, the Department shall consult with the following entities or groups, or appropriate representatives of those entities or groups:

(1) The Department of Agriculture and Consumer Services.
(2) The Division of Public Health of the Department of Health and Human Services.
(3) The North Carolina State University College of Veterinary Medicine.
(4) The State Animal Response Team.
(5) Local law enforcement officials.
(6) Local animal control officials.
(7) Wild animal breeders.
(8) Exotic pet hobbyists.
(9) Commercial pet retailers.
(10) Small zoo owners.
(11) Humane organizations.
(12) Any other entities or groups whose interests may be affected by proposed regulations.

SECTION 32.2. The Department shall report its findings to the General Assembly no later than the convening of the 2007 General Assembly.

SECTION 32.3. The report made by the Department of Environment and Natural Resources shall include:

(1) A list of the types of animals that possess such inherently dangerous characteristics that they should not be owned or possessed by persons who do not have special expertise or training, and a determination as to whether these animals should be grouped into classes for differential treatment based upon the nature and extent of the threat they pose to the public. This list should also include information about the nature of the dangers posed by each type of animal.
(2) A suggested means for regulating ownership of certain animals, including a means of enforcing any proposed restrictions on the ownership or possession of those animals. This portion of the report may include an evaluation of regulations in place in other jurisdictions that have proven to be effective in protecting the public from inherently dangerous animals.

(3) A plan for addressing inherently dangerous animals that are indigenous species within the jurisdiction of the Wildlife Resources Commission under Article 22 of Chapter 113 of the General Statutes and a consideration as to whether any potential legislation should broadly address the keeping of any wildlife as pets, whether indigenous or not and whether inherently dangerous or not. This portion of the report should result from extensive consultation with the Wildlife Resources Commission.

(4) A recommendation as to whether persons owning or possessing animals covered by any proposed restrictions should be grandfathered in under a regulatory scheme and the appropriate means of grandfathering those persons in, including consideration of whether certain animals are so threatening to the public safety that the grandfathering of untrained owners or possessors should not be allowed under any circumstances.

(5) A recommended list, as comprehensive as possible, of persons and entities that should be exempted from the proposed restrictions on ownership or possession of the animals covered by any proposed restrictions, such as zoos, veterinary hospitals, wildlife sanctuaries, research institutions, and the like.

PART XXXIII. STATE FAIR HOUSING ACT STUDY (Kinnaird)

SECTION 33. The North Carolina Human Relations Commission shall study whether the State Fair Housing Act should be amended to make it an unlawful discriminatory housing practice to refuse to enter into a residential real estate transaction with a person based upon the fact that the person receives public assistance due to age or physical or mental disability. In studying this issue, the Commission shall review the laws of other states related to housing discrimination and determine the extent to which certain forms of public assistance are protected under those laws. While conducting the study, the Commission shall consult with representatives from the residential real estate and residential rental community. The Commission shall report its findings and any recommendations to the 2007 General Assembly upon its convening.

PART XXXIV. STUDY YOUTHFUL OFFENDERS (H.B. 1298 – Bordsen)

SECTION 34.1. The North Carolina Sentencing and Policy Advisory Commission may study issues related to the conviction and sentencing of youthful offenders aged 16 to 21 years, to determine whether the State should amend the laws concerning these offenders, including, but not limited to, revisions of the Juvenile Code and/or the Criminal Procedure Act that would provide appropriate sanctions, services, and treatment for such offenders. In conducting the study, the Commission may review the laws concerning juveniles and youthful offenders from the federal government, other states, and the relevant North Carolina laws and programs. The Commission shall

consult with the Department of Correction, the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Public Instruction in conducting the study.

SECTION 34.2. The Commission shall submit a final report, along with any recommended legislation, by March 1, 2007, to the 2007 General Assembly.

PART XXXV. ADMINISTRATIVE OFFICE OF THE COURTS STUDY SELF-SERVE CENTERS (Rand)

SECTION 35. The Administrative Office of the Courts, in consultation with the North Carolina Bar Association, the North Carolina Legal Services Planning Council, Legal Aid of North Carolina, Inc., the North Carolina Justice Center, and Pisgah Legal Services shall study the most effective way to address the increasing numbers of persons who either cannot afford representation or choose to represent themselves in family law matters and in some civil litigation. The Administrative Office of the Courts shall report the results of this study to the House and Senate Appropriations Subcommittees on Justice and Public Safety no later than December 31, 2007.

PART XXXVI. STUDY OF RATE-SETTING METHODOLOGY FOR STATE-FUNDED KIDNEY DIALYSIS (H.B. 1725 – Earle)

SECTION 36. The Department of Health and Human Services may study its rate setting methodology for State-funded kidney dialysis services to determine the feasibility of inflationary increases that correspond to rate and inflationary increases provided for equivalent Medicaid services. If the study is conducted, the Department shall report its findings to the House of Representatives Appropriations Committee and the Senate Appropriations Committee by May 1, 2007.

PART XXXVII. MENHADEN STUDY (H.B. 955 – Stiller)

SECTION 37. The Joint Legislative Commission on Seafood and Aquaculture may study the management of menhaden and Atlantic thread herring, including whether it should be unlawful to take menhaden or Atlantic thread herring with a purse seine off the shore of Brunswick and New Hanover Counties during all or part of each year. If the study is conducted, the Commission shall report its findings and recommendations, including any legislative proposals, to the 2007 General Assembly.

PART XXXVIII. CONTINUE TWENTY-FIRST CENTURY REVENUE SYSTEM STUDY COMMISSION (Daughtridge, McGee)

SECTION 38. Section 46.7 of S.L. 2004-161 reads as rewritten:

"**SECTION 46.7.** Report. – The Commission may make an interim report to the ~~2005~~ 2006 Regular Session of the 2005 General Assembly not later than its convening, and must make its final report to the ~~2006 Regular Session of the 2005~~ 2007 General Assembly upon its convening. The Commission shall terminate the earlier of the filing of its final report or upon the convening of the ~~2006 Regular Session of the 2005~~ 2007 General Assembly."

PART XXXIX. STUDY COMMISSION ON THE ORGANIZATION, POWERS, DUTIES, FUNCTIONS, FUNDING, AND POTENTIAL CONSOLIDATION OR ELIMINATION OF STATE BOARDS, COMMISSIONS, AND COUNCILS (Harrell)

SECTION 39.1. There is created the Study Commission on State Boards, Commissions, and Councils. The Commission shall consist of 28 members as follows:

(1) 14 members appointed by the President Pro Tempore of the Senate.

(2) 14 members appointed by the Speaker of the House of Representatives.

SECTION 39.2. The President Pro Tempore of the Senate shall appoint two cochairs of the Commission and the Speaker of the House of Representatives shall appoint two cochairs of the Commission. The Commission may meet at any time upon the joint call of the cochairs. Vacancies on the Commission shall be filled by the same appointing authority as made the initial appointment.

SECTION 39.3. The Commission shall examine the organization, powers, duties, functions, and funding of State boards, commissions, and councils. The Commission shall specifically consider the following:

(1) Whether the boards, commissions, or councils should be eliminated or consolidated with one or more other boards, commissions, or councils.

(2) Whether the number of members serving on boards, commissions, and councils or the manner in which members are selected should be altered.

(3) Whether the number and frequency of meetings of boards, commissions, and councils should be altered.

(4) The cost of supporting each board, commission, or council, including salaries, per diem, travel, clerical and administrative support, and other expenses.

(5) The productivity and effectiveness of the boards, commissions, and councils.

SECTION 39.4. The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

SECTION 39.5. Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services

Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical support staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 39.6. The Commission shall submit a final report of its findings and recommendations, including any legislative recommendations, to the 2007 General Assembly upon its convening. The Commission shall terminate upon the convening of the 2007 General Assembly.

SECTION 39.7. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Commission established by this part.

PART XL. STUDY COMMISSION ON WORKER RETRAINING (Harrell)

SECTION 40.1. There is created the Study Commission on Worker Retraining. The Commission shall consist of 32 members as follows:

(1) 16 members appointed by the President Pro Tempore of the Senate.

(2) 16 members appointed by the Speaker of the House of Representatives.

SECTION 40.2. At least half of the members appointed to the Commission by the President Pro Tempore of the Senate and at least half of the members appointed to the Commission by the Speaker of the House of Representatives shall be persons who are not members of the General Assembly and who are actively engaged in worker retraining or welfare reform as either private citizens, administrators of State agencies, or administrators or faculty at community colleges in the State.

SECTION 40.3. The President Pro Tempore of the Senate shall appoint two cochairs of the Commission and the Speaker of the House of Representatives shall appoint two cochairs of the Commission. The Commission may meet at any time upon the joint call of the cochairs. Vacancies on the Commission shall be filled by the same appointing authority as made the initial appointment.

SECTION 40.4. The Commission shall examine:

(1) Business incentives that encourage employers to support efforts by employees to retrain in order to qualify for higher paying or nonexportable jobs by allowing employees time off, reimbursing employees for education expenses, or providing other support.

(2) Successful retraining incentive programs in this and other states.

SECTION 40.5. The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

SECTION 40.6. Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative

Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical support staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 40.7. The Commission shall submit a final report of its findings and recommendations, including any legislative recommendations, to the 2007 General Assembly upon its convening. The Commission shall terminate upon the convening of the 2007 General Assembly.

SECTION 40.8. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Commission established by this part.

PART XLI. LOCAL SCHOOL CONSTRUCTION FINANCING STUDY (Yongue)

SECTION 41.1. Section 7.32.(b) of S.L. 2004-124 reads as rewritten:

"**SECTION 7.32.(b)** Membership. – The Commission shall be composed of ~~20~~19 members, as follows:

~~(1) One member appointed by the Governor, after consultation with the President Pro Tempore of the Senate and the Speaker of the House of Representatives, who shall serve as chair;~~

(2) Eight members appointed by the President Pro Tempore of the Senate: two members of the Senate from urban areas, two members of the Senate from rural areas, one member representing a large, fast-growing, urban school administrative unit that is a plaintiff in the Leandro school-financing litigation, one member from the financial services industry, one county commissioner, and one educator;

(3) Eight members appointed by the Speaker of the House of Representatives: two members of the House of Representatives from urban areas, two members of the House of Representatives from rural areas, one member representing a rural school administrative unit that is a plaintiff in the Leandro school-financing litigation, one member who is knowledgeable about municipal and school finance, one school board member, and one educator;

(4) The State Treasurer or a designee;

(5) The State Superintendent of Public Instruction or a designee; and

(6) The chair of the State Board of Education.

Vacancies shall be filled by the appointing authority. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint a cochair of the Commission."

SECTION 41.2. Section 7.32.(i) of S.L. 2004-124 reads as rewritten:

"**SECTION 7.32.(i)** Reports. – The Commission shall make ~~an interim report to the 2005 General Assembly no later than January 31, 2005, and~~ a final report to the ~~2006~~ 2007 ~~Regular Session of the 2005~~ General ~~Assembly no later than March 31, 2006.~~Assembly. The final report shall contain recommendations for legislation to implement recommendations made by the Commission. ~~The interim report may also contain recommendations for legislation.~~ The Commission shall terminate ~~on March 31, 2006.~~upon the filing of its final report."

PART XLII. LEGISLATIVE STUDY COMMISSION ON STATE PERSONNEL STATUTES

SECTION 42. Section 5.1 of S.L. 2004-161 reads as rewritten:

"**SECTION 5.1.** The General Assembly may study issues related to the State Personnel Act. The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall designate an appropriate committee to conduct the study. The Committee may make an interim report to the ~~2005~~ 2006 General Assembly and shall make its final report to the ~~2006 Regular Session of the 2005~~ 2007 General Assembly."

PART XLIII. DIVISION OF AIR QUALITY STUDY OF COSTS AND BENEFITS OF REDUCING EMISSIONS OF OXIDES OF NITROGEN, PARTICULATE MATTER, AND GREENHOUSE GASES FROM MOTOR VEHICLES. (S.B, 1006 – Clodfelter)

SECTION 43. The Division of Air Quality of the Department of Environment and Natural Resources shall study the costs and benefits of reducing emissions of oxides of nitrogen, particulate matter, and greenhouse gases from motor vehicles in this State. In particular, the Division shall evaluate the desirability and air quality benefits of adopting motor vehicle emissions standards adopted in other states. The Division of Air Quality shall submit an interim report on its findings and recommendations, including any legislative proposals, no later than January 15, 2007 and shall submit a final report no later than April 1, 2007 to the Environmental Review Commission and the Legislative Commission on Global Climate Change.

PART XLIV. DEPARTMENT OF HEALTH AND HUMAN SERVICES SURVEY OF PHARMACY PROVIDERS PARTICIPATING IN THE MEDICAID PROGRAM TO DETERMINE THE COST OF DISPENSING A MEDICAID PRESCRIPTION (H.B. 2853 – England; Faison)

SECTION 44. Not later than January 1, 2007, the Department of Health and Human Services shall conduct a survey of pharmacy providers participating in the Medicaid program to determine the cost of dispensing a Medicaid prescription in North Carolina. In place of the survey, the Department of Health and Human Services may use a recently conducted national survey of a statistically relevant sample of

pharmacies. The Department shall report its findings to the Senate Appropriations subcommittee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than March 1, 2007.

PART XLV. WATERFRONT ACCESS STUDY COMMITTEE (H.B. 1922 – Wainwright, Justice; S.B. 1352 – Albertson)

SECTION 45.1. There is created the Waterfront Access Study Committee.

SECTION 45.2. The Committee shall be comprised of 21 members as follows:

(1) The Director of the Sea Grant College Program of The University of North Carolina or the Director's designee.

(2) The Senate Cochair of the Joint Legislative Commission on Seafood and Aquaculture or the Cochair's designee.

(3) The House Cochair of the Joint Legislative Commission on Seafood and Aquaculture or the Cochair's designee.

(4) The Chair of the Marine Fisheries Commission or the Chair's designee.

(5) The Chair of the Coastal Resources Commission or the Chair's designee.

(6) The Chair of the Wildlife Resources Commission or the Chair's designee.

(7) The Director of the Division of Marine Fisheries or the Director's designee.

(8) The Director of the Division of Coastal Management or the Director's designee.

(9) The President of the North Carolina Recreation and Parks Association or the President's designee. The individual who serves in this position must also be a director of a public parks and recreation agency located in a coastal region as described in G.S. 143B-289.54(b).

(10) A representative of a local government located in the Northeast Coastal Region, as described by G.S. 143B-289.54(b), appointed by the President Pro Tempore of the Senate.

(11) A representative of a local government located in the Central Coastal Region, as described by G.S. 143B-289.54(b), appointed by the Speaker of the House of Representatives.

(12) A representative of a local government located in the Southeast Coastal Region, as described by G.S. 143B-289.54(b), appointed by the President Pro Tempore of the Senate.

(13) An economist appointed by the Speaker of the House of Representatives.

(14) A representative of the residential building industry who builds in a coastal region as described in G.S. 143B-289.54(b), appointed by the President Pro Tempore of the Senate.

(15) A realtor licensed under Chapter 93A of the General Statutes, appointed by the Speaker of the House of Representatives.
(16) An individual involved in economic development in a coastal region as described in G.S. 143B-289.54(b), appointed by the President Pro Tempore of the Senate.
(17) A representative of the marine trades industry appointed by the Speaker of the House of Representatives.
(18) A representative of the commercial fishing industry appointed by the President Pro Tempore of the Senate.
(19) A representative of the recreational fishing industry appointed by the Speaker of the House of Representatives.
(20) A social scientist appointed by the President Pro Tempore of the Senate.
(21) A representative of the environmental community appointed by the Speaker of the House of Representatives.

The Director of the Sea Grant College Program of The University of North Carolina or the Director's designee shall be the Chair of the Committee. Any vacancy shall be filled by the original appointing authority. A quorum of the Committee shall be a majority of its members. The Committee shall meet upon the call of the Chair.

SECTION 45.3. The Committee, with the assistance of the Sea Grant College Program of The University of North Carolina and the North Carolina Coastal Resources Law, Planning, and Policy Center, shall study the degree of loss and potential loss of the diversity of uses along the coastal shoreline of North Carolina and how these losses impact access to the public trust waters of the State. Specifically, the Committee shall:

(1) Gather information about local land-use management and zoning, current shoreline development trends, and local tax rates, including tax assessment trends for shoreline properties.
(2) Collect research and information from North Carolina and other states and jurisdictions regarding incentive-based techniques and management tools used to preserve waterfront diversity.
(3) Assess the applicability of such tools and techniques to the coastal shorelines of North Carolina.
(4) Prepare a draft report with a statement of the issues, a summary of the research, and recommendations to address issues of diversity of waterfront use and access in North Carolina.
(5) Hold three public meetings to present the draft report and recommendations to the public and user groups. One public meeting shall be held in each of the three coastal regions described by G.S. 143B-289.54(b).

SECTION 45.4. Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to the

Commission to aid in its work. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Commission may meet during a regular or extra session of the General Assembly, subject to approval of the President Pro Tempore of the Senate and the Speaker of the House of Representatives. Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building. The Commission, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them and the power to subpoena witnesses.

SECTION 45.5. The Committee may submit an interim report of its study to the Joint Legislative Commission on Seafood and Aquaculture, the Marine Fisheries Commission, and the Coastal Resources Commission no later than January 15, 2007. The Committee shall submit a final report of the results of its study, including any legislative recommendations, to the Joint Legislative Commission on Seafood and Aquaculture, the Marine Fisheries Commission, and the Coastal Resources Commission no later than April 15, 2007. The Committee shall terminate on April 15, 2007, or upon the filing of its final report, whichever occurs first.

SECTION 45.6. From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this act.

PART XLVI. GOVERNMENT PERFORMANCE AUDIT

SECTION 46.1. The Government Performance Audit Committee is established. The Committee shall be located administratively in the General Assembly. The Committee shall consist of 10 members appointed as follows: (i) five members of the House of Representatives shall be appointed by the Speaker of the House of Representatives, and (ii) five members of the Senate shall be appointed by the President Pro Tempore of the Senate.

Terms on the Committee begin on August 1, 2006. A member continues to serve until a successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. The Committee and the terms of the members shall expire when the Committee submits a final report to the General Assembly.

The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Committee. The Committee shall meet at least once a quarter upon the joint call of the cochairs. A quorum of the Committee is six members. No action may be taken except by a majority vote at a meeting at which a quorum is present.

From funds available to the General Assembly, the Legislative Services Commission shall allocate monies to fund the meetings of the Committee. Members of

the Committee shall receive subsistence and travel expenses as provided in G.S. 120-3.1.

The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Directors of Legislative Assistants of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee.

SECTION 46.2. The Committee shall contract for a performance audit of the executive branch of State government. The goals of the audit are to evaluate the efficiency and effectiveness of State government and to identify specific ways to make improvements. The audit may examine entire departments, agencies, or institutions, or similar programs in several departments. The results of the audit shall be reported on or before February 1, 2008.

The performance audit shall include an examination of the efficiency and effectiveness of major management policies, practices, and functions, including the following areas:

(1) Planning, budgeting, and program evaluation policies and practices, including an analysis of the compliance of the executive branch with existing planning requirements, such as the Capital Improvement Planning Act, Article 1B of Chapter 143 of the General Statutes.
(2) Personnel systems operations and management.
(3) State purchasing operations and management.
(4) Information technology and telecommunications systems policy, organization, and management.
(5) Review of duplications and related or overlapping services or activities for the purpose of coordinating and streamlining programs to achieve consistent and clear objectives.

SECTION 46.3. The Committee shall issue a Request for Proposal (RFP) for a government performance audit to be conducted in accordance with this act. The Committee may award a contract pursuant to the RFP.

PART XLVII. STATE AND LOCAL REVENUE MODERNIZATION STUDY COMMISSION.

SECTION 47.1. The State and Local Revenue Modernization Study Commission is established.

SECTION 47.2. The Commission shall be composed of 30 members, as follows:

(1) Fifteen members appointed by the Speaker of the House of Representatives as follows:
   a. Five persons with substantial business experience.
   b. Four persons who are members of the House of Representatives at the time of appointment.

c. Two persons who hold county or municipal elected office or are county or city managers.
d. One person with experience in economic analysis.
e. Three members of the public at large.

(2) Fifteen members appointed by the President Pro Tempore of the Senate as follows:
a. Five persons with substantial business experience.
b. Four persons who are members of the Senate at the time of appointment.
c. Two persons who hold county or municipal elected office or are county or city managers.
d. One person with experience in economic analysis.
e. Three members of the public at large.

The Commission shall have two cochairs, one designated by the President Pro Tempore of the Senate and one designated by the Speaker of the House of Representatives from among their respective appointees. The Commission shall meet upon the call of the cochairs. Any vacancy on the Commission shall be filled by the original appointing authority.

SECTION 47.3. The Commission shall:

(1) Examine State and local revenue-sharing and taxing authority.
(2) Review the existing State tax code and recommend ways to modernize it.
(3) Examine the current authority of local government to levy taxes and fees and recommend any changes in such authority.
(4) Recommend to the General Assembly needed changes in State and local tax structure and sharing of revenues.
(5) Study and recommend a permanent financing strategy leading to the elimination of county financial participation in Medicaid services.

SECTION 47.4. Members of the Commission shall receive subsistence and travel allowances at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate. With the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Commission. The University of North Carolina shall provide advice and staffing to the Commission. Provision of such advice and staffing shall be coordinated through the President of The University of North Carolina, utilizing appropriate resources of the various constituent institutions. With the prior approval of the Legislative Services Commission, the Commission may hold its meetings in the State Legislative Building or the Legislative Office Building. The Commission may also meet at various locations around the State in order to promote greater public participation in its deliberations. The Commission, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them and the

power to subpoena witnesses. The Commission may meet during a regular or extra session of the General Assembly.

SECTION 47.5. The Commission shall report its finding and recommendation to the 2007 Regular Session of the General Assembly no later than May 1, 2007. The Commission shall terminate upon the filing of its final report

SECTION 47.6. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Commission established by this Part. Such allocation may be accomplished by transfer of funds to the University of North Carolina. Funds appropriated to The University of North Carolina may also be used to provide professional and clerical assistance as provided by this Part.

PART XLVIII. CHRONIC KIDNEY DISEASE TASK FORCE (Wright)

SECTION 48.1. The North Carolina Institute of Medicine is requested to convene a Task Force to study chronic kidney disease.

SECTION 48.2. If the Task Force is convened, the Secretary of Health and Human Services or a designee shall serve as a Co-Chair of the Task Force. The other Co-Chair shall be selected from the Task Force members. The Task Force shall include, but not be limited, to the following members:

(1) Two members of the House of Representatives appointed by the Speaker of the House of Representatives.
(2) Two members of the Senate appointed by the President Pro Tempore of the Senate.
(3) Three physicians appointed from lists submitted by the North Carolina Medical Society.
(4) One physician appointed from lists submitted by the Old North State Medical Society.
(5) One member who represents the State affiliate of the National Kidney Foundation.
(6) One member who is a representative of the Department of Nephrology at each of the following medical schools: The University of North Carolina at Chapel Hill School of Medicine, Duke University School of Medicine, Bowman Gray School of Medicine at Wake Forest University, and the Brody School of Medicine at East Carolina University.
(7) One member who represents owners/operators of clinical laboratories in the State.
(8) One member who represents a private renal care provider
(9) One member who is a dietitian licensed by the State of North Carolina.
(10) One member who is a registered nurse practicing in the renal field.
(11) One member who is a social worker practicing in the renal field.
(12) One member who has chronic kidney disease.

(13) Four representatives from the Department of Health and Human Services, including one representative from Community Care of North Carolina, one representative from the Division of Public Health, Chronic Disease Branch, one representative from the Division of Facility Services, Certificate of Need section, and one representative from the Office of Minority Health and Health Disparities.

If the Task Force is convened, the North Carolina Institute of Medicine shall provide staff and arrange for meeting facilities for the Task Force.

SECTION 48.3. If the Task Force is convened, it shall develop a plan to:

(1) Reduce the occurrence of chronic kidney disease by controlling the most common risk factors, diabetes and hypertension, through preventive efforts at the community level and disease management efforts in the primary care setting.

(2) Educate the public and health care professionals about the advantages and methods of early screening, diagnosis, and treatment of chronic kidney disease and its complications based on Kidney Disease Outcomes Quality Initiative Clinical Practice Guidelines for chronic kidney disease or other medically recognized clinical practice guidelines.

(3) Educate health care professionals about early renal replacement therapy education for patients (including in-center dialysis, home hemodialysis, peritoneal dialysis as well as vascular access options and transplantation) prior to the onset of ESRD when kidney function is declining.

(4) Make recommendations on the implementation of a cost-effective plan for prevention, early screening, diagnosis, and treatment of chronic kidney disease and its complications for the State's population.

(5) Identify current barriers to adoption of best practices and potential policy options to address these barriers.

SECTION 48.4. If the North Carolina Institute of Medicine Chronic Kidney Disease Task Force is convened, it shall submit its interim report and recommendations to the 2007 General Assembly upon its convening, and to the chairs of the Senate Health Committee, the House of Representatives Health Committee, the House Aging Committee, and the Governor. The final report shall be submitted no later than the convening of the 2008 General Assembly. Upon submission of this report, the Task Force shall terminate.

PART XLIX. RAIL SERVICES COMMISSION (H.B. 89 – Pate, Rapp; S.B. 674 – Nesbitt)

SECTION 49.1. Commission Established. – There is established in the General Assembly a Joint Legislative Commission on Expanding Rail Service. The Commission shall be composed of 16 members as follows:

(1) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives.
(2) Eight members of the Senate appointed by the President Pro Tempore of the Senate.

SECTION 49.2. Duties of Commission. – The Commission shall study the following matters related to expanding rail service in North Carolina:

(1) The cost and benefits of expanding and upgrading rail service in the State, including the effect the expanded service would have on economic development.
(2) The feasibility, cost, and benefits of establishing commuter rail service in the State to transport workers to cities from outlying areas, including the effect the commuter service would have on increasing the economic opportunities of those who live in the outlying areas.
(3) The cost and benefits of expanding passenger rail service to the western and eastern areas of the State, including the effect the expanded service would have on tourism.
(4) Ways to preserve unused or abandoned rail corridors for future rail needs.
(5) Spurring economic development and tourism through further development of short-line railroads.

Any vacancy on the Commission shall be filled by the appointing authority. Cochairs of the Commission shall be designated by the Speaker of the House of Representatives and the President Pro Tempore of the Senate from among their respective appointees. The Commission shall meet upon the call of the cochairs. A quorum of the Commission shall be nine members.

SECTION 49.3. Expenses of Members. – Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 49.4. Staff. – Adequate staff shall be provided to the Commission by the Legislative Services Office.

SECTION 49.5. Consultants. – The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

SECTION 49.6. Cooperation. – The Commission may call upon any department, agency, institution, or officer of the State or any political subdivision thereof for facilities, data, or other assistance.

SECTION 49.7. Meetings During Legislative Session. – The Commission may meet during a regular or extra session of the General Assembly, subject to approval of the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

SECTION 49.8. Meeting Location. – The Commission shall meet at various locations around the State in order to promote greater public participation in its deliberations. The Legislative Services Commission shall grant adequate meeting space to the Commission in the State Legislative Building or the Legislative Office Building.

SECTION 49.9. Report. – The Commission shall make a final report of its findings and recommendations to the 2007 General Assembly. Upon the filing of its final report, the Commission shall terminate.

SECTION 49.10. Appropriation. – Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Commission.

PART L. LEGISLATIVE STUDY COMMISSION ON THE BUDGET OF THE DEPARTMENT OF PUBLIC INSTRUCTION

SECTION 50.1. There is created the Legislative Study Commission on the Budget of the Department of Public Instruction. The purpose of the Commission is to perform a zero-based budget review of the Department of Public Instruction.

SECTION 50.2. The Commission shall consist of five members of the House of Representatives appointed by the Speaker of the House of Representatives and five members of the Senate appointed by the President Pro Tempore of the Senate.

The Speaker of the House of Representatives shall designate one Representative as cochair, and the President Pro Tempore shall designate one Senator as cochair. Vacancies on the Commission shall be filled by the same appointing authority as made the initial appointment.

SECTION 50.3. In performing a zero-based budget review of the Department of Public Instruction, the Commission shall include all of the following:

(1) Consider the mission and goals of the Department, as set out in statutes and in the rules, policies, and practices of the Department.

(2) Evaluate the mission and goals of the Department in view of the Leandro decision, the No Child Left Behind Act of 2001, the academic performance of students in the public schools, and the needs of the State and its citizens, and propose any necessary revisions.

(3) Evaluate the efficiency and effectiveness of the Department of Public Instruction in furthering the missions and goals of the Department, including any proposed revisions. This evaluation shall include (i) the role of the Department of Public Instruction, its administrative structure, organization, and its statutory powers and duties; (ii) the role of the State Board of Education as the head of the Department of Public Instruction, its composition, organization, and constitutional and statutory powers and duties; and (iii) the role of the State Superintendent as secretary and chief administrative officer of the State Board, the State Superintendent's selection, and the State Superintendent's constitutional and statutory powers and duties.

(4) Evaluate each program within the Department to determine (i) whether and to what extent it is required by State or federal law; (ii) what extent it achieves the mission and goals of the Department; and (iii) whether there are alternative ways to achieve the mission and goals of

the Department, including proposed revisions, in a more efficient and effective manner.

(5) Assess the activities performed in each program, the major benefits provided by the program, the current cost and staffing levels for the program, the rationale for the cost and staffing levels, and the administrative and other overhead costs of the program.

(6) Determine the level of funding and staff necessary to accomplish the goals and missions of the Department, including proposed revisions, without regard to past levels of funding.

SECTION 50.4. The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the joint call of the cochairs. The Commission may meet in the Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. If the Commission hires a consultant, the consultant shall not be a State employee or a person currently under contract with the State to provide services. All State departments and agencies and local governments and their subdivisions shall furnish the Commission with any information in their possession or available to them. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Director of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission.

SECTION 50.5. The Commission shall report the results of its study and its recommendations to the 2007 General Assembly upon its convening. The Commission shall terminate upon filing its final report or upon the convening of the 2007 General Assembly, whichever is earlier.

SECTION 50.6. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Commission established by this Part.

PART LI. STATE BOARD OF EDUCATION STUDY OF PUBLIC SCHOOL PERSONNEL COMMUNICATION CONCERNING DISABILITIES

SECTION 51. The State Board of Education, in cooperation with Division TEACCH and the North Carolina Justice Academy, shall study training for public school personnel designed to facilitate, when needed, effective communication and transfer of information about students with autism and other disabilities between school personnel and school resource officers. The State Board shall report its findings and recommendations to the 2007 General Assembly on or before March 31, 2007.

PART LII. DOROTHEA DIX HOSPITAL PROPERTY STUDY COMMISSION EXPANDED

SECTION 52. Section 3.4.(b) of S.L. 2003-314 reads as rewritten:

"**SECTION 3.4.(b)** Creation and Membership. – The Dorothea Dix Hospital Property Study Commission is created. The Commission shall consist of ~~nine~~ 11 members, ~~four~~ five appointed by the President Pro Tempore of the Senate and ~~four~~ five appointed by the Speaker of the House of Representatives. The Secretary of Health and Human Services shall serve as an ex officio member of the Commission."

PART LIII. JOINT LEGISLATIVE STUDY COMMITTEE ON SEX OFFENDER REGISTRATION AND INTERNET CRIMES AGAINST CHILDREN

SECTION 53.1. There is established a Joint Legislative Study Committee on Sex Offender Registration and Internet Crimes Against Children.

SECTION 53.2. The Study Committee shall consist of 18 members, nine members appointed by the Speaker of the House of Representatives and nine members appointed by the President Pro Tempore of the Senate.

SECTION 53.3. The Study Committee shall study sex offender registration laws and internet crimes against children. In connection with this study, the Committee shall:

(1) Review the list of offenses for which registration is required in North Carolina and determine whether offenses should be added or deleted from the registration requirement.

(2) Consider increasing or decreasing the amount of time a person should remain on the registry.

(3) Examine the procedures for termination of the registration requirement.

(4) Consider the ways to improve the verification of the registration requirement.

(5) Evaluate whether law enforcement should have an affirmative duty to notify residents, schools, or other interested parties that a sex offender lives in the neighborhood.

(6) Identify methods that can be used to track sex offender locations, including the use of GPS devices to monitor sex offenders, even after they have served their sentences.

(7) Study the use of registration fees.

(8) Consider prohibiting sex offenders from working in jobs that involve direct contact with children.

(9) Evaluate proposals that require sex offenders to stay a certain distance from schools and day care centers.

(10) Compare sex offender laws in North Carolina with the laws of other states.

(11) Review the criminal statutes and sentencing guidelines in North Carolina relating to the production, distribution, and possession of child pornography and determine how they can be strengthened and improved.

(12) Review the criminal statutes and sentencing guidelines in North Carolina relating to enticement of children through the use of computers or the Internet.

(13) Examine the current prosecution and sentencing of child pornography and other Internet crimes against children.

(14) Evaluate law enforcement practices, capacity, training, and workload for combating child pornography and other Internet crimes against children.

(15) Investigate ways to increase the use of asset forfeiture in child pornography distribution and production cases.

(16) Review best practices federally and in other states regarding Internet crimes against children.

SECTION 53.4. Members of the Committee shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 53.5. Subject to the approval of the Legislative Services Commission, the Committee may meet in the State Legislative Building or the Legislative Office Building. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist in the work of the Commission. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Committee, and the expenses relating to the clerical employees shall be borne by the Committee. The Committee, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them and the power to subpoena witnesses. The appointing authority shall fill vacancies.

SECTION 53.6. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Committee established by this Part.

SECTION 53.7. The Committee shall make a final report to the 2007 General Assembly upon its convening, and shall terminate upon the earlier of the filing of its final report or the convening of the 2007 General Assembly.

PART LVIV. JOINT LEGISLATIVE CORRECTIONS, CRIME CONTROL, AND JUVENILE JUSTICE OVERSIGHT COMMITTEE

SECTION 54.1. The Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee may study the topics listed in this Part and report its findings, together with any recommended legislation, to the 2007 General Assembly upon its convening.

SECTION 54.2. Expungement for Non-Violent Felons (H.B. 1084 – Bordsen) – The Committee may study issues related to expungement for non-violent felons.

PART LV. BENEFICIAL USES OF INDUSTRIAL HEMP (S.B. 1572 – Bingham and Kinnaird)

SECTION 55.1. There is established a Study Commission on the Beneficial Uses of Industrial Hemp.

SECTION 55.2. The Commission shall be composed of 15 members as follows:

(1) Two members of the Senate appointed by the President Pro Tempore of the Senate.
(2) Two members of the House of Representatives appointed by the Speaker of the House of Representatives.
(3) Two members appointed by the Governor.
(4) The Chair of the Agriculture Committee of the House of Representatives.
(5) The Chair of the Agriculture, Environment, and Natural Resources Committee of the Senate.
(6) The Commissioner of Agriculture or the Commissioner's designee.
(7) The Secretary of Commerce or the Secretary's designee.
(8) The President of the North Carolina Farm Bureau Federation, Inc., or the President's designee.
(9) The Dean of the Kenan-Flagler Business School at the University of North Carolina at Chapel Hill or the Dean's designee.
(10) The Dean of The Fuqua School of Business at Duke University or the Dean's designee.
(11) The Dean of the College of Agriculture and Life Sciences at North Carolina State University or the Dean's designee.
(12) The Dean of the School of Agriculture and Environmental Sciences at North Carolina Agricultural and Technical State University or the Dean's designee.

Any vacancy on the Commission shall be filled by the appointing authority. Cochairs of the Commission shall be designated by the President Pro Tempore of the Senate and the Speaker of the House of Representatives from among their respective appointees. The Commission shall meet upon the call of the cochairs. A quorum of the Commission shall consist of eight members.

SECTION 55.3. The Commission shall study the many beneficial industrial uses of industrial hemp, including the use of industrial hemp oil as an alternative fuel

and the use of industrial hemp fiber in construction and paper products. The Commission shall examine the economic opportunities industrial hemp provides to the State and consider the desirability and feasibility of authorizing industrial hemp cultivation and production as a farm product in North Carolina. In addition, the study shall include the following:

(1) A review of current scientific and business literature on the many uses of industrial hemp, including the uses of industrial hemp oil as an alternative fuel and motor oil; the uses of omega-3 rich industrial hemp seed and industrial hemp oil in snack foods, body care products, and food supplements; the uses of industrial hemp fibers as raw materials for construction and paper products and for fabric; and the uses of industrial hemp in the manufacture of recyclable car parts.

(2) A review of scientific literature on the different types of hemp and how industrial hemp differs from hemp that is the illegal substance marijuana.

(3) A review of current economic literature on the economic benefits of, and the economic markets for, the products made using industrial hemp.

(4) A review of actions taken by the federal government and actions by other states to produce industrial hemp for industrial uses.

(5) An evaluation of the economic opportunities for the State that may result from producing industrial hemp as a farm product and manufacturing industrial hemp products.

(6) Any other issues the Commission deems relevant.

SECTION 55.4. Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to the Commission to aid in its work. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Commission may meet during a regular or extra session of the General Assembly, subject to approval of the President Pro Tempore of the Senate and the Speaker of the House of Representatives. Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building. The Commission, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them and the power to subpoena witnesses.

SECTION 55.5. The Commission shall make its findings and recommendations in a final report to the 2007 General Assembly and the Environmental Review Commission by December 1, 2006. The Comission shall terminate upon the filing of its final report.

SECTION 55.6. From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this Part.

PART LVI. STUDY COMMISSION ON DAY CARE AND RELATED PROGRAMS (S.B. 1827 – Jenkins)

SECTION 56.1. There is created the Legislative Study Commission on Day Care and Related Programs.

SECTION 56.2. The Commission shall consist of 12 members appointed as follows:

(1) Four members of the Senate appointed by the President Pro Tempore of the Senate.

(2) Four members of the House of Representatives appointed by the Speaker of the House of Representatives.

(3) Two members of the general public appointed by the President Pro Tempore of the Senate.

(4) Two members of the general public appointed by the Speaker of the House of Representatives.

Any vacancy on the Commission shall be filled by the appointing authority. Cochairs of the Commission shall be designated by the President Pro Tempore of the Senate and the Speaker of the House of Representatives from among their respective appointees. The Commission shall meet upon the call of the cochairs.

SECTION 56.3. The Commission shall study all of the following:

(1) Assess the shortfalls and benefits of the various day care and related programs.

(2) Consider needed adjustments, and possible program consolidations, and the necessary reprioritization of funds to realize the maximum benefit to the State's children and families.

(3) Consider how day care and related programs affect economic development today and in the future.

(4) Review any other matter that the Commission finds relevant to its charge.

SECTION 56.4. Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate. Upon the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to the Commission to aid in its work. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Commission may meet during a regular or extra session of the General Assembly, subject to approval of the President Pro Tempore of the Senate and the Speaker of the House of Representatives. Subject to the approval of the Legislative Services Commission, the Commission may meet in the Legislative Building or the Legislative Office Building. The Commission, while in the discharge of its official duties, may exercise all the powers provided under

the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them and the power to subpoena witnesses.

SECTION 56.5. The Commission shall make its findings and recommendations in a final report to the 2007 General Assembly by December 31, 2006. The Commission shall terminate upon the filing of its final report.

SECTION 56.6. From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the purpose of conducting the study provided for in this Part.

PART LVII. BILL AND RESOLUTION REFERENCES

SECTION 57. The listing of the original bill or resolution in this act is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

PART LVIII. EFFECTIVE DATE AND APPLICABILITY

SECTION 58. Except as otherwise specifically provided, this act is effective when it becomes law. If a study is authorized both in this act and in the Current Operations and Capital Improvements Appropriations Act of 2006, the study shall be implemented in accordance with the Current Operations and Capital Improvements Appropriations Act of 2006 as ratified.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

SESSION LAW 2006-66
SENATE BILL 1741

AN ACT TO MODIFY THE CURRENT OPERATIONS AND CAPITAL APPROPRIATIONS ACT OF 2005, TO INCREASE TEACHER AND STATE EMPLOYEE PAY, TO REDUCE THE SALES TAX RATE AND THE INCOME TAX RATE APPLICABLE TO MOST SMALL BUSINESSES, TO CAP THE VARIABLE WHOLESALE COMPONENT OF THE MOTOR FUEL TAX RATE AT ITS CURRENT RATE, TO ENACT OTHER TAX REDUCTIONS, AND TO PROVIDE FOR THE FINANCING OF HIGHER EDUCATION FACILITIES AND PSYCHIATRIC HOSPITALS AND OTHER CAPITAL PROJECTS.

The General Assembly of North Carolina enacts:

PART I. INTRODUCTION AND TITLE OF ACT

INTRODUCTION

SECTION 1.1. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and, except as allowed by the Executive Budget Act, or this act, the savings shall revert to the appropriate fund at the end of each fiscal year.

TITLE OF ACT

SECTION 1.2. This act shall be known as "The Current Operations and Capital Improvements Appropriations Act of 2006."

PART II. CURRENT OPERATIONS AND EXPANSION/GENERAL FUND

CURRENT OPERATIONS AND EXPANSION/GENERAL FUND

SECTION 2.1. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated are adjusted for the fiscal year ending June 30, 2007, according to the schedule that follows. Amounts set out in brackets are reductions from General Fund appropriations for the 2006-2007 fiscal year.

Current Operations – General Fund	**FY 2006-2007**
EDUCATION	
Community Colleges System Office	$ 64,160,027
Department of Public Instruction	139,944,021
University of North Carolina – Board of Governors	
Appalachian State University	2,189
East Carolina University	

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

SESSION LAW 2006-106
SENATE BILL 1451

AN ACT TO ENFORCE COLLECTION OF PROPERTY TAXES ON REAL PROPERTY AGAINST THE RECORD OWNER AS OF THE DATE THE TAXES BECOME DELINQUENT, TO CODIFY THE PRORATION OF TAXES ON REAL PROPERTY, TO REQUIRE A TAX COLLECTOR TO TAKE REASONABLE ADDITIONAL STEPS TO NOTIFY A PROPERTY OWNER OF A TAX SALE UNLESS THE TAX COLLECTOR HAS AFFIRMATIVE KNOWLEDGE THAT THE MAILED NOTICE REACHED THE RECIPIENT, TO AMEND THE DEFINITION OF INVENTORIES TO INCLUDE DISPLAY MODULAR HOMES, AND TO STUDY THE VALUATION OF PROPERTY AT ITS PRESENT-USE VALUE FOR PROPERTY TAX PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-273(17) reads as rewritten:

"**§ 105-273. Definitions.**

When used in this Subchapter (unless the context requires a different meaning):

...

(17) "Taxpayer" means any person whose property is subject to ad valorem property taxation by any county or municipality and any person who, under the terms of this Subchapter, has a duty to list property for taxation. For purposes of collecting delinquent ad valorem taxes assessed on real property under G.S. 105-366 through G.S. 105-375, "taxpayer" means the owner of record on the date the taxes become delinquent and any subsequent owner of record of the real property if conveyed after that date."

SECTION 2. G.S. 105-369 reads as rewritten:

"**§ 105-369. Advertisement of tax liens on real property for failure to pay taxes.**

(a) Report of Unpaid Taxes That Are Liens on Real Property. – In February of each year, the tax collector must report to the governing body the total amount of unpaid taxes for the current fiscal year that are liens on real property. A county tax collector's report is due the first Monday in February, and a municipal tax collector's report is due the second Monday in February. Upon receipt of the report, the governing body must order the tax collector to advertise the tax liens. For purposes of this section, district taxes collected by county tax collectors shall be regarded as county taxes and district taxes collected by municipal tax collectors shall be regarded as municipal taxes.

(b) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1013.

(b1) Notice to Owner. – After the governing body orders the tax collector to advertise the tax liens, the tax collector must send a notice to the ~~listing owner and to the~~ record owner of each affected parcel of property, as determined as of ~~December 31 of the fiscal year for which the taxes are due.~~the date the taxes became delinquent. The notice must be sent to ~~each~~ the owner's last known address by first-class mail at least 30 days before the date the advertisement is to be published. The notice must state the principal amount of unpaid taxes that are a lien on the parcel to be advertised and inform the owner that the ~~names~~ name of ~~the listing owner and~~ the record owner as of the date the taxes became delinquent will appear in a newspaper advertisement of delinquent taxes if the taxes are not paid before the publication date. Failure to mail the

Report & study

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

SESSION LAW 2006-151
HOUSE BILL 2047

AN ACT TO PROMOTE CONSUMER CHOICE IN VIDEO SERVICE PROVIDERS AND TO ESTABLISH UNIFORM TAXES FOR VIDEO PROGRAMMING SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 42.
"State Franchise for Cable Television Service.

"**§ 66-350. Definitions.**

The following definitions apply in this Article:

(1) Cable service. – Defined in G.S. 105-164.3.
(2) Cable system. – Defined in 47 U.S.C. § 522.
(3) Channel. – A portion of the electromagnetic frequency spectrum that is used in a cable system and is capable of delivering a television channel.
(4) Existing agreement. – A local franchise agreement that was awarded under G.S. 153A-137 or G.S. 160A-319 and meets either of the following:
  a. Is in effect on January 1, 2007.
  b. Expired before January 1, 2007, and the cable service provider under the agreement provides cable service to subscribers in the franchise area on January 1, 2007.
(5) Pass a household. – Make service available to a household, regardless of whether the household subscribes to the service.
(6) PEG channel. – A public, educational, or governmental access channel provided to a county or city.
(7) Secretary. – The Secretary of State.
(8) Video programming. – Defined in G.S. 105-164.3.

"**§ 66-351. State franchising authority.**

(a) Authority. – The Secretary of State is designated the exclusive franchising authority in this State for cable service provided over a cable system. This designation replaces the authorization to counties and cities in former G.S. 153A-137 and G.S. 160A-319 to award a franchise for cable service. This designation is effective January 1, 2007. After this date, a county or city may not award or renew a franchise for cable service.

(b) Award and Scope. – The Secretary is considered to have awarded a franchise to a person who files a notice of franchise under G.S. 66-352. A franchise for cable service authorizes the holder of the franchise to construct and operate a cable system over public rights-of-way within the area to be served. Chapter 160A of the General Statutes governs the regulation of public rights-of-way by a city.

"**§ 66-352. Award of franchise and commencement of service.**

(a) Notice of Franchise. – A person who intends to provide cable service over a cable system in an area must file a notice of franchise with the Secretary before

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

SESSION LAW 2006-196
HOUSE BILL 1891

AN ACT TO CLARIFY AND SIMPLIFY THE APPLICATION OF THE ADDITIONAL GROSS PREMIUMS TAXES ON FIRE AND LIGHTNING COVERAGE AND TO MAKE TECHNICAL AND CLARIFYING TAX LAW CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-228.5(d)(3) reads as rewritten:

"(d) Tax Rates; Disposition. –

...

(3) Additional Statewide Fire and Lightning Rate. – An additional tax ~~shall be applied to gross premiums on contracts of insurance applicable to fire and lightning coverage, except in the case of marine and automobile policies,~~ at the rate of one and thirty-three hundredths percent ~~(1.33%).~~(1.33%) applies to gross premiums on insurance contracts applicable to fire and lightning coverage, except marine and automobile contracts. The tax is a percentage of the gross premiums from the contracts, determined in accordance with the table in this subdivision. Twenty-five percent (25%) of the net proceeds of this additional tax shall be deposited in the Volunteer Fire Department Fund established in Article 87 of Chapter 58 of the General Statutes. The remaining net proceeds shall be credited to the General Fund.

Type of Insurance Contract	**Taxable Percentage**
Fire Loss	100%
Commercial Multiple Peril	
Nonliability portion	100%
Liability portion	0%
Homeowners	50%
Farm Owners	30%."

SECTION 2. G.S. 105-228.5(b)(2) and G.S. 105-228.5(d)(4) are repealed.

SECTION 3. G.S. 105-228.5(d)(3), as amended by Section 1 of this act, reads as rewritten:

"(d) Tax Rates; Disposition. –

...

(3) Additional ~~Statewide Fire and Lightning Rate.~~ Rate on Property Coverage Contracts. – An additional tax at the rate of ~~one and thirty-three hundredths percent (1.33%)~~ eighty-five hundredths percent (.85%) applies to gross premiums on insurance contracts ~~applicable to fire and lightning coverage, except marine and automobile contracts.~~for property coverage. The tax is imposed on ten percent (10%) ~~a percentage~~ of the gross premiums from ~~the~~ insurance contracts for automobile physical damage coverage ~~contracts, determined in accordance with the table in this subdivision.~~ and on one hundred percent (100%) of the gross premiums from all other contracts for property coverage. Twenty ~~five~~ percent ~~(25%)~~ (20%) of the net proceeds of this additional tax ~~shall be deposited in~~ must be credited to

REVENUE LAWS STUDY COMMITTEE
Tuesday, September 05, 2006 at 9:30 AM
Room 544, Legislative Office Building

MINUTES

The Revenue Laws Study Committee met at 9:30 AM on September 5, 2006, in Room 544 of the Legislative Office Building. Eight members of the committee were present. Senator Kerr presided.

Overview of 2006 Tax Law Changes and Fate of the Revenue Laws Study Committee's Recommendations to the 2006 General Assembly.

Brenna Erford, a fiscal analyst with the Fiscal Research Division, was recognized to explain the 2006 Tax Law Changes and outcome of the recommendations to the 2006 General Assembly. Copies of her presentations are attached.

Motor Vehicle Property Tax Collection.

Martha Walston, an attorney with the Fiscal Research Division, was recognized for an overview of the 2005/2006 legislation. A copy of her presentation is attached.

David Baker, Director, Property Tax Division, Department of Revenue, was recognized to explain the "Findings and Recommendations for Determining Valuation of Motor Vehicles for Property Tax Purposes". Wayne Hurder and Portia Manley, DMV, were available to answer questions.

Stephanie King, Director of Accounting Operations, DOT, was recognized to explain "Findings and Recommendations for Implementing an Integrated Computer System".

Pete Rodda, Forsyth County Tax Assessor, was recognized to speak in favor of consolidating tax collection services.

Paul Meyer, Assistant General Counsel, NC Association of County Commissioners, was recognized to address the issue.

John Policastro, NC Automobile Dealers Association, was recognized to speak in opposition to requiring Automobile Dealers to collect the tax at the point of sale.

Roger Bone, Carolina Independent Automobile Dealers Association, was recognized to speak in opposition to requiring Automobile Dealers to collect the tax at the point of sale.

Corporate Income Tax: Combined Returns.

Cindy Avrette, an attorney with the Research Division, was recognized for an overview of the issue. A copy of the presentation is attached.

Norris Tolson, Secretary of the Department of Revenue, was recognized to explain the current law and spoke in favor of combined returns.

Greg Radford, Director, Corporate Income Tax Division, Department of Revenue, was recognized to explain corporate "loopholes" and spoke in favor of combined returns.

Representative Wainwright moved to request that staff study the issue and report by October 3 with a proposal on which consolidated corporate return would best benefit the State. The motion carried unanimously.

Chuck Neely, Council on State Taxation, was recognized to speak in opposition of North Carolina adopting corporate income tax combined returns.

Michael A. Hannah, CPA, Director of the State and Local Tax Group, PriceWaterhouseCoopers, LLP, was recognized to speak in favor of updating revenue laws in regards to corporate income tax returns.

The meeting adjourned at 12:12 PM.

Senator John H. Kerr, III, Co-Chair
Revenue Laws Study Committee

Representative Paul Luebke, Co-Chair
Revenue Laws Study Committee

DeAnne Mangum, Committee Clerk

REVENUE LAWS STUDY COMMITTEE
State Legislative Building
Raleigh, North Carolina 27603

Senator John H. Kerr, III, Co-Chair *Representative Paul Luebke, Co-Chair*

August 22, 2006

NOTICE

TO: Members, Revenue Laws Study Committee

FROM: Senator John Kerr, Co-Chair
Representative Paul Luebke, Co-Chair

SUBJECT: Revenue Laws Study Committee Meeting

There will be a meeting of the **Revenue Laws Study Committee** as follows:

DAY: **Tuesday**

DATE: **September 5, 2006**

TIME: **9:30 am**

LOCATION: **Room 544, Legislative Office Building**

The Revenue Laws Study Committee will soon resume its task of reviewing the tax laws of this State to determine if any improvements are needed. As we plan the work of the Committee, we'd like to get your suggestions on what the Committee should study. If you have specific suggestions on how to improve the tax laws, please share these suggestions with us.

At the September meeting, we will ask for input from the members on study topics. You may offer your suggestions at that time or send them to us by letter or email. When corresponding with us, please send a copy to our staff, Cindy Avrette, as well. Her email address is cindya@ncleg.net. The Committee's email address is revenuelaws@ncleg.net.

We look forward to hearing your suggestions and to the continued work of the Committee.

Please advise DeAnne Mangum at (919) 733-2405 or e-mail deannem@ncleg.net if you will be unable to attend.

REVENUE LAWS STUDY COMMITTEE AGENDA

Sen. John Kerr Rep. Paul Luebke

Tuesday, September 5, 2006
Room 544, Legislative Office Building
9:30 a.m.

I. **Welcoming Remarks**

II. **Overview of 2006 Tax Law Changes and Fate of the Revenue Laws Study Committee's Recommendations to the 2006 General Assembly**

Brenna Erford, Fiscal Research

III. **Motor Vehicle Property Tax Collection**

- **Overview of 2005 and 2006 Legislation**
  Martha Walston, Fiscal Research
- **Findings & Recommendations for Determining Valuation of Motor Vehicles for Property Tax Purposes**
  David Baker, Director, Property Tax Division, Department of Revenue
- **Findings & Recommendations for Implementing an Integrated Computer System**
  Stephanie King, Director of Accounting Operations, Department of Transportation
- **Comments**
  - Pete Rodda, Tax Assessor, Forsyth County; North Carolina Tax Assessors Association
  - Paul Meyer, Assistant General Counsel, NCACC
  - John Policastro, NC Automobile Dealers Association

IV. **Corporate Income Tax: Combined Returns**

- **Overview of Issue**
  Cindy Avrette, Research Division
- **Implementation of Current Law**
  - Secretary Norris Tolson, Department of Revenue
  - Greg Radford, Director, Corporate Income Tax Division, Department of Revenue
- **Comments from Interested Parties**

V. **Adjournment**

Future Meeting Dates: Oct. 3, Oct. 31, Dec. 5, Jan. 16, Jan. 23
All meetings in Room 544, LOB, at 9:30 a.m.

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — **Name of Committee**

September 5, 2006 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Stephanie King	NCDOT / 5 Wilmington St Raleigh
Johanna Reese	DOT
Diane Cherry	Institute for Emerging Issues
Fred Box	Bone & Asso.
Pam Meyer	NCACC
[illegible]	NCAOA
[illegible]	Maupin Taylor
George Clooney	Actors Guild
Steve Brewer	Embarq
Paul Stock	NC Bankers
[illegible] NEELY	MT

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — September 5, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Nancy Rudleman	Margin Taylor
Maggie Thomas	NCDOT
Ken Bergman	NCDOT
Portia Manley	NCDOT
[illegible]	RAVL
H. A. IASAICO	NCDOT
Sam Taylor	NCEA
Cheryl Causey	BBT
DAVID WEAVER	FIRST CHARTER
Steve Metcalf	The Policy Group
Kelly Calabria	Capstrat

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — September 5, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Dana Simpson	Smith Anderson
William Nelson	Smith Anderson
FRANK FOLGER	HELMS MULLISS WICKER
Will McAfee	Environmental Defense
Donna Alderman	NCDOR
Janice Davidson	NC DOR
REGGIE LITTLE	NC DOR
David Baker	NC DOR
KIRK BOONE	NC DOR
Bill Wilkes	NC DOR
Greg Rolford	NC DOR

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — September 5, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Lennie Collins	DOR
Donna Powell	DOR
Timothy R. Peele	DOR
Ed Turlington	BPM&L
Mike Hamrick	PWC
Tom Fox	TWC
Cam Cover	BPM&L
Joseph Coletti	John Locke Foundation
Daniel Baum	KCLH
Linda S. Millsaps	DOR
Andy Segal	DOR

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — September 5, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Patrick Buffkin	ALLEY ASSOCIATES, INC.
John Goodman	NCCBA
Jim Ahler	NCACPA
Rita Harris	NCSPA
Tim Burgess	Progress Energy
Lucius Pullen	Attorney
Pete Rodda	Forsyth Co Tax Assessor/Collector
Sharon Miller	CUCA
Kam Johnson	Smith Anderson
Jennifer Willis	Wake County Govt
Mia Bailey	Electricities of NC, Inc.

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Barbi Gray	Civitas Institute
LORI ANN HARRIS	CFHA
Mitch Kokai	John Locke Foundation
Sarah Price	Beason Government Affairs
Mark Jason	" "
DC Dew	Bellsouth
Andy Ellen	NCRMA
Fran Preston	NCRMA
Dennis Patterson	OSC
Wayne Hurder	DOT - DMV
Kay Hobart	AGO
Ken Melton	DOR
[illegible]	[illegible]
Dirk Colton	attorney
[illegible]	JDAI, PA
[illegible]	[illegible]
Kevin Leonard	DCSR
Rebecca Bawinegar	gov's office
Andy Romanet	NCLM

2006 Finance Law Changes

Brenna Erford
NCGA Fiscal Research Division
September 5, 2006

Budget Outlook

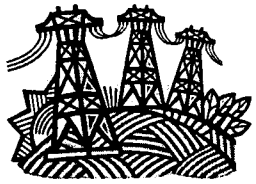
- 2005-06 revenue surplus: $1.06 billion
- Baseline revenue growth was 11.8% versus 5.3% forecast
- About 37% of revenue surplus was counted as one-time or nonrecurring
- Baseline growth rate forecast for 2006-07 is 3.3%
- Substantial structural budget gap anticipated for 2007-08 fiscal year due to reliance on one-time resources for operating budget

2006 General Assembly Actions

- Sales Tax Changes
- Income Tax Changes
- Motor Fuel Tax Changes
- Credits & Incentives
- Franchise Tax Changes
- Property Tax Changes

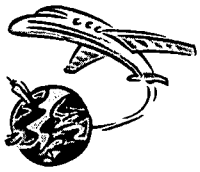
Sales Tax Changes - Rates

- State sales tax rate reduced from 4.5% to 4.25% effective December 1, 2006
  - Sunset for remaining ¼ cent sales tax remains July 1, 2007
- Sales tax rate for electricity sold to manufacturers reduced from 2.83% to 2.6% effective July 1, 2007



Sales Tax Changes - Refunds

- Aviation fuel refund extended through January 1, 2009, for motorsports & interstate passenger carriers
- 50% refund for motorsports racing teams on purchase of tangible personal property
- LEAs can apply for refund of local sales tax



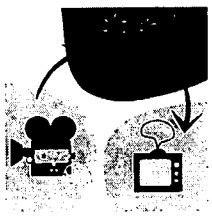
Sales Tax Changes - Exemptions



- Railroad cars leased by interstate carriers
- Electricity sold to Internet data centers
- Logging machinery
- R&D equipment (now subject to 1% privilege tax with $80 cap per item)

Sales Tax Changes – Video Services

- All providers taxed at general rate
- No more local cable franchise fees
- State tax credit for franchise fees paid eliminated
- Share of State sales tax given to local governments
- Effective January 1, 2007



Streamlined Sales Tax Changes

- New definitions
  - Telecommunications services
  - Ancillary service
  - Prepaid wireless calling
- New sales tax payment schedule for semi-monthly filers
  - Affects largest NC retailers
- Eliminated provisions regarding small underpayments

Income Tax Changes

- Upper 8.25% tax bracket reduced to 8%
  - Effective January 1, 2007
  - Sunset for remaining ¼ cent remains January 1, 2008
- Extend real property donation tax credit
  - 2009 sunset
- 529 college savings plan deduction
  - $750 for single filers, $1,500 for joint in 2007; $2,000 for single, $4,000 for joint starting in 2008

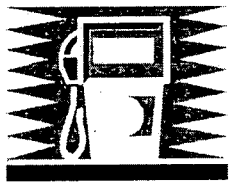


Income Tax Changes

- Additional joint filing option
  - Married joint filers with one partner living in another state and earning no NC income may file joint NC return
- Expansion of royalty reporting option
- S Corp. Income Tax Adjustments
- Conformed to IRC changes
  - Credit for child care
  - Energy Act changes
- Credits for alternative fuel investment & production
  - Expanded credit for investment in alt. fuel production facilities
  - New credit for biodiesel production

Motor Fuel Tax Changes

- Variable component of State tax on motor fuel capped at 12.4 cents per gallon
  - Effective July 1, 2006 through June 30, 2007



Credits & Incentives

- Small Business Health Insurance Tax Credit
  - Credit equal to 100% of employer's cost of providing benefits up to $250 per employee
  - Effective January 1, 2007
  - Limited to 50% of taxpayers' income tax liability
  - Credit does not apply to workers making >$40,000
  - 2009 sunset



Credits & Incentives

- Bill Lee Act Changes

Changes in S.B. 1741

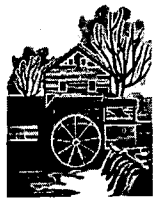
- **Expand Definition of Development Zone** (Section 24.5)
- **Wage Standard – Certain Manufacturers** (Section 24.14)
- **Agrarian Growth Zones** (Section 24.16)
  - Zone located wholly in a county
  - No city with population >10,000
  - All census tracts & block groups have poverty level of >20%
  - Area of zone does not exceed 5% of county

Changes in H.B. 2170

- **Replaces 1996 Act with more narrowly focused job creation & investment credits**
- **Substitutes three economic development tiers for five**
  - 40 counties in Tier 1
  - 40 counties in Tier 2
  - 20 counties in Tier 3
- **Summary table of changes is included in meeting documents**

Credits & Incentives

- **Mill Rehabilitation Tax Credit**
  - Increased credit for historic rehabilitations of qualified properties located in distressed economic tier counties
- **Film Incentive Changes**
  - Eliminates expense base add-back for film industry credit created in 2005
- **Oyster Shell Tax Credit**
  - $1.00 per bushel donated to DENR



Franchise Tax Changes

- Franchise Tax Loophole Closing
  - Attempt to eliminate tax avoidance via corporate structuring
- Franchise Tax Changes
  - Taxpayers may reduce deferred tax liabilities by corresponding tax assets, but not below zero

Property Tax Changes

- H.B. 2097, Property Tax Changes
  - Allows electronic listing of individual personal property
  - Clarifies funding mechanism for combined vehicle registration/property tax system
  - County boards of equalization & review have authority to approve late applications for appraisal
  - Allows collectors to receive tax receipts for appealed assessments
  - Other clarifying changes

Property Tax Changes

- S.B. 1451, Delinquent Property Tax/Inventory/Study
  - Revenue Laws recommendation
  - Relieves seller of personal liability for property tax when property transferred before taxes become delinquent or when transferred before property is annexed and taxes imposed
  - Codifies practice of prorating property taxes when property is sold
- Property Tax/Vehicle Registration
  - Change in effective date

Legislative Studies

- H.B. 1723, The Studies Act of 2006
  - Section 7, Revenue Laws Study Committee
    - Property tax valuation
    - Administrative & judicial review of tax cases
    - State business taxation
    - Sound Management Program for forest land
    - Tax refund donation for prostate cancer
    - Housing authority tax exemptions
    - Tax refund contributions to charitable causes
    - Income tax refund contribution election
    - Intermodal rail facility
    - Sales & income tax reform

Tax Reform & Modernization

- H.B. 1723, The Studies Act of 2006
  - Section 38, Continue Twenty-First Century Revenue System Study Commission
  - Section 47, State and Local Fiscal Modernization Study Commission
- Other reform commissions
  - Emerging Issues Forum
  - Possible foundation-sponsored reform study

Resources

- 2006 Finance Law Changes Publication
  www.ncleg.net/LegLibrary
- 2006 Overview: Fiscal & Budgetary Actions
  www.ncleg.net/LegislativePublications/fiscalresearchd_/
- Revenue Laws website:
  www.ncleg.net/committees/revenuelawsstudy
- Revenue Laws email address: revenuelaws@ncleg.net

Fate of 2006 Legislation Recommended by the Revenue Laws Study Committee

Bill	Status
H2047/S1559 - Video Services Competition Act	SL 2006-151
H1938 - Amend Taxation of Logging Machinery	SL 2006-19
H1915/S1510 - SSTA Sales Tax Defn/Sales Tax Payments	SL 2006-33
H2097/S1452 - Property Tax Changes	SL 2006-30
S1451 - Amend Delinquent Property Tax Collection	SL 2006-106
H1892 - IRC Update	SL 2006-18
S1552 - Additional Personal Income Tax Filing Option	SL 2006-66, Sec. 24.11 (Budget bill)
H1898 - S. Corp Income Tax Adjustments	SL 2006-17
H1891 - Clarify Additional Gross Premiums Tax	
PCS - Simplify Fire Tax Rate/Other Changes	SL 2006-196
H1962/S540 - Franchise Tax Loophole Closing	SL 2006-66, Sec. 24A.2. (Budget bill)
S1283 - Franchise Tax Base Calculation	SL 2006-95
H2048/S1458 - Expansion of Royalty Reporting Option	SL 2006-66, Sec. 24A.3. (Budget bill)
S343 - Electricity Franchise Tax Distribution	Did not pass
H1963/S1453 - Revenue Laws Tech. & Motor Fuel Tax Changes	SL 2006-162

S.L. 2005-294 (HB 1779), as amended in 2006 Session
AN ACT TO CREATE A COMBINED MOTOR VEHICLE REGISTRATION RENEWAL AND PROPERTY TAX COLLECTION SYSTEM

CURRENT SYSTEM

- DMV gives county monthly list of vehicles that were registered for first time or renewed two months earlier.
- County lists and appraises vehicles and sends owner a property tax bill.
- Owner receives property tax bill about three months after registration or renewal.
- If property taxes not paid within one month after they are due (about four months after the registration or renewal), then interest accrues on undue taxes at rate of 5% for first month and ¾ % for each month thereafter until the taxes are paid.
- If taxes not paid four months after they become due (eight months after registration or renewal), the county sends list to DMV, and DMV blocks tag so person cannot renew vehicle for registration until property taxes paid.

(Registration expires on the last day of the month as designated on the registration sticker, but the vehicle may be lawfully operated until midnight on the fifteenth day of the month following the month in which the sticker expired.. The $28 registration fee is paid to DMV and credited to the Highway Fund. This registration fee was increased from $20 to $28 in the 2005 Appropriations Act, S.L. 2005-276.)

S.L. 2005-294, AS AMENDED IN 2006 SESSION

Beginning January 1, 2006:

- Interest on unpaid property tax was increased from 2% to 5% for the first month. 60% of the first month's interest collected on unpaid taxes goes to a special account in the Treasurer's Office to be distributed at the direction of the North Carolina Association of County Commissioners to the DMV for purpose of developing and implementing the integrated computer system. **(S.L. 2006-30 added language clarifying that 60% of only the FIRST month's interest would be transferred to the special account to pay for the integrated computer system. This change reflects the intent of the sponsors and supporters for House Bill 1779.**

Beginning July 1, 2010 **(moved from 2009 to 2010 in S.L. 2006-259)** or when the combined computer system is in operation, whichever occurs first:

- Property tax on registered motor vehicles will be due on the date that a new registration is applied for or on the fifteenth day of the month following the month in which the registration renewal sticker expired. Payment of property taxes is a prerequisite to issuance or renewal of the registration for the taxable period.
- Property Tax Division of the DOR will send out a combined property tax and registration bill.
- DOR is to receive a fee for sending out combined notice equal to cost of printing and sending the notice. This fee is to be paid from taxes and fees remitted to counties and municipalities.

- DMV or agent contracting with the DMV may retain a fee for collecting county and municipal taxes. This fee is to be equal to at least 1/3 of the compensation DMV agents currently receive for registration renewal. The current fee is $1.43.
- Taxes and fees must be paid either to the DMV or an agent contracting with the DMV. These taxes and fees do NOT have to be paid in the county that is the situs of the vehicle.
- Interest will accrue on unpaid registration fees at the rate of 5% for the remainder of the month following the month in which the registration sticker expired. The interest will be transferred on monthly basis to the Highway Fund for technology improvement within the DMV. The interest collected on unpaid property taxes will no longer go to special account in Treasurer's Office but will remain with the counties and municipal corporations.
- The DMV or its agents will provide a weekly financial report containing information required by the Property Tax Division to the taxing units and the DMV to enable them to account for payments received.
- The Property Tax Division of the DOR will annually adopt a schedule of motor vehicle values for use by all county assessors. The schedule must account for local market conditions and allow adjustments for mileage and condition. The purpose of this statewide valuation system is to ensure uniform valuations across counties.

STUDIES AND REPORTS MANDATED BY S.L. 2005-294

- Property Tax Division within the DOR and the DMV were directed to study and develop a plan for determining the method for valuing motor vehicles and for implementing the integrated computer system. The Divisions were to report findings and recommendations to Revenue Laws Study Committee, the Fiscal Research Division, and the Joint Legislative Transportation Oversight Committee by April 30, 2006. The Divisions, as required by legislation, consulted with representatives from the following organizations: NC Association of County Commissioners, NC League of Municipalities, NC Association of Assessing Officers, NC Automobile Dealers Association, NC Independent Automobile Dealers Association, and NC Tax Collectors Association.
- The Property Tax Division and the DMV began meeting with representatives from the above listed organizations in November 2005, and established the following three subcommittees to help gather and review information: Valuation Subcommittee, Information Technology Subcommittee, and Legislative Subcommittee. The entire group and subcommittees met monthly through March 2006. A written report, which was submitted on July 1, 2006, includes reports of the subcommittees.
- The Treasurer was also directed to report to the Revenue Laws Study Committee semi-annually with first report due by April 30, 2006 (Report must contain description of funds transferred to and from special account)

North Carolina General Assembly

Revenue Laws Study Committee

Joint Legislative Transportation Oversight Committee

And

Fiscal Research Division

Study of the method of valuation of motor vehicles to be taxed, and implementing an integrated computer system needed to combine the registration renewal and property tax collection for motor vehicles in the state.

Summary of Findings and Recommendations

July 1, 2006

North Carolina General Assembly

Revenue Laws Study Committee

Joint Legislative Transportation Oversight Committee

and

Fiscal Research Division

Study of the method of valuation of motor vehicles to be taxed, and implementing an integrated computer system needed to combine the registration renewal and property tax collection for motor vehicles in the state.

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Study Group Report on House Bill 1779

During the 2005 legislative session, the North Carolina General Assembly ratified House Bill 1779 to "create a combined motor vehicle registration renewal and property tax collection system." The legislation becomes effective Jan. 1, 2009.

House Bill 1779 transfers responsibility for motor vehicle tax collection from the 100 counties across the state to the N.C. Department of Transportation's Division of Motor Vehicles. The legislation requires DMV to collect the tax when motor vehicle registration is renewed or issued. It also directs the N.C. Department of Revenue's Property Tax Division to develop a statewide valuation system to ensure uniform valuations across counties. The bill also specifies that the tax notice and registration renewal notification be combined into one form or set of forms.

To offset project development costs, the legislation states that interest on unpaid taxes will be increased from 2 percent to 5 percent for the first delinquent month. It would drop to a three-quarters percentage rate for each month thereafter, the same as current law per General Statute 105-330. This additional revenue is intended to defer development costs associated with automating the new system.

Sixty percent of the interest collected for the first delinquent month would be transferred on a monthly basis to the Combined Motor Vehicle and Registration account for DMV to cover the development and implementation of an integrated computer system that will allow for the combined assessment, billing and collection of vehicle property taxes and the issuance of registration plates.

In addition, the legislation allows for fees to be assessed and collected for administering the new program.

Task Force for H.B. 1779

Section 12 of H.B. 1779 requires the Property Tax Division and DMV to jointly study and develop a plan for determining the method of valuation of motor vehicles to be taxed and for implementing an integrated computer system.

On Nov. 1, 2005, the first meeting of a task force to discuss the joint study was held at the Legislative Office Building. Representatives attended from the N.C. Association of County Commissioners, N.C. League of Municipalities, N.C. Association of Assessing Officers, N.C. Automobile Dealers Association, N.C. Independent Automobile Dealers Association, N.C. Tax Collectors Association, N.C. License Plate Agencies, Office of the Governor, N.C. Department of Justice, N.C. Office of Information Technology Services, Wake County, General Assembly-Fiscal Research Division, Department of Revenue-Property Tax Division, and Department of Transportation's Division of Motor Vehicles and Information Technology.

The Valuation, Information Technology and Legislative subcommittees were established to help gather and review information. These three subcommittees met and provided updates on a monthly basis. Their reports are attached as part of this overall report.

Preliminary Conclusions

The implementation of H.B. 1779 is a significant effort (cost and issue resolution) and will require careful study. The preliminary IT estimate to develop the integrated computer system is $20.3 million. However, this figure does include the development of the Department of Revenue's statewide valuation system (specifications and cost to be determined). Preliminary collection authority (DMV or agents) costs, exclusive of county savings from reduced workload, will exceed $20 million per year. Other costs for DOR, Information Technology Services, the Office of State Controller and counties (system integration) are currently undetermined and will add to the previously stated totals. *(See High Level Estimate of Cost for Implementation, pages 15-16).*

Because only limited data is available, it is difficult to provide reliable revenue forecasts on how to fund system development and post "go-live" support needs. Indications are, though, that H.B. 1779 assessments for system development costs are insufficient. Collection of the 3 percent interest on unpaid vehicle property taxes for the five-month period of January through May 2006 on deposit at the Office of State Treasurer totals $976,450. *(See Counties for ACH DMV Debits for House Bill 1779 in 2006, page 20).* The annual estimate is $2.4 million.

Committee members have identified numerous issues for resolution. *(See Key Factors for Consideration, pages 9-14.)* Some of the key industries affected include auto dealers, leasing companies, trucking and license tag agencies. Administration and policy decisions are needed for valuation system design, bad debt resolution (training and ongoing), integration with all 100 counties, and a host of accounting and treasury procedures to establish the new process. These issues will require thorough study and consideration. Some may also require legislative action or a Memorandum of Understanding between implementing state agencies.

Legislative Committee Report Summary

The Legislative Committee determined that four basic points are driving the need for a merged system including:

1) Voluntary compliance in paying taxes levied on registered motor vehicles is eroding;
2) Significant revenue is uncollected at the end of the fiscal year;
3) Collections enforcement is difficult under the current system; and
4) The existing system is inherently inefficient.

When the current motor vehicle billing process was implemented in 1993, more than 80 percent of motor vehicle tax bills were paid before the past due date. Today, only 66 percent of such bills are paid on time, resulting in significant delinquencies for local tax collectors.

The committee reported that about $80 million in city, county and fire district taxes levied on motor vehicles are uncollected at the end of each fiscal year. Local collectors do not have the necessary demographic data for effective enforcement of delinquent taxes.

Each year, DMV mails approximately 8 million license plate renewal notices, and counties follow suit by mailing corresponding property tax bills. Savings could be realized with a combined billing, with the added benefit of fewer interactions needed between government and taxpayers.

The subcommittee reported that its membership had generally agreed that the concept of a combined vehicle property tax collection system is feasible and no obstacle has been identified that cannot be overcome.

Members identified a number of issues that will require careful consideration, though, particularly between the property tax and DMV groups. Some of these issues may necessitate legislative action while others could possibly be handled through a memorandum of understanding between DMV and the Property Tax Division. Following is a sampling of issues discussed:

- What should be done with the thousands of unpaid delinquent tax bills in the county system when H.B. 1779 is implemented;
- How should the billing and collection of property taxes sold through a new or used car dealer be handled;
- How should enforcement of registrations and property tax collections be handled if a owner chooses to ignore the invitation to renew, or if the owner wants to pay the property tax but chooses not to renew the registration;
- How should refunds along with the accounting and transfer of funds be handled;
- What affect will bankruptcies have on the new process; and
- Should concepts other than what is envisioned by H.B. 1779 be reconsidered.

The Legislative Committee also recommended that a legislative technical change is needed to clarify that 60 percent of the first month's interest will be dedicated to funding the H.B. 1779 project. This technical change is in a bill that the Revenue Laws Study Committee is to recommend during the General Assembly's 2006-07 short session.

Valuation Committee Report Summary

The Valuation Committee determined that five major focus areas need to be addressed for plan implementation. Those areas include:

1) Adopting a uniform schedule of motor vehicle values;
2) Determining appraisal accuracy statewide;
3) Accounting for local market conditions;
4) Allowing adjustments for mileage of individual vehicles; and
5) Developing a uniform appeals process.

The plan calls for the Property Tax Division to review the valuation services available and adopt a schedule that can be used to best comply with G.S. 105-330. The division has determined that the uniform schedule of values should be chosen and put into the system by September 1 of each year to allow staff adequate time to process, print and mail the property tax information to citizens by November 1.

G.S. 105-330.2(b) requires that a classified motor vehicle be appraised by the assessor at its true value in money as prescribed by G.S. 105-283. Effective July 1, 2009, it further requires the Property Tax Division to annually adopt a schedule of values.

One of the most accepted methods of determining appraisal accuracy in a mass appraisal system is to perform a "sales ratio study." In a sales ratio study, a random sample of actual sales is selected

and then the assessed value of each property is divided by that property's actual sales price. After calculating the ratios of the selected sales, they are arrayed in order from lowest to highest and the median ratio is considered an indicator of the appraisal accuracy.

If the median ratio is below 1, then the appraisal is said to be overall below fair market value. If the median ratio is above 1, then the appraisal is said to be overall above fair market value. There are many other statistical measures in a sales ratio study that can be used to evaluate the appraisal and there are specifics regarding the correct method of doing such a study.

The committee recommends that a sales ratio study be performed each year to determine the accuracy of appraisals. A separate ratio should also be calculated by different classes of vehicles such as for heavy trucks, trailers, motorcycles and sport utility vehicles.

According to G.S. 105-330.2(b), each assessor is responsible for determining the fair market value of motor vehicles. After the Property Tax Division adopts the statewide uniform schedule of values, the assessor will determine if local market conditions require any deviation from the uniform schedule.

To account for local market conditions, assessors would be required to submit to the Property Tax Division, for approval, their requested deviation from the uniform schedule along with supporting detail.

The Property Tax Division would need to develop a mileage adjustment table to allow for automatic mileage adjustments, which would be incorporated into the new integrated computer system. Annual mileage information is already available in the emissions part of the current automated system and as of January 2006, 48 counties have been providing emissions data.

Available mileage information can be used to estimate as of the January 1 valuation date and make positive or negative adjustments to the uniform value. If mileage information is not automatically available, any assessor or collecting authority should be able to enter information from the most recent vehicle inspection receipt and an automatic mileage adjustment and property tax recalculation will occur.

As an additional service to the citizens of North Carolina, there should be equitable rules among the 100 counties for the appeal process. Through this appeals process, condition factors that may affect the value of vehicles could be considered.

Assessors would have control and responsibility over each individual vehicle value to adjust for condition upon appeal. Timely appeals would be required and citizens would need to bring the subject vehicle to the county tax office for inspection. An assessor should not as a pre-appeal condition, require a third party vehicle appraisal. Citizens, though, should have the option of seeking one to support their opinion of value.

The Property Tax Division will study and adopt along with the uniform schedule of values, a set of categories as a condition grading system along with percentage adjustments. Categories could include the following: Excellent, plus 5 percent; Average, no adjustment; Below Average, minus 5 percent; and Poor, minus 10 percent.

The January 1 appraisal date may prove to be a factor that would make this adjustment inaccurate; however, since some appeal deadlines are not close to the appraisal date. For example, a vehicle with November 2009 expiration has a tax due date and appeal deadline of Dec. 15, 2009. However, the valuation is scheduled to be as of Jan. 1, 2009 – almost a full year prior to the appeal deadline. It is also difficult for a taxpayer to prove the condition of their vehicle at a single prescribed valuation date. A possible solution is to have two or more appraisal dates – January 1 and July 1 for instance.

If an appeal is decided in the customer's favor, the customer is entitled to a refund. DMV would refund the amount due from future distributions to the county and would maintain accounting records for such transactions. Similar refunds would be made when a registration plate is turned in and the vehicle is sold.

Information Technology Committee Report Summary

The Information Technology Committee determined that enhancements must be made to the State Titling and Registration System, Business Systems Improvement Project and other applications to accommodate H.B. 1779. Complex modifications are needed for titling, registration and fiscal components of these current applications. Modification will also be made to the emissions application to allow the use of actual mileage in calculating property tax. Changes are also needed for the return check system application.

Costs to develop the integrated computer system are estimated at $20,372,300, with 221,122 hours of projected development time. The labor cost is based on a labor rate of $50 per hour for state employees and $80 per hour for contractors ($150 per hour for only BSIP contractors). The proposed implementation date is scheduled for July 1, 2009. The DOT Board of Transportation must approve this project before it can be officially initiated.

The expected technical operational cost of the enhancement is an additional $3,727,084 per year. It is anticipated that nine state technical resources (including four full-time equivalent resources for STARS and five part-time resources for the other state applications) and 100 part-time county technical resources will be required to adequately support these major enhancements. Therefore, the estimated total technical operational cost for the first five years after implementation is $18,635,421.

In all, total life cycle costs – project implementation plus five years of annual operations – are estimated at $39,335,453

Major project functions for the new computer system include:

- Generating billing information for vehicle property tax and registration renewal;
- Collecting vehicle property tax with registration issuance and renewal;
- Denying registration renewal for unpaid taxes;
- Generating report to facilitate distribution of a compensatory fee to DMV for tax collection;
- Applying interest to both delinquent taxes and unpaid registration fees;
- Allowing partial or full refunds;
- Supporting tax valuation process for vehicles; and
- Allowing for inquiries of historical vehicle property tax information.

DMV Impacts

With an overall change in the vehicle property tax collection system in North Carolina, the Division of Motor Vehicles would become the point of contact for typical customer interactions such as service inquiries, complaints and office visits. An increase in customer service personnel will be needed to handle this added workload including information processing technicians, call center representatives and field operation support staff.

The amount of revenue taken in by tag agents and vehicle registration services should quadruple, and additional motor vehicle field supervisors will be needed for related oversight and monitoring. Implementation of this new system will also require extensive training for both DMV and tag agents' staff.

DMV estimates that it will need 56 additional customer service and field personnel to implement the legislation, along with significant office equipment, computers, telephones, and vehicles for field supervisors. Total salary and operational budget requirements are at $25,723,171 for FY07-08 through FY09-10.

A complete rewrite of STARS will also be needed to integrate its functionality with the local government property tax collection systems. The system will also require routine maintenance and any necessary enhancements.

DOT Fiscal Impacts

Implementation of H.B. 1779 will significantly affect financial operations in NCDOT's fiscal area. The department has analyzed high-level impacts focusing on the collection and distribution of funds from vehicle property taxes on behalf of the counties.

Financial staff estimates 13 additional accounting positions will be needed for these functions plus associated office supplies, computers and training. The estimated annual cost is $1,922,095 for FY 2008-09 through FY10-11.

Currently Fiscal is responsible for the accounting functions to track the collection of revenue for more than 420 branch agents and dealers throughout the state that perform and collect registration services. To implement HB1779, NCDOT would need to develop integrating accounting procedures for DMV collections, refunds and bad debt at a more detailed level to accommodate the distribution of funds for the 100 counties plus 400 to 650 municipalities.

As the reconciliation of collections, refunds and bad debt become more complex, additional accounting personnel will be a key factor for success. Maintaining internal controls will be essential in the certification of funds on deposit with the State Treasurer and the distribution of collections.

There will be an exponential increase in the amount of bad debt that DMV will have to manage as a result of the collection of vehicle property taxes. Presently, NCDOT receives about 5,000 bad debt inquiries per month in the Fiscal-DMV areas. More personnel will be needed to handle the expected increase in bad debt collection.

DOR Impacts

H.B. 1779 will significantly impact the Department of Revenue and additional staff and resources will be needed. Major focus areas include determining vehicle values, reviewing the final tax collection reports and administering the day-to-day program.

DOR's Property Tax Division will need to solicit vendors or businesses to procure the valuation on vehicles throughout the state. The selected company will have to provide specific information that can be used to uniformly and equitably value motor vehicles across the state.

The Department of Revenue will need to make sure that a ratio study is performed each year to verify the accuracy of the values being provided by the valuation company. The actual calculations performed for the ratio study may be incorporated into the new integrated computer system.

DOT will be required to remit the collected tax funds to each county. Once these funds have been electronically transferred to the counties, the Property Tax Division will assume a consultant's role to help counties further distribute the collected taxes to the various municipalities and jurisdictions. DOR will have to review and determine the accuracy of the accounting records via reports generated by DOT.

As the implementation of this law draws closer, the agency will also have to provide significant training to license tag agencies, automobile dealers, county staff, taxpayers and others.

Closing Comments

House Bill 1779 requires the payment of vehicle property taxes at the time of vehicle registration renewal. The N.C. Association of Tax Assessors estimates that H.B. 1779 will create an additional $72 million in vehicle property taxes that presently go uncollected. These savings would be partially offset by the significant system development and operational costs required to create a centralized collection system. The full extent of these changes and costs is not currently known, although estimates to date surpass the fiscal note assumptions.

The intent of H.B. 1779 is to hold the implementing state agencies harmless on the cost of development and operations. When the full extent of the costs are known, changes to the bill fee structure for implementation interest, administration fees and fee collection will need to be raised.

House Bill 1779 Summary of Feasibility Topics

Key Factors for Consideration	Finding	Comment
Dealerships Collecting Property Taxes	North Carolina Automobile Dealers Association is opposed to any interpretations of HB 1779 that would require dealers to collect initial vehicle property tax payments at the point of sale.	NCADA requests its position to be included in all relevant sections of HB 1779.
Collecting Property Taxes for Leased Vehicles	Unable to resolve how vehicle property tax will be billed on leased vehicles if the vehicle is owned by a leasing company and the plate is issued in the name of the lessee.	Additional time must be devoted to understand the current process and resolve issues.
IRP Collections	Trucking industry is opposed to paying vehicles property taxes under HB1779 requirements.	Introducing legislative change to exempt IRP from HB1779.
5-Year Life Cycle Cost $39,007,721 for NCDOT - Information Technology (Implementation Cost + Annual Operating Cost)	Limited data is available to provide a reliable revenue forecast to fund efforts required for system development and post go-live support.	Factors such as revenue generated from delinquent taxes, ITS support, internet cost, hardware purchases, fees the state will incur for banking transactions including credit card fees must be assessed when more data is available. Beginning July 1, 2009 interest will accrue for registration fees paid after due date (5 percent for the first month and three quarter of a percent for each month thereafter.) Unable to determine whether interest will cover system support.
Project Development Cost prior to implementation is $20,372,300	Cost could range between $18,335,070 to $25,465,375 based on known high level	Cash flow problems at NCDOT will impede the agency from absorbing cash

Key Factors for Consideration	Finding	Comment
(-10 percent to +25 percent Confidence Limit)	requirements. Adequate cash to meet deadline is a concern. Collection of 60 percent of unpaid property tax on deposit at the State Treasurer for January to April 2006 is $715,154. Reliable estimates of future cash availability on deposit at the State Treasurer are not known.	shortfalls from system development and post go-live support. Cash on deposit at the Department of State Treasurer must be transferred to the Highway Fund prior to obligations. Shortfalls will stop development immediately.
Financial Impacts to Division of Motor Vehicles	There will be significant impacts to the operation of DMV – Registration. The division has estimated the cost for HB1779 for funding consideration to be approximately $45 million dollars for a 5-year period (ranges from $7.7 million to 9.5 million annually). This includes staffing, credit card fees, mailings, computers, employee bonding, etc.	Revenue will be required to support this effort.
Financial Impacts for DOT - Fiscal	Area estimates the need for 13 new administrative positions.	Funding sources will need to be identified.
Financial Requirements of DOR	Unable to determine an estimated budget.	Budgets will need to be funded adequately.
Impact to DMV Tag Agents for Collecting Vehicle Property Taxes	Must determine fee per transaction for collection of property taxes by tag agents. Review cost aspects for collection of vehicle property taxes to include credit card capabilities. Must allow for employee bonding, increased staffing, security, insurance premiums, hardware,	Analysis is required. Who should define the fee? Difficult to identify all cost associated with increased responsibilities.

Key Factors for Consideration	Funding	Comment
	training, etc. Additional cost could be significant.	
N.C. Association of Assessing Officers	Estimate cost reduction to operation.	No negative impacts.
Cost to 100 Counties	Further review is needed to determine budgetary impacts of the legislation for all counties.	Full participation is required for project success.
General Fund Impacts	General funds pays for the majority of banking transaction fees for the state.	Fees related to these items will need to be analyzed and discussed with state and county representatives.
Resource Issues	Insufficient resources from the state and county can cause significant delays that can jeopardize implementation. New state positions must be established prior to implementation. Largest impact will be to NCDOT operation. Tag agents will require additional manpower.	Key individuals must be identified and empowered to resolve issues quickly. There will be a significant demand on NCDOT – IT staff with STARS expertise. Adequate resources must be funded and equipped prior to go-live.
Scope Creep	Identification of new requirements can cause a negative impact to the implementation date. These issues must be addressed quickly.	Determine if new requirements are mandatory for go-live. Discuss impact of changes with project group to determine a solution. Escalate to senior management.
STARS Interfacing with 100 Counties	Address ability for counties to fund and have technical capability to interface with STARS functionality by July 1, 2009.	Forum of information exchange will be needed to adequately address technical and funding issues to escalate problems. Every system must be functional prior to go-live.
Certification of Collections by NCDOT	Daily balancing and certifications will be required from bank deposits across the state. Additional staff will be required in the	Thorough testing and procedural guidelines must be documented prior to go-live.

Key Factors for Consideration	Finding	Comment
	Fiscal area (13 employees).	
Distribution of Funds by NCDOT	NCDOT would be responsible for the distribution of collections to 100 counties plus 400 to 650 cities and towns. The counties will be responsible for the distribution to fire districts.	NCDOT will implement an Automatic Clearing House process for the distribution of funds. Report required for DOR – Property Tax Division oversight.
Credit Card Processing	It will be advantageous to allow credit card processing for the combined bill.	Analysis will be needed to determine the best way to cover this cost in compliance with state guideline. The State Controller's Office will need to be heavily involved.
New Legislative Mandates Prior to July, 2009	Escalate issue to senior management for direction.	Project implementation might have to be delayed.
Training and Help Desk Support	Possibility there will be insufficient staff to support counties.	Must identify support needs for counties as soon as possible in the project analysis stage.
Technical Changes	Unable to identify all technical changes in a timely manner.	Plan to complete the identification of technical changes required by completion of user requirements. Sign-off will be obtained.
Data transport for new/revised street addresses from counties to validate addresses for billing.	Various data transport issues will need to be addressed.	Careful evaluation will be required during development.
Bad Debt	Analyze legal and administrative issues related to sending a combined bill for funds subsequently paid to counties, cities, etc. Bad debt recorded in the combined system will be tremendous. Who "owns" the debt from the combined bill.	The state will need to solicit input from the Attorney General's Office to investigate legal ramifications as well as defining collection methods for the debt as rules vary per county.
Bankruptcies	Formulate process to handle	Legal consultation with

Key Factors for Consideration	Finding	Comment
	issues resulting from bankruptcy filings.	county representation is required.
Refunds	Define refunding procedures for vehicle tax and registration purposes.	State and county personnel will need to define best practices to be followed uniformly. Process must be seamless to balance financial records (particularly for credit card transactions.)
Unpaid delinquent tax bills in the county systems when HB 1779 is implemented.	Significant analysis will be required by counties to resolve issue. It has been decided there will be no conversion of delinquent data.	Any issue that impacts system development must be identified in requirements gathering.
Issue resolution between counties and state that impedes system development	Identification of issues to senior management or a steering committee is needed.	Memorandum of Understanding must define roles and responsibilities of all parties to increase productivity.
Pro-ration of taxes	Careful review is required to discuss continuing the pro-ration of taxes in any form.	Counties will need to develop a plan of action to address this uniformly with the Property Tax Division.
Uniform Set of Values	Schedule of values should be chosen by September 1 of each year.	Adopting a uniform set of values is possible. Unable to determine estimate cost for impact to area.
Determine Appraisal Accuracy Statewide	Sales ration study should be performed each year to determine accuracy of appraisals.	The Property Tax Division – DOR must work with the provider of the valuation system and Division of Motor Vehicles, and a statistician to ensure the study is accurate. It may be possible to have STARS incorporate the ability to perform the sales ratio study automatically.
Local Market Conditions	Process will be defined for	Based on approval from the

Key Factors for Consideration	Finding	Comment
	adjustments to the statewide uniform schedule of values based on fair market value of the vehicle.	Property Tax Division, STARS must allow the adjustment countywide. Information from the sales ratio study could be sued to support the need to adjust values in a jurisdiction.
Adjustments for mileage of individual vehicles	Property Tax Division recommends automatic mileage adjustments based on mileage adjustment table that the agency is developing and annual mileage information incorporated into the new system.	Available mileage information can be used to estimate mileage as of the January 1 valuation date and make adjustments to the uniform value. If mileage information is not known, any assessor or collecting authority should be able to enter information form a vehicle's most recent inspection and an automatic mileage adjustment and recalculation of property tax should occur.
Uniform appeals process to consider effects of other condition factors that may affect the value of the vehicle.	Equitable rules among counties is needed for the appeals process. Through the appeals process, condition factors that may affect the value of vehicles can be considered.	Assessors will control individual vehicle value to adjust for condition upon appeal. Upon timely appeal, the taxpayer can bring the vehicle to the county tax department if possible and the assessor should inspect the vehicle. The assessor should not, as a pre-appeal condition require a third party appraisal of the vehicle, however the taxpayer may opt to do so.

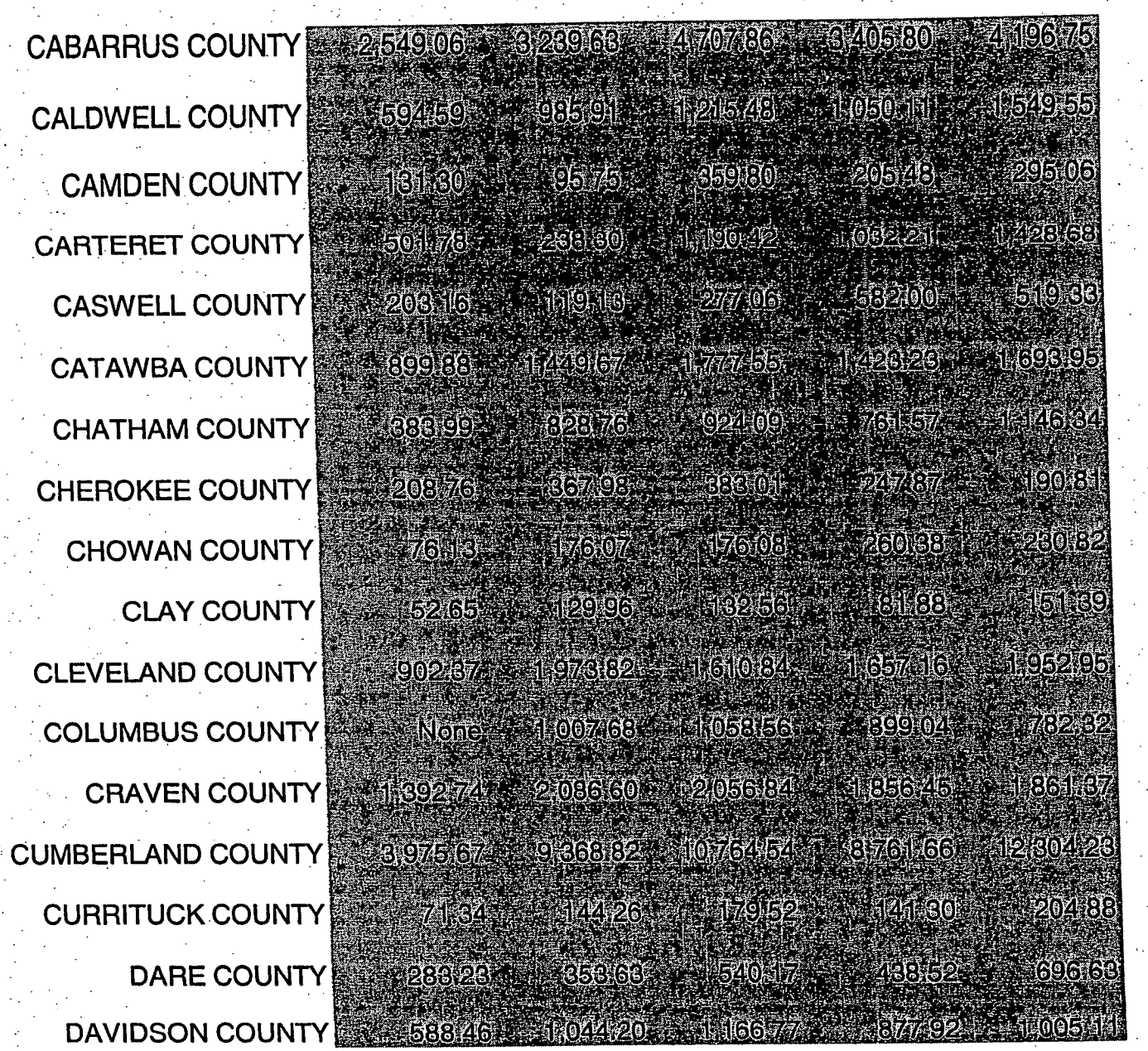
High Level Estimate of Cost for Implementation and Support
HB 1779 - Combined Vehicle Tax and Registration

	FY06-07 thru FY08-09	FY08-09	FY09-10	FY10-11	FY11-12	FY12-13	Total
Department of Transportation							
Information Technology							20,372,300.00
Implementation Cost	20,372,300.00						
Annual Operating Cost		3,727,084.20	3,727,084.20	3,727,084.20	3,727,084.20	3,727,084.20	18,635,421.00
Anticipated Life of Development - 5 Years							
ITS Billings (Connections and Internet)	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	
Division of Motor Vehicles		7,758,564.00	8,446,651.00	9,517,956.00	9,517,956.00	9,517,956.00	44,759,083.00
Compensation to Branch Agents	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	
Prepare, Print, Mail Notices	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	
Credit Card Terminal & Installations ($750 X 12 Sites)		9,000.00					9,000.00
Service Agreements		Unknown	Unknown	Unknown	Unknown	Unknown	
Employee Bonding ($5000 Estimate X 4 Sites)		20,000.00	20,000.00	20,000.00	20,000.00	20,000.00	100,000.0
Fiscal (13 New Administrative Positions)		692,388.10	606,820.74	622,887.86	622,887.86	622,887.86	3,167,872.4
Department of Revenue							
Significant - Estimate Unknown							
Valuation of Motor Vehicles	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	
Review Financial Reporting of Collections	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	
Day to Day Administration	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	
NC License Plate Agencies							
Employee Bonding ($5000 Estimate X 120 Sites)		600,000.00	600,000.00	600,000.00	600,000.00	600,000.00	3,000,000.0
Increase Staff (2 members per office)		5,990,400.00	5,990,400.00	5,990,400.00	5,990,400.00	5,990,400.00	29,952,000.
Increase Security	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	

Increase Insurance Premiums	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	-
Computers		864,000.00					864,000.00
($3600 X 2 employees X 120)							
Workstations		624,000.00					624,000.00
($2600 X 2 employees X 120)							
Computer Maintenance		120,000.00	120,000.00	120,000.00	120,000.00	120,000.00	600,000.00
Credit Card Terminal & Installations		90,000.00					90,000.00
($750 X 120 Sites)							
Service Agreements		Unknown	Unknown	Unknown	Unknown	Unknown	-
NC Association of Assessing Officers							
NCAAO Cost Reduction	0	0	0	0	0	0	
Cost for Counties (Prior to July, 2009 and Post Go-Live)	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	
General Fund - State	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	
TOTAL	$20,372,300.00	$20,495,436.30	$19,510,955.94	$20,598,328.06	$20,598,328.06	$20,598,328.06	$122,173,676.42
Total for FY06-07 thru FY08-09		40,867,736.30					

Counties for ACH DMV Debits for House Bill 1779 in 2006

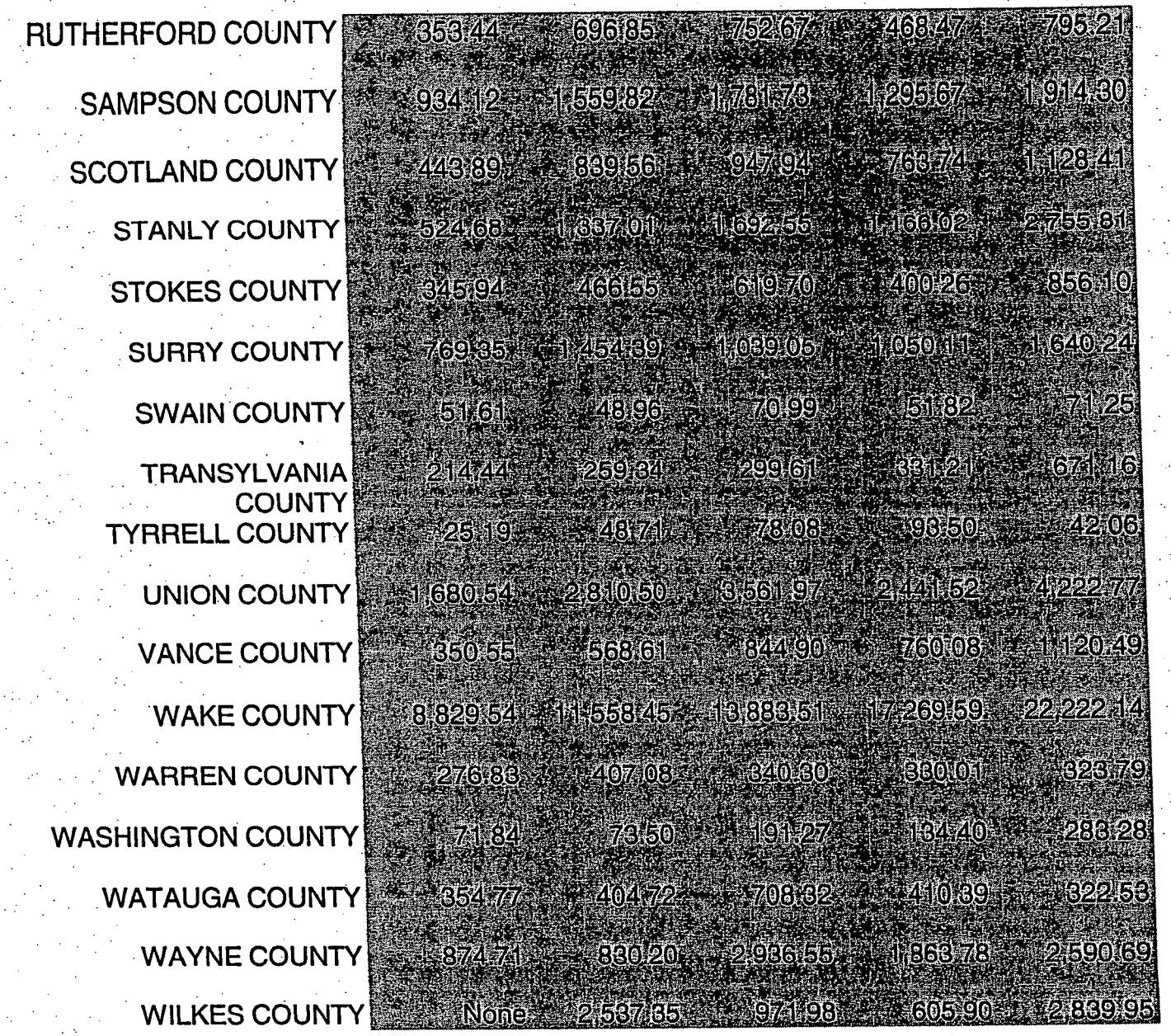
	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	N
ALAMANCE COUNTY	2,270.30	2,633.66	4,176.43	2,836.88	4,128.60						
ALEXANDER COUNTY	180.66	415.32	896.51	281.29	496.24						
ALLEGHANY COUNTY	69.59	129.96	145.14	128.38	96.91						
ANSON COUNTY	343.24	519.88	946.50	478.96	1,159.46						
ASHE COUNTY	211.90	280.32	314.48	364.83	355.47						
AVERY COUNTY	117.33	192.48	300.79	118.81	300.61						
BEAUFORT COUNTY	828.04	427.08	757.50	565.66	599.80						
BERTIE COUNTY	302.55	309.38	527.08	496.61	802.12						
BLADEN COUNTY	234.80	1,455.44	1,877.76	1,980.25	1,905.64						
BRUNSWICK COUNTY	842.68	1,769.68	2,177.65	1,723.60	2,628.40						
BUNCOMBE COUNTY	3,047.33	3,835.89	5,308.08	4,432.45	6,282.71						
BURKE COUNTY	699.74	1,778.09	2,292.20	1,604.01	2,785.65						


CABARRUS COUNTY 2,549.06 3,239.63 4,707.86 3,405.80 4,196.75
CALDWELL COUNTY 594.59 985.91 1,215.48 1,050.11 1,549.55
CAMDEN COUNTY 131.30 95.75 359.80 205.48 295.06
CARTERET COUNTY 501.78 238.30 1,190.42 1,082.21 1,428.68
CASWELL COUNTY 208.16 119.13 277.06 582.00 519.33
CATAWBA COUNTY 899.88 1,449.67 1,777.55 1,423.23 1,693.95
CHATHAM COUNTY 383.99 828.76 924.09 761.57 1,146.34
CHEROKEE COUNTY 208.76 367.98 383.01 247.87 190.81
CHOWAN COUNTY 76.13 176.07 176.08 260.38 250.82
CLAY COUNTY 52.65 129.96 132.56 61.88 151.39
CLEVELAND COUNTY 902.37 1,973.82 1,610.84 1,657.16 1,952.95
COLUMBUS COUNTY None 1,007.68 1,058.56 899.04 782.32
CRAVEN COUNTY 1,392.74 2,086.60 2,056.84 1,856.45 1,861.37
CUMBERLAND COUNTY 3,975.67 9,368.82 10,764.54 8,761.66 12,304.23
CURRITUCK COUNTY 71.34 144.26 179.52 141.30 204.88
DARE COUNTY 283.23 353.63 540.17 438.52 696.68
DAVIDSON COUNTY 588.46 1,044.20 1,166.77 877.92 1,005.11

DAVIE COUNTY	301.41	397.16	571.40	486.17	588.51
DUPLIN COUNTY	380.69	1,042.76	1,113.81	900.20	2,394.97
DURHAM COUNTY	4,738.70	9,025.11	10,356.81	7,313.82	12,065.42
EDGECOMBE COUNTY	531.47	1,041.02	1,390.41	959.03	4,667.88
FORSYTH COUNTY	4,441.26	7,529.55	10,444.16	8,086.68	11,709.28
FRANKLIN COUNTY	789.11	1,395.92	1,322.45	1,149.75	1,497.41
GASTON COUNTY	3,015.25	6,142.87	7,086.21	5,385.30	6,806.18
GATES COUNTY	65.89	176.32	215.11	114.33	591.74
GRAHAM COUNTY	114.95	82.73	107.76	96.49	107.06
GRANVILLE COUNTY	425.17	1,017.74	904.10	841.95	1,962.92
GREENE COUNTY	174.86	177.03	381.76	301.45	482.67
GUILFORD COUNTY	8,502.96	15,873.92	16,373.80	15,155.02	16,870.89
HALIFAX COUNTY	217.99	1,709.64	834.41	642.91	860.66
HARNETT COUNTY	888.10	1,860.83	2,288.90	2,001.01	3,176.67
HAYWOOD COUNTY	589.98	790.91	1,211.67	732.63	2,328.54
HENDERSON COUNTY	361.22	495.28	864.34	577.65	794.60
HERTFORD COUNTY	177.70	434.27	447.20	589.45	520.65

HOKE COUNTY	197.45	182.27	151.61	61.23	98.88
HYDE COUNTY	38.52	28.16	64.79	24.07	69.99
IREDELL COUNTY	1,131.84	1,784.01	2,085.78	1,417.24	1,681.01
JACKSON COUNTY	167.32	236.04	274.66	217.45	364.19
JOHNSTON COUNTY	2,689.11	4,655.82	5,524.80	4,477.08	6,378.14
JONES COUNTY	108.87	121.55	246.71	81.46	215.49
LEE COUNTY	909.86	633.20	960.73	628.17	1,578.35
LENOIR COUNTY	1,040.27	1,271.46	1,676.74	1,012.83	1,566.70
LINCOLN COUNTY	1,121.03	1,640.59	1,687.28	1,417.64	2,149.92
MACON COUNTY	130.43	136.27	184.40	55.47	214.92
MADISON COUNTY	119.36	202.31	356.86	327.56	230.87
MARTIN COUNTY	390.51	568.35	959.45	796.38	845.75
MCDOWELL COUNTY	349.80	642.06	862.88	658.77	1,163.34
MECKLENBURG COUNTY	12,375.13	26,251.20	38,260.91	30,131.43	38,150.64
MITCHELL COUNTY	106.48	174.61	282.64	206.38	223.30
MONTGOMERY COUNTY	106.54	309.09	315.85	207.58	311.30
MOORE COUNTY	1,261.32	1,505.04	1,874.20	1,460.84	2,151.98

NASH COUNTY	813.26	2,288.06	2,596.70	2,146.91	2,868.77
NEW HANOVER COUNTY	2,496.08	4,205.97	4,839.85	4,129.30	6,039.09
NORTHAMPTON COUNTY	358.19	559.86	602.14	526.25	594.46
ONSLOW COUNTY	1,609.45	2,170.81	1,860.47	1,691.46	2,257.67
ORANGE COUNTY	2,511.42	4,535.93	3,747.85	2,904.14	2,650.34
PAMLICO COUNTY	134.95	207.49	201.30	226.58	414.99
PASQUOTANK COUNTY	355.74	1,389.43	900.55	917.14	1,581.04
PENDER COUNTY	679.30	873.34	1,363.40	1,587.66	1,330.60
PERQUIMANS COUNTY	110.49	140.26	127.28	235.94	298.47
PERSON COUNTY	294.01	1,496.13	739.69	435.50	556.95
PITT COUNTY	984.37	4,080.77	4,267.62	3,428.32	3,977.30
POLK COUNTY	131.65	243.13	444.00	357.77	327.94
RANDOLPH COUNTY	885.08	1,687.73	2,782.09	2,140.54	1,817.95
RICHMOND COUNTY	431.63	1,714.91	1,156.31	789.52	1,277.87
ROBESON COUNTY	2,584.28	4,481.82	4,791.69	3,965.04	5,256.69
ROCKINGHAM COUNTY	1,324.95	1,979.68	2,428.20	1,835.50	2,453.95
ROWAN COUNTY	1,879.50	4,105.55	3,652.40	3,164.89	4,250.62


RUTHERFORD COUNTY
353.44
696.85
752.67
468.47
795.21
SAMPSON COUNTY
934.12
1,559.82
1,781.73
1,295.67
1,914.30
SCOTLAND COUNTY
443.89
839.56
947.94
763.74
1,128.41
STANLY COUNTY
524.68
1,337.01
1,692.55
1,166.02
2,755.81
STOKES COUNTY
345.94
466.55
619.70
400.26
856.10
SURRY COUNTY
769.35
1,454.39
1,039.05
1050.11
1,640.24
SWAIN COUNTY
51.61
48.96
70.99
51.82
71.25
TRANSYLVANIA COUNTY
214.44
259.34
299.61
331.21
671.16
TYRRELL COUNTY
25.19
48.71
78.08
93.50
42.06
UNION COUNTY
1,680.54
2,810.50
3,561.97
2,441.52
4,222.77
VANCE COUNTY
350.55
568.61
844.90
760.08
1,120.49
WAKE COUNTY
8,829.54
11,558.45
13,883.51
17,269.59
22,222.14
WARREN COUNTY
276.83
407.08
340.30
380.01
323.79
WASHINGTON COUNTY
71.84
73.50
191.27
134.40
283.28
WATAUGA COUNTY
354.77
404.72
708.32
410.39
322.53
WAYNE COUNTY
874.71
830.20
2,986.55
1,868.78
2,590.69
WILKES COUNTY
None
2,537.35
971.98
605.90
2,839.95

WILSON COUNTY	2,181.79	1,528.30	1,616.76	1,335.80	1,843.68
YADKIN COUNTY	381.34	567.01	759.97	593.82	627.20
YANCY COUNTY	165.62	232.50	301.68	285.67	485.58
Total	105,688.36	191,282.42	228,923.35	189,260.60	261,294.94
Combined Totals by Month		296,970.78	525,894.13	715,154.73	976,449.67

HB 1779
Reports

Valuation
Committee

Valuation Committee
May 15, 2006 Report
to
Revenue Laws Study Committee
Joint Legislative Transportation Oversight Committee
Fiscal Research Division

Introduction

In 1991, the North Carolina General Assembly enacted N.C.G.S. 105-330, our current motor vehicle property tax statutes. This change greatly improved local government's ability to list and assess motor vehicles for property tax purposes. House Bill 1779, passed in the 2005 Session, has made several changes to N.C.G.S. 105-330 to further enhance local government's ability to not only assess motor vehicles for property tax, but also collect the motor vehicle property tax. This section of the report will address those changes that we believe will improve the appraisal and valuation of motor vehicles for property tax purposes. This plan will both increase the efficiency of local government and provide more uniformity, equity, and appraisal accuracy for North Carolina citizens.

Section 12 of House Bill 1779 requires the Property Tax Division within the North Carolina Department of Revenue and the Division of Motor Vehicles within the Department of Transportation to jointly study and develop a plan for determining the method of valuation of motor vehicles to be taxed. This plan is to be submitted in a report, along with our findings and recommendations, to the Revenue Laws Study Committee, the Joint Legislative Transportation Oversight Committee, and the Fiscal Research Division by May 15, 2006.

This plan, based on the law in HB 1779, will address the following major points.

1) A plan for adopting a uniform schedule of motor vehicle values.
2) A plan for determining appraisal accuracy statewide.
3) A plan for taking into account local market conditions
4) A plan for allowing adjustments for the mileage of individual vehicles.
5) A uniform appeals process that will consider the effect of other condition factors that may affect the value of individual vehicles.

This comprehensive plan will improve the statewide valuation of motor vehicles for property taxation.

1) A Uniform Schedule of Values

G.S. 105-330.2(b) requires that a classified motor vehicle be appraised by the assessor at its true value in money as prescribed by G.S. 105-283. Effective July 1, 2009, it further requires the Property Tax Division to annually adopt a schedule of values. This recommended plan calls for the Property Tax Division to review the valuation services available and adopt the schedule that can be used to best comply with G.S. 105-330. When selecting a schedule of values, the Division should consider all relevant factors. Some of these factors include but are not limited to:

1) The accuracy of the values and support for proving the accuracy.
2) How much the valuation service charges for providing the values.
3) Compatibility with the software created for the new system.
4) The completeness of the collective values (Number of VINs matching a value.)
5) Other items or services provided with the list of values. (Hardcopies, etc.)
6) Their level of support to our specific statutory requirements.

For example, valuation service A may have the lowest cost, but the list of values may only match 70% of the Vehicle Identification Numbers (VINs) in North Carolina and the valuation service may not be flexible in the format they provide their values in. This would leave 30% of North Carolina's vehicles needing manual

valuation. Valuation service B may guarantee a 95% match of VINs and also devote a full time position to assist with valuation issues specific to North Carolina requirements. These and all other factors should be carefully considered before a selection is made.

Based on related dates in HB 1779, the uniform schedule of values should be chosen and put into the system by September 1, of each year. This is because values are determined as of January 1, of the year that taxes are due. Taxes on December expirations are due January 15, and would therefore have the newest values. These vehicles will be sent a combined invitation to renew and property tax notice around the November 1 prior to expiration. Values should be in the new system by September 1, to begin processing the property tax information that will be printed before mailing November 1.

2) A plan for determining appraisal accuracy statewide

One of the most accepted methods of determining appraisal accuracy in a mass appraisal system is to perform a "sales ratio study". This is done by selecting a random sample of actual sales and then dividing the assessed value of each property by that property's actual sales price. After calculating the ratios of the selected sales, they are arrayed in order from lowest to highest ratio and the median ratio is considered to be an indicator of the appraisal accuracy. If the median ratio is below 1, then the appraisal is said to be overall below fair market value. If the median ratio is above 1, then the appraisal is said to be overall above fair market value. There are many other statistical measures in a sales ratio study that can be used to evaluate the appraisal and there are specifics regarding the correct method of doing a sales ratio study.

We suggest that a sales ratio study be performed each year to determine the accuracy of appraisals in North Carolina. Licensed dealers collect sales price data at the time of collecting the Highway Use Tax and this data is available from the Division of Motor Vehicles. The Property Tax Division should work with the provider of the valuation service, the Division of Motor Vehicles, and a statistician to ensure the study is performed as accurately as possible.

It may also be possible to have the new integrated computer system incorporate the ability to perform the sales ratio study automatically. A separate ratio should be calculated for different classes of vehicles (heavy trucks, trailers, motorcycles, SUVs).

3) A plan for taking into account local market conditions

According to G.S. 105-330.2(b), each assessor is responsible for determining the fair market value of motor vehicles. After the Property Tax Division adopts the statewide uniform schedule of values, the assessor will determine if local market conditions require any deviation from the uniform schedule. The Assessor would be required to submit to the Property Tax Division, for approval, their requested deviation from the uniform schedule along with evidence of why it is needed. For example, an Assessor in a mountain county may believe that the uniform schedule has 4x4 vehicles appraised too low for their county and may be able to provide evidence that the values of 4x4 vehicles should be 5% higher in their jurisdiction. Upon approval by the Property Tax Division, the integrated computer system would allow the adjustments countywide. Information from the sales ratio study could be used to support the need to adjust values in a jurisdiction.

4) A plan for allowing adjustments for the mileage of individual vehicles

We recommend automatic mileage adjustments based on a mileage adjustment table adopted by the Property Tax Division and annual mileage information incorporated into the new system. The Property Tax Division should have the ability to adjust the mileage adjustment table in the new integrated computer system. Annual mileage information is available in an emissions part of the current system and as of January 2006, 48

counties are a part of that emissions system. The new integrated computer system should use all mileage information available to arrive at the most accurate motor vehicle values.

Available mileage information can be used to estimate mileage as of the January 1 valuation date and make positive or negative adjustments to the uniform value.

If mileage information is not automatically available, any Assessor or collecting authority should be able to enter information from a vehicle's most recent inspection and an automatic mileage adjustment and recalculation of property tax will occur.

5) A uniform appeals process that will consider the effect of other condition factors that may affect the value of individual vehicles

As an additional service to our citizens, there should be equitable rules among our counties for the appeal process. Through this appeals process, condition factors that may affect the value of vehicles can be considered.

Assessors will have control and responsibility over each individual vehicle value to adjust for condition upon appeal. Upon timely appeal, the taxpayer should bring the vehicle to the county tax department if possible and the Assessor should inspect the vehicle to determine the need for a condition adjustment. An Assessor should not, as a pre-appeal condition, require a third party appraisal of a vehicle, however the taxpayer may choose to have an appraisal done to support their opinion of value.

Condition Standards

The Property Tax Division will study and adopt along with the uniform schedule of values, a set of categories as a condition grading system along with percentage adjustments. For example, these categories may be:

Excellent	+5%
Average	no adjustment
Below Average	– 5%
Poor	–10%

The January 1 appraisal date may prove to be a factor that would make this adjustment inaccurate since some appeal deadlines are not close to the appraisal date. For example, a vehicle with a November 2009 expiration has a tax due date and appeal deadline of December 15, 2009. However the valuation is to be as of January 1, 2009, almost a year prior to the appeal deadline. It is difficult for a taxpayer to prove the condition of the vehicle as of the valuation date.

A possible solution is to have two or more appraisal dates, July 1 and January 1 for example.

Vehicle Descriptions needed for appraisal

The integrated computer system should have appraisal notes and fields tied to each VIN. This would allow the adjustments or notes of an Assessor who inspected the vehicle to be reviewed by a different Assessor if the vehicle is moved within North Carolina. This may also prevent multiple visits to the Assessor for valuation adjustments.

In some situations, the VIN does not fully describe the characteristics of the vehicle. For example, a VIN for a trailer does not describe all of the characteristics needed to properly appraise the trailer. The lack of proper

description is also a problem in the appraisal of recreational vehicles (RVs). We suggest that that the Property Tax Division work with the Division of Motor Vehicles to develop a plan in the memorandum of understanding described in G.S. 105-330.2(c). This plan should result in the collection of the needed appraisal information at the time of title and/or registration of a trailer or RV.

Adjustment for Title Brand

The Property Tax Division can recommend standards for valuation adjustments due to branded titles, which should be made automatically, based on data from the Division of Motor Vehicles. For example, the Division might recommend that a branded title (salvaged, reconstructed, flood or fire damage) receive an automatic 25% reduction in value. This should be an adjustable function of the integrated computer system.

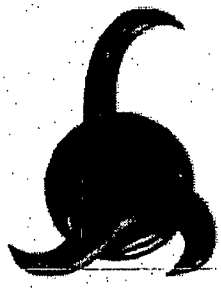
HB 1779

Reports

Information Technology (IT) Committee

COLLECT PROPERTY TAX PROJECT

High Level Requirements



STATE TITLING AND REGISTRATION SYSTEM (STARS) PROJECT TEAM

HB 1779 – Information Technology (IT) Committee Report

April 13, 2006

Version 1.0

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Sign Off – High Level Requirements

We, the undersigned, agree that this High-Level Requirements document accurately addresses the requested major high level functions of the Collect Property Tax Project.

	Signature	Date
DMV Commissioner:	George Tatum	
DOT CIO:	Mark Paxton	
DMV Applications Director:	Kenneth Bergman	
STARS Appl. Dev. Manager:	Maggie P. Thomas	
STARS Team Leader:	Michael Thomas	
DMV Director for Driver & Vehicle Services:	Wayne Hurder	
DMV Deputy Director of Operations:	Don Ferrier	
DMV Assistant Director of Driver & Vehicle Services:	Portia Manley	
DOT Chief Financial Officer:	Mark Foster	
DOR CIO:	Randy Barnes	
DOR Representative/ Property Tax Division:	David Baker	
NC Association of County		

Commissioners:	**Paul Meyer**		
Wake County Representative/ NC Association of Assessing Officers:	**Emmett Curl**	_____	_____
Forsyth County Representative/ NC Tax Collectors Assoc:	**William Rodda**	_____	_____
Person County Representative/ NC Association of Assessing Officers:	**Russell Jones**	_____	_____
NC League of Municipalities:	**Andrew Romanet**	_____	_____
NC Automobile Dealer Assoc:	**Bob Glaser**	_____	_____
NC Independent Automobile Dealer Association	**Jim Edwards**	_____	_____

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COLLECT PROPERTY TAX PROJECT
High Level Requirements

1. Executive Summary

Effective July 1, 2009, per House Bill 1779 (HB 1779 – Combined Motor Vehicle Registration Renewal and Property Tax Collection System), vehicle property taxes will be collected with the issuance and renewal of vehicle registrations. Over the past years, the Division of Motor Vehicles has implemented a variety of activities to facilitate the collection of vehicle property taxes by the North Carolina counties. Currently, DMV sends monthly registration data for every issued and renewed vehicle registration to the counties. The counties use this data to calculate vehicle property taxes for each vehicle and to generate the associated property tax invoice. This has significantly improved property tax assessment for registered vehicles. Currently, on a monthly basis, DMV renews and issues from 400,000 to 700,000 vehicle registrations.

Within a fiscal year, the vehicle property taxes are collected for 85 percent to 91 percent of the registered vehicles. However, the counties would like to improve this collection rate within a fiscal year by requiring the payment of the vehicle property taxes with the issuance or renewal of a vehicle registration. Therefore, after much discussion HB 1779 was ratified in August 2005.

The legislators have requested a report outlining the tax valuation and automation strategy, as well as the estimated cost, to implement this law. The report is due on May 15, 2006. This document addresses the automation strategy and its associated estimated cost. This High Level Requirements document will establish the baseline requirements for HB 1779 and facilitate the management and control of the business requirements. A Requirements Traceability Matrix will be utilized as a tool to ensure that the plans, products and activities of the project are consistent with the approved business requirements.

2. Background Information

North Carolina counties, municipalities and special districts collect property tax on motor vehicles registered in the state. Under the existing system, the State Titling and Registration System or STARS sends monthly data to all counties identifying those motor vehicles that have been issued or renewed registrations for the month; this process was initiated in March 1993. The counties then send a bill to the motor vehicle owner for the taxes due on the vehicle. If the motor vehicle owner fails to pay the property tax for the vehicle within the designated time period, the county notifies STARS to put a registration stop on the vehicle. The motor vehicle owner then cannot perform any registration services on the vehicle in STARS until proof has been provided that the taxes have been paid. Under the current system, a high percentage of vehicle property tax is paid late or not at all.

COLLECT PROPERTY TAX PROJECT
High Level Requirements

3. Project Description

During the 2005 session, the North Carolina General Assembly ratified House Bill 1779 titled "An act to create a combined motor vehicle registration renewal and property tax collection system." The bill makes a number of changes to the way property tax on motor vehicles is collected. In order to improve collection, the property tax will be collected by the N.C. Department of Transportation's Division of Motor Vehicles when a motor vehicle registration is issued or renewed. Also, the Property Tax Division of the N.C. Department of Revenue will develop a statewide valuation system to ensure uniform valuations across counties. The bill also specifies that the tax notice and registration renewal notification be combined into one form or set of forms. To help pay for the changes, the interest on unpaid taxes will be increased from 2 percent to 5 percent for only the first delinquent month, and the additional 3 percent will be utilized for the development cost to automate HB 1779. Therefore, 60 percent of the interest collected for the first delinquent month will be transferred on a monthly basis to the Combined Motor Vehicle and Registration account for DMV to support the development and implementation of this integrated computer system. Also, after the completion of the project, DMV will be compensated (at least one-third of the current compensation paid for registration renewals conducted by contract agents) for collecting vehicle property taxes for the counties. It will also receive the interest on registration fees for delinquent vehicle registration renewals.

After carefully reviewing the law and the time constraints, the STARS, Business Systems Improvement Project or BSIP, and other applications will be enhanced to accommodate HB 1779. Mandates of this law will require complex modifications to the titling, registration and fiscal components of these current titling and registration applications. Modifications will also be made to the emissions application to allow the utilization of actual mileage in calculating property tax. In addition, changes will be made to the Return Check application to accommodate HB 1779. The project is scheduled to be initiated on Sept. 5, 2006 and implemented on July 1, 2009.

The major project functions are as follows:

1. Generate billing information for vehicle property tax and registration renewal

   The current registration renewal and tax notices will be combined into a single notice. The combined notice will contain all the information on the current registration and tax notices as well as any additional information identified.

COLLECT PROPERTY TAX PROJECT
High Level Requirements

2. Collect vehicle property tax with registration issuance and renewal

   The counties will no longer collect property tax on vehicles. Instead, DMV will collect the vehicle property tax and any interest when the customer requests a new registration or renews an existing registration. The STARS internet application will be revised to also collect registration fee, property tax, and any applicable interest for late registration and property tax fees. This enhancement will increase the required credit card processing fee. Also, NCDOT will distribute the collected property taxes to the state's counties and municipalities.

3. Deny registration renewal for unpaid vehicle property tax

   If the vehicle property tax has not been paid for a vehicle, a vehicle registration cannot be renewed or issued for that vehicle. Since the vehicle owners will be required to pay the property tax with the registration issuance or renewal, the counties will no longer need to send DMV a list of vehicles with unpaid property tax to deny registration renewal.

4. Generate report to facilitate the distribution of compensatory fee to DMV for the collection of property tax

   On a weekly basis, DMV will provide the Department of Revenue a report identifying the property tax collected for each taxing unit. The report will include any additional information required by the Department of Revenue.

5. Apply interest to delinquent vehicle property tax

   When a vehicle owner renews a registration after the due date, interest is applied to the tax amount. Interest accrues at the rate of 5 percent for the first month after the taxes are due and three-fourths percent for each month thereafter. DMV will calculate the interest and charge the customer at the time the registration is renewed.

6. Apply interest to unpaid registration fees

   Beginning on July 1, 2009, interest will accrue for registration fees paid after the due date. The interest on registration fees will be 5 percent for the first month after the registration renewal is due and three-fourths percent for each month thereafter. DMV will calculate the interest and charge the customer at the time the registration is renewed.

7. Allow partial or full refund of vehicle property tax

   If a customer appeals the property tax amount and the appeal is decided in the customer's favor, the customer is entitled to a refund. DMV will refund the amount due to the customer from future distributions to the county and will maintain accounting records for such refunds. Similar refunds will occur when a registration plate is turned in and the vehicle is sold. A history file detailing any issued refunds should be maintained.

8. Support tax valuation process for vehicles

   A vehicle's value is a component of the calculation of the vehicle's property tax. DMV will determine the value of the vehicle based upon the schedule of values, standards and rules adopted by the Property Tax Division.

9. Allow inquiry of historical vehicle property tax information for paid taxes

   Vehicle owners will be able to inquire on the taxes paid for a vehicle for a designated number of years. Property tax payment information will not be converted from the existing county systems for inquiry purposes. Accordingly, the inquiry option will not provide property tax payment information prior to implementation of this project.

4. Assumptions and Constraints

The following is a list of assumptions for the project:

1. The counties will be responsible for identifying and collecting taxes for unregistered vehicles as described in G.S. 105-330.3(a)(2).

2. The Department of Revenue's Property Tax Division will develop or procure the vehicle valuation system.

3. The Property Tax Division or a designated third party will create, print and mail the combined tax and registration notice. This notice will take the place of the current invitation to renew.

4. DMV tag agencies will be compensated for collecting property tax.

5. A Lock Box arrangement may be considered for mail-in renewal and vehicle tax payment rather than the STARS remittance process.

6. Other than motor vehicle bills which were due prior to the implementation of the new system, the counties will no longer accept property tax payments for classified registered motor vehicles.

7. Any amount refunded to the taxpayer will be processed using the enhanced STARS refund process.

8. The STARS system will calculate and charge the interest for delinquent property taxes and late registration renewals. The International Registration Plan or IRP vehicles are excluded from requirements of HB 1779.

9. If a vehicle is exempted from property tax, the DOR Property Tax Division or designated third party will still send a combined tax and registration notice. The notice may show no taxes due.

10. Car dealerships may accept vehicle property taxes when a vehicle is purchased.

11. The estimated development cost of this project includes technical and client labor, computer usage, and projected software and hardware cost to analyze, design and implement the system; the associated business cost will be addressed in a separate document.

12. The Property Tax Division will be responsible for implementing procedures for determining the accuracy of vehicle appraisals using a sales ratio study.

COLLECT PROPERTY TAX PROJECT
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13. The limitations and opportunities of accepting electronic payments (including credit cards and Electronic Funds Transfer) for vehicle property taxes and vehicle registration will be explored by this project.

14. No conversion of data for inquiry purposes will be required. Therefore, the customers will not be able to inquire via STARS on property tax data prior to the implementation of this project.

15. Technical changes to the law must be identified and resolved by Dec. 31, 2007 (completion date for Detailed Design).

16. The new system must allow the waiver of taxes (e.g., for military residents).

17. The data from the counties to apply property tax stops will be accepted for a designated time period after the implementation of the project to facilitate the flagging of delinquent property taxes due prior to the new system.

18. The online county options for setting and removing property tax stops will be available for usage for a designated time period after the implementation of the project to facilitate the flagging of delinquent property taxes due prior to the new system.

19. The project will incorporate training, but existing resources will be used for training.

20. DOT will distribute the collected vehicle property taxes to the counties and municipalities.

COLLECT PROPERTY TAX PROJECT
High Level Requirements

5. High-Level Requirements

The requested major functions/requirements of the proposed system changes are as follows:

5.1. Generate billing information for vehicle property tax and registration renewal

- 5.1.1. Identify tax districts for vehicles
- 5.1.2. Calculate vehicle property tax and vehicle registration renewal fee
- 5.1.3. Generate registration renewal notifications for vehicles with stops
- 5.1.4. Allow mail-in processing for the combined tax and registration renewal notice
- 5.1.5. Display the new combined tax and registration renewal notice on internet renewals
- 5.1.6. Terminate the generation of monthly vehicle registration data for the counties

5.2. Collect vehicle property tax with registration issuance and renewal

- 5.2.1. Validate the vehicle value and property tax for in-person vehicle registration issuance and renewal
- 5.2.2. Validate the vehicle value and property tax for vehicle registration renewal via internet
- 5.2.3. Validate the vehicle value and property tax for vehicle registration renewal via mail
- 5.2.4. Prorate taxes for plates that remain annual
- 5.2.5. Allow waiver of property taxes when appropriate
- 5.2.6. Generate fiscal reports to identify taxes collected for each county
- 5.2.7. Distribute collected property tax to North Carolina counties and municipalities.

5.3. Deny registration renewal for unpaid vehicle property tax

- 5.3.1. Discontinue the acceptance of data for unpaid vehicle property tax from the counties
- 5.3.2 Disable the online county option for setting and removing tax stop
- 5.3.3 Convert current vehicle tax stop data to support new registration denial process

5.4 Generate report to facilitate the distribution of compensatory fee to DMV for the collection of vehicle property tax.

5.4.1 Develop a weekly report for the Property Tax Division with the tax payments received

5.4.2 Track branch compensation for collected taxes

5.5. Apply interest to delinquent vehicle property tax.

5.5.1. Calculate and charge interest for delinquent property tax

5.5.2. Display interest payments received for delinquent property tax on the fiscal reports

5.6. Apply interest to unpaid registration fees

5.6.1. Calculate and charge interest for delinquent registration fees

5.6.2. Display interest payments received for delinquent registration fees on fiscal reports

5.7. Allow partial or full refund of vehicle property tax

5.7.1. Refund partial fees resulting from an appeal or plate turn-in

5.7.2. Allow full refunds resulting from an appeal or plate turn-in

5.7.3. Maintain a history file detailing any refunds issued

5.8. Support tax valuation process for vehicles.

5.9 Allow inquiry of historical vehicle property tax information for paid taxes for a designated number of years

6. Impact

The Collect Property Tax Project may significantly affect future and in-progress projects, existing applications and organizations, and vice versa. Research is currently in progress to ascertain the total impact of this project and the impact of other projects on this project. This project will affect the STARS, Emissions, BSIP and Return Check applications, which are scheduled to be enhanced as a part of this project. The project also may require the transport of some county data to the new system to set up tax district information, maintenance of new addresses and support for county specific address dictionaries. This project may impact other systems/projects that have not been identified.

The US Real ID project may impact this project, as already seen in research concerning its impact on the Collect Property Tax project. If any of the enterprise data (e.g., customer name) is expanded to support US Real ID, the Collect Property Tax project will be affected. The US Real ID project is currently scheduled to be implemented in 2008 — about one year before the implementation date for this project; however, this date may change.

In addition, several organizations actively involved with this project will also be impacted. These organizations are listed below, as well as the perceived high level impact.

COLLECT PROPERTY TAX PROJECT
High Level Requirements

GROUP	HIGH LEVEL IMPACT
Department of Transportation – Division of Motor Vehicles	Provide DMV business expertise to support the changes in HB 1779. Also support collection of requirements, design, testing and training for the system changes.
Department of Transportation – Information Technology	Modify the State Titling and Registration System, International Registration Plan System, Emission and Safety Inspection System and BSIP to support the changes in HB 1779.
Department of Revenue – Property Tax Division / Information Technology	Provide expertise on property tax collection. Develop and/or procure systems to support the changes in HB 1779; participate in the collection of requirements, design and possibly testing for HB 1779; modify appropriate departmental applications to support HB 1779; conduct training.
North Carolina Association of County Commissioners	Provide expertise on the collection of property tax; participate in the collection of requirements, design and possibly testing for HB 1779.
North Carolina League of Municipalities	Provide expertise on the collection of property tax; participate in the collection of requirements, design and possibly testing for HB 1779.
North Carolina Association of Assessing Officers	Provide expertise on the collection of property tax.
North Carolina Automobile Dealers Association	Represent the automobile dealers and keep them informed regarding the changes for HB 1779.
North Carolina Independent Automobile Dealers Association	Represent the independent automobile dealers and keep them informed regarding the changes for HB 1779.
North Carolina Tax Collectors Association	Provide expertise on the collection of property tax

7. Approximated Project Cost/Work Effort

Based on the requirements listed, the project will cost approximately $20,372,300 (minus 10 percent to plus 25 percent confidence limits). This estimated development cost includes the following components:

Development Item	Estimated Hours	Estimated Resources	Estimated Cost
ITS/ Staff Counterintelligence Officer Coordination	20,000	3	$1,600,000
STARS Labor	115,206	35	$8,355,600
Department of Revenue Labor	1,500	3	$120,000
Emissions Labor	500	2	$ 40,000
BSIP Labor	13,704	5	$1,138,000
County Labor	27,320	100	$2,185,600
Return Check Labor	4,080	3	$326,160
Clients' Labor for Client Testing	16,352	42	817,600
Clients' Labor for Joint Application Design Sessions	22,460	Same as Client Testing	$1,123,000
Computer Usage Cost (25 percent of technical labor cost)	N/A	N/A	$3,041,340
Software Packages Cost	N/A	N/A	$1,500,000
Hardware Cost	N/A	N/A	$ 125,000
Total Project Estimate	221,122	193	$20,372,300

The labor cost is based on a labor rate of $50 per hour for state employees and $80 per hour for contractors ($150 per hour for only BSIP contractors). The proposed implementation date is scheduled for July 1, 2009. The NCDOT Board of Transportation must approve this project before it can be officially initiated.

In addition, the expected technical operational cost of the enhancement is $3,727,084.20 per year. It is anticipated that nine state technical resources (including four full-time equivalent resources for STARS and five part-time resources for the other state applications) and 100 part-time county technical resources will be required to adequately support these major enhancements. Therefore, the estimated total technical operational cost for the first five years after implementation is $18,635,421.

COLLECT PROPERTY TAX PROJECT
High Level Requirements

The life cycle cost (cost of development and anticipated five-year maintenance and enhancement) is as follows:

4.1 Project Implementation Schedule	
Project start date	Oct. 1, 2009
Estimated project end date	Dec. 31, 2009
Confidence limits (+/- xx weeks)	4 weeks
A. Anticipated Life of Application, in Years	
Anticipated life of the application/system (in years)	5
B. Total Project Implementation Costs	
Total estimated project implementation costs (96 percent of technical labor and computer usage cost plus software and hardware)	$ 19,700,032.00
C. Annual Maintenance and Support Costs	
Estimated annual average cost of maintaining and supporting the proposed system or application	$ 1,613,542.10
D. Other Annual Costs	
Other anticipated annual costs, including costs for planned enhancements/upgrades	$ 2,113,542.10
E. Total Life Cycle Cost	
From above lines, TLC Cost = B + A(C + D)	$38,335,453.00
F. Post-Implementation Costs	
Total of all one-time costs that occur post-implementation (4 percent of technical labor and computer usage)	$ 672,268.00
G. Extended Total Life Cycle	
From above lines, Extended TLC Cost = E + F	$39,007,721.00

Note: a. Project Development Cost = Project Implementation Costs + Post-Implementation Costs
= B + F = $19,700,032 + $672,268 = $20,372,300

b. Annual Operational Cost = Annual Maintenance & Support Costs + Other Annual Costs
= C + D = $1,613,542.10 + $2,113,542.10 = $3,727,084.20

c. Total Life Cycle Cost = Project Implementation Costs + 5 years (Annual Operational Cost)
= B + A(C+D)
= $19,700,032 + 5 ($1,613,542.10 + $2,113,42.10) = $38,335,453

d. Extended Total Life Cycle Cost = Total Life Cycle Cost + Post-Implementation Cost
= E + F = $38,335,453 + $672,268 = $39,007,721

The above estimates are based on the identified requirements, associated technical and client labor, computer usage, software package options and hardware requirements. If any of these variables change significantly, the corresponding estimated cost must be revised.

8. Requirements Traceability Matrix

The following Requirements Traceability Matrix is a living document for the project. This matrix will be updated during each phase of both the development life and maintenance life cycles. The matrix will help to validate that appropriate plans, products and activities for the project address the requirements for this subsystem.

COLLECT PROPERTY TAX PROJECT
High Level Requirements

System Requirements Allocated to Software								
Plans, Products, Or Activities →	*High-Level Requirements Document*	*Statement of Work*	*User Requirement / Detailed Design*	*Client Test Plans*	*Modules*	*Screens*	*Reports*	*Other Products / Activities*
5.1. Generate billing information for vehicle property tax and registration renewal.	Section 5							
5.1.1. Identify tax districts for vehicles.	Section 5							
5.1.2. Calculate vehicle property tax and vehicle registration renewal fee.	Section 5							
5.1.3. Generate registration renewal notifications for vehicles with stops.	Section 5							
5.1.4. Allow mail-in processing for the combined tax and registration renewal notice.	Section 5							

5.1.5. Display the new combined tax and registration renewal notice on internet renewals.	Section 5							
5.1.6 Terminate the generation of monthly vehicle registration data for the counties.	Section 5							
5.2. Collect vehicle property tax with registration issuance and renewal.	Section 5							
5.2.1. Validate the vehicle value and property tax for in-person vehicle registration issuance and renewal.	Section 5							
5.2.2. Validate the vehicle value and property tax for vehicle registration renewal via internet.	Section 5							
5.2.3. Validate the vehicle value and property tax for vehicle registration renewal via mail.	Section 5							
5.2.4. Prorate taxes for plates that remain annual.	Section 5							
5.2.5. Allow waiver of property taxes when appropriate.	Section 5							
5.2.6. Generate fiscal reports to identify taxes collected for	Section 5							

each county.								
5.2.7. Distribute collected property tax to North Carolina counties and municipalities.	Section 5							
5.3. Deny registration renewal for unpaid vehicle property tax.	Section 5							
5.3.1. Discontinue the acceptance of data for unpaid vehicle property tax from the counties.	Section 5							
5.3.2. Disable the online county option for setting and removing tax stop.	Section 5							
5.3.3. Convert current vehicle tax stop data to support new registration denial process.	Section 5							
5.4. Generate report to facilitate the distribution of compensatory fee to DMV for the collection of vehicle property tax.	Section 5							
5.4.1. Develop a weekly report for the Property Tax Division of the Department of Revenue with the tax payments received.	Section 5							
5.4.2. Track branch compensation for collected taxes.	Section 5							

5.5. Apply interest to delinquent vehicle property tax.	Section 5							
5.5.1. Calculate and charge late penalties for delinquent property tax.	Section 5							
5.5.2. Display interest payments received for delinquent property tax on the fiscal reports.	Section 5							
5.6. Apply interest to unpaid registration fees.	Section 5							
5.6.1. Calculate and charge late penalties for delinquent registration fees.	Section 5							
5.6.2. Display interest payments received for delinquent registration fees on fiscal reports.	Section 5							
5.7. Allow partial or full refund of vehicle property tax.	Section 5							
5.7.1. Refund partial fees resulting from an appeal or plate turn-in.	Section 5							
5.7.2. Allow full refunds resulting from an appeal or plate turn-in.	Section 5							
5.7.3. Maintain a history file detailing any refunds issued.	Section 5							
5.8. Support tax valuation process for vehicles.	Section 5							

5.9 Allow inquiry of historical vehicle property tax information for paid taxes for a designated number of years.	Section 5							

9. APPENDIX

9.1 Acknowledgements

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HB 1779 – IT Committee

COLLECT PROPERTY TAX PROJECT
High Level Requirements

9.2 Project Risk Assessment

Risk #	Category	Description (Defined Risk)	Approach Response to Risk	Risk Mitigation and Resolution	Likeli-hood	Severity	Level of Control	Significance
1.	Funding/Cash Availability	Insufficient funds to complete the project	Identify the funding requirements early in the project. Finalize funding as early as possible.	Establish funding as early as possible.	2	3	4	9
2.	Project Team	Insufficient resources to complete project	Identify resource problems quickly and take appropriate action.	Provide backup resources from the STARS project team if needed; continue to monitor resource level/requirements.	3	3	3	9
3.	Other Assignments	Resources reassigned to other high priority assignments (e.g. legislative mandates, emergency production support)	Present identified conflicts and associated impact to project to senior management.	Identify conflicts in weekly status reports and use other STARS team members to support these assignments as much as possible.	3	4	4	11
4.	Requirements	Scope Creep (additional user requirements)	Identify impact to the implementation date.	Determine whether new requirements can be done in another phase; discuss impact of changes with project group to determine best solution.	3	4	4	11
5.	Interfacing systems	Changes to interfacing system are not completed on time thus delaying the project	Identify stakeholders early in the process. Regularly communicate with representative from the interfacing system.	Continue to monitor the progress of the interfacing systems. Identify schedule slippage as soon as possible.	3	4	5	12
6.	New Legislative Mandates	Major legislation requiring implementation before HB 1779	Attempt to postpone the implementation of new legislative mandates until after the project is completed. If legislation cannot be delayed, notify senior management of the impact to the project as soon as possible.	While preparing fiscal notes for proposed legislation, identify the conflict with the HB1779 project. For legislation passed, identify the impact with senior management at DMV and DOT-IT as soon as possible.	3	4	4	11
7.	DMV Help Desk	Insufficient staff to adequately support counties	Identify the support needs for the counties as soon as possible in the project analysis stage.	Review the support required by the counties with senior management at DMV. Determine what, if any, additional staff is required to meet this need.	4	3	3	10

9.2 Project Risk Assessment

Risk #	Category	Description (Defined Risk)	Approach Response to Risk	Risk Mitigation and Resolution	Likeli-hood	Severity	Level of Control	Significance
8.	Operational Costs	Insufficient funds for annual operational cost	Identify the additional operational costs as early in the project as possible.	Present the additional cost to senior management as early as possible. Identify the source of funds to cover the cost prior to the project implementation.	5	4	3	12
9.	Technical Changes	Not able to identify all technical changes to HB 1779 in a timely manner	Identify technical changes to the law as soon as possible.	Plan to complete the identification of technical changes to HB 1779 by completion of the User Requirements.	3	5	3	11

Likelihood:
1- Very unlikely
2- Somewhat unlikely
3- 50/50 Chance
4- Highly likely
5- Nearly Certain

Severity:
1- Minor impact on cost, schedule, performance, etc.
2- Moderate impact on cost, schedule, performance, etc.
3- Significant impact on project baselines
4- Very significant impact on project baselines
5- Disastrous impact, probable project failure

Level of Control:
1- Essentially avoidable through selected risk mitigation actions
2- Highly controllable through organization or project actions
3- Moderately controllable through organization or project actions
4- Largely uncontrollable by the organization or project actions
5-Uncontrollable by the organization or the project

Significance: Likelihood + Severity + Level of Control

COLLECT PROPERTY TAX PROJECT

High Level Requirements

9.3 Issues Log

Issue #	Issue Date/Issue Description/Issue Category	Originator of Issue/Assigned To	Expected Resolution Date/Actual Completion	Status	Planned Resolution/Discussion	Actual Resolution
1.	2005-11-01: Can dealers be exempted from collecting vehicle property taxes with a car sale?	NCADA/ HB 1779 Team	ASAP	Open	2005-12-01: According to the law, dealers must collect vehicle property taxes with car sales. 2006-02-17: During the short session, legislators plan to revisit this issue. 2006-03-09: Issues are still being worked on. We hope to find a compromise with the dealers. 2006-03-30: David Baker will discuss this with Paul Meyers; it may have to wait until the short session.	
2.	2006-01-04: Should IRP be revised to collect vehicle property tax?	DMV/ Dept of Revenue	ASAP/ 2006-03-30	Closed	2006-01-04: Per the law, IRP should be revised to accommodate HB 1779. 2006-01-26: The Dept of Revenue is researching whether there may be some exceptions for IRP vehicles. 2006-02-17: A meeting will be scheduled to review the business rules of IRP; other IT committee members can attend. 2006-03-09: DOR is researching to see if IRP vehicles can be exempted from HB 1779. DOR announced that the IRP vehicles will be excluded from the requirements of HB 1779.	2006-03-30: The plan is to exclude IRP vehicles from the HB 1779 requirements. The Revenue Laws meeting is scheduled for April 19 to exclude the IRP vehicles via a law change.
3.	2006-01-04: Address the credit card cost (Visa, Mastercard) for collecting taxes and registration cost.	IT Committee	ASAP	Open	2006-02-17:Credit card processing was recommended to deal with bad checks. DOR charges $2 per $100 as a convenience fee. The average tax bill is $100. 2006-03-30: Stephanie King will	

COLLECT PROPERTY TAX PROJECT

High Level Requirements

9.3 Issues Log

Issue #	Issue Date/Issue Description/Issue Category	Originator of Issue/Assigned To	Expected Resolution Date/Actual Completion	Status	Planned Resolution/Discussion	Actual Resolution
					take ownership of this issue. 2006-04-06: A meeting was held with the State Controllers Office to discuss credit card processing. At the meeting it was stated that a convenience fee could not be charged for face-to-face merchant card transactions. A convenience fee could be charged for internet transactions. Mastercard allows for a flat fee or a sliding scale. Visa only allows a flat fee, not a sliding scale or percentage. There are several fees charged for credit/debit card transactions. It was stated that a typical fee for $100 is $1.68 for Visa and $1.86 for Mastercard.	
4.	2006-01-04: How does the US Real ID project impact the Collect Property Tax project (HB 1779)?	Mark Paxton/ STARS project team	2006-02-17 2006-02-16	Closed		206-02-16: If the enterprise data (e.g., customer name) is expanded, the US Real ID project will impact the Collect Property Tax project.
5.	2006-02-17: How will leased vehicles be handled?	IT Committee	2006-03-24	Open	2006-03-21: Should the invitation to renew for leased vehicles be sent to the lessee since the vehicle can be renewed only if the taxes are paid? Then, the lessee would pay the taxes and get reimbursed by the leasing company, or would request the leasing company to pay the taxes so that the lessee can renew his/her registration? 2006-03-30: A meeting with the leasing companies should be held. We need to research whether there is a leasing association.	

COLLECT PROPERTY TAX PROJECT

High Level Requirements

9.3 Issues Log

Issue #	Issue Date/Issue Description/Issue Category	Originator of Issue/Assigned To	Expected Resolution Date/Actual Completion	Status	Planned Resolution/Discussion	Actual Resolution
6.	2006-02-22: How will STARS be refreshed with new/revised street addresses from the counties to validate addresses for billing purposes?	STARS team/ IT Committee	2006-03-15	Open	2006-03-09: There are data transport issues for the new street addresses. 2006-03-22: The STARS team is working closely with Wake County.	
7.	2006-02-22: What changes should be made to the Return Check and Refund subsystems to support HB 1779?	Theresa Jones/ Fiscal, BSIP, STARS, State Automated Drivers License System	2006-03-15 / 2006-03-30	Closed	2006-02-22: A meeting with Fiscal, BSIP, STARS, and SADLS will be scheduled for 3/3/06 at 10:30 am to discuss this issue.	2006-03-09: The returned checks and refunds for property taxes will be deducted from the current month's revenue for the appropriate county.
8.	2006-03-06: Will this project impact the State Highway Patrol?	DOR/ IT Committee	2006-03-24 / 2006-03-09	Closed		2006-03-09: This project will not impact the State Highway Patrol.
9.	2006-03-06: Will this project impact Division of Criminal Information?	IT Committee/ STARS	2006-03-24 / 2006-03-09	Closed		2006-03-09: This project will not impact DCI.
10.	2006-03-06: Who will determine the fee per transaction for the collection of property taxes by the tag agents?	DOR/ IT Committee	2007-12-31	Open	2006-03-09: The group decided that Paul Meyers should lead this issue. Portia Manley will call Paul.	
11.	2006-03-06: Property tax data must be kept for 10 years. DMV registration data must be kept for three years plus the current year. How will this impact STARS purge process?	DOR/ Counties & IT Committee	2006-03-24 / 2006-03-09	Closed		2006-03-09: Counties stated that we should follow DMV's purging rules. Purging of property tax data associated with a registration can be done after 18 months. DMV will continue to retain vehicle registrations and associated records for the current year and three previous years.
12.	2006-03-07: Who will be authorized to initiate refunds for property taxes?	Fiscal/STARS- IT Committee	2006-03-24 / 2006-03-09	Closed		2006-03-09: The counties will be authorized to initiate refunds for property taxes. In addition, DMV would initiate refunds for plate turn-ins with vehicle ownership transfer and the

COLLECT PROPERTY TAX PROJECT

High Level Requirements

9.3 Issues Log

Issue #	Issue Date/Issue Description/Issue Category	Originator of Issue/Assigned To	Expected Resolution Date/Actual Completion	Status	Planned Resolution/Discussion	Actual Resolution
						counties would approve the refund online. The refund would be for the remaining months on the registration.
13.	2006-03-07: Should the property tax fees be distributed by DOT to the Property Tax Division or directly to the counties?	Fiscal/STARS-IT Committee	2006-03-24 / 2006-03-21	Closed	2006-03-09: DOR Chief Financial Officer is recommending that DMV distribute the funds to the counties.	2006-03-21: The decision was made for DMV to distribute the funds to the counties.

COLLECT PROPERTY TAX PROJECT

High Level Requirements

9.4 Work Flow

Phase	Start Date	End Date	Est. Hours	Resources
General Management	09/05/06	12/31/09	4,144	DOT/IT Management
Project Management	09/05/06	12/31/09	6,000	Project Manager.
Project Administration	09/05/06	12/31/09	3,290	Project Manager, Project Leader
Software Project Tracking Oversight	09/05/06	12/31/09	4,000	Technical Team
Project Organization	09/05/06	11/30/06	1,000	Project Manager, Project Leader
User Requirements	12/01/06	06/29/07	9,092	Project Manager, Project Leader, Lead Analysts
Detailed Design	07/02/07	12/31/07	8,000	Project Manager, Project Leader, Lead Analysts
Evaluation and Selection	07/02/07	03/28/08	1,308	Project Manager, Project Leader, Lead Analysts
Develop Program Specs	12/01/07	03/28/08	4,528	Technical Team Leader, Lead Analysts
Programming/Unit Testing	02/04/08	10/31/08	40,000	Technical Team
System/Integration Testing	09/29/08	01/02/09	7,184	Technical Team
Client Testing	01/05/09	06/26/09	20,000	Technical Team
System Demo (Event)	06/26/09	06/26/09	0	Project Manager, Project Leader
Implementation	06/15/09	07/01/09	2,200	Technical Team
Post-Implementation	07/01/09	12/31/09	4,360	Technical Team
Project Closeout	01/02/09	03/31/10	100	Technical Team
STARS Total			115,206	
Department of Revenue Total	09/05/06	12/31/09	1,500	Department of Revenue team
Emission Total	09/05/06	12/31/09	500	Emission project team
BSIP Total	09/05/06	12/31/09	13,704	BSIP project team
Return Check Total	09/05/06	12/31/09	4,080	SADLS project team
County Total	09/05/06	12/31/09	27,320	County project teams
ITS/SCIO Coordination Total	09/05/06	12/31/09	20,000	ITS/SCIO Personnel
JAD Sessions – Client Labor	12/01/06	12/28/07	22,460	STARS, Return Check, Emissions, BSIP, DOR, and NC Counties
Client Testing – Client Labor	1/05/09	6/26/09	16,352	STARS, Return Check, DOR, BSIP, SADLS
Grand Total			221,122	

9.5 Roles and Responsibilities

9.5.1 Business Responsibilities of DMV - Vehicle Registration

- Assist in defining the business requirements for the proposed system changes.
- Review and provide acceptance for all major deliverables.
- Develop training materials and train personnel on the system changes.
- Perform/review acceptance testing for STARS system changes.
- Perform production/post-implementation testing for the system changes.
- Design Combined Property Tax and Registration Renewal invoice
- Establish a Memorandum of Understanding between DMV and DOR

9.5.2 Business Responsibilities of DMV - Motor Carrier

- Assist in defining the business requirements related to the International Registration Plan/Motor Carrier and STARS interface.
- Perform/review acceptance testing for changes related to the IRP/Motor Carrier interface with STARS.

9.5.3 Business Responsibilities of DMV – Fiscal

- Assist in defining the business requirements related to the fiscal interfaces.
- Review and provide acceptance for all major deliverables.
- Perform/review acceptance testing for changes related to the fiscal interfaces.

9.5.4 Business Responsibilities of the Property Tax Division of the Department of Revenue.

- Assist in defining the business requirements related to the county interface and valuation system
- Review and provide acceptance for all major deliverables.
- Perform/review acceptance testing for changes related to the county interface and valuation system
- Design Combined Property Tax and Registration Renewal invoice
- Establish a Memorandum of Understanding between DMV and DOR

9.5.5 Business Responsibilities of the NC Counties

- Assist in defining the business requirements
- Review and provide acceptance for all major deliverables
- Perform/review acceptance testing for changes related to the county interface and valuation system

9.5.6 Business Responsibilities of DMV – Emissions

- Assist in defining the business requirements for the proposed system changes.
- Review and provide acceptance for all major deliverables.
- Perform/review acceptance testing for emission system changes.
- Perform production/post-implementation testing for the system changes.

9.5.7 Technical Responsibilities of DOT/IT/STARS

- Hold meetings with the user groups to identify the user requirements and design for the system changes. Develop and distribute meeting agendas and minutes.
- Create and distribute project documents including the High level Requirements document, Statement of Work, User Requirements document, Detailed Design document, project status reports, program specifications and test plans.
- Develop system changes according to identified user requirements.
- Unit and system test all programs.
- Support client acceptance testing.
- Implement system changes including any data conversions.
- Provide maintenance and support after system implementation.

9.5.8 Technical Responsibilities of the Property Tax Division of the Department of Revenue.

- Develop or procure the vehicle valuation system.
- Unit and system test all changes to the valuation system and the interface with STARS.
- Support acceptance testing.
- Provide maintenance and support after system implementation.

9.5.9 Technical Responsibilities of DOT/IT/Database Administration

- Support project by implementing database and customer information control system changes in all test and production environments.

9.5.10 Technical Responsibilities of BSIP

- Make BSIP program changes required to implement the system.
- Unit and system test BSIP programs
- Support acceptance testing.
- Provide maintenance and support after system implementation.

9.5.11 Technical Responsibilities of Return Check

- Make changes to Return Check programs required to implement the system.
- Unit and system test all Return Check programs
- Support acceptance testing.
- Provide maintenance and support after system implementation.

9.5.12 Technical Responsibilities of Counties

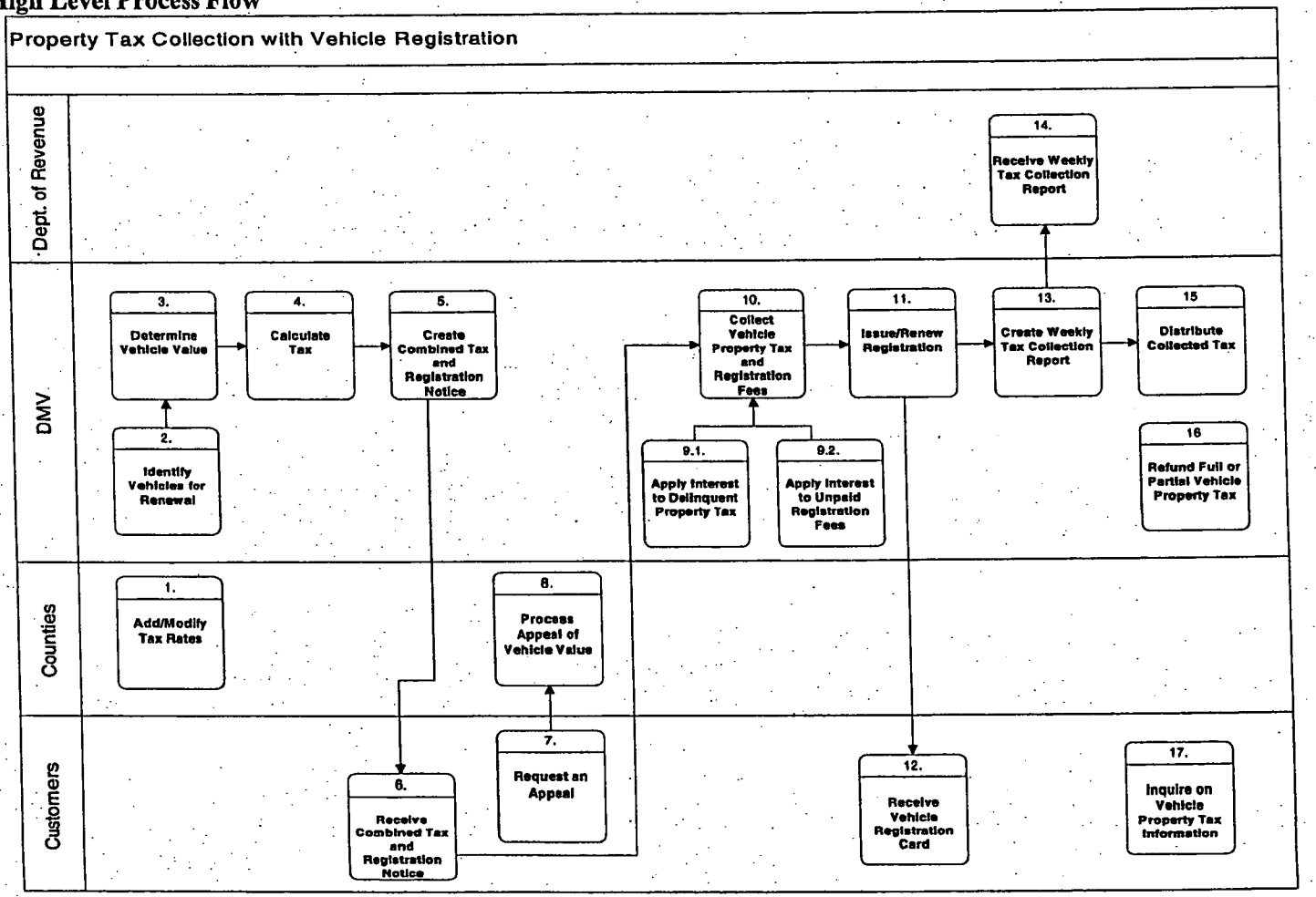
- Provide technical expertise on the current county tax systems.
- Make any changes required to existing county tax systems resulting from the project.

9.5.13 Information Technology Services/State Chief Information Office

- Direct HB 1779 project
- Coordinate cross agency/county issues and tasks

COLLECT PROPERTY TAX PROJECT
High Level Requirements

9.6 High Level Process Flow



COLLECT PROPERTY TAX PROJECT
High Level Requirements

1. Add/Modify Tax Rates

The counties will be responsible for entering and maintaining the tax rates. The rates will each have a start and end time to ensure the appropriate tax is charged to the customer. The counties will maintain the tax rates on an ongoing basis. (Section 6; G.S. 105-330.5(d))

2. Identify Vehicles for Renewal

DMV will identify all the vehicle registrations that will expire in the next few months. (Section 6; G.S. 105-330.5(a))

3. Determine Vehicle Value

The value of the vehicles will be determined as of January 1 of the year the taxes are due. The valuation should take into account local market conditions and allow for adjustments for mileage and the condition of the vehicle. (Section 2; G.S. 105-330.2)

4. Calculate Tax

Calculate all county and municipal corporation taxes due for the vehicle. (Section 6; G.S. 105-330.5(a))

5. Create Combined Tax and Registration Notice

DMV will combine the registration information with the property tax information and print a combined tax and registration notice. The notice will include the date of the notice, the appraised value of the motor vehicle, the tax rate of the taxing units, information regarding appeals and the registration fees. DMV will mail the notice. (Section 6; G.S. 105-330.5)

6. Receive Combined Tax and Registration Notice

The customer will receive the combined property tax information prior to the expiration date of the vehicle registration. The customer has three options for renewing the registration and paying the property tax and registration fees; 1) mail the notice to DMV/Lock Box with the specified fees; 2) renew via the DMV internet renewal application; or 3) renew in person at a DMV license plate agency. (Section 3; G.S. 105-330.4 (a))

7. Request an Appeal

The vehicle owner may appeal the value of the vehicle and the situs and taxability of the vehicle. The appeal must take place before the taxes become delinquent. (Section 2; G.S. 105-330.2)

8. Process Appeal of Vehicle Value

If during the appeal it is found that the vehicle value is in error, then the vehicle value will be modified. The customer may also be due a refund of taxes already paid. (Section 2; G.S. 105-330.2)

9.1. Apply Interest to Delinquent Property Tax

Interest on unpaid taxes accrues at the rate of 5 percent for the first month following the date the taxes were due and three-fourths percent for each month thereafter. DMV will collect the interest at the time of the registration renewal. (Section 4 and 5; G.S. 105-330.4(b))

9.2. Apply Interest to Unpaid Registration Fees

Starting on July 1, 2009, interest on unpaid registration fees accrues at the rate of 5 percent for the first month following the date the registration was due and three-fourths percent for each month thereafter. DMV will collect the interest at the time of the registration renewal. (Section 5; G.S. 105-330.4(b))

10. Collect Vehicle Property Tax and Registration Fees

DMV will accept payment from the customer for registration fees, taxes and penalties. The fees collected will be separated so that they can be distributed to the correct agencies. (Section 3; G.S. 105-330.4(a), Section 4 and 5;G.S. 105-330.4(b))

11. Issue/Renew Registration

The new or renewed vehicle registration is issued to the customer.

12. Receive Vehicle Registration Card

Upon successful issuance or renewal of the vehicle registration, DMV issues a registration card to the customer either in person or via the mail.

13. Create a Weekly Tax Collection Report

DMV shall create a weekly report containing information required by the Property Tax Division to the taxing units. (Section 6; G.S. 105-330.5(b))

14. Receive a Weekly Tax Collection Report

The Property Tax Division will receive a weekly report containing information required by the Property Tax Division to the taxing units. (Section 6; G.S. 105-330.5(b))

15. Distribute Collected Tax

DMV will account for taxes and fees due the taxing units and remit the fees at least once a month. (Section 6; G.S. 105-330.5(b))

16. Refund Full or Partial Vehicle Property Tax

When an appeal is decided in favor of the customer, DMV will refund all or part of the taxes paid for the vehicle. (Section 2; G.S. 105-330.2(c))

17. Inquire on Vehicle Property Tax Information

DMV will provide an option to allow customers to view property tax paid for the current and designated previous years. The amount of history available will be determined during the requirements collection phase.

9.7 Document Revision Log

Version Number	Date	Revision
1.0	04/13/2006	Baseline

HB 1779

Reports

Legislative Committee

Legislative Subcommittee Report
H 1779 Study Group

The Legislative Subcommittee was created to assist in determining the feasibility of a merged property tax/motor vehicle registration system envisioned by H 1779. Our primary focus at this point was to consider potential legislative changes necessary for the blending of applicable law governing property tax administration and motor vehicle registration.

There are four basic points driving the need for a merged system:

1. Voluntary compliance in paying taxes levied on registered motor vehicles is eroding. When the current motor vehicle billing process was implemented in 1993 over 80% of all motor vehicle tax bills were paid before the past due date. Today only 66% of such bills are paid timely, resulting in significant delinquencies for local tax collectors. In Forsyth county alone, over 10,400 additional motor vehicle bills become past due each month.
2. Significant revenue is uncollected at the end of the fiscal year. It is estimated that approximately $80 million in city, county and fire district taxes levied on motor vehicles are uncollected at the end of each fiscal year.
3. The enforcement of collections is difficult under the current system. Local collectors do not the necessary demographic data for the effective enforcement of delinquent motor vehicle taxes. It economically feasible for tax collectors to seize motor vehicles for non-payment of taxes due to the sheer volume of unpaid accounts.
4. The current system is inherently inefficient. Each year the Division of Motor Vehicles will mail some 8 million invitations to renew a license plate. The counties follow about three months later with another 8 million property tax bills. There is an obvious savings to be realized with a combined billing with the added benefit of fewer interactions with government for the taxpayer.

During our meetings it has become apparent that a blending of DMV and property tax business rules and statutory requirements is truly a monumental task. Members of the Study Group have learned that we do not individually possess sufficient knowledge of the business rules and statutory obligations of our counterparts to make intelligent decisions without careful study. The analysis necessary for this blending has barely started, mostly within the IT and Legislative Subcommittees.

The Legislative Subcommittee has identified a number of issues that will require careful consideration, particularly between the property tax and DMV groups. The following list of issues has been discussed, but only in generalities. Some of these issues may require legislative action for resolution while others may be handled through the Memorandum of Understanding between the Property Tax Division and Division of Motor Vehicles.

- How should we handle the billing of property taxes on leased vehicles if the vehicle is owned by a leasing company and the license plate is issued in the name of the lessee?
- Do we continue the proration of taxes in any form?
- What do we do with the thousands of unpaid delinquent tax bills in county systems when H 1779 is implemented? Do we continue the blocking process? If so, should we block the vehicle rather than the license plate?
- Should IRP vehicles be listed with the tax assessor in a similar manner as unregistered vehicles?
- How should we handle the billing of and collection of property taxes for vehicles sold through a new or used vehicle dealer?
- Do we issue a renewal for a late payment that did not include the appropriate amount of interest? (the answer is no in the property tax world)
- How do we enforce registrations/property tax collections if the owner chooses to ignore the invitation to renew? Or, if the owner wants to pay the property tax but chooses not to renew the registration?
- How do we handle the accounting and the transfer of funds?
- What is the appropriate rate of compensation of contract agents?
- How do we handle refunds?
- What affect will bankruptcies have on the new process?
- Should we reconsider concepts other than what is envisioned by H 1779?

Throughout our discussions no individual or group has brought forward any reason as to why the H 1779 concept cannot work. Our Subcommittee membership has generally agreed that this concept is feasible and no obstacle has been identified that cannot

be overcome. There must be significantly more study and discussion of the issues listed above and other issues that have yet to be identified. But it is the finding of the Legislative Subcommittee that the H 1779 concept is viable and feasible.

The Legislative Subcommittee strongly recommends that a small subcommittee be created to assist the Property Tax Division and Division of Motor Vehicles in developing answers to the issues listed in this report. The Legislative Subcommittee is prepared to accept this role and shift its focus from feasibility to implementation if that is the desire of the two Divisions. It is the recommendation that this Subcommittee commence monthly meetings (at minimum) to carefully examine the current business rules, operations and statutory requirements for the administration of the property tax and DMV registrations. We must carefully consider every facet of operations in order to make recommendations or decisions (as appropriate) to the Property Tax Division and Division of Motor Vehicles on how to blend the business rules and operations for the successful implementation of H 1779. These decisions should be communicated to the IT Committee so that the system can be constructed appropriately and the September 2006 target for the start of development can be maintained. Any issue requiring a legislative change would be drafted appropriately for introduction in the 2007 session – or if time allows, the 2006 short session.

The most critical legislative requirement at this time is a technical change to make it clear that 60% of the first month's interest will be dedicated to funding the H 1779 project. This technical change is in a bill that will be recommended by the Revenue Laws Study Committee for the short session.

HB 1779

Impact Statements

NC Association of Assessing Officers

NC Tax Collectors Association

April 5, 2006
HB 1779 Impact Statement
North Carolina Association of Assessing Officers
North Carolina Tax Collectors Association

Introduction

H 1779 will accomplish a long-standing goal of North Carolina's property tax professionals by merging the property tax function with the license registration for registered motor vehicles. All other states that levy a property tax on registered vehicles operate under some form of a merged system for good reason – to avoid the inevitable delinquencies that occur when a motor vehicle owner can obtain registrations without paying property taxes.

There are four basic points driving the need for a merged system:

1. Voluntary compliance in paying taxes levied on registered motor vehicles is eroding. When the current motor vehicle billing process was implemented in 1993 over 80% of all motor vehicle tax bills were paid before the past due date. Today only 66% of such bills are paid timely, resulting in significant delinquencies for local tax collectors.

2. Significant revenue is uncollected at the end of the fiscal year. It is estimated that approximately $80 million in city, county and fire district taxes levied on motor vehicles are uncollected at the end of each fiscal year.

3. The enforcement of collections is difficult under the current system. Local collectors do not have the necessary demographic data to effectively enforce the collection of delinquent motor vehicle taxes. The sheer volume of delinquent accounts renders it economically infeasible for tax collectors to routinely seize motor vehicles for non-payment of taxes.

4. The current system is inherently inefficient. Each year the Division of Motor Vehicles will mail some 8 million invitations to renew a license plate. The counties follow about three months later with another 8 million property tax bills. There is an obvious savings to be realized with a combined billing with the added benefit of fewer interactions with government for the taxpayer.

Impact on Tax Assessors

HB 1779 actually does not significantly change the way tax assessors assess motor vehicles for taxation. All 100 North Carolina assessors currently determine the appropriate tax situs of each registered vehicle and determine an appropriate market value for each vehicle as of January 1 of the year in which the bill becomes due. HB1779 does not alter this process. Rather than performing this work on 100 separate computer systems, HB1779 requires the consolidation of the situsing and valuation processes in an enhanced STARS system. Tax assessors envision a "master address/situs" database as a part of the enhanced STARS system that automatically assigns most registered motor vehicles to the appropriate taxing jurisdiction - just as individual county systems do now. Tax assessors also envision a "master valuation table" as a part of the enhanced STARS system that will automatically assign a value to the vast majority of vehicles – just as county computer systems do now.

One notable difference is the role of the Property Tax Division of the North Carolina Department of Revenue in creating a statewide schedule of values. Currently, each county assessor creates a schedule of values applicable only in his or her county. The governing board for the county ultimately is responsible for adopting and approving the county's schedule of values. The NCAAO sees the role of the Property Tax Division in formulating a statewide schedule of values as a positive step that will result in more uniform and equitable valuations of registered motor vehicles statewide.

The exemptions and appeals process for county assessors also remains largely unchanged in the new system. The vehicle owner continues to be responsible for applying for property tax exemptions. The assessor remains responsible under the new system for determining the taxability of the vehicle after the application for exemption is filed. Likewise, the burden remains on the property owner to furnish whatever proof is necessary to justify an adjustment to the valuation of a vehicle. Tax assessors envision these functions as a part of the enhanced STARS system. In most North Carolina counties, valuation adjustments are

resolved and bills are adjusted in a matter of a few minutes. We anticipate no substantial change in the number of valuation appeals or adjustments to bills.

The tax assessor will continue to require the listing of unregistered vehicles (those without an active registration) as of January 1 each year. The assessor will remain responsible for determining the situs and valuation of unregistered vehicles. It is anticipated that the schedule of values developed by the Property Tax Division will also be used in the valuation of unregistered vehicles.

In summary, the role of the NCAAO membership is largely unchanged under HB1779.

Impact on Tax Collectors

HB 1779 would essentially relieve county tax collectors from the responsibility of collecting taxes levied on registered motor vehicles. H 1779 requires the taxes to be collected with registration fees by the Division of Motor Vehicles or its contact agents. Local tax collector theoretically could become DMV contract agents; however, it appears unlikely this would actually happen.

Tax collectors would cease to look at taxes levied on registered motor vehicles as a traditional tax levy. Taxes levied on registered vehicles under the new system will not be charged to the collector or DMV. Under the new system, a registration cannot be obtained or renewed unless the property taxes are paid. Thus, if the taxes are not paid, the affected vehicle becomes an unregistered vehicle which must be listed each January. Unregistered vehicles will continue to be included in the annual tax levy that is actually charged to the tax collector – just as they are now.

Past-due bills on registered motor vehicles that reside within the tax collector's charge as of the implementation date of the new H 1779 system will remain in the tax collector's charge. Tax blocks for unpaid taxes that are a feature of the current process will remain in place. While the NCTCA membership is hopeful the blocking process will force vehicle owners to pay their delinquent bills, **the NCTCA strongly recommends that STARS be upgraded to block BOTH the vehicle identification number (VIN) and the license plate. This would totally eliminate the ability to avoid the block by simply purchasing a different license plate.**

It is anticipated that refunds and prorations be handled within the enhanced STARS system. It is further anticipated that prorations and refunds will be generated based upon the documented actions of the vehicle owner as reflected in the STARS system, eliminating the need for review by local tax collectors.

In summary, the role of the tax collector in collecting taxes on registered motor vehicles is virtually eliminated under the new system established by H 1779.

Impact on Costs

Local costs associated with registered motor vehicle billing and collections may appear in the Assessor's budget, Collector's budget, or any combination. Therefore, it is appropriate to address this matter separately.

The cost to enhance the STARS system to bring property tax functions within the system has not been finalized. The funding for this enhancement is provided by utilizing the increase in the first month's interest for non-payment of registered vehicle taxes from 2% to 5%. This difference, referred to as "60% of the first month's interest" should provide sufficient funding for the development of the enhanced STARS system. The anticipated revenue stream is estimated to exceed $4 million annually. It is interesting to note that the funding for the implementation of HB1779 is derived from the people who are creating the tax collection problem.

HB1779 requires the costs of printing and mailing the bill to be remitted from the tax revenues collected. This simply transfers these costs from local budgets, but since the costs will be taken from revenues before distribution, there is no net difference to the counties. **The Division of Motor Vehicles will realize an immediate savings of as much as $4 million annually** as the registration fees will appear on a combined noticed which is paid for by the counties.

Local governments will realize significant savings by not mailing past due notices and blocking notices. Assuming a total cost of printing and mailing a notice at approximately 50 cents per notice, counties would save approximately $2.5 million annually in initial past due notices and another $350,000 in blocking notices.

A question remains as to the amount of the fee to be remitted to the DMV and its contract agents for the collection of property taxes. HB1779 established the fee to be at least 1/3 of the fee paid by DMV for registrations. At approximately 50 cents per transaction, the cost to local governments would be approximately $4 million annually.

The most obvious benefit to local governments is the enhanced cash flow created by fewer delinquencies. It is estimated that approximately $80 million in city, county and fire district taxes levied on motor vehicles are uncollected at the end of each fiscal year.

HB 1779

Impact Statements

NC Automobile Dealers Association

North Carolina Automobile Dealers Association

Impact of House Bill 1779 on North Carolina's Franchised New Automobile and Truck Dealers

Background on NCADA's position on H.B. 1779

The North Carolina Automobile Dealers Association has been supportive of and has assisted in efforts to combine the process of motor vehicle property tax collection with annual motor vehicle registration renewals since the proposal was first initiated with the introduction of House Bill 1779. However, from the beginning of these efforts, NCADA has indicated adamant and continuing opposition to any proposal which would require North Carolina's new automobile and truck dealers to collect personal property tax on new and use motor vehicles at the point of sale. The sponsor of the legislation and other supporters indicated throughout the legislative process that such a point of sale obligation on dealers was not included in HB1779.

NCADA has participated in the task force created by HB1779 to assist the Department of Revenue and the Division of Motor Vehicles in implementing the required systems to combine property tax collections and motor vehicle registration renewals. While there remains debate on the matter, it is clear that some parties are interpreting the provisions of HB1779 as imposing a requirement on dealers to remit payment of personal property tax when submitting a customer's title and registration materials for a new tag to DMV or to local tag agents. Such a requirement would have the effect of imposing a "de facto" obligation on a dealer to collect the initial personal property tax payment from customers at the time of sale of a new and used motor vehicle. NCADA does not agree with this interpretation and it is NCADA's belief that legislators supporting HB1779 in the 2005 session did not intend to impose such an obligation on North Carolina dealers.

Impact of H.B. 1779 on North Carolina Franchised Dealers

As originally envisioned and presented to NCADA, the provisions of HB 1779 combining the property tax collection and vehicle registration renewal systems should have a minimal impact on North Carolina's franchised new automobile and truck dealers. NCADA would continue to educate its membership on the status of these implementation efforts and assist the Department of Revenue and the DMV as requested.

However, if the provisions of HB1779 are interpreted to require dealers to collect personal property tax from customers at the point of sale, the impact on North Carolina dealers would be **significant and extremely negative**.

North Carolina dealers already collect a significant amount of state and federal taxes and fees from customers at the point of sale. Adding another $100, $300 or more to the cost of a car or truck purchase at the time of sale could have a negative effect on sales in North Carolina. Customers would have the added burden of yet one more expense to cover as they seek to obtain financing for a vehicle purchase. In many instances, this could be the one factor that causes a sale to fall through. Further, it is doubtful that lenders would be willing to finance one more additional expense that is not secured by the value of the vehicle. As such, it is likely that customers would be forced to remit the full amount of the property tax at the time of the sale.

Such an interpretation of HB1779 would cause diminished vehicles sales in North Carolina adding to the economic hardships dealers have been facing throughout the past year. Naturally, as North Carolina dealerships generate more than 20% of the retail sales tax collected in North Carolina, a significant impact on the overall North Carolina economy could result as well.

Further Legislative Action

For the benefit of both North Carolina consumers and dealers, NCADA is opposed to any interpretation of HB1779 or any other proposal that would require dealers to collect initial vehicle property tax payments at the point of sale. As NCADA does not believe it was the intent of the members of the General Assembly to impose such a requirement, NCADA respectfully states its intent to seek any necessary legislative action to clarify the provisions of HB1779.

It is not NCADA's intent to disrupt the efforts of the HB1779 task force as it works to implement the necessary systems. However, NCADA feels that it is crucial to clarify the provisions and prevent any interpretation of HB1779 that would impose point of sale requirements on dealers as soon as possible. In this way, the efforts of the task force and the originally stated purpose of HB1779 to collect property tax at the time of registration renewal may continue unimpeded.

H.B. 1779 Task Force May 15, 2006 Report

NCADA requests that its position on HB1779, as well as its position on further necessary legislative action be included in all relevant sections of the HB1779 Task Force May 15, 2006 report, including the issues log portion of the IT subcommittee.

HB 1779

Impact Statement

NC License Plate Agencies

Impact on License Plate Agencies
With the Implementation of HB 1779

Per your request (and without full prior knowledge of DMV's requirements of us upon implementation of HB 1779) we have created the following impact statement. Contract agencies will provide collection services, educate the public concerning changes, and handle dramatically increased funds.

In order to effectively achieve this we may need to:

1. Bond each employee
   Per Commissioner Tatum, with the possibly huge influx of cash created by our collection of vehicle property taxes, we will have to provide bond coverage for each employee. We are investigating this with insurance companies, but do not yet have an exact cost estimate. However, the quotes have been as high as $5,000.00 per year for a medium to large office.

2. Increase staff
   In order to handle the additional customer contact time we will have to increase our staffs. Depending on the location we expect to need at least one-half to as many as two full staff positions. Also, depending on the location the hourly wage should run from $8.00 to as much as $12.00 per hour. The **minimum** additional cost estimate for this is $8,320 per year (half time @ $8.00/hr) and the **maximum** would be about $49,920 (2 full time @$12.00/hr) per year plus Social Security and State and Federal Unemployment taxes and benefits for both. Once again, these figures are approximate and will vary from office to office with the low estimate covering only the very small offices while medium to large offices could anticipate one- and-one-half to two additional employees. These staff increases will also necessitate the addition of extra terminals in most offices. Additional space requirements would call for new counters or increased office size and costs for this would vary per location. We also anticipate increased and longer telephone contacts as we explain the changes to angry and confused customers. We may have to add an additional employee for customer services (telephone.) As this employee would generate no revenue, it would be costly.

3. Install increased security
   With the great increase in cash flowing through our offices, most will need to improve physical security measures. The installation of alarm systems, cameras and monitoring equipment, and, in some locations, more secure work areas will be required. Even with these measures in place, customers will notice that we are collecting massive amounts of cash. We will have to increase the number of deposits per day. Credit/debit card capability in our offices will be mandatory for us to undertake this endeavor. While debit/credit cards will help with security, it will add to the overall contact time spent with each customer.

4. Increase limits on business insurance and errors and omissions insurance
   This will increase our already high insurance premiums and will vary by office as our premiums are based on gross revenues.

HB 1779

Impact Statement

NC Department of Revenue

IMPACT STATEMENT
FROM NORTH CAROLINA DEPARTMENT OF REVENUE CONCERNING THE IMPLEMENTATION OF HB 1779

The implementation of HB 1779 will impact certain state departments in various ways. This statement is an attempt to focus on the impact the law will have on the business practices of the North Carolina Department of Revenue. HB 1779 impacts the Department in the four major ways listed below:

1. The valuation of Motor Vehicles.
2. The preparing, printing and mailing of notices.
3. The review of the financial reporting of the money collected on motor vehicles.
4. The day-to-day administration of the law.

1. The valuation of Motor Vehicles – N.C.G.S. 105-330.2(b)

The Property Tax Division of the Department of Revenue will be required to solicit vendors or businesses to procure the valuations on vehicles throughout the state. The valuation company that is selected will have to provide specific pieces of information that can be utilized to uniformly and equitably value motor vehicles in North Carolina. The Division will have to research and then decide which company will best serve the taxpayers in North Carolina. A review of this process will have to be made by the Division on a yearly basis.

The Division will need to make sure that a ratio study is performed each year to verify the accuracy of the values being provided by the valuation company. The actual calculations done for the ratio study may be incorporated into the newly developed centralized computer system. If this is not the case, then the Department will need to do additional research and perform a manual ratio study with data gathered from various entities.

The valuation aspect of the law provides a way for county assessors to deviate from the standard statewide valuation on vehicles. This is due to market driven values that may be slightly higher or slightly lower in a particular county. The Division will need to evaluate the validity of the request based on the ratio study mentioned above. In the event that a deviation is permitted, our office will need to communicate that accepted variance to the assessor and to county taxpayers.

There has been much discussion about making various adjustments to the value of vehicles based on excessive mileage, poor condition, branded title, etc. The Property Tax Division will be required to research and determine a fair adjustment concerning each of these conditions. Those standardized adjustments will then be incorporated into the computer system and the adjustments will be automatically calculated prior to the actual mailing of the tax bill.

2. The preparing, printing and mailing of notices – N.C.G.S. 105-330.5(a)

A decision was made that the Division of Motor Vehicles will combine the registration information with the property tax information, print a combined tax and registration notice, and mail the notice. As long as this decision remains in effect, it removes significant impact to the Department regarding this section of the impact statement. For informational purposes, we have included the other possible options below if this decision were to change.

Under the current statute, the Property Tax Division of the Department of Revenue is required to prepare a combined tax and registration notice on each vehicle, and either the Department or a third-party contractor which the law allows for, would print and mail the notice. As mentioned above, the current decision is that DMV will perform this duty. The number of notices is expected to total 7 to 8 million annually. The impact of printing and mailing the tax/registration notices on the Department would double the current printing and mailing requirements already being performed by the Department and would necessitate the purchase of a (new) large volume laser printer and mail processing equipment. Printing and mailing the notices would also require additional staff to handle the process of preparing, printing, bursting and mailing the notices on a daily basis.

If a decision were made to out-source the printing and mailing of notices, the Department's one-time equipment costs would be zero and recurring operational/staff costs would be minimal. Out-sourcing the process would require the Department to be responsible for selecting, managing and administering the third party contractor.

3. The review of the financial reporting of the money collected on motor vehicles -- N.C.G.S. 105-330.5(b).

The Department of Transportation will be responsible for remitting the collected tax funds to each county. The Department of Revenue will be directly impacted due to the statutory requirement to review and determine the accuracy of the accounting records via a report(s) generated by the Department of Transportation. Once these funds have been electronically transferred to the counties, the Property Tax Division will assume a role of consultant to help counties further distribute the taxes collected to various municipalities and jurisdictions. This will require staff time and resources.

4. The day-to-day administration of the law -- N.C.G.S. 105-289.

The Property Tax Division of the North Carolina Department of Revenue has general and specific supervision over the valuation and taxation of property by the taxing units throughout the State. HB 1779 will impact the day-to-day administration of the property tax by the Division.

As the implementation of this law draws closer, the Department will have the responsibility of training various entities throughout the state. It is presumed that teaching for the following groups would be necessary: License tag agencies, automobile dealers, county staff, taxpayers within various regions, and other groups not yet identified. The teaching aspect of this law will continue for several months beyond implementation. An informational document may need to be created to answer basic questions concerning the new law as it relates to the general public.

The Property Tax Division will need to develop essential forms and documents to be submitted by various groups to facilitate the process created by HB 1779. Some of these documents may take on the form of directives or opinions on how to carry out the normal business practices of the groups most closely related to the changes that will occur.

A key document in this process is the Memorandum of Understanding which will be between the Department of Revenue and the Department of Transportation. This document will address the various business practices of the two Departments and the local taxing units. The impact of this document on the Department of Revenue's processes will be determined at a later date.

Conclusion:

HB 1779 will impact the North Carolina Department of Revenue as described above. The Property Tax Division will be impacted greatly and its day-to-day functions will change due to this new law. Additional staff and resources will be needed by the Property Tax Division to fulfill the requirements of the new Combined Motor Vehicle Registration and Renewal and Property Tax Collection System.

Other Divisions within the Department of Revenue will also be impacted and additional staff and resources may also be needed. The amount of additional staff and resources will vary greatly depending on the decision as to how the notices required by HB 1779 will be prepared, printed and mailed.

HB 1779

Impact Statement

NC Department of Transportation

Fiscal Section

Analysis of Impacts to DOT Fiscal

Implementation of HB1779 will significantly affect financial operations in the fiscal area at NCDOT. The department has analyzed high-level impacts of this legislation focusing on the collection and distribution of funds from vehicle property taxes on behalf of the counties.

Financial staff estimates 13 additional administrative positions will be needed for these functions. Estimated annual cost for FY08-09 is $692,388.

Today, registration services are performed and collected by more than 420 branch agents and dealers throughout the state. To implement this legislation, NCDOT would need to develop integrated accounting procedures for DMV collections, refunds and bad debt at a more detailed level to accommodate the distribution of funds for 100 counties plus 400 to 650 cities and towns. It is vital that the enhanced STARS functionality is fully implemented and that all parties are thoroughly trained prior to "go-live" for the project. Ongoing support will be critical as we begin the collection and distribution of funds.

The reconciliation of collections, refunds and bad debt includes cash/check transactions, and credit card transactions via the Internet. Electronic funds transfer transactions will also be significant. New requirements have been discussed to allow credit card point of sale transactions to be performed by branch agents throughout the state. Because the reconciliation of collections, refunds and bad debt will become more complex, additional accounting personnel will be a key factor for success. Maintaining internal controls will be essential in the certification of funds on deposit with the State Treasurer and the distribution of collections.

There will be an exponential increase in the amount of bad debt that DMV will have to manage as a result of the collection of vehicle property taxes. Currently, we receive about 5,000 bad debt inquiries per month in the Fiscal–DMV area. It is logical to assume as the amounts increase by producing a combined bill, the bad debt will follow. Inquiries resulting from these occurrences will require additional personnel to accommodate the increased number of bad debt items and telephone inquiries.

DOT Fiscal Section Fiscal Impact Detail

Fiscal-DMV Personnel Requirement & Fringes

Classification	PG	Salary	FICA	Retire	Health Insurance	Payroll Additive	Totals	Total FY07/08	Total FY08/09	Total FY09/10	Total FY10/11
Accountant II	75	41,366	3,164	2,482	3,432	740		51,713	53,005	54,330	
Accountant II	75	41,366	3,164	2,482	3,432	740		51,713	53,005	54,330	
Accountant II	75	41,366	3,164	2,482	3,432	740		51,713	53,005	54,330	
Accountant I	72	36,521	2,794	2,191	3,432	654		45,667	46,809	47,979	
Accountant I	72	36,521	2,794	2,191	3,432	654		45,667	46,809	47,979	
Accountant I	72	36,521	2,794	2,191	3,432	654		45,667	46,809	47,979	
Accountant I	72	36,521	2,794	2,191	3,432	654		45,667	46,809	47,979	
Accountant I	72	36,521	2,794	2,191	3,432	654		45,667	46,809	47,979	
Accounting Specialist II	69	32,432	2,481	1,946	3,432	580		40,545	41,559	42,598	
Accounting Specialist II	69	32,432	2,481	1,946	3,432	580		40,545	41,559	42,598	
Accounting Specialist I	67	30,045	2,299	1,803	3,432	538		33,050	33,876	34,723	
Accounting Tech III	63	25,886	1,980	1,553	3,432	463		32,362	33,171	34,000	
Accounting Tech III	63	25,886	1,980	1,553	3,432	463		32,362	33,171	34,000	
Total Personnel Requirement	13							562,338	576,396	590,806	

Operating Budget Requirements

Office Supplies								1,000	1,000	1,000	
Telephone Charges									2,925	4,000	
Telephone								8,450			
Office Furniture								33,800			
Equipment Maintenance								20,000	6,500	6,500	
Computers								46,800			
Training								20,000	20,000	20,000	
Total Operating								130,050.00	30,425.00	32,000.00	

Total Requirement **692,388.10** **606,820.74** **622,806.00**

*Space for employees is limited in current environment.

Telephones - 13 phones @ $650.00/each (from ITS Telephone Order Service Request)

Office Furniture - cost for desks, chairs, file cabinets and other items to establish working area for 13 or more employees. Out years cost would be for replacements, additions, and repairs.

Office Equipment - equipment for 13 new employees to include a copier and service agreement @ approximately $6,500/each.

Computers - 13 computers and printers @ approximately $3,600/each

Training- Cost would be incurred to train employees on use of SAP, different DMV systems and how to handle all aspects of collections. Turnover or additional positions would require additional training each year for new employees.

HB 1779

Impact Statement

NC Department of Transportation

DMV

Impact Statement from North Carolina Division of Motor Vehicles
Concerning the Implantation of H.B. 1779

During the 2005 session, the North Carolina General Assembly ratified House Bill 1779 titled "An act to create a combined motor vehicle registration renewal and property tax collection system". The bill makes a number of changes to the way property tax on motor vehicles is collected. In order to improve collection, the property tax will be collected by DMV when a motor vehicle registration is issued or renewed

The impacts to DMV:
(Please See Attached Cost Sheet)

Personnel
This project will require a total rewrite of the State Titling and Registration System (STARS) in order to integrate its functionality with the local government property tax collection systems. It will also require routine maintenance of this system as well as any enhancements necessary. We assume a total change in the collecting of vehicle property tax at DMV will result in an increase in customer service inquiries, complaints, and number of visits to DMV or branch agents to complete their tasks. This will require an increase in the number of customer service personnel including Information Processing Technicians, Call Center representatives, and Field Operation Support personnel.

In addition, the amount of revenue taken in by tag agents and vehicle registration services should quadruple. With the increase of revenue, the amount of time monitoring tag agencies' operations would require additional Motor Vehicle Field Supervisors. Implementation of this new system will require extensive training of DMV and tag agents' staff, which will require additional Staff Development resources. In addition, all new office positions will require basic office equipment such as workstations, personal computers, telephones, etc.

Equipment
The current DMV remittance process system will have to be replaced in order to accommodate the amount of collections anticipated with this new integrated tax collection system. Currently, on a monthly basis, DMV renews and issues from 400,000 to 700,000 vehicles registrations. Of that amount, DMV receives back approximately, 1,200,000 transactions from customers conducting their transaction by mail. Therefore, the Division believes that it would be both more effective and efficient to move this process out to a lock box service. With the type of service the customer would mail their renewal to an off site operation where their renewal information would be captured. This is a process is that is currently be utilized by some county tax operations. This process would eliminate the need for the Division to purchase and maintain the expensive equipment required. The average cost of a lock box service is 16 cents per transaction.

Credit Cards
DMV conducts over 953,000 Internet renewals or 17% of the renewals processed annually. We would assume the same percentage would renew via the Internet for the integrated tax system following the implementation. Currently the Division does not accept Internet transactions for more than $50 due to sliding scale credit card fees, which cannot be absorbed in the Division's operating budget. This should be taken into consideration with the passage the H.B. 1779. The Division would need to recoup these associated costs in order to maintain Internet services. It is estimated that an average transaction would be $135 for tag renewals and tax assessment. It is also estimated that 1,530,000 transactions will be processed annually with credit cards. The credit card usage fee on these transactions would be $3.40 per transaction at an annual cost of **$5,171,400**. There is also a charge back cost associated with disputed charges, which we estimate at $25/dispute x 1,000 per year for a total annual cost of **$25,000**. (Note: there is no sure method of determining what percentage of transactions will be realized via credit cards business. Due to the varying size of the transactions and the potential transaction volumes, the Division could experience sizable cost increases in a short period of time for credit card usage fees for which the existing operating budget could not supplement. Consideration should be given to adequately address these unanticipated cost especially considering North Carolina citizens might increasingly choose the credit card payment method due to the

size of these transactions.) DMV currently experiences an annual increase in credit card transactions at a rate of 16%. This percentage is being used to anticipate annual growth in this process.

(The credit card concerns are being addressed by DOT Fiscal)

Electronic Funds Transfer (EFT)

There are over 250 on-line dealers using third party vendors. Currently, these dealers are submitting their funds through EFT within ten days. The contracts with the third party vendors are up for renewal with the Division. The Division must comply with the State Treasurer's cash management process, therefore, submitting funds with in two days. The third party vendors; CVR and TriVin, will need to comply with the new contract, which will follow the State Treasurer's policy. This might effect the willingness of some of the dealers currently participating in the program, therefore, more dealers may be going to the tag agents or DMV to conduct their business.

Fiscal Impact Detail

Personnel Requirements

Classification	PG	Min Rate	# to Employ	Total Salary	FICA	Retire	Health Ins	Payroll Additive	Total FY06/07	Total FY07/08	Total FY08-10
MV Field Supervisors	69	31,582	6	189,492	14,496	11,018	20,592	3392	238,990	250,940	263,486
Staff Development Specialist I	67	29,195	2	58,390	4,467	3,395	6,864	1,045	74,161	77,869	81,763
Administrative Assistant II	65	26,968	6	161,808	12,378	9,409	20,592	2,897	207,084	217,438	228,310
***Information Processing Tech**	63	25,036	37	926,332	70,865	53,867	126,984	16,581	1,194,629	1,577,230	1,656,092
Driver License Examiners	65	26,968	5	134,840	10,315	7,841	17,160	2,414	172,570	181,198	190,258
*Note: (10) additional Call Center personnel will be added FY08-09 (47 total IPT)											
Total Personnel Requirement(in FY08-09 it will become 66)			56						1,887,434	2,304,675	2,419,909

Operating Budget Requirements	Rate	# of Units			
Cell Phones (Field Supervisors)	840	6		5,040	5,040	5,040
Computers/Printers/Monitors	3,600	50		180,000	36,000	
Data Lines (Field Supervisors)	600	6		3,600	3,600	3,600
Desktop Calculators	59	56		3,304	590	
Fax Machines	277	8		2,216		
Laptops/Printers (Field Supervisors)	2,494	6		14,964		
Office Furniture/Cubicles	2,600	47		122,200	26,000	
*Office Space (64 sq. ft/person)	16/sq. ft.	47		48,128	58,368	58,368
Remittance Processor/maintenance	130,000	2		230,000	10,000	10,000
Telephones - Call centers	263	10			2,630	
Telephones	175	50		8,750		
Vehicles (Field Supervisors)	3,538/yr	6		21,228	21,228	21,228
Credit Card Usage Fee/Charge Back Fee	$3.40/trans $25/chg back			5,202,000	6,034,320	6,999,811
Total Operating				5,871, 130	6,141,976	7,098,047
Total Requirement				7,758,564	8,446,651	9,517,956

Recommendations for Methods of Valuation

1) A Uniform Schedule of Values

This recommended plan calls for the Property Tax Division to review the valuation services available and adopt the schedule that can be used to best comply with G.S. 105-330. When selecting a schedule of values, the division should consider all relevant factors. Some of these factors include but are not limited to:

1) The accuracy of the values and support for proving the accuracy.
2) How much the valuation service charges for providing the values.
3) Compatibility with the software created for the new system.
4) The completeness of the collective values (number of VINs matching a value.)
5) Other items or services provided with the list of values. (hardcopies, etc.)
6) Their level of support to our specific statutory requirements.

For example, valuation service A may have the lowest cost, but the list of values may only match 70 percent of the Vehicle Identification Numbers in North Carolina. In addition, the valuation service may not be flexible in the format they provide their values in. This would leave 30 percent of North Carolina's vehicles needing manual valuation. Valuation service B may guarantee a 95 percent match of VINs and devote a full time position to assist with valuation issues specific to North Carolina requirements. These and other factors should be carefully considered before a selection is made.

Based on related dates in HB 1779, the uniform schedule of values should be chosen and put into the system by September 1 of each year. This is because values are determined as of January 1 of the year that taxes are due. Taxes on December expirations are due January 15, and would therefore have the newest values. These vehicles will be sent a combined invitation to renew and a property tax notice around November 1, before expiration. Values should be in the new system by September 1, to begin processing the property tax information that will be printed before mailing November 1.

2) A plan for determining appraisal accuracy statewide

We suggest that a sales ratio study be performed each year to determine the accuracy of appraisals in North Carolina. Licensed dealers collect sales price data at the time of collecting the Highway Use Tax and this data is available from the Division of Motor Vehicles. The Property Tax Division should work with the provider of the valuation service, the Division of Motor Vehicles and a statistician to ensure the study is performed as accurately as possible.

It may also be possible to have the new integrated computer system incorporate the ability to perform the sales ratio study automatically. A separate ratio should be calculated for different classes of vehicles (heavy trucks, trailers, and motorcycles, SUVs).

3) A plan for taking into account local market conditions

The assessor would be required to submit to the Property Tax Division, for approval, their requested deviation from the uniform schedule along with evidence of why it is needed. For example, an assessor in a mountain county may believe that the uniform schedule has 4x4 vehicles appraised too low for their county and may be able to provide evidence that the values of 4x4 vehicles should be 5 percent higher in their jurisdiction. Upon approval by the Property Tax Division, the integrated computer system would allow the adjustments countywide. Information from the sales ratio study could be used to support the need to adjust values in a jurisdiction.

4) A plan for allowing adjustments for the mileage of individual vehicles

We recommend automatic mileage adjustments based on a mileage adjustment table adopted by the Property Tax Division and annual mileage information incorporated into the new system. The Property Tax Division should have the ability to adjust the mileage adjustment table in the new

integrated computer system. Annual mileage information is available in an emissions part of the current system and as of January 2006, 48 counties are a part of that emissions system. The new integrated computer system should use all mileage information available to arrive at the most accurate motor vehicle values.

Available mileage information can be used to estimate mileage as of the January 1 valuation date and make positive or negative adjustments to the uniform value.

If mileage information is not automatically available, any assessor or collecting authority should be able to enter information from the most recent inspection receipt of a vehicle and an automatic mileage adjustment and recalculation of property tax will occur.

Condition Standards

The Property Tax Division will study and adopt along with the uniform schedule of values, a set of categories as a condition grading system along with percentage adjustments. For example, these categories may be:

Excellent	plus 5 percent
Average	no adjustment
Below Average	minus 5 percent
Poor	minus 10 percent

The January 1 appraisal date may prove to be a factor that would make this adjustment inaccurate since some appeal deadlines are not close to the appraisal date. For example, a vehicle with a November 2009 expiration has a tax due date and appeal deadline of Dec. 15, 2009. However the valuation is to be as of Jan. 1, 2009, almost a year prior to the appeal deadline. It is difficult for a taxpayer to prove the condition of the vehicle as of the valuation date.

A possible solution is to have two or more appraisal dates, July 1 and January 1 for example.

Vehicle Descriptions needed for appraisal

The integrated computer system should have appraisal notes and fields tied to each VIN. This would allow the adjustments or notes of an assessor who inspected the vehicle to be reviewed by a different assessor if the vehicle is moved within North Carolina. This may also prevent multiple visits to the assessor for valuation adjustments.

In some situations, the VIN does not fully describe the characteristics of the vehicle. For example, a VIN for a trailer does not describe all of the characteristics needed to properly appraise the trailer. The lack of proper description is also a problem in the appraisal of recreational vehicles. We suggest that the Property Tax Division work with the Division of Motor Vehicles to develop a plan in the memorandum of understanding described in G.S. 105-330.2(c). This plan should result in the collection of the needed appraisal information at the time of title and/or registration of a trailer or RV.

Adjustment for Title Brand

The Property Tax Division can recommend standards for valuation adjustments due to branded titles, which should be made automatically, based on data from DMV. For example, the division might recommend that a branded title (salvaged, reconstructed, flood or fire damage) receive an automatic 25 percent reduction in value. This should be an adjustable function of the integrated computer system.

Recommendations for Integrated Computer System

After carefully reviewing the law and the time constraints, the STARS, BSIP and other applications will be enhanced to accommodate HB 1779. The requirements of this law will require complex modifications to the titling, registration, and fiscal components of these current titling and registration applications. Modifications will also be made to the Emissions application to allow the utilization of actual mileage in calculating property tax. In addition, changes will be made to the Return Check application to accommodate HB 1779. The project is scheduled to be initiated on Sept. 5, 2006, and to be implemented on July 1, 2009.

PROJECT IMPLEMENTATION COST

DOT-IT PRE-IMPLEMENTATION DEVELOPMENT COST - $20,372,300

POST IMPLEMENTATION	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14
DMV'S ANNUAL CREDIT CARD COST	5,202,000	6,034,320	6,999,811				
DMV'S PERSONNEL REQUIREMENT	1,887,434	2,304,675	2,419,909				
DMV'S OPERATING REQUIREMENTS	669,130	107,656	98,236				
DOT'S FISCAL OPERATING	130,050	30,425	32,000				
DOT'S FISCAL PERSONNEL REQUIREMENTS	562,338	576,396	590,888				
DOT-IT TOTAL TECHNICAL OPERATIONS COST			3,727,084	3,727,084	3,727,084	3,727,084	3,727,084
TOTAL	8,450,952	9,053,472	13,867,928	3,727,084	3,727,084	3,727,084	3,727,084

REVENUE	FY 06-07	FY 07-08	FY 08-09	FY 09-10
TOTAL BASED ON 60% INTEREST OF UNPAID TAXES	2,100,000	1,633,333	1,633,333	1,633,333
COMPENSATION PAID FOR RENEWALS AT .48 PER TRANSACTION			YEAR 2009	YEAR 2010
*CHL.STD.TRANSACTION			29,895	30,493
*RAL. STD. TRANSACTION			32,669	33,310
*MAILED IN TRANSACTION			623,481	635,950
TOTAL			686,045	699,753

*BASED ON 2% ANNUAL INCREASE EACH YEAR

Corporate Income Tax: *Computing Taxable Income*

Cindy Avrette, Research Division
Revenue Laws Study Committee
September 5, 2006

How Should State Compute Corporate Taxable Income?

- "The authority of the Secretary of Revenue to require taxpayers to file consolidated returns. The study of this issue may include consideration of whether the State should require some corporations or all corporations to file a consolidated return."
- Review of Recent Corporate Income Tax Policy Decisions
- Overview of State Filing Options
- Look at Filing Requirement in NC
- How Should NC Compute C Taxable Income?

What is Happening?

- Corporate Income Tax as Percentage of GF Revenues
- State Policy Decisions
  - Tax credits
  - Adoption of federal taxable income
- Structural Weaknesses in State Corporate Tax Systems – State Filing Options



NC Policy Decisions

- Tax Incentives for New & Expanding Businesses
  - Set income, health insurance, and environmental standards
  - Cap credit
  - Forfeiture provisions
  - Credits sunset
  - Annual reports
- Federal Taxable Income
  - Annually review

Corporate Tax 'Loopholes'



- Product of structural weaknesses in state corporate income tax statutes – Separate Entity Returns
- Corporations with subsidiaries in multiple states can devise ways to shift income from high effective tax rate state to a low effective tax rate state

NC and Corporate Tax "Loopholes"

- Definition of business income
  - 2002 enacted broad definition
  - 'All income that is apportionable under the United States Constitution'
- 'Nowhere income'
  - 2005 considered 'throwout' legislation
- Income shifting through Passive Investment Company (PIC)
  - 2001 enacted royalty income reporting option
  - 'Tweaked' legislation several times
  - 2006 expanded reporting option to include other intangible assets

Shortcomings of Anti-PIC Laws

- Anti-PIC legislation addresses only one mechanism by which a corporation may seek to minimize its tax liability through income shifting
- Corporations have legitimate reasons other than tax avoidance for creating PICs
- Difficult to draft legislation that distinguishes a legitimate from a tax-motivated payment

Corporate Tax 'Loopholes'



- Multi-state corporations can devise ways to shift income
- Product of how state computes corporate taxable income – Based upon a state's filing method
- **SEPARATE ENTITY RETURNS**

Calculation of Corporate Income Tax

- Determine amount of profits subject to apportionment
  - Federal taxable income + State modifications
  - State filing options
- Apply NC apportionment formula to determine NC taxable income
  - Three factors – Sales, Property, Payroll
  - Double-weighted sales
- Multiply NC taxable income by tax rate and subtract applicable tax credits

Calculation of Profits...

- **Determine amount of profits subject to apportionment**
  - **Federal taxable income + State modifications**
  - **State filing options**
- Apply NC apportionment formula to determine NC taxable income
  - Three factors
  - Double weighted sales
- Multiply NC taxable income by tax rate and subtract applicable tax credits

State Filing Options

- Five Broad Categories
  - Mandatory separate entity returns
  - Elective consolidated returns
  - Mandatory combined unitary reporting
  - Discretionary combined unitary reporting
  - A hybrid system
- Lack of Uniformity among States
- *MTC: Model Statute approved that would require combined reporting for corporations engaged in a unitary business (June 21, 2005)*

State Filing Options – Separate Entity Returns

- Corporation with nexus determines its income based on stand-alone operations of its business
- Multi-state corporations – Apply apportionment formula
- Creates an opportunity to create legal structures and intercompany transactions that shift income
- 5 states require separate entity returns with no exceptions

State Filing Options – Consolidated Returns

- Affiliated corporations must file consolidated financial statements under GAAP
- Affiliated corporations may file consolidated federal return
- Parent and subsidiary structure in which all affiliates are at least 80% owned by another group member
- About 30 states permit consolidated returns

State Filing Options – Combined Reporting

- Based on unitary group
- A unitary group is two or more commonly controlled corporations that are engaged in the same trade or business
- Members of a unitary group determine their state taxable income by apportioning the group's combined business income to the taxing state on the basis of combined apportionment factors
- About 15 states require combined reporting

North Carolina – Hybrid Filing

- Separate Return
  - G.S. 105-130.14
  - Cannot file a consolidated return unless specifically directed to do so by Secretary
  - Must determine State net income as if a separate return had been filed for federal purposes

North Carolina – Hybrid Filing

- Secretary may require 'consolidated return'
  - G.S. 105-130.6
  - Net income of a corporation that is a parent, subsidiary, or affiliate of another is to be determined by eliminating all payments and charges in excess of fair compensation
    G.S. 105-130.5(a)(9) and G.S.105-130.5(b)(2)
  - If separate company returns do not 'disclose the true earnings' of the corporation as a result of the use of intercompany transfer prices 'in excess of fair compensation'

North Carolina: Hybrid Filing

- Debate over Secretary's authority to require consolidated return
  - Scope of authority, procedure, and penalties
  - Issue currently under litigation in Wal-Mart case
- Secretary may require different method of calculating income to more clearly reflect true income
  - G.S. 105-130.15
  - G.S. 105-130.16
  - Neither statute mentions 'consolidated return'

Is there a Comprehensive Solution?

- **Combined Reporting**
  - Comprehensive way to nullify income shifting strategies
  - Single most important state corporate tax reform measure
  - Means to modernize state tax codes to adapt to the growth in multi-state corporations

- *State Corporate Income Taxes2001-2003, February 2005*
  Joint Project of Citizens for Tax Justice & the Institute on Taxation and Economic Policy

Combined Reporting

- **WHAT IS IT?**
  It is a method of calculating the income of a group of related corporations for tax purposes
- **HOW?**
  It looks beyond the legal structure of separate incorporations to determine whether two or more related corporations are engaged in a **single unitary business**
- **WHY?**
  To ensure the income of a multi-state corporation is computed and apportioned in the same manner as a single corporate business

Issues re: Combined Reporting

- Optional or mandatory
- Definition of 'unitary business'
- Type of combined reporting
  - Worldwide
  - Water's edge
  - Domestic
- Which affiliates to include
- Administrative and compliance costs
- Transitional issues
- Fiscal impact

How Should NC Compute Corporate Taxable Income?

- Make current statutes clearer
- Require consolidated return if corporations file federal consolidated return
- Require combined reporting



Department of Revenue Presentation to the Revenue Laws Study Committee

Combinations

September 5, 2006

The Problem

- North Carolina is a separate entity state
- Susceptible to Income-Shifting and Other Tax Avoidance Strategies
- These strategies can shift the tax burden to taxpayers operating solely in NC or without the resources or desire to engage in these strategies.

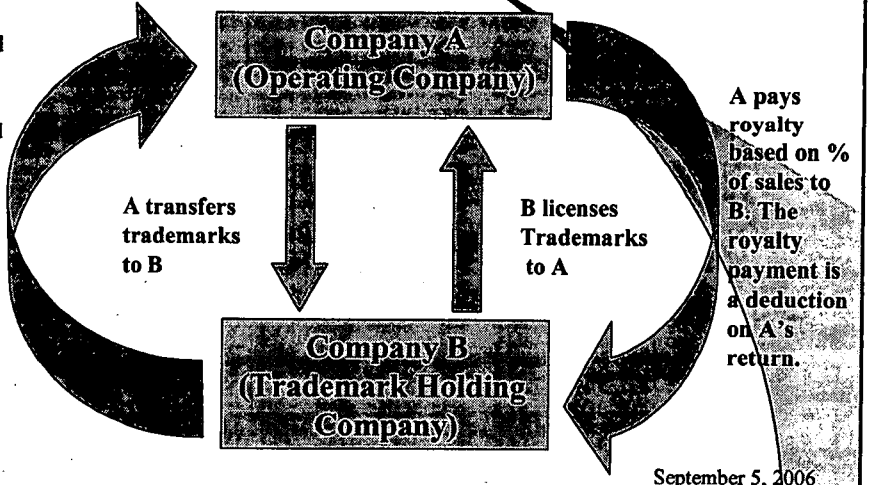
September 5, 2006

Examples of Taxpayer Strategies

- Trademark Holding Companies - 1
- Trademark Holding Companies – 2
- Investment Companies

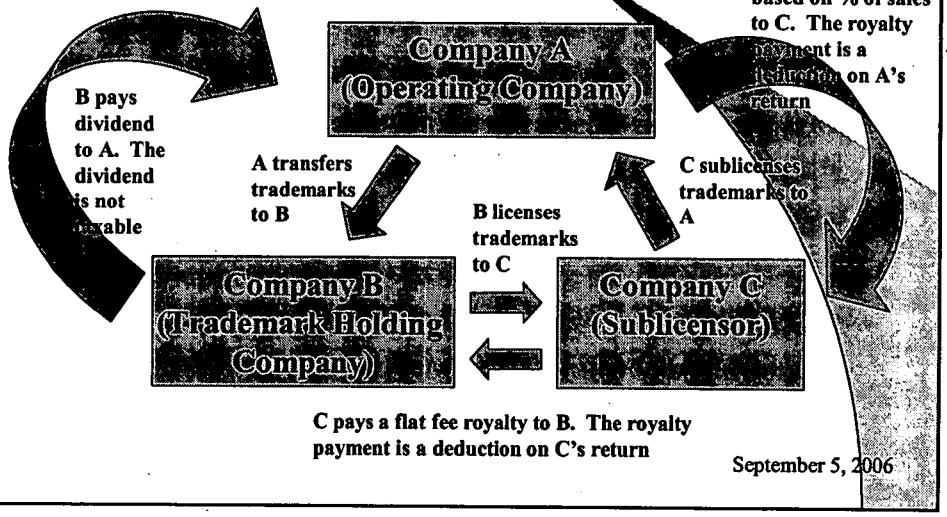
September 5, 2006

Example: Trademark Holding Company - 1



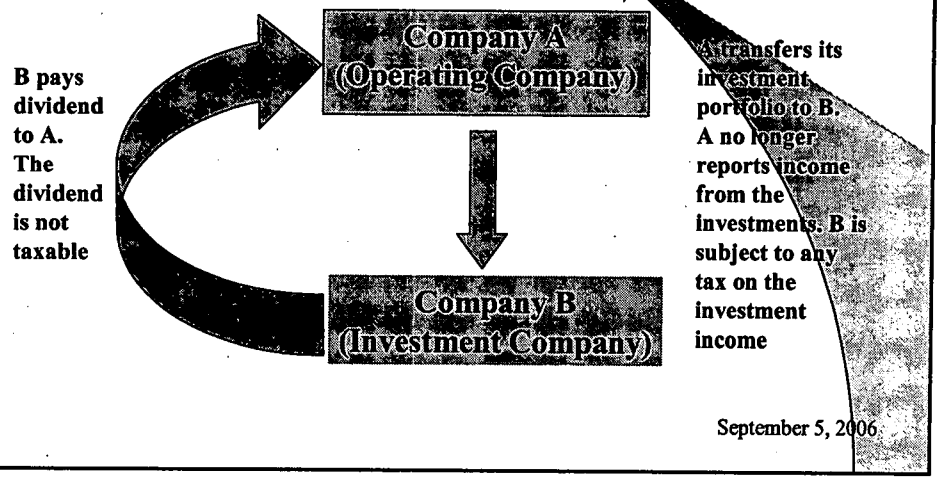
September 5, 2006

Example: Trademark Holding Company - 2



September 5, 2006

Example: Investment Company



September 5, 2006

Tools Available to the Department

- **Eliminating Charges in Excess of Fair Compensation**
- **Change in Accounting Method if Method Used Does Not Clearly Reflect Income**
- **Redeterminations for Improper Business Conduct**

Tools Available to the Department

Eliminating Transactions that Cause True Net Income or Net Income Properly Attributable to the State to Not be Reported. Examples of Such Transactions Include:

- **Arbitrary Shifting of Income**
- **Price Fixing**
- **Charges for Services**

Tools Available to the Department

- **Forced Combinations to Determine True Earnings**
  - **Net Incomes Combined on a Pre-Apportionment Basis**
  - **Intercompany Transactions Eliminated**
  - **One Combined Apportionment Factor**
  - **Does Not Have to Include all Members of the Group**

The Department has Used Forced Combinations for Years

- Hearing decision in 1990 related to combination assessment for tax years 1983 and 1984
- Two hearing decisions in 1997 that affirmed combination assessments for tax years 1987 – 1990 and 1989 – 1990
- A & F decision in 2000 affirmed combination as a proper alternative to requiring the separate companies to file income tax returns. Affirmed by both the Tax Review Board and Wake County Superior Court.
- Over $220 million paid from forced combinations

What Factors does the Department Look at to Determine if Corporate Group Should be Combined?

- Has there been a transfer of assets between related companies?
- Did the operations surrounding the use of the assets change; who controls the business decisions regarding those assets?
- What were the state tax consequences of the transfer; were deductions created or income moved to another entity?

September 5, 2006

What Factors does the Department Look at to Determine if Corporate Group Should be Combined?

- What was the impact of the transfer on the corporations profits excluding taxes?

What were the federal tax consequences of the transfer?

September 5, 2006

Whether true net income has been reported is a question of fact and requires careful analysis by the Department. We are always willing to consider a ruling request from a taxpayer before it enters into such a transaction.

- Rulings may be requested under G.S. 105-264
- Protection to the taxpayer, who can rely on the ruling, including being protected from assessment of additional tax or penalty, until the Department changes the ruling.
- Taxpayer has to provide adequate and accurate information and fully disclose all of the facts.
- If the transaction presented carries a high degree of risk, we may delay issuing a ruling until an audit can be completed.

September 5, 2006

Alternative Solution

Mandatory Combined Reporting

Previously advocated by the Governor's Commission to Modernize State Finances

September 5, 2006

"A state that does not require related corporations conducting a unitary business to file a combined report is at the mercy of its corporate taxpayers"

Richard Pomp, Loiselle Professor of Law, University of Connecticut

September 5, 2006

"Failure to require unitary combination is an open invitation to tax avoidance."

Charles McLure, Senior Fellow, Hoover Institution; Deputy Assistant Secretary of the Treasury during the Reagan Administration

September 5, 2006

"Combined reporting has been a success in every state that has adopted it."

Michael McIntyre, Professor of Law,
Wayne State University

September 5, 2006

Mandatory Combined Reporting

- Currently 17 states require combined reporting
- Vermont was the most recent to adopt; effective for tax years beginning on or after January 1, 2006
- In August, the MTC adopted a model uniform statute for combined reporting

September 5, 2006

States That Require Consolidated/Combined Returns

Alaska	Illinois	New Hampshire
Arizona	Kentucky	North Dakota
California	Maine	Oregon
Colorado	Minnesota	Utah
Hawaii	Montana	Vermont
Idaho	Nebraska	

"Vermont's separate accounting system is inadequate to measure accurately the income of a corporation with non-Vermont affiliates and creates tax disadvantages for Vermont corporations which compete with multistate and multinational corporations doing business in Vermont."

Vermont Legislature

Many Variations of Combined Reporting

- Start with federal consolidated return (with or without including corporations domiciled in tax-haven countries)
- Worldwide combination
- Water's Edge (with or without tax-haven countries)
- Unitary business
- Nexus (each corporation has to be doing business in NC)

September 5, 2006

Recommendation – Adopt a unitary, pre-apportionment, combination

September 5, 2006

Advantages to the State

- Eliminates intercompany transactions, making ineffective most state-only tax strategies that have been employed by taxpayers
- Restores equity to the corporate tax system

September 5, 2006

Advantages to Taxpayers

- Provides certainty to taxpayers as to how their tax strategies will be responded to by the State
- Some taxpayers would have lower tax liabilities
- Could lead to a tax rate reduction
- Depending on whether combination was extended to franchise tax, could lead to fewer returns having to be filed.

September 5, 2006

Summary of Remarks to the North Carolina Revenue Laws Study Committee

By

Michael A. Hannah, CPA
Director, State & Local Tax Group
PricewaterhouseCoopers, LLP
Raleigh, North Carolina

Re:

Issues Involving the Enforcement of North Carolina's Forced Combination And Corporate Income Adjustment Powers Under General Statutes 105-130.6, 105-130.15. & 105-130.16

September 5, 2006

Introduction - Mike Hannah served as Assistant Secretary for Legal Services and the Hearings Officer at the NCDOR for nearly 8 years. He is currently employed by PricewaterhouseCoopers, LLP, where he assists corporate clients with NC and SC tax issues. It is hoped his varied work experience can provide some useful insight into the issues involved with enforcement of NC's forced combination and income distortion statutes.

1. The General Assembly has determined that NC is a "separate entity state" for purposes of corporate taxation. Corporations are usually taxed only on their NC operations, even if they also conduct business in other states. In fact, corporations are specifically precluded from filing tax returns that consolidate their NC and out of state operations without permission of the Secretary of Revenue, even if they do so for Federal purposes.

2. Three statutes were originally enacted in the 1930's to prevent corporations from artificially manipulating NC taxable income through the use of excessive payments to related out of state companies; the statutes have changed very little since enactment, while corporations have had to significantly change how they must be structured and conduct business to stay competitive in the evolving global economy.

3. In summary, the statutes permit the Secretary of Revenue to:

    1) eliminate intercompany transactions in excess of fair market value;
    2) combine the net incomes of in state and related out of state companies if he determines that NC taxable income is not being fairly reported because of improper transactions between related entities;
    3) recompute NC taxable income using any "reasonable methods of computation" to determine the "proper" state net income.

4. The Secretary of Revenue should have some reasonable powers to prevent the improper reduction of a corporation's NC taxable income through unnecessary or artificial intercompany transactions.

5. However, the Secretary has almost unlimited power to force combined returns and make income adjustments. Also, G.S. 105-130.6 requires that the final determination of NC taxable income "shall not be set aside unless shown to be plainly wrong." This nearly insurmountable standard of proof does not appear in any other NC tax statute and almost forces companies to file suit for relief, adding to taxpayer confusion and negatively impacting the state's business climate.

6. Modern corporations regularly utilize transactions between related special purpose entities for various and legitimate reasons such as inventory control, finance, management, protecting assets, etc., and to obtain economies of scale.

7. There has been a significant increase in the focus of NCDOR auditors on intercompany transactions and resulting assessments based on forced combination over the last three years, a factor highlighted by the Voluntary Compliance Program in 2005 and the Settlement Initiative in 2006.

8. I have the highest respect for my friend, Norris Tolson, his hard work and dedication to the NCDOR. I trust him to do what he believes is proper under the law. But, the NCDOR has declined to issue written interpretative guidelines, which makes following the law more difficult for taxpayers.

9. The forced combination/income distortion statutes are extremely broad, and there is no case law or written guidelines for applying them. The result is that corporations cannot determine whether their intercompany transactions are improper until they have already been assessed tax, penalties and interest after an audit. This is not equitable.

10. **At the very least consideration should be given to:**
    1) a reasonable limitation on the forced combination and income adjustment powers so that they apply only to improper, abusive or sham intercompany transactions,
    2) requiring written guidelines for applying the statutes,
    3) a more reasonable standard of proof that is similar to that used in other NC tax statutes,
    4) specific clarification of how the statutes are to be interpreted and operate mechanically, and
    5) restricting the use of penalties in such cases.

North Carolina's Next State and Local Tax Frontier

Forced Combination

MICHAEL A. HANNAH

THE AUDIT ENVIRONMENT FOR RELATED-COMPANY TRANSACTIONS IN NORTH CAROLINA HAS CHANGED SIGNIFICANTLY; INTERCOMPANY TRANSACTIONS PREVIOUSLY AUDITED WITHOUT ADJUSTMENT AND ASSUMED TO BE ACCEPTABLE, SUDDENLY MAY BE VIEWED BY THE DOR AS IMPROPER.

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Michael is a Director with the Multistate Tax Services Group in the Raleigh, North Carolina office of PricewaterhouseCoopers. He has over 30 years of varied experience in public accounting, private industry, the practice of law and state government, and served as Assistant Secretary of Revenue with the North Carolina Department of Revenue under former Governor James Hunt. In his capacity as hearings officer at the NCDOR, he conducted administrative tax hearings and heard taxpayer appeals for North Carolina corporate income & franchise, sales & use, motor fuels, individual income and unauthorized substance taxes for nearly 8 years.

He is a licensed attorney and CPA in both North Carolina and West Virginia and has current, detailed knowledge of the policies and procedures of the NCDOR. His practice focuses on audit defense, litigation support and government relations for Fortune 500 and other national clients in various industries including retail, manufacturing, utilities, high tech, sports teams and telecommunications. He has assisted numerous clients with tax controversies in both North Carolina and South Carolina and has provided technical tax advice to various lobbyists, legislators and industry groups.

Michael has spoken nationally on multistate tax issues and has published several articles in the *Journal of Multistate Taxation and Incentives*, *COST Practitioner Connection*, and *State Tax Notes*. He is a member of the NCACPA Tax Committee, the NCCBI Tax & Fiscal Policy Committee and the Tax Section of the NC Bar Association. He also served on N.C. Governor Michael Easley's "Commission to Modernize State Finances" and currently serves on NC State University's Institute for Emerging Issues "Financing the Future" working group.

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Corporate Franchise and Income Taxes

Forced Combination—North Carolina's Next State and Local Tax Frontier

The audit environment for related-company transactions in North Carolina has changed significantly; intercompany transactions previously audited without adjustment and assumed to be acceptable, suddenly may be viewed by the DOR as improper.

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The dearth of case law, regulations, and interpretative analyses pertaining to the North Carolina statutes that, under some circumstances, require the filing of combined returns by related entities is partially a result of the comparatively low incidence of audit activity prior to 2003 involving the issue of intercompany transactions. Only three Secretary of Revenue Final Decisions issued since 1993 discuss forced combinations, usually as a collateral issue. [1] Moreover, only one of those decisions has been reviewed by the North Carolina Court of Appeals, which did not address the issue of forced combination. [2]

During the 1990s, the issue of related-company transactions was not often the subject of audits in North Carolina. When the matter was raised, it usually was resolved at an informal conference with North Carolina Department of Revenue (NCDOR) senior management, alleviating the need for a formal administrative tax hearing under N.C. Gen. Stat. §105-241.1. As a consequence, regrettably, little guidance exists regarding the NCDOR's interpretation of the three applicable statutes pertaining to income distortion, an understandable source of concern for both taxpayers and tax practitioners. [3]

The audit environment for related-company transactions in North Carolina has changed significantly during the last four years. The NCDOR's Voluntary Compliance Program (VCP), announced with great flourish and fanfare in December 2004, heralded a sea change for state audit policy, with an increased focus on intercompany transactions of all kinds. Reportedly spawned by the NCDOR's victory in the trademark licensing case, *A&F Trademark, Inc. v. Tolson,* [4] the VCP's initial proclamation contained a somewhat surprising list of other purported "income shifting" transactions to be scrutinized, including those involving related procurement, finance, factoring, and management

companies; REITs; and IRS "listed transactions." [5] This new audit focus has left some taxpayers dazed and confounded, as intercompany transactions previously audited without adjustment and assumed to be acceptable, suddenly may be viewed by the NCDOR as improper.

The strategy behind the VCP was simple: use the "stick" of future audits, balanced with the "carrot" of penalty waivers, to induce companies to voluntarily report "income shifting strategies" as part of a managed audit. [6] Many taxpayers were taken aback, however, by the more expansive categories of transactions subject to scrutiny, as well as the comparatively brief time period available to comply with the VCP's terms. The timing problem was further complicated by the concurrence of the program with calendar year-end closings. Companies scrambled to evaluate whether their intercompany transactions met the very broad targeting standard announced by NCDOR: improper shifting of income outside of North Carolina.

Deciding whether to participate in the VCP (which was in effect through 2/28/05) was made more problematic by the absence of any published guidelines for determining what constituted improper income shifting. Taxpayer requests for advance rulings on the propriety of their intercompany transactions were rebuffed by NCDOR. This was likely a function of the short time span permitted for enrollment, the number of potential participants, and the myriad fact patterns at issue, all of which made timely advance rulings by NCDOR particularly difficult. In unofficial discussions with Department representatives regarding the matter, some taxpayers were presented with the classic analysis: "we will know it when we see it."

Ultimately, with the threat of potential penalties of up to 60% of the tax liability, those companies that desired to play it safe and participate in the VCP remitted nearly $257 million to the state's coffers. The absence of published program guidelines and the existence of time constraints prevented some taxpayers from making a carefully analyzed decision—a factor that undoubtedly enhanced participation in the program. Interestingly, the financial windfall did not go unrewarded by North Carolina's cash-hungry General Assembly, as it sought yet again to cover a severe structural budget deficit that has continued since 2001. During 2005 budget negotiations, grateful legislators, in an unsolicited and uncharacteristic move, provided the NCDOR with 60 additional employees in a surprising contravention of Governor Easley's original budget recommendations. [7]

The good intentions and financial success of the VCP cannot be denied. The business climate reputation of the state, however, may suffer slightly from the manner in which the program was implemented. With a considerable number of companies unquestionably planning to contest the NCDOR's apparent position that nearly all related-entity transactions may be income-shifting ploys, the stage is set for yet another round of legal posturing over one more controversial tax issue.

As with the question of licensing intangibles in North Carolina, the increased NCDOR audit focus on other, even more commonplace related-company transactions, will undoubtedly generate considerable consternation among corporate taxpayers. Thus, the "cacophony of controversy" continues for tax practitioners and their clients in North Carolina. [8] The following discussion looks at some of the current NCDOR audit policies and major issues facing North Carolina corporate taxpayers that engage in related-company transactions.

Background

Intercompany transactions among related entities have been the subject of state tax planning for many years, as evidenced by the evolution of various state anti-distortion

statutes. Nevertheless, the corporate structures of many companies were often redesigned as part of new business plans seeking economies of scale and other advantages, not to save state income taxes. With corporations facing ever-increasing market competition, escalating operating costs and growing expectations from shareholders, management was often forced to expand and integrate core businesses both vertically and horizontally in order to increase profits and grow share value. Prior to such reorganizations, the operations of many large companies were often concentrated in one operating entity, with various semi-autonomous divisions functioning throughout the country, thereby contributing to inefficiencies and lower profitability.

Newly implemented corporate structural changes segregated operations into more specialized entities to permit additional focus on individual functions, such as administration, finance, operations, and sales. The restructuring plans were integral parts of legitimate, substantive business reorganizations, the purpose of which was to boost profitability by positioning the companies for future revenue growth through increased sales and the acquisition of other companies. A reduction of state income taxes may or may not have been a significant factor in the final business decision to implement the reorganization. Obviously, such a result, even if merely collateral, would have been welcomed.

In many of these corporate restructurings, one major business advantage was achieved by the creation of a centralized procurement company. The effectiveness of centralized procurement is well established and the method is commonly used by many successful national retailers and other industries. A separate procurement entity permits the company to obtain significant pricing and other advantages through economies of scale resulting from centralization of purchasing functions. These benefits are not available if each individual and geographically diverse operating entity is required to maintain its own separate inventory acquisition system.

North Carolina and other states are now more closely scrutinizing procurement and other related-company transactions. This heightened awareness may result from an unfounded presumption that such arrangements are oftentimes part of an elaborate, bogus accounting mechanism designed solely to artificially shift income between related entities and to lower state income taxes. The increased attention has brought about a marked increase in audits in North Carolina that require forced combination of procurement, finance, and management companies with their related operating entities. Unfortunately, nearly all types of intercompany transactions are now viewed with considerable skepticism by the NCDOR.

North Carolina's Statutory Scheme

North Carolina is a "separate entity" state for purposes of filing corporate income tax returns. [9] Corporations that file a consolidated return for federal purposes are specifically precluded by state statute from filing a consolidated return in North Carolina "unless specifically directed to do so in writing by the Secretary [of Revenue]." [10] Further, a corporation filing a North Carolina return "shall determine its State net income as if a separate return had been filed for federal purposes." [11] Therefore, it seems that the NCDOR should, under most circumstances, be required to recognize the separateness of individual, related corporate entities. Indeed, the NCDOR has historically given at least tacit approval to the use of specialized related entities by requiring combined returns only infrequently.

Many recent NCDOR audits, however, have shown a marked propensity to require a combined return when related-company transactions occur. Even participants in the VCP

have been surprised by the ferocity with which NCDOR has assailed such corporate structures. Related-company transactions are apparently viewed negatively from the inception of an audit, with a substantial burden on the taxpayer to justify them. Some taxpayers have been required to combine related entities that have economic substance, conduct independent operations, maintain separate accounting records, and have no property, operations, employees, or agents in North Carolina.

This "one net catches all" audit approach is made more troubling by that fact that it may have been triggered, at least partially, by NCDOR's experience with, and the negative media attention focused on, various other aggressive state tax planning strategies. Modest cynicism about state tax planning is certainly understandable in view of some of the corporate accounting shenanigans of the "Roaring 1990s." Still, the NCDOR should also recognize that a state tax planner is not hiding behind every related-company transaction.

North Carolina's statutory scheme requires that the NCDOR respect the separate-entity status of related companies except in specific circumstances. The statutes requiring (1) an add-back of excessive intercompany payments, (2) a forced combination of related entities, or (3) a recomputation of a taxpayer's state net income were enacted during the 1930s, with relatively few substantive amendments since then. [12] The NCDOR's interpretation of these statutes, not surprisingly, gives the Secretary almost unfettered discretion to make the various determinations permitted under them.

The problems inherent in applying "New Deal" era tax statutes to "New Age" corporate structures are readily apparent. Over the years, some practitioners have quietly discussed the need for review and clarification of the forced combination and income distortion statutes. Nevertheless, even official calls from Governor Easley's "Commission to Modernize State Finances" in December 2002 to clarify and strengthen the statutes remain unheeded. [13] The need for some reasonable state power to prevent abusive intercompany transactions is obvious, but there must be some reasonable mechanism in place to distinguish between acceptable and abusive transactions. Whether North Carolina's current statutory scheme can withstand the inevitable legal challenges to the seemingly boundless power of the Secretary to force combinations and recompute state taxable income is questionable.

N.C. Gen. Stat. §105-130.6 is one of three statutes available to the NCDOR that authorize review of related-company transactions. This statute permits the Department to require any corporation to file a "consolidated" tax return with all of its subsidiaries and affiliates if the Secretary finds that the return filed "does not disclose the true earnings of the corporation on its business carried on in this State." The statute goes on to require that the *combined net income* of all the corporations "be apportioned to this State by use of the applicable apportionment formula required ... under G.S. 105-130.4." The apportionment formula used must include the property, payroll, and sales of all corporations involved in the combination. Moreover, an entity may be combined "regardless of whether the parent or controlling corporation or interests or its subsidiaries or affiliates, other than the taxpayer, are or are not doing business in this State."

Consolidated or Combined Returns?

Although the statute uses the term "consolidated return," the NCDOR may anticipate the potential complications of nexus issues that could result from that terminology. One commentator, in a 1994 article, provided a possible hint that the NCDOR may contend that the wording of the statute contemplates a "combined return," not a true consolidation. [14] The reason cited is that the last sentence in the first paragraph of the

statute (quoted, in part, above, regarding whether the companies "are or are not doing business in this State") is inconsistent with the filing of a true consolidated return. This position is further supported by the statute's reference to "combined net income," as well as other language in the statute. [15] This interpretation has not been tested in any North Carolina court, however, and may be difficult to support given the unmistakable choice by the General Assembly to use the term "consolidated."

A taxpayer that disagrees with the NCDOR's recomputation of its state net income can provide some input into the process, by filing, "within 30 days after notice of such determination, a statement of its objections and of an alternative method of determination," and "[t]he Secretary must consider the statement in determining the income earned in this State." [16] Any real benefits of this relief may be illusory, however, as the last sentence of N.C. Gen. Stat. §105-130.6 goes on to read: "The findings and conclusions of the Secretary shall be presumed to be correct and shall not be set aside unless shown to be plainly wrong." Such a standard is tantamount to "guilty until proven innocent," and is nearly insurmountable, thereby giving taxpayers considerable difficulty in contesting and litigating assessments based on §105-130.6.

Intercompany eliminations. In its very first sentence, N.C. Gen. Stat. §105-130.6 mandates that the net income of a corporation doing business in North Carolina that is affiliated with another corporation "shall be determined" by eliminating all intercompany payments or charges "in excess of fair compensation." This requirement is supplemented by yet another statute that, in determining state net income, calls for the add-back to federal taxable income of intercompany payments or charges that are "in excess of fair compensation." [17]

The use of the word "shall" in §105-130.6 indicates that the intercompany elimination is a requirement, not an option. That statute goes on to read, in the second sentence, that if the Secretary determines that "a report by a corporation does not disclose its true earnings ..., the Secretary *may* require ... a consolidated return of the entire operations" of the corporate group. (Emphasis added.) Because the elimination of intercompany payments in excess of fair market value is required, while the forced combination of the taxpayer's related entities is merely optional, some commentators make the argument that the rules of statutory construction require the elimination of excessive intercompany payments as a prerequisite to a forced combination by the Secretary. The argument continues that once any excessive payments are eliminated, the Secretary no longer has the ability to force a combination.

While academically enticing, the efficacy of this argument may be suspect, as the first two sentences in the statute arguably contemplate two separate powers for the Secretary. An interpretation of N.C. Gen. Stat. §105-130.6 that permits the Secretary to force a combination of a taxpayer's affiliates only after eliminating intercompany transactions that are in excess of fair market value could arguably render the second sentence nearly meaningless. Once excessive amounts are eliminated from intercompany transactions, it seems logical that a distortion of income may no longer exist. If the elimination of excessive intercompany payments is a prerequisite to forced combination, and if forced combination were not a separate power granted to the Secretary, only the first sentence of the statute would be required.

An extremely important issue not addressed in N.C. Gen. Stat. §106-130.6 is the standard for determining whether sufficient distortion of income exists to require a combination. An argument can be made that if the intercompany transactions are not in excess of fair compensation, the NCDOR may not require a forced consolidation because the "the true earnings of the corporation on its business carried on in this State" has

been properly reported on the separate return as required by the statute. If the intercompany payments to the related entity are not in excess of fair compensation because they are within the range of rates that would have been paid to a third party for these services, the payments seemingly could not be distortive.

This is a very important but deceivingly subtle aspect of the issue. If the NCDOR determines that state net income can be distorted even if intercompany transactions are at fair market rates, North Carolina may have crossed the threshold from a single-entity state to a unitary combined one. Such an interpretation is contrary to both the wording of the statutes and the words of the North Carolina Supreme Court. If the accounting records clearly show that the net income "reasonably attributable to ... business done or performed within the borders of ... North Carolina" for an entity was reported on the entity's North Carolina corporate tax return, then a forced combination is improper. [18] This is the amount of net income that North Carolina can lawfully tax.

The Secretary's powers under N.C. Gen. Stat. §105-130.6 extend beyond forced combination. If the "consolidated return" required by the statute does not result in the "amount of income earned in this State, the Secretary may readjust the determination by reasonable methods of computation...." The extent of this additional and extremely broad authority is made all the more nebulous by the absence of guidelines for its application.

Authority to Adjust Returns Generally

N.C. Gen. Stat. §105-130.16 is conceptually related to §105-130.6, but also provides the Department with additional authority to determine "the proper computation of the [taxpayer's] entire net income." [19] Here again, the absence of guidelines for computing the "proper" state net income is particularly problematic for taxpayers because of the tremendous discretion afforded to the Secretary of Revenue to make that determination. The emphasis in this statute, as in N.C. Gen. Stat. §105-130.6, is on a computation of "true net income," but the Secretary's remedy is not limited to a forced combination. Rather, the focus is on the prevention of both a "distortion" of income and the "arbitrary shifting of income," by providing for a "proper computation" of state income using, evidently, any means whatsoever.

Although the term "distort" is used in N.C. Gen. Stat. §105-130.16, no statutory definition is provided. In the absence of such a definition, the term should be given its ordinary meaning. [20] The dictionary defines "distort" as to "misinterpret, misrepresent, or misstate." [21] Thus, a determination that a corporate taxpayer has "distorted" state income through intercompany transactions should require a finding that the income has been misrepresented or misstated in some manner as a result of those transactions.

The NCDOR is not likely concerned with a misstatement of North Carolina income that is too high, and thus the focus will be on an understatement of income. One may query, however, whether the NCDOR would have the authority to use this statute to decrease state taxable income if it could be shown to be too high for some reason, and also whether it would be inclined to do so. The analysis of income distortion should be quantitative, not qualitative, and should require a detailed inquiry by the NCDOR to establish whether, how, and by how much, the state income has been understated by the intercompany transactions.

It is most unfortunate that the statute does not provide a standard for the NCDOR to determine when a taxpayer's net income is sufficiently understated to be deemed distorted. The absence of a standard in the applicable statutes, regulations, or other interpretative pronouncements of the NCDOR could result in inconsistent, confusing, or

even arbitrary application in practice. For instance, is a one-dollar understatement of North Carolina taxable income sufficient to create distortion, or is the appropriate figure $1 million or $10 million? Furthermore, because both N.C. Gen. Stat. §§105-130.6 and 105-130.16 provide for such highly discretionary determinations, the imposition of penalties under either statute seems totally inappropriate.

The language in N.C. Gen. Stat. §105-130.16(b) that reads "in determining [net income], the Secretary must have regard to the fair profit that would normally arise from the conduct of the trade or business," may provide some guidance for establishing when state income is distorted. Because North Carolina is a "separate entity" state, the "fair profit that would normally arise from the conduct of the trade or business" should logically refer to the trade or business being conducted by operations within the state. The "fair profit," therefore, should be the same profit amount that would be earned by unrelated entities paying "arm's-length" prices for goods and services in the open market.

It is unclear whether the NCDOR undertakes a detailed quantitative analysis of the intercompany transactions between related entities in all audits to establish how the transactions cause a distortion of the true North Carolina net income. Any failure to do so, however, may be a result of both the absence of clear guidelines for determining income distortion and the lack of precedence due to the historically low number of audits involving the issue.

In at least one recent assessment based on a forced combination with a related procurement company, the NCDOR's analysis was only qualitative. In the audit report, the NCDOR's analysis relied solely on a generalization that there were "several intercompany transactions among the members of the affiliated group" to draw an unsubstantiated conclusion that "income derived in this State [was] shifted to other jurisdictions," without showing any empirical evidence of the amount of income shifted. [22] The NCDOR's reliance on such an uncorroborated conclusion of income-shifting is particularly challenging for the taxpayer because it effectively denies the taxpayer a meaningful opportunity to refute the contention.

The absence of clear factual findings in assessments can create a nearly untenable situation for taxpayers, made more difficult by the nearly insuperable standard of proof required by N.C. Gen. Stat. §105-130.6. This situation seems to go well beyond the General Assembly's intent to require a forced combination in abusive situations only, e.g. if the intercompany transactions were made at rates that generate less than a "fair profit," or if the transactions result in "arbitrary income shifting." [23] In view of the high standard of proof required for taxpayers, an audit policy that provides for an assessment based on income distortion without a detailed analysis of supporting facts is tantamount to creating a presumption that distortion exists simply because there are intercompany transactions. The North Carolina General Assembly has created no such presumption.

Method of accounting must clearly reflect income. N.C. Gen. Stat. §105-130.15 is also cited by the NCDOR as providing a basis for a computation by the Secretary that will "clearly reflect the income" of a taxpayer, if the method used by the taxpayer does not do so. The Secretary's authority under this statute to recompute taxable income also has few restrictions and no guidelines. Rather than seeking to avoid income distortion, however, §105-130.15 appears to refer to the taxpayer's use of a consistent accounting method that will "follow as nearly as practicable the federal practice." Given the nearly limitless powers contained in N.C. Gen. Stat. §§105-130.6 and 105-130.16, it is not clear that the legislature would have found it necessary to provide the Secretary with even more omnipotence

regarding the computation of state income. Whether the NCDOR interpretation of N.C. Gen. Stat. §105-130.15 is correct remains to be seen.

Both N.C. Gen. Stat. §§105-130.6 and 105-130.16 are replete with such phrases as "true amount of net income earned ... in this State," "true earnings of the corporation on its business carried on in this State," or "net income properly attributable to the State." The General Assembly surely intended this language to restrict any adjustment to a taxpayer's state taxable income so as to be reasonable and equitable and reflect only income attributable to activities in North Carolina.

Enactment of these statutes indicates a very early legislative awareness of the potential abuses of "arbitrary shifting of income" from intercompany transactions. It seems highly doubtful, however, that this awareness included a legislative intent to permit taxation of all unitary operations of a corporation at the sole discretion of the Secretary of Revenue. In view of the General Assembly's determination that North Carolina is a "separate entity state," and given the wording of the statutes, it appears that there was no legislative intent to permit the taxation of income not earned in North Carolina under the guise of a combined return.

Constitutional limits. The NCDOR must also be mindful of the constitutional limits on the state's taxing power that have been decreed by the U.S. Supreme Court. [24] Certainly, the Court has given "States wide latitude to fashion formulae designed to approximate the in-state portion of value produced by a corporation's truly multistate activity," including the imposition of state income tax on unitary operations. [25] North Carolina's statutory scheme, however, gives no indication that the General Assembly intended that the Secretary's income-distortion powers be extrapolated to such a degree that the state becomes a unitary-combination state in fact. The concept allowing the filing of consolidated returns in North Carolina has been contemplated frequently by various groups over the last several years, especially since the state's budget crisis began in 2001. The General Assembly, however, has not made a final decision on the issue.

The NCDOR's Rationale

Some insight into the analysis previously used by NCDOR in "income distortion" cases can be found in N.C. Secretary of Revenue Final Decision 95-144, 8/26/97, one of the few Final Decisions that discuss the issue in detail. There, it was determined that the Secretary has an "inherent authority to determine a taxpayer's proper net income from its business conducted in the state under the provisions of N.C.G.S. §§105-130.1 et seq." [26] This decision also cites the Secretary's explicit statutory authority to prevent taxpayers from "cherry picking" or "geographically sourcing" income from subsidiaries to other states when that income is "properly attributable to ... [a] unitary business conducted in the state." [27] According to the Final Decision, this explicit authority exists in N.C. Gen. Stat. §§105-130.6, 105-130.15, and 105-130.16, i.e., the statutes discussed above.

Although Final Decision 95-144 concerned whether gain or loss on the sale of stock in a unitary subsidiary was apportionable business income, the language used may provide at least some guidance regarding the NCDOR's interpretation of the combination and income-distortion statutes. The Final Decision's statement asserting "the Secretary's inherent authority to determine a taxpayer's proper net income from its business *conducted in the state*" (emphasis added) may support an argument that the focus of analysis in income-distortion cases should be on determining net income from activities that occur solely in North Carolina.

Clearly, in *Allied-Signal, Inc. v. Director, Division of Taxation,* [28] the U.S. Supreme Court reiterated the longstanding unitary business principle as a workable basis for determining the circumstances under which a state may constitutionally tax the multistate income of a nondomiciliary corporation. The establishment of that constitutional boundary, however, does not necessarily mean that North Carolina's statutory scheme extends to it by automatically permitting the inclusion of income from related unitary entities in state apportionable income. Given the wording of N.C. Gen. Stat. §§105-130.6 and 105-130.16, it seems that the NCDOR still must establish that a taxpayer's income is distorted by intercompany transactions, or that the income has been "arbitrarily shifted" outside the state, before it can properly tax the extraterritorial income, despite *Allied-Signal.*

In a written statement regarding the Secretary's powers under the three statutes discussed above, the NCDOR has taken the position that it is "free to use forced combination, required add-back, or taxable nexus as a basis for attacking related-company transactions." [29] While the use of the word "attacking" may be prophetic, the statement is indicative of the very broad interpretation of the income-distortion statutes followed by the NCDOR. This interpretation appears in N.C. Secretary of Revenue Final Decision 97-990, 9/19/90, another of the very few applications of the NCDOR's power to require a combined return. [30]

In that case, a group of related trademark licensing companies domiciled in Delaware were found to have taxable nexus in North Carolina because of their licensing activities in the state. The decision also discussed an alternative method for assessing the taxpayers, however, stating: "The facts of this case support a combination of the Taxpayers and their related retail companies.... In similar cases, the Department could pursue a combination, a separate assessment, or both as alternatives."

Although decided on the separate issue of taxable nexus, Final Decision 97-990 is very relevant to the issue of income distortion. The case cited specific reasons to support the finding that a combination of the North Carolina retail companies with the related Delaware trademark licensing companies would be appropriate by focusing squarely on alleged sham transactions that occurred between them. According to the Final Decision, the transactions were perceived as particularly egregious because they had little economic substance and served no legitimate business purpose other than saving state income taxes.

In reciting the facts that supported forced combination, the NCDOR noted that (1) royalty fees charged were never converted into cash; (2) the trademarks were transferred "for little or no consideration" in IRC Section 351 exchanges; (3) the profitability of the licensing companies was extraordinarily high because of very low expenses in relation to the royalty income; (4) the trademark licensing companies had no economic substance; and (5) the operating companies incurred a disproportionately adverse impact on their profitability immediately subsequent to the transfer of the trademarks, which called into question the economic viability of the transactions. [31]

Source of potential guidance. The significance of this decision for income-distortion cases is that the NCDOR determined that the intercompany transactions in question arbitrarily shifted income between the companies and resulted in the improper computation of state net income of the North Carolina operating companies, only after a detailed analysis of those transactions. Because of its detailed discussion of a forced-combination theory, the analysis contained in Final Decision 97-990 could be used by the NCDOR as a basis to establish guidelines for determining whether intercompany transactions distort state income. These guidelines could include, among other factors:

(1) The existence of substantive business reasons for establishing the related entity.
(2) The profitability of the related entity with regard to reasonableness and in relation to industry standards.
(3) Whether the related entity has economic substance and operates separately.
(4) Whether the intercompany transactions are at arm's-length rates.
(5) Whether the intercompany transactions have real economic effects.
(6) Whether there was a positive impact on the profitability of the operating entity as a result of the intercompany transactions.

One NCDOR official position states that the purpose of N.C. Gen. Stat. §105-130.6 is to provide a means for the Secretary of Revenue to impose North Carolina corporate income tax in abusive situations when affiliated companies are, through various corporate transactions, improperly "siphoning off" income duly taxable in the state to affiliates located in other states. [32] N.C. Gen. Stat. §105-130.16 further expands this power by permitting the Secretary to determine the amount of "net income properly attributable to the State." Nevertheless, the application of these considerable discretionary powers without the establishment of some reasonable guidelines to follow is extremely problematic for taxpayers.

The use of related procurement, finance, management, and other entities in corporate structures is commonplace and indeed necessary in our modern economy to help maintain competitiveness. Absent a legitimate factual finding that a particular corporate structure was established predominantly to reduce state taxable income, it should be respected by the NCDOR. Absent a material distortion of income established through sufficient factual findings, the NCDOR should not indirectly impose income tax on the earnings of a related entity by arbitrarily including the net income of that entity in the computation of North Carolina taxable income on a combined return.

Guidelines in Other States

As discussed above, neither N.C. Gen. Stat. §105-130.6 nor 105-130.16 provide a mechanism for either computing true state taxable income, establishing distortion of income, or determining when a forced combination is appropriate. In looking to other states for some guidance on this issue, one can see that the federal arm's-length standard contained in IRC Section 482 has often been used to provide a framework for analysis. In fact, even in a state where distortion of income is presumed when a significant number of intercompany transactions occur (e.g., New York), the state relies on the federal arm's-length transaction standard as a guideline for establishing whether income distortion exists. [33]

New York litigation supports arm's-length standard. Consider, for instance, *Matter of Sears, Roebuck and Co.,* [34] where the New York Tax Appeals Tribunal determined that retail giant Sears and its wholly owned finance subsidiary, Sears Roebuck Acceptance Corp. (SRAC), should not be required to file a combined report. SRAC was formed by Sears to obtain funds through the placement in the open market of commercial paper, demand borrowings, and private placements with banks. SRAC, in turn, loaned the borrowed funds to Sears in return for the parent company's promissory notes. Although agreeing with the New York Division of Taxation that Sears and SRAC were engaged in a unitary business, the Tax Appeals Tribunal nevertheless held that the two affiliates could not be required to file a combined report because Sears, by proving that its transactions with SRAC were at

arm's length, had carried its burden of rebutting the presumption that the intercorporate transactions led to distortion in Sears' income.

In another New York case, *Matter of Express, Inc.,* [35] a retailer and its wholly owned trademark protection company were not required to file combined reports for New York franchise tax purposes because the trademark protection company was not a mere shell corporation and the royalty fees it received from the retailer were set at arm's-length rates. In 2004, New York reiterated its adherence to the federal arm's-length value standard for forced combination in *Matter of The H.W. Wilson Co., Inc.,* [36] where the taxpayer rebutted the presumption of distortion created by substantial intercorporate transactions by establishing that the transactions were made at arm's-length prices.

Virginia considers distortion. In North Carolina's neighboring state of Virginia, the state's supreme court has restricted the power of the Department of Taxation to adjust state taxable income by limiting the application of Va. Code §58.1-446, the state's forced consolidation statute, to situations where "an arrangement [exists] between two commonly owned corporations [to] improperly, inaccurately, or incorrectly ... reflect ... the business done or the Virginia taxable income earned from business done in this State." [37]

Furthermore, in a 2004 ruling that applied Virginia's income distortion statute, the state's Department of Taxation seemed to recognize the limitations on forced combination by noting: "Absent the creation of the arrangement [i.e., the corporate structure], [the out-of-state subsidiary's] income could have been included in the [parent-]Taxpayer's taxable income apportioned and taxed in Virginia." [38] Thus, the focus of Virginia's income-distortion statute is on ensuring that income that, but for the effect of improper intercompany transactions, would be otherwise taxable in Virginia, is in fact taxed by the state.

Applying the guidance. New York's emphasis on economic substance, business purpose, and an arm's-length standard, and Virginia's use of a "but for" test, should at least be instructive for North Carolina. These standards, combined with the analysis in N.C. Secretary of Revenue Final Decision 97-990, provide excellent input for the development of reasonable guidelines to be used by the NCDOR in evaluating income-distortion cases. Because North Carolina adopts federal taxable income as the starting point in determining state net income, the arm's-length-rate standard for intercompany transactions provided in IRC Section 482 could also be easily adapted as one of the guidelines. [39]

North Carolina statutes require "the proper computation of the entire net income and the net income properly attributable to the State, and in determining these computations, the Secretary [of Revenue] must have regard to the fair profit that would normally arise from the conduct of the trade or business." [40] Because of the economic advantages of using related specialty entities, a taxpayer's "fair profit" would be, in many cases, the same as, or quite possibly even more than, that which would have resulted without the benefits of the related entities. By forcing a combination of related entities, the NCDOR would actually be ignoring "the fair profit that would normally arise" had the taxpayer purchased the intercompany services from unrelated companies.

As of this writing, there have been no constitutional challenges to the NCDOR interpretation of N.C. Gen. Stat. §105-130.6 or 105-130.16, although that situation is sure to change. A more detailed discussion of such a challenge is certainly a tempting subject for another day. Suffice it to say that both state and federal cases provide

intriguing arguments against the imposition of state tax on extraterritorial income under the guise of correcting a distortion of state income. A tax assessment that is not explained in full detail hinders a taxpayer's proper defense. Further, the absence of publicized guidelines for establishing when distortion of income exists prevents all taxpayers from accurately determining whether they are in compliance with the statute and have properly reported their North Carolina incomes. Both of these issues create serious due process concerns.

Time for More Cooperation

It would be naive to assert that all corporate reorganizations and all related-company transactions were structured with a blind eye toward state income tax implications. Nevertheless, it is also inequitable for North Carolina's corporate taxpayers to be held hostage by the threat of a forced combination of selected related entities without any guidelines to provide uniformity and consistency in the wielding of the considerable power given to the Secretary of Revenue under the income-distortion statutes. As North Carolina and other states increasingly use these types of statutes,[41] the establishment of reasonable standards to distinguish between those transactions that are appropriate and those that are distortive is an absolute necessity to ensure sound tax policy.

An NCDOR audit policy that results in the forced combination of select unitary operations under nearly all circumstances and the treatment of most intercompany transactions as distortive seems counter to North Carolina's separate-entity statutory scheme. The General Assembly has not yet made North Carolina a unitary combination state and, despite the U.S. Supreme Court's ruling in *Allied-Signal,* the Secretary of Revenue should not be permitted to unilaterally do so under the guise of correcting income distortion.

Perhaps the time has come for an open dialogue between state government, taxpayers, and tax practitioners, including a comprehensive review of the impact of related-company transactions on corporate tax revenues and tax administration issues that would eventually lead to the development of a consistent, equitable tax policy regarding forced combination. Such discussions, hopefully, could permit the parties to put aside the difficult issues of the past and lead to more candid discourse and better cooperation regarding other tax policy matters. []

Sidebar

Practice Note: Intercompany Transactions Call for Careful Planning

Many states, including North Carolina, are now more closely scrutinizing procurement and other related-company transactions. This heightened awareness may result from an unfounded presumption that such arrangements are oftentimes part of some elaborate accounting mechanism designed solely to artificially shift income between related entities and to lower state income taxes. In North Carolina, this increased attention has brought about a marked increase in audits that require forced combination of procurement, finance, and management companies with their related operating entities. Unfortunately, nearly all types of intercompany transactions are now viewed with considerable skepticism by the Department of Revenue.

[1]

N.C. Secretary of Revenue Final Decisions 95-144, 8/26/97; 96-293, 7/1/97; and 97-990, 9/19/00. (All three decisions were issued by the author, who was then serving as Assistant Secretary of Revenue.)

[2]

Final Decision 97-990, *supra* note 1; *aff'd* N.C. Dept. of Rev., Admin. Decision No. 381, 5/7/02; *aff'd* A&F Trademark, Inc. v. Tolson, N.C. Super. Ct., No. 02-CV-007467, 5/22/03, 2003 WL 21665022 ; *aff'd* 605 SE2d 187 (N.C. Ct. App., 2004); *rev. den.* 611 SE2d 168 (N.C., 2005); *cert. den.* U.S.S.Ct. Dkt. No. 04-1625, 10/3/05. The Secretary's Final Decision was discussed in Hannah and Hall, "North Carolina Enters the Delaware Intangible Holding Company Fracas," 11 J. Multistate Tax'n 6 (July 2001).

[3]

The three statutes are N.C. Gen. Stat. §§105-130.6 ("subsidiary and affiliated corporations"), 105-130.15 ("basis of return of net income"), and 105-130.16 ("returns"), as cited in Final Decision 95-144, *supra* note 1.

[4]

Note 2, *supra.*

[5]

"N.C. Department of Revenue Offers Taxpayers Chance for Reprieve" (NCDOR Public Affairs Office, 12/28/04). A "listed transaction" is one that the IRS has identified in a notice, regulation, or other published guidance as a tax-avoidance transaction. See Treas. Reg. §1.6011-4(b)(2).

[6]

"N.C. Department of Revenue Offers Taxpayers Chance for Reprieve," *supra* note 5.

[7]

S.B. 622, 8/13/05 (N.C. Sess. Law No. 2005-276).

[8]

See Hannah and Hall, *supra* note 2.

[9]

See Final Decision 95-144, *supra* note 1.

[10]

N.C. Gen. Stat. §105-130.14.

[11]

Id.

[12]

See note 3, *supra.*

[13]

"Final Report, Governor's Commission to Modernize State Finances" (North Carolina, December 2002), page 14. (The author was a member of the Commission.) The report is available online via the website of the North Carolina Office of State Budget and Management, www.osbm.state.nc.us.

[14]

See Miller, "Consolidated and Combined Reporting in a Single Entity State: A North Carolina Perspective," presented at the 44th Annual Conference, Southeastern Association of Tax Administrators (July 1994), page 7. (Kay Linn Miller Hobart is currently the Special Assistant Attorney General for the Revenue Section at the NCDOR. The views expressed in her article are her own and do not represent an official statement of the N.C. Attorney General's Office or the NCDOR.)

[15]

Miller, *supra* note 14, page 6.

[16]

N.C. Gen. Stat. §105-130.6.

[17]

N.C. Gen. Stat. §105-130.5(a)(9).
[18]

ET & WNC Transportation Co. v. Currie, 248 N.C. 560, 104 SE2d 403 (1958).
[19]

N.C. Gen. Stat. §105-130.16(b) reads as follows: "When the Secretary [of Revenue] has reason to believe that any corporation so conducts its trade or business in such manner as to either directly or indirectly distort its true net income and the net income properly attributable to the State, whether by the arbitrary shifting of income, through price fixing, charges for service, or otherwise, whereby the net income is arbitrarily assigned to one or another unit in a group of taxpayers carrying on business under a substantially common control, the Secretary may require any facts the Secretary considers necessary for the proper computation of the entire net income and the net income properly attributable to the State, and in determining these computations, the Secretary must have regard to the fair profit that would normally arise from the conduct of the trade or business."
[20]

See, e.g., Duke Power Co. v. Clayton, 274 N.C. 505, 164 SE2d 289 (1968).
[21]

Webster's Revised Unabridged Dictionary (2003).
[22]

Excerpt from redacted NCDOR auditors report, May 2005.
[23]

N.C. Gen. Stat. §105-130.16(b).
[24]

See, e.g., Hans Rees' Sons v. North Carolina ex rel. Maxwell, 283 US 123, 75 L Ed 879 (1931); Complete Auto Transit, Inc. v. Brady, 430 US 274, 51 L Ed 2d 326 (1977); Quill Corp. v. North Dakota, 504 US 298, 119 L Ed 2d 91 (1992); Allied-Signal, Inc. v. Director, Division of Taxation, 504 US 768, 119 L Ed 2d 533 (1992). For analyses of some of these decisions, see Lieberman, "*Complete Auto Transit, Inc. v. Brady*: How Many Parts Are There?," 3 J. Multistate Tax'n 4 (Mar/Apr 1993); Eule and Richman, "Out-of-State Mail-Order Vendors Need Not Collect Use Taxes—Yet!," 2 J. Multistate Tax'n 163 (Sep/Oct 1992); Nolan, "Crossing the Bright Line: Evaluating Physical Presence in *Quill*'s Shadow," 7 J. Multistate Tax'n 244 (Jan/Feb 1998); Dyk and Bilich, "*Allied-Signal* and the Unitary Business Principle: Little Guidance, Many Questions," 2 J. Multistate Tax'n 154 (Sep/Oct 1992); Dorman, "Illinois Tax Agency Clarifies Unitary Business Issues Left Open After *Allied-Signal*," 9 J. Multistate Tax'n 9 (Mar/Apr 1999).
[25]

Allied-Signal, Inc. v. Director, Division of Taxation, *supra* note 24.
[26]

Final Decision 95-144, *supra* note 1. As noted there, the author was the NCDOR hearings officer who issued this decision.
[27]

Id.
[28]

Note 24, *supra.*
[29]

Redacted letter, dated 3/20/03, from an NCDOR auditor to a taxpayer.
[30]

As noted, *supra* note 1, the author was the NCDOR hearings officer who issued this decision. Also, see Hannah and Hall, *supra* note 2, for an in-depth analysis of the proceedings.
[31]

Final Decision 97-990, *supra* note 1, page 100.
[32]

2003-2004 Technical Bulletins—Corporate, Excise, and Insurance Tax (N.C. Dept. of Revenue), page 56, available on the Department's website at

www.dor.state.nc.us/practitioner.

[33] N.Y. Tax Law §211.4 and related regulations.

[34] N.Y.S. Tax App. Trib., DTA No. 801732, 4/28/94, 1994 WL 174465 , *aff'g* N.Y.S. Div. of Tax App., ALJ Determination, No. 801732, 1/28/93.

[35] N.Y.S. Div. of Tax App., ALJ Determination, Nos. 812330, 812331, 812332, and 812334, 9/14/95, 1995 WL 561501 . Also see Matter of Silver King Broadcasting of N.J., Inc., N.Y.S. Tax App. Trib., DTA No. 812589, 5/9/96, 1996 WL 272379 .

[36] N.Y.S. Div. of Tax App., No. 819039, 4/15/04, 2004 WL 874543 .

[37] Commonwealth v. General Electric Co., 236 Va. 54, 372 SE2d 599 (1988).

[38] Va. P.D. Rul. No. 04-88, 8/31/04.

[39] See N.C. Gen. Stat. §§105-130.2(5c) and 105-228.90.

[40] N.C. Gen. Stat. §105-130.16(b).

[41] See, e.g., Levitt and Jeter, "Combined Reporting: New York's *Sherwin-Williams* Decision 'Touches Up' Distortion," 15 J. Multistate Tax'n 6 (May 2005); Tomeo, "Intercompany Transactions: Two State Legislatures Go on the Attack," 12 J. Multistate Tax'n 6 (February 2003).

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REVENUE LAWS STUDY COMMITTEE
Tuesday, October 3, 2006 at 9:30 AM
Room 544, Legislative Office Building

MINUTES

The Revenue Laws Study Committee met at 9:30 AM on October 3, 2006, in Room 544 of the Legislative Office Building. Eleven members of the committee were present. Representative Luebke presided.

Dave Crotts, Fiscal Research, introduced the new member of the staff, Barry Boardman, a fiscal analyst with the Fiscal Research Division.

Approval of the Minutes.

Rep. Carney motioned for the approval of the September 5, 2006 minutes and the motion carried. A copy of the minutes is attached.

Gift Tax – Overview of the Tax and Alternatives for Simplification.

Canaan Huie, a staff attorney with the Bill Drafting Division was recognized to explain the State's gift tax. A copy of the power point presentation is attached.

Hearings and Appeal Process for Disputed Tax Matters

Overview of Current Process
Sabra Faires, Senate Tax Counsel, was recognized to explain the current process for tax appeals. David Baker, Director of Property Tax, Department of Revenue and Chuck Neely, representing the Council on State Taxation were recognized to answer questions. A copy of Ms. Faires' power point presentation is attached.

Refunds of Tax Paid under Protest and other Tax Refunds.
Trina Griffin, a staff attorney with the Research Division, was recognized to explain the refund process for appealed taxes. A copy of her report is attached.

Joe Crosby, legislative director for the Council on State Taxation; Jody Joyner, representing Moore & Van Allen; and Royce Powell, representing Maupin Taylor, PA; were recognized to speak in favor of updating the tax appeal process. Copies of their statements are attached.

Linda Millsaps, Assistant Secretary for Tax Administration, Department of Revenue, was recognized to explain the Department's view on the tax appeal hearings.

Chuck Neely was again recognized to speak in favor of bypassing the Department of Revenue and allowing business tax appeals to go to directly to court.

The meeting adjourned at 12:22 pm.

Senator John H. Kerr, III, Co-Chair
Revenue Laws Study Committee

Representative Paul Luebke, Co-Chair
Revenue Laws Study Committee

DeAnne Mangum, Committee Clerk



REVENUE LAWS STUDY COMMITTEE
State Legislative Building
Raleigh, North Carolina 27603

Senator John H. Kerr, III, Co-Chair *Representative Paul Luebke, Co-Chair*

September 19, 2006

NOTICE

TO: Members, Revenue Laws Study Committee

FROM: Senator John Kerr, Co-Chair
Representative Paul Luebke, Co-Chair

SUBJECT: Revenue Laws Study Committee Meeting

There will be a meeting of the **Revenue Laws Study Committee** as follows:

DAY:	**Tuesday**
DATE:	**October 3, 2006**
TIME:	**9:30 am**
LOCATION:	**Room 544, Legislative Office Building**

Please advise DeAnne Mangum, at (919) 733-2405 or e-mail deannem@ncleg.net if you will be unable to attend.

REVENUE LAWS STUDY COMMITTEE AGENDA

Sen. John Kerr Rep. Paul Luebke

Tuesday, October 3, 2006
Room 544, Legislative Office Building
9:30 a.m.

I. **Approval of the Minutes from the September 5, 2006, Meeting**

II. **Gift Tax – Overview of the Tax and Alternatives for Simplification**

Canaan Huie, Bill Drafting Division

III. **Hearings and Appeal Process for Disputed Tax Matters**

- **Overview of the Current Process**
  Sabra Faires, Tax Counsel for the Senate
- **Refunds of Tax 'Paid under Protest' and Other Tax Refunds**
  Trina Griffin, Research Division
- **Interested Parties**
  - Jody Joyner, Moore & Van Allen
  - Joe Crosby, Council on State Taxation
  - Royce Powell, Maupin Taylor PA
- **Department of Revenue**
  Linda Millsaps, Assistant Secretary for Tax Administration

IV. **Gross Premiums Tax on Insurance Companies – Simplification of Fire Tax Rate**

- **Review of 2006 Legislation**
  - Cindy Avrette, Research Division
  - Rodney Bizzell, Fiscal Research Division
- **Comments and Concerns**
  - Jim Long, Commissioner of Insurance
  - Joe Stewart, Executive Director, Insurance Federation of North Carolina

V. **Adjournment**

Future Meeting Dates: Nov. 14, Dec. 12, Jan. 16, Jan. 23
All meetings in Room 544, LOB, at 9:30 a.m.

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — October 3, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jeb Allen	Allen Assoc
Robert Bradshaw	"
Cassie Harkins	Margolis Taylor
Andy Romanet	NCLM
Karen Johnson	Smith Anderson
Tom Cecil	BPMHC
Charlie Dodd	NC Trucking Association
Doug Heron	NC BAR ASSOCIATION
John McHugh	Good Ethics
Dana Simpson	Smith Anders
Jennifer Willis	Wake County Govt

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — October 3, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Leslie Bevacqua Cam	Capstrat
Daniel Baum	Kennedy Covington
Rob Tyler	TWC
Joseph D. Joyner, Jr.	Moore & Van Allen
D. Royce Powell	Maupin Taylor
Cheryl Causey	BB&T
Jamie Jenrick	TWC
B Nobles	Maupin Taylor
Joseph R. Crosby	Council on State Taxation
Nancy Rendleman	Maupin Taylor
Robert Shaw	" "

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — October 3, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
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THOM TILLIS	CANDIDATE / REP ELECT NC HOUSE - 98TH DIST

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Donna Alderman	DOR
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Janet Shires	NC DOR
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John [illegible]	Bode [illegible]
Sarah Price	Beason Government
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Ray Burns	BET

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Sharon Miller	CUCA
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Tim Holmes	DOR - Sales Tax
Janice W. Davidson	DOR - Motor Fuels
Andy Sasol	DOR
Steve Cornwell	DOR
Anna Mitchell	DOR
Dina Pwen	DOR

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Terence Friedman	AGO
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Meg Gray	NCBTC
Elaine Majic	NC BYC
Karl Knapp	NCDOR
REGGIE LITTLE	NCDOR
Jimmy Gabriel	NC DOR

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[illegible]	NMRS
Susan Valaitis	Nationwide
Joe Stewart	IFNC
Roger Bone	Bone + Assoc
Ken Melton	NC DOR
Dr. Linda Millsaps	NC DOR
Andy Ellen	NCRMA
Elizabeth Dalton	NCRMA
Kathy Hawkins	Progress Energy

Gift Tax Reform

Y. Canaan Huie
Legislative Drafting Division
Revenue Laws Study Committee
October 3, 2006

Gift Tax Reform

- North Carolina's gift tax
- Federal gift tax
- Other states' gift taxes
- Relation to estate taxes
- Options for reform

North Carolina's Gift Tax

- Enacted in 1939
- Based on cumulative annual gifts and due April 15
- Annual exclusion equal to the federal annual exclusion amount – currently $12,000 per beneficiary
- Gifts are valued at actual value at time of transfer
- Does not apply to some gifts
  - Gifts to spouses
  - Charitable contributions
  - Gifts to cover medical or educational expenses
- Not directly related to the estate tax

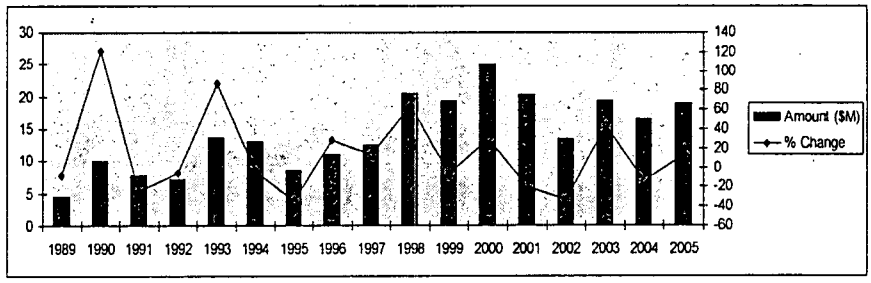


North Carolina's Gift Tax

- Amount of gift tax varies based on the amount of the gift and the relationship between the donor and the beneficiary
- Class A Beneficiaries
  - Lineal ancestor or descendant, adopted child, or step-child
  - Rate ranges from 1% to 12%
  - $100,000 lifetime exemption
- Class B Beneficiaries
  - Sibling, descendant of sibling, uncle or aunt by blood
  - Rate ranges from 4% to 16%
- Class C Beneficiary
  - All beneficiaries other than those in Classes A and B
  - Rate ranges from 8% to 17%

North Carolina's Gift Tax

- Collections from the gift tax are extremely volatile
- Net collections for the 2005 fiscal year were $18.9 million
- Estimated collections for the 2007 fiscal year are $17.6 million



Federal Gift Tax

- Part of a unified system with estate taxes
- 2001 federal changes "de-unified" some aspects of the system
- Gift and estate taxes have a unified tax rate ranging from 18% to 46%
- Since 2001, gift and estate taxes have had separate exclusion amounts
  - $1 million lifetime exclusion for gift tax
  - $2 million exclusion (including gifts) for estate tax
  - Differing exclusion amounts affect timing and total amount of tax paid

Federal Gift Tax – Effect of Exclusion Amount

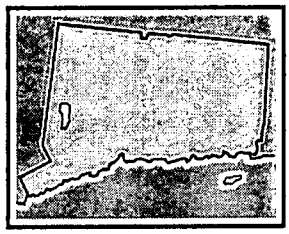
- Taxpayer A
  - Makes no gifts
  - Estate of $4 million
  - Pays estate tax on $2 million
- Taxpayer B
  - Makes gifts of $1 million
  - Estate of $3 million
  - No gift tax paid
  - Pays estate tax on $2 million
- Taxpayer C
  - Makes gifts of $2 million
  - Estate of $2 million
  - Pays gift tax on $1 million and estate tax on $2 million with credit for gift taxes paid
- Taxpayer D
  - Makes gifts of $4 million
  - Has no estate
  - Pays gift tax on $3 million

Significant Differences Between State and Federal Gift Taxes

- State taxes are separate whereas federal taxes are part of a unified system
- State tax rates and exclusion amounts vary based on the relationship between the donor and beneficiary
- State exclusion amounts are much lower than federal amounts
- Some differences in valuation and administration

Other States' Gift Taxes

- Only 3 other states currently have gift taxes – Connecticut, Louisiana, and Tennessee



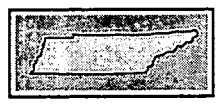
- Connecticut
  - Unified estate/gift tax system
  - Annual exclusion of $12,000/beneficiary
  - Combined lifetime exclusion amount of $2 million
  - Rates range from 5.085% to 16%
  - No classification of beneficiaries

Other States' Gift Taxes

- Louisiana
  - Non-unified tax – no estate tax
  - Annual exclusion of $12,000/beneficiary
  - Lifetime exclusion of $30,000
  - Rates range from 2% to 3%
  - No classification of beneficiaries



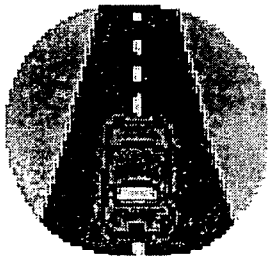
- Tennessee
  - Non-unified tax
  - Exclusions differ based on relationship between donor and beneficiary
  - Rates range from 5.5% to 16%



Relation to Estate Taxes

- North Carolina has separate gift and estate tax systems
- However, North Carolina's estate tax is based on the unified federal system
- Thus, State gift taxes are not factored in when determining State estate taxes
- Note: the State estate tax is currently set to expire automatically if the federal estate tax expires

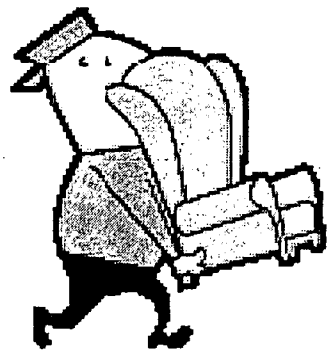
Options for Reform



- Repeal the State gift tax
- Create a unified State estate and gift tax system
- Conform the taxes more closely to federal law

Options for Reform – Repeal of the Gift Tax

- Pros
  - Clearly reduces compliance costs for taxpayers and the Department
  - Uniformity with other states
  - Possible effect on behavior affecting other revenues
- Cons
  - Loss of revenue in the range of $15 million to $20 million annually
  - Possible concerns about equity

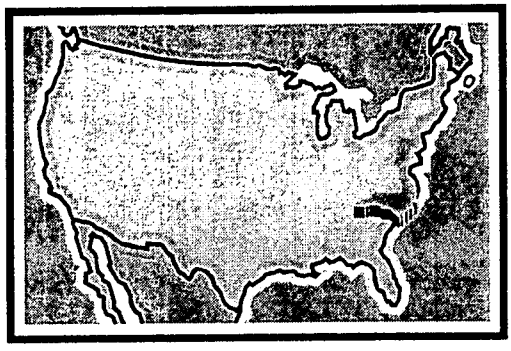


Options for Reform – Create a Unified State System

- May be independent of the federal system or may adopt the federal system as the basis of the State system
- May affect revenue in any way
- Pros and cons would depend on how the system was designed

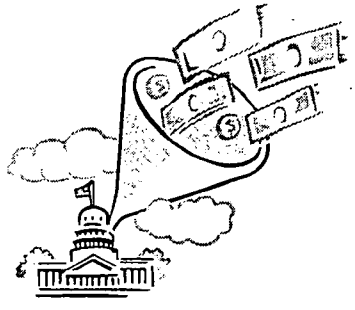
Options for Reform – More Closely Conform to Feds

- Eliminate distinctions between classes of beneficiaries
- Match federal exclusion amounts
- Adopt federal rules regarding the valuation of gift

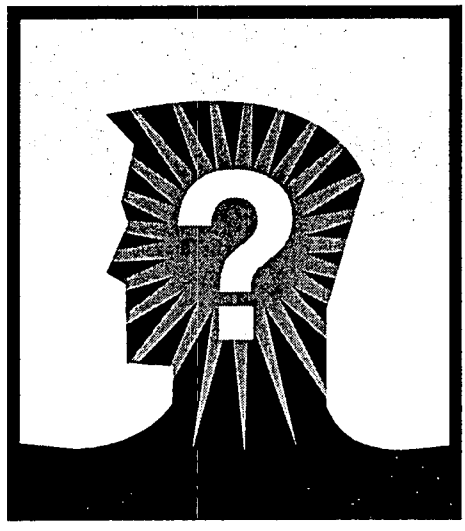


Options for Reform – More Closely Conform to Feds

- Pros
  - Compliance should be easier for both taxpayers and Department
  - Addresses some concerns about equity
- Cons
  - Potential loss of some revenue



Questions



Tax Hearings and Appeals

Sabra Faires
Revenue Laws Study Committee
October 3, 2006

Charge to Committee

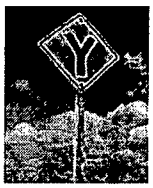
- S.L. 2006-196, HB 1891, Sec. 13(4)
- Study the administrative process for the review of disputed tax matters
- Two aspects
  - Overall process
  - Taxes "paid under protest"

Process for State Taxes

- Current process in place since 1955
- Applies to individual and corporate income, franchise tax, sales tax, motor fuels tax, unauthorized substance tax, and other taxes imposed by State
- Sources of disputes
  - Assessment by Department
  - Denial of request for refund

Process for State Taxes

- Two Paths
  - Administrative review process
  - Direct to court process



Administrative Review

- Request for Hearing
- Informal Resolution
- Hearing
  - Secretary has delegated authority to hearing officer under 105-260.1
  - Taxpayer can be represented by non-attorney
  - Rules of evidence do not apply
  - No authority to decide constitutional issues
- Secretary's Decision
  - Made by Department hearing officer after hearing
  - Written decision with findings of fact and conclusions of law
  - Not public, Department redacts decisions and puts on website
  - Taxpayer can appeal, but Department cannot appeal

Administrative Review

- Appeal from Secretary to Tax Review Board
- 3 member Board
  - State Treasurer or designee
  - Chair of N.C. Utilities Commission
  - Appointee of Governor
- Established in 1953 to hear apportionment relief requests, given appeal role in 1955

Administrative Review

- Tax Review Board Hearing
  - Review is on record made at departmental hearing
  - No payment or bond required
  - Rules of evidence do not apply
  - Must be an attorney to represent taxpayer before Board
  - Makes written decision
  - Decision public, published in N.C. Register

Administrative Review

- Superior Court
  - Petition for review
  - Review is on record
  - Standard of review set out in G.S. 150B-51(b)
- Regular appeal route from Superior Court
  - Court of Appeals
  - North Carolina Supreme Court

Direct to Superior Court

- Payment or bond required
- Can skip administrative review
- Can jump to court from steps in administrative review
- De novo review
- Rules of Civil Procedure apply



Judicial Branch Alternatives

- Separate court
  - Patterned after federal tax court
  - Issues with volume of work
- Included in Business Court
  - Established by Rules 2.1 and 2.2 of the General Rules of Practice for the Superior and District Courts and, in 2005, by statute (7A-45.3)
  - Chief Justice designates a special superior court judge to hear and decide complex business cases

Business Court

- Complex business case is an action that involves a material issue related to :
  - Law on corporations and other business entities
  - Securities law
  - Antitrust law
  - State trademark or unfair competition law
  - Intellectual property law
  - Internet, electronic commerce, and biotechnology

Business Court

- Tax cases are not mandatory complex business cases
- Could designate some or all tax cases as mandatory complex business cases
- Currently, can ask for tax case to be designated:
  - Discretionary complex business case
  - Exceptional civil case

Tax Tribunal in Executive Branch

- Endorsed by American Bar Association in its Model State Administrative Tax Tribunal Act
- Primary goals of Model Act
  - No pay to play – get a hearing before payment or bond required
  - Tax Tribunal is independent of Secretary and Department of Revenue – key to fairness
  - 10-yr term of tax tribunal judge – key to reasoned decision based on expertise

Office of Administrative Hearings

- Established in 1985 as independent, quasi-judicial agency
- Chief Justice appoints Chief Administrative Law Judge
- Stated purpose is to prevent commingling of legislative, executive, and judicial functions in administrative process
- Department of Revenue exempt from OAH hearing process

Office of Administrative Hearings

- ALJs must be attorneys
- Chief ALJ can designate certain ALJs with specific expertise to preside at specific types of hearings
- ALJs must be attorneys
- Rules of Civil Procedure apply

Office of Administrative Hearings

- 29 other central panel states, plus D.C. and Chicago
  - Includes South Carolina, Alabama, and Georgia
- 17 of the 29 states hear state tax cases and 4 hear property tax cases
  - The 4 are Michigan, South Carolina, South Dakota, and Wyoming

Refunds of Tax "Paid Under Protest" and Other Tax Refunds

Prepared by Trina Griffin, Research Division
Revenue Laws Study Committee
October 3, 2006

1

Objectives

- ☐Overview of federal and State tax refund procedures
- ☐Background of the protest rule
  - Legislative history
  - Judicial Interpretation
- ☐Issues for consideration

2

Refund Procedures

Federal Law	NC Law
1. Refund for overpayment	1. Refund for overpayment
2. Civil action	2. Payment under protest
3. Protective refund claim	3. Protective refund claim

3

1. Refund for Overpayment

Statute of Limitations

- A refund claim must be filed within 3 years of the filing deadline, provided the return was filed before the due date.
- If the return was filed after the due date, a refund claim must be filed not later than 3 years from the time the return was actually filed, or 2 years from the date the tax was paid, whichever is later.
- If no return was filed, the claim must be filed within 2 years of the date of payment.

4

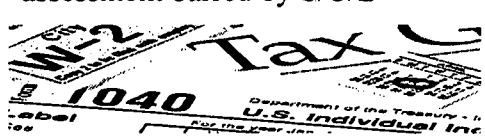
Form & Content of Claim

- Must meet the following requirements:
  - In writing.
  - Demands a refund.
  - States the amount of the claim.
  - Sets forth in detail each ground claimed by the taxpayer sufficient to apprise IRS of the claim.
  - Contains supporting facts or evidence.
  - Signed under oath or penalty of perjury.

5

Scope of Refund Request

- The IRS may reconsider the entire return.
- Does not authorize additional assessment barred by S/O/L



6

2. Civil Action

Prerequisites

- Must file refund claim with IRS and wait 6 months.
- Pay to play.
- Proper forum is U.S. District Court or the U.S. Court of Federal Claims.
- Must use same legal theory as set forth in refund claim.

7

Statute of Limitations

- Within 2 years from:
  - –notice of disallowance, OR
  - –the date the taxpayer waived notification of disallowance of claim.

8

3. Protective Refund Claim

- Authorized by regulation
- Used when the right to refund is contingent on future events that may not be resolved until statute of limitations has expired
- File before expiration of the refund claim period.



9

Requirements

1. Must identify and describe the contingencies affecting the claim.
2. Must be sufficiently clear and definite to alert the IRS as to the essential nature of the claim.
3. Must identify specific year or years for which the refund is claimed.







10

Refund Procedures

Federal Law	NC Law
☑ Refund for overpayment	1. Refund for overpayment
☑ Civil action	2. Payment under protest
☑ Protective refund claim	3. Protective refund claim

11

1. Refund for Overpayment

(G.S. 105-266.1)

When is it used?

- Excessive
- Incorrect
- **NOT** for challenging legality of tax

12

What is the procedure?
(G.S. 105-266.1)

STEP 1 File amended return or written letter requesting refund

13

Statute of Limitations

- The **later** of the following:
  - Within 3 years after the date for filing of return

    OR
  - Within 6 months after payment of tax

14

What is the procedure?
(G.S. 105-266.1)

STEP 1 File amended return or written letter requesting refund

STEP 2 Departmental review

STEP 3 Request for hearing

STEP 4 Hearing within 90 days

STEP 5 Within 90 days after notification of hearing decision, taxpayer may either:
- Petition for administrative review before the TRB
- Bring a civil action

STEP 6 Appeal

15

2. Payment Under Protest
(G.S. 105-267)

✓When is it used?
✓What is the purpose?
✓What is the procedure?

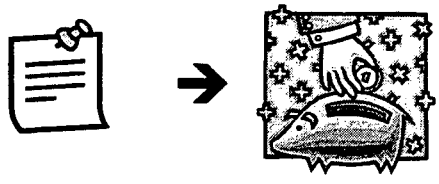
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When is it used?

- For overpayments or for challenging legality of tax.
- "If upon trial, it is determined that all or part of the tax was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive. . ."
- Statute does not mention "unconstitutional."

17

What is the purpose?



18

What is the procedure?

STEP 1 — Written request within 3 years after payment of tax.

STEP 2 — 90-day waiting period.

STEP 3 — Aggrieved taxpayer may file suit within 3 years after the expiration of the 90-day period.

19

Protective Refund Claim

- Requirements:
  - Filed before the expiration of the statutory refund claim period.
  - Identifies and describes the contingencies affecting the claim.
  - Is sufficiently clear and definite to alert the Dept. as to the essential nature of the claim.
  - Identifies the tax schedule and the specific year for which the protective claim is filed.

20

Objectives

☑Overview of federal and State tax refund procedures

➔Background of the protest rule

- Legislative history
- Judicial interpretation

☐Issues for consideration

21

Legislative History

- General Assembly first authorized the use of a tax injunction in 1865.
- Beginning in 1927, the statute has required that the taxpayer pay the tax prior to filing suit.
- For over 65 years, the statute of limitations was 30 days.
- 1996 = extended to 1 year
- 1999 = extended to 3 years

22

Judicial Interpretation

Bailey I & II and Swanson

Taxation of State and local employee retirement benefits



Fulton and Smith

Taxation of intangibles



23

Bailey Background

State retirement income

⇩

100% exempt

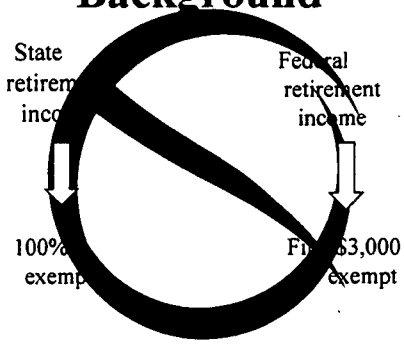
Federal retirement income

⇩

First $3,000 exempt

24

Background



25

Bailey I (1992)



- Plaintiffs =
  - State and local employees
  - Vested in retirement system prior to August 12, 1989 (effective date of act repealing 100% exemption)
  - Had not filed protest prior to lawsuit

⇨ CASE DISMISSED

26

Swanson (1994)



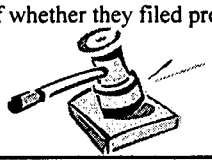
- *Swanson* plaintiffs =
  - Federal employees seeking refund of taxes paid on retirement benefits
  - "Class demand letter" filed under G.S. 105-267.

⇨ CASE DISMISSED

27

Bailey II Case (1998)

- Plaintiffs = State and local retirees who had each complied with protest requirements
- Result = UNCONSTITIONAL impairment of contract
- Remedy = Refunds for all State and local retirees who vested prior to Aug. 12, 1989, regardless of whether they filed protest.



28

Bailey II Case (1998)

- Holding - While claims of illegal or improper taxation are subject to the procedural requirements of G.S. 105-267, it is only to the extent necessary to provide the State with the notice sufficient to protect fiscal stability.
- Two Justices dissented from the Court's analysis of G.S. 105-267.

29

Intangibles Tax Case

- NC imposed intangibles tax on ownership of corporate stock.
- "Taxable percentage deduction" – Exemption for the proportion of stock equal to proportion of business conducted in NC.
- Fulton argued deduction violates Commerce Clause by discriminating against out-of-state companies.

30

Intangibles Tax Case

- 1996 = USSC held the intangibles tax was unconstitutional and remanded case to NC Supreme Court to "fashion a remedy."
- 1997 = NC Supreme Court severed deduction from law and left rest intact.
- 1997 = General Assembly passed 2 acts; one forgiving tax liability and one authorizing refunds.



31

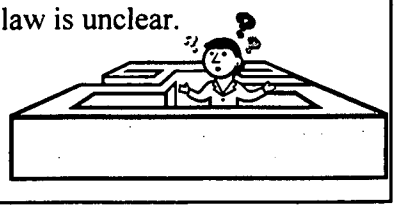
Smith Case (1998)

- The Court held that the legislative act granting refunds only to those who had filed a timely protest violated the uniformity requirement of the North Carolina Constitution.

32

Where Are We After *Bailey II*?

- Until 1998, the law was settled with regard to the validity of G.S. 105-267.
- Now the law is unclear.



Where Are We After *Bailey II*?

vs.

The holding of Bailey II is limited to its unique set of facts.



The protest rule is dead

34

Objectives

☑Overview of State and federal tax refund procedures

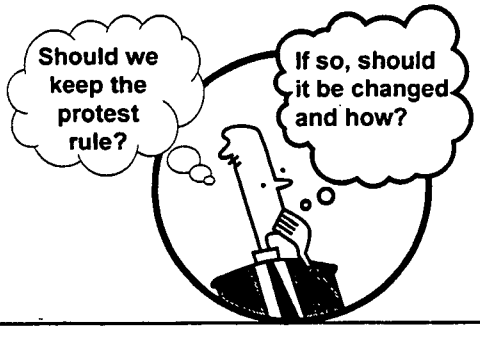
☑Background of the protest rule

- Legislative history
- Judicial Interpretation

➔Issues for consideration

35

Issues for Consideration



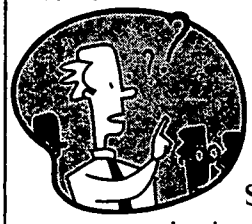
36

Questions to Consider

- **Does it serve the purpose for which it was originally intended?**
- **Should taxpayers have to take some sort of action to preserve their claim with regard to an improper tax?**

37

Questions to Consider



Form?

Content?

Statute of limitations?

Should it be limited to unconstitutional elements of a tax?

Who should be covered?

38

Objectives

- ☑**Overview of State and federal tax refund procedures**
- ☑**Background of the protest rule**
  - **Legislative history**
  - **Judicial Interpretation**
- ☑**Issues for consideration**

39

§ 105-266.1. Refunds of overpayment of taxes.

(a) If a taxpayer claims that a tax or an additional tax paid by the taxpayer was excessive or incorrect, the taxpayer may apply to the Secretary for refund of the tax or additional tax at any time within the period set by the statute of limitations in G.S. 105-266.

The Secretary shall grant a hearing on each timely request for a refund. Within 60 days after a timely request for a refund has been filed and at least 10 days before the date set for the hearing, the Secretary shall notify the taxpayer in writing of the time and place at which the hearing will be conducted. The date set for the hearing shall be within 90 days after the timely request for a hearing was filed or at a later date mutually agreed upon by the taxpayer and the Secretary. The date set for the hearing may be postponed once, at the request of the taxpayer or the Secretary, for a period of up to 90 days or for a longer period mutually agreed upon by the taxpayer and the Secretary.

Within 90 days after conducting a hearing under this subsection, the Secretary shall make a decision on the requested refund, notify the taxpayer of the decision, and adjust the computation of the tax in accordance with the decision. The Secretary shall refund to the taxpayer in accordance with G.S. 105-266 the amount of any tax the Secretary finds was paid incorrectly or paid in excess of the tax due.

(b) The rules of evidence do not apply in a hearing before the Secretary of Revenue under this section. G.S. 105-241.2, 105-241.3, and 105-241.4 apply to a tax or additional tax assessed under this section.

(c) Within 90 days after notification of the Secretary's decision with respect to a demand for refund of any tax or additional tax under this section, an aggrieved taxpayer may, instead of petitioning for administrative review by the Tax Review Board under G.S. 105-241.2, bring a civil action against the Secretary for recovery of the alleged overpayment. If the alleged overpayment is more than two hundred dollars ($200.00), the taxpayer may bring the action either in the Superior Court of Wake County or in the superior court of the county in which the taxpayer resides; if the alleged overpayment is two hundred dollars ($200.00) or less, the taxpayer may bring the action in any State court of competent jurisdiction in Wake County. If upon trial it is determined that there has been an overpayment of tax or additional tax, judgment shall be rendered therefor, with interest, and the State shall refund the amount due.

(d) Either party may appeal to the appellate division from the judgment of the superior court under the rules and regulations prescribed by law for appeals, except that the Secretary, if he should appeal, shall not be required to give any undertaking or make any deposit to secure the cost of such appeal.

(e) Nothing in this section shall be construed to conflict with or supersede the provisions of G.S. 105-241.2, and, with respect to tax paid to the Secretary of Revenue, the rights granted by this section are in addition to the rights provided by G.S. 105-267. (1957, c. 1340, s. 10; 1969, c. 44, s. 66; c. 1132, s. 2; 1973, c. 476, s. 193; 1979, c. 801, s. 91; 1981 (Reg. Sess., 1982), c. 1211, s. 2; 1987, c. 827, s. 22; 1993, c. 485, s. 14; c. 532, s. 10; 1995, c. 17, s. 11.2.)

§ 105-267. Taxes to be paid; suits for recovery of taxes.

No court of this State shall entertain a suit of any kind brought for the purpose of preventing the collection of any tax imposed in this Subchapter. Whenever a person has a valid defense to the enforcement of the collection of a tax, the person shall pay the tax to the proper officer, and that payment shall be without prejudice to any defense of rights the person may have regarding the tax. At any time within the applicable protest period, the taxpayer may demand a refund of the tax paid in writing from the Secretary and if the tax is not refunded within 90 days thereafter, may sue the Secretary in the courts of the State for the amount demanded. The protest period for a tax levied in Article 2A, 2C, or 2D of this Chapter is 30 days after payment. The protest period for all other taxes is three years after payment.

The suit may be brought in the Superior Court of Wake County, or in the county in which the taxpayer resides at any time within three years after the expiration of the 90-day period allowed for making the refund. If upon the trial it is determined that all or part of the tax was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the judgment shall be collected as in other cases. The amount of taxes for which judgment is rendered in such an action shall be refunded by the State. G.S. 105-241.2 provides an alternate procedure for a taxpayer to contest a tax and is not in conflict with or superseded by this section. (1939, c. 158, s. 936; 1955, c. 1350, s. 15; 1957, c. 1340, s. 10; 1977, c. 946, s. 1; 1996, 2nd Ex. Sess., c. 14, s. 10.1; 1998-98, s. 13.1(c); 1999-415, s. 5.)

Statement to Revenue Laws
Study Committee at its October 3, 2006,
Meeting Concerning Proposed
Changes in North Carolina's Tax Appeals System

By

Royce Powell*

My tax controversy practice is primarily in the federal system against the IRS. However, I have also represented clients with disputes with the North Carolina Department of Revenue so I do have personal experience with the current North Carolina system. I am here today speaking on my own behalf, and not representing any group, because of my personal interest in ensuring that North Carolina has a tax dispute forum which business taxpayers perceive to be fair and unbiased.

I just want to say a few words about how the federal system has gone a long way toward achieving a taxpayer perception of fairness and actual fairness by providing the option to go directly to the U.S. Tax Court, which functions much like our North Carolina Business Court would function under the proposal being discussed at this meeting today. When I have represented clients in the U.S. Tax Court (which fills basically the same role as the North Carolina Business Court would fill under the proposal), my clients and I have been satisfied that the U.S. Tax Court is objective and knowledgeable, that the procedure is fair, and that many cases settle because the IRS is hesitant to try doubtful cases before a truly neutral judge.

The federal system starts with an IRS agent who audits a tax return and provides written notice as to how much additional tax the agent believes is owed and why. If you can't convince the IRS agent that he or she is wrong about the additional tax claimed, and you want to continue to challenge the additional tax, there are basically two choices for the taxpayer. First, you can pursue an administrative appeal with the IRS Office of Appeals (run by the IRS) which I view as much like the appeal to the Assistant Secretary in the North Carolina Department of Revenue system. (However, even if you choose to go to the IRS Office of Appeals, you are not stuck with

*D. Royce Powell, Esq. practices tax and corporate law in Raleigh with the Maupin Taylor law firm.

a record or findings set by the IRS Appeals Officer and you are entitled to proceed further to federal court, where the case will be tried before an independent judge, if you get an unsatisfactory result from IRS Appeals). Or, secondly, you can choose to skip the federal administrative appeals process and go directly to U.S. Tax Court, without first having to pay the tax the IRS agent contends is due. [1]

In the federal system, taxpayers who choose to exercise their right to skip an administrative appeal and go directly to court most frequently decide to go to the U.S. Tax Court which they can access without first having to pay the tax alleged and where they find a judge that is accustomed to hearing tax cases. This is much like the proposal for certain taxpayers now being discussed at this meeting for the North Carolina Business Court. Of course, the proposal under discussion would also preserve the present North Carolina Department of Revenue administrative appeal if the taxpayer does not want to go directly to the North Carolina Business Court.

Since the IRS Office of Appeals was formed in 1952, there have been repeated questions about whether it is truly independent of the IRS agents and attorneys since its representatives occupy offices near and communicate freely with IRS attorneys and agents. Taxpayers frequently want to avoid the administrative step of IRS Appeals when they know that the IRS has taken a hard line on their type case or know that the IRS has provided IRS appeals with special hard nose guidelines for settlement of their type case.

None of my remarks should be interpreted as a suspicion that IRS Appeals officials and North Carolina Department of Revenue officials involved in administrative appeals don't try to be fair and impartial in listening to tax appeals. Rather, in my view, these officials are given a nearly impossible job when they are simultaneously asked to be assertive in collecting the revenue and to be totally impartial in listening to a tax appeal involving a significant amount of money.

[1] Taxpayers can also choose to go directly to two other federal courts, but they must first pay the tax alleged in full.

In summary, at least in the federal system, there is a way to skip over the administrative process controlled by the IRS and get directly into an impartial court with tax expertise without having to pay the tax assessed if you want to avoid the time and expense of an administrative proceeding which your client perceives will not be impartially conducted. I wholeheartedly support the proposal being discussed at this meeting to permit certain North Carolina taxpayers to go directly to our Business Court.

Thanks for listening to my remarks.

COST
COUNCIL ON STATE TAXATION

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President
Council On State Taxation

Testimony to the Revenue Laws Study Committee October 3, 2006

Fair, Efficient and Customer-Focused Tax Administration

Joseph R. Crosby
Legislative Director, Council On State Taxation

Senator Kerr, Representative Luebke, and Members of the Committee, thank you for the opportunity to testify on issues associated with the administration of North Carolina's tax system. My name is Joe Crosby, and I am Legislative Director for the Council On State Taxation (COST).

About COST

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of 580 major corporations engaged in interstate and international business. COST's objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities

Assessing North Carolina's Business Tax System

COST has long been concerned with business climate issues among the States. One critical component of a state's business climate is the perceived fairness of the rules and requirements for administration and appeal of state tax statutes. Why are these issues so important? Although state tax statutes and regulations are subject to audit scrutiny, the percentage of taxpayers actually audited is very small. As a result, our federal and state tax systems are premised, to a large degree, on voluntary compliance. It is a common truth that taxpayers will more fully and willingly comply with a tax system they perceive to be balanced, fair, and effective. State legislatures must also be sensitive to competitiveness concerns created by a poor business climate when companies face decisions of where to expand or relocate.

Fair, Efficient and Customer-Focused Tax Administration

Every other year, COST releases a "scorecard" that attempts to objectively analyze state treatment of significant procedural issues that reflect whether states provide fair, efficient, and customer-focused tax administration. The scorecard evaluates each state's statutory scheme against objective criteria rather than subjective surveys of taxpayers' views. Thus, any criticism I offer regarding North Carolina's tax administration system does not relate in any way to those charged with enforcing the law; rather, the criticism is directed at the law.

The scorecard measures states based on the answers to the following questions:

1) Does the state have even-handed statutes of limitation (equal for refunds and assessments)?
2) Does the state have equalized interest rates (equal for refunds and assessments)?
3) Does the state provide for at least a 60 day—and preferably 90 day—protest period?
4) Does a federal filing extension automatically extend the state filing date?
5) Does a federal revenue agent report (RAR) open the entire state return to audit?
6) Does the state provide an independent tax dispute forum?
7) Does the state require payment of tax (or bond) before providing an independent hearing?

Relative to these criteria, North Carolina fares poorly, ranked 43 out of the fifty states. Fortunately, remedying flaws in North Carolina's existing tax administration laws is relatively straightforward and would not require a significant expenditure. The remainder of my testimony will highlight several changes that COST recommends.

Provide for a 90 Day Protest Period

The first step in the administrative process in most states is the issuance of an assessment with notification of a right to protest. That protest period should be at least 60 days and preferably 90 days. Shorter protest periods—such as the 30 days provided for by North Carolina—are unreasonable and could jeopardize a taxpayer's ability to fully respond to a proposed assessment. A notice period of 60 days or longer is of increasing importance in a global economy where taxpayers are working to comply with the laws of numerous jurisdictions. Currently, the majority of the states offer 60 or more days to file protests, with 8 states providing at least 90 days.

Provide for Automatic Extensions with a Federal Extension

Obtaining a federal extension should automatically qualify the taxpayer for an extended state due date. To ease administrative burdens, an automatic extension should only require a taxpayer to attach a copy of the federally extended return with the state return to qualify. Only 7 states, including North Carolina, do not provide an automatic extension of the state filing deadline for taxpayers that obtain a federal extension.

Limit Adjustments to Issues Contained in the RAR

Unless a taxpayer has signed a waiver of the statute of limitations for state tax purposes, federal audit changes (the Revenue Agent Report, or RAR) should not be reason to open an entire year to inspection. If the state return is otherwise beyond the statute, state adjustments should be confined to the issues contained in the federal audit report. Significantly, North Carolina is one of only nine states that use a federal RAR as justification to open a taxpayer's entire return to audit.

Eliminate "Pay to Play"

While no state currently requires payment of a disputed tax during the administrative appeals process, 13 states, including North Carolina, require taxpayers to prepay tax or post a bond to obtain access to the trial court level. The perception of unfairness is more acute in "pay-to-play" states like North Carolina where the initial hearing is before an adjudicatory body that is not independent of the state's department of revenue.

For corporate taxpayers that have made a significant investment in a state by locating factories, facilities, and employees in the state, forcing the corporation to pay an assessment—based solely on the untested theories and assertions of an auditor or audit team—before being given a right to contest that assessment before an independent tribunal is tantamount to suggesting that the company will skip town on an obligation that may or may not come due. The requirement to prepay a proposed tax liability encourages unnecessary delay in the handling of a taxpayer cases and fosters a mutually distrustful atmosphere between the departments of revenue and the business community that reflects poorly on a state's business climate and competitiveness.

Elimination of the pay-to-play rules benefits states and taxpayer alike. States benefit by reducing their backlog of cases, and taxpayers benefit from an administrative atmosphere perceived to be less adversarial. Both sides benefit from the perception that the state has taken a major step towards improving its business climate. If a state department of revenue feels that a particular tax assessment is in jeopardy based on the facts and circumstances before it, it should certainly issue a jeopardy assessment on that amount; such assessments are a legitimate means of protecting the state fisc. However, jeopardy assessments should only be used in extreme circumstances and the burden of proving that the assessment is in jeopardy should fall upon the state.

Provide for Fair, Efficient and Independent Appeals

North Carolina does not have an independent hearing officer for appeals of disputed tax assessments. Appeals are made to an Assistant Secretary who sits in the office of the Secretary of Revenue, across the hallway from the Department of Revenue's lawyer. Taxpayers are therefore appealing disputed assessments to the same office which made the assessment, which is hardly an independent hearing of an appeal. Further exacerbating this perceived unfairness, taxpayers who do not prevail in their protest before an Assistant Secretary then have to appeal on the record set before the Assistant Secretary and the review by the courts is on the findings made by the Secretary. Since the legal system gives great deference to administrative decisions, it is extremely hard to have these decisions over turned in the courts.

North Carolina is one of only 15 states that do not provide an independent, prepayment appeals system (either judicial or nonjudicial). Without independence, the appearance of objectivity is simply not present. That perception, regardless of its accuracy, necessarily detracts from even exemplary personnel and work product of the adjudicative body. Indeed, in national meetings organized by COST, taxpayers frequently cite North Carolina's current appeals process as unfair—a "rubber stamp" for the Department of Revenue's audit findings.

As an alternative to the process described above, taxpayers can pay an assessment and sue for a refund. This presents two problems. The first, as noted previously, is that it is unfair to require a taxpayer to pay a disputed assessment before that taxpayer has the opportunity for a fair hearing before an impartial tribunal. Most states and the federal government allow taxpayers to make their case before an independent body prior to payment of a disputed assessment. The second problem is that many judges in general jurisdiction courts are not experienced with complicated tax cases.

There are different ways to remedy the current system. One potential avenue for reform is through the Business Court. The General Assembly has previously created the Business Court to hear complicated business cases. The Business Court, comprised of three experienced trial judges, could handle tax appeals fairly and competently. Of course, they would need to develop tax expertise, but this is true of any body hearing tax appeals. Providing taxpayers with access to the Business Court, prior to the payment of a disputed assessment, would send a very positive message to the national business community that they can expect fair treatment in North Carolina by independent, experienced judges.

Regardless of the avenue for reform that is ultimately chosen, those who wish to should be able to continue to pursue administrative appeals as they do under current law. The current administrative appeals process is also likely the best process for certain cases, such as tax protester cases, small dollar cases, drug cases and the like. To ensure that the independent tribunal—whether the Business Court or another body—is not inundated with routine cases, qualitative and quantitative jurisdictional standards should be set.

Conclusion

North Carolina is widely perceived as a good state in which to invest and do business. Unfortunately, some of the laws governing tax administration in North Carolina are unfriendly to taxpayers and are markedly out of line with other states' laws. Fortunately, the current deficiencies are relatively easy to remedy by legislative action. COST is very interested in working with you and the Department of Revenue to improve North Carolina's tax administration system.

Tax Hearings and Appeals

Sabra Faires
Revenue Laws Study Committee
October 3, 2006

Charge to Committee

- S.L. 2006-196, HB 1891, Sec. 13(4)
- Study the administrative process for the review of disputed tax matters
- Two aspects
  - Overall process
  - Taxes "paid under protest"

Process for State Taxes

- Current process in place since 1955
- Applies to individual and corporate income, franchise tax, sales tax, motor fuels tax, unauthorized substance tax, and other taxes imposed by State
- Sources of disputes
  - Assessment by Department
  - Denial of request for refund

Process for State Taxes

- Two Paths
  - Administrative review process
  - Direct to court process



Administrative Review

- Request for Hearing
- Informal Resolution
- Hearing
  - Secretary has delegated authority to hearing officer under 105-260.1
  - Taxpayer can be represented by non-attorney
  - Rules of evidence do not apply
  - No authority to decide constitutional issues
- Secretary's Decision
  - Made by Department hearing officer after hearing
  - Written decision with findings of fact and conclusions of law
  - Not public, Department redacts decisions and puts on website
  - Taxpayer can appeal, but Department cannot appeal

Administrative Review

- Appeal from Secretary to Tax Review Board
- 3 member Board
  - State Treasurer or designee
  - Chair of N.C. Utilities Commission
  - Appointee of Governor
- Established in 1953 to hear apportionment relief requests, given appeal role in 1955

Administrative Review

- Tax Review Board Hearing
  - Review is on record made at departmental hearing
  - No payment or bond required
  - Rules of evidence do not apply
  - Must be an attorney to represent taxpayer before Board
  - Makes written decision
  - Decision public, published in N.C. Register

Administrative Review

- Superior Court
  - Petition for review
  - Review is on record
  - Standard of review set out in G.S. 150B-51(b)
- Regular appeal route from Superior Court
  - Court of Appeals
  - North Carolina Supreme Court

Direct to Superior Court

- Payment or bond required
- Can skip administrative review
- Can jump to court from steps in administrative review
- De novo review
- Rules of Civil Procedure apply



Tax Hearing Statistics

- Corporate
  - About 80 hearing requests a year
  - 1 or 2 go to hearing with Secretary
- Personal Taxes
  - About 320 hearing requests a year
  - About 20 go to hearing with Secretary
- Sales and Use Taxes
  - About 160 hearing requests a year
  - About 10 go to hearing with Secretary

Tax Hearing Statistics

- Unauthorized Substance Taxes
  - About 300 hearing requests a year
  - About 200 go to hearing with Secretary
- Motor Fuels Taxes
  - About 60 hearing requests a year
  - About 10 go to hearing with Secretary

Process for Property Taxes

- Property Tax Commission
  - 5 member board established in 1973
    - 3 appointed by Governor
    - 2 appointed by General Assembly
- Scope of appeals
  - Orders of county commissioners adopting schedules of value
  - Orders of local Boards of Equalization and Review concerning the listing, appraisal, or assessment of property
  - From appraisal and apportionment determinations by Department of Revenue concerning public service company property

Process for Property Taxes: Property Tax Commission

- Meets each month for three days in hearing room at Department of Revenue
- Staff support provided by Department of Revenue
- One or more members can hear appeal and make recommendation to full Commission
- Rules of evidence apply
- Counties and corporate taxpayers must be represented by an attorney; individuals can represent themselves
- Enters order with findings of fact and conclusions of law
- Orders are public
- Appeal from Commission to Court of Appeals

Property Tax Commission Statistics

- About 700 requests each year for a hearing before Commission
- About 35 hearings held a year

Alternatives to Current Process

- Establish Tax Court in Judicial Branch
- Include Tax Cases in Business Court
- Establish Tax Tribunal in Executive Branch
- Include Tax Cases in Office of Administrative Hearings
- Modify current process
  - Eliminate Tax Review Board
  - Skip superior court review after Tax Review Board decision

Judicial Branch Alternatives

- Separate court
  - Patterned after federal tax court
  - Issues with volume of work
- Included in Business Court
  - Established by Rules 2.1 and 2.2 of the General Rules of Practice for the Superior and District Courts and, in 2005, by statute (7A-45.3)
  - Chief Justice designates a special superior court judge to hear and decide complex business cases

Business Court

- Complex business case is an action that involves a material issue related to :
  - Law on corporations and other business entities
  - Securities law
  - Antitrust law
  - State trademark or unfair competition law
  - Intellectual property law
  - Internet, electronic commerce, and biotechnology

Business Court

- Tax cases are not mandatory complex business cases
- Could designate some or all tax cases as mandatory complex business cases
- Currently, can ask for tax case to be designated:
  - Discretionary complex business case
  - Exceptional civil case

Tax Tribunal in Executive Branch

- Endorsed by American Bar Association in its Model State Administrative Tax Tribunal Act
- Primary goals of Model Act
  - No pay to play – get a hearing before payment or bond required
  - Tax Tribunal is independent of Secretary and Department of Revenue – key to fairness
  - 10-yr term of tax tribunal judge – key to reasoned decision based on expertise

Office of Administrative Hearings

- Established in 1985 as independent, quasi-judicial agency
- Chief Justice appoints Chief Administrative Law Judge
- Stated purpose is to prevent commingling of legislative, executive, and judicial functions in administrative process
- Department of Revenue exempt from OAH hearing process

Office of Administrative Hearings

- ALJs must be attorneys
- Chief ALJ can designate certain ALJs with specific expertise to preside at specific types of hearings
- ALJs must be attorneys
- Rules of Civil Procedure apply

Office of Administrative Hearings

- 29 other central panel states, plus D.C. and Chicago
  - Includes South Carolina, Alabama, and Georgia
- 17 of the 29 states hear state tax cases and 4 hear property tax cases
  - The 4 are Michigan, South Carolina, South Dakota, and Wyoming

REVENUE LAWS STUDY COMMITTEE
Thursday, November 16, 2006 at 9:30 AM
Room 544, Legislative Office Building

MINUTES

The Revenue Laws Study Committee met at 9:30 AM on November 16, 2006, in Room 544 of the Legislative Office Building. Thirteen members of the committee were present. Senator Kerr and Representative Luebke presided.

Senator Kerr introduced a new staff attorney with the Research Division, Heather Fennell, who will be a member of the staff of the Revenue Laws Study Committee.

Approval of the Minutes

Senator Hoyle motioned for the approval of the October 3, 2006 minutes and the motion carried. A copy of the minutes is attached.

Gross Premiums Tax on Insurance Companies – Simplification of Fire Tax Rate

Cindy Avrette, a staff attorney with the Research Division, was recognized to review of 2006 legislation. A summary of the presentation is attached.

Rodney Bizzell, a fiscal analyst with the Fiscal Research Division, was recognized to explain the current distribution of the Gross Premiums Tax. A summary of the presentation is attached.

Wayne Goodwin, Assistant Commissioner of Insurance, was recognized for comments. A copy of his remarks and a 2006 report of the Fire Grant Fund are attached.

Joe Stewart, Executive Director of the NC Insurance Federation, was recognized. He briefly stated that he supports the Insurance Commission's position.

Refunds of Tax "Paid Under Protest" : Follow-up and Overview of Dunn v. State Case

Trina Griffin, a staff attorney with the Research Division, was recognized to summarize the case. A copy of her comments is attached.

Senator Kerr took a moment to express his appreciation of Senator Webster's public service as a legislator and wished him the best in his future.

Property Tax Valuation of Conservation Land

Stan Duncan, Henderson County Tax Assessor, was recognized to explain the valuation method. A copy of his report is attached.

Pete Rodda, Forsyth County Tax Assessor, was recognized to explain property tax valuation exemption facts. A copy of his report is attached.

Edgar Miller, Director of Government Relations for the Conservation Trust of North Carolina, and Will McDow, Forest Policy Analyst for Environmental Defense, were recognized for comments. A copy of their joint power point presentation is attached. A copy of Mr. McDow's handout, "Legislative Options to Update the Present Use Value Program: Examples from Other States" is attached.

Richard Hamilton, Director of the Wildlife Resources Commission, was recognized for comment. He would like to see the State offer tax incentives to wildlife conservationist landowners in order to preserve critical habitats.

Income Tax Credit for Certain Real Property Donations

Dan Ettefagh, a staff attorney with the Bill Drafting Division, was recognized to offer a history and review of the income tax credit. A copy of his power point presentation is attached.

Richard Rogers, Assistant Secretary for Natural Resources, Department of Environment and Natural Resources, spoke in favor of the conservation program.

Jason Walser, Chair, LandTrust Council, spoke in place of Reid Wilson, Executive Director, NC Conservation Trust. He spoke in favor of the conservation program and a copy of his power point presentation is attached.

Linda Millsaps, Assistant Secretary for Tax Administration, Department of Revenue, was recognized to explain the Department's view on the program. She briefly spoke of curbing valuation abuse and of an objective of improving the law to reach its goal.

Corporate Income Tax: Process for Estimating Fiscal Impact of Combined Reporting

Karl Knapp, Director, Tax Research Division, Department of Revenue was recognized to explain the status of the report. DOR is trying to emulate California's statutes. The review process will take into the next session to view the incoming information and make recommendations.

The meeting adjourned at 12:10 pm.

Senator John H. Kerr, III, Co-Chair
Revenue Laws Study Committee

Representative Paul Luebke, Co-Chair
Revenue Laws Study Committee

DeAnne Mangum, Committee Clerk

REVENUE LAWS STUDY COMMITTEE AGENDA

Sen. John Kerr Rep. Paul Luebke

Thursday, November 16, 2006
Room 544, Legislative Office Building
9:30 a.m.

I. **Approval of the Minutes from the October 3, 2006, Meeting**

II. **Gross Premiums Tax on Insurance Companies – Simplification of Fire Tax Rate**
- **Review of 2006 Legislation**
  - Cindy Avrette, Research Division
  - Rodney Bizzell, Fiscal Research Division
- **Comments and Concerns**
  - Wayne Goodwin, Assistant Commissioner of Insurance
  - Joe Stewart, Executive Director, Insurance Federation of NC

III. **Refunds of Tax "Paid Under Protest": Follow-up and Overview of *Dunn v. State* Case**
Trina Griffin, Research Division

IV. **Property Tax Valuation of Conservation Land**
- **Method of Valuation**
  - Stan Duncan, Tax Assessor, Henderson County
  - Pete Rodda, Tax Assessor, Forsyth County
- **Comments from Interested Parties**
  - Edgar Miller, Director of Government Relations, Conservation Trust for North Carolina
  - Will McDow, Forest Policy Analyst, Environmental Defense
  - Richard Hamilton, Director of Wildlife Resources Commission

V. **Income Tax Credit for Certain Real Property Donations**
- **History and Review of Tax Credit**
  Dan Ettefagh, Bill Drafting Division
- **Comments from Interested Parties**
  - Richard Rogers, Assistant Secretary for Natural Resources, Department of Environment and Natural Resources
  - Reid Wilson, Executive Director, Conservation Trust for NC
  - Linda Millsaps, Assistant Secretary of Tax Administration, Department of Revenue

VI. **Corporate Income Tax: Process for Estimating Fiscal Impact of Combined Reporting**
Karl Knapp, Director, Tax Research Division, Department of Revenue

VII. **Adjournment**

Future Meeting Dates: Dec. 12, Jan. 16, Jan. 23
All meetings in Room 544, LOB, at 9:30 a.m.

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — Nov. 16, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	[illegible]
[signature]	MTC
[signature]	BR
Ken Melton	D.O.R.
DICK HAMILTON	WILDLIFE
Richard Rogers	NCDENR
David Scobie	NCACPAs
Karl Knapp	DOR
Steve Cornwell	DOR
Nancy Pomeranz	NC DOR
Virginia Daughtry	DOR

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — Nov. 16, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Will McDow	Environmental Defense
Tom Beason	NCED / NCWF
Lee Harris	NCDOR
Stan Duncan	Henderson County Assessor
David Baker	NCDOR
Camilla Herlevich	NC Coastal Land Trust W. Lavington NC
Jason Walser	Land Trust for Central NC
Michael Houser	NCAE
Ashley C. Morris Jr	Ashley C. Morris JR PLLC
Vicky Young	DOI
Lee Weisbecker	Triangle Bus. Journal

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — Nov. 16, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Greg Rayford	NC DOR
Jack Cummings	Alston + Bird
Howard McMillan	Norfolk Southern Corp.
Pete Rodda	Forsyth Co Tax Assessor/Collector
Paul Mayer	NCACC
Sharon Millen	CUCA
Pat Goddard	NCAAO + Johnston Co Tax Administrator
Terence Friedman	NCDOJ
Angie Hamm	Maupin Taylor
Courtney Crowder	Capstrat

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — Nov. 16, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Sandy Sands	WCSR
[illegible]	COST 122 C ST NW WASH, DC 20001
[illegible]	GENERAL ELECTRIC
[illegible]	Poyner & Spruill
Wm. Nelson	Smith Anderson
Grey Roney	DOJ-AG
Linda Struyk Millsaps	DOR
DAN WITTLE	ENV. DEFENSE
Randy Fraser	TWC
Becki Gray	Citizens Institute
BNEELY	MTPA

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — Nov. 16, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jim	NCWU - RBNC
Jim Fuller	NCACPA - Raleigh
Roger + Fred Bone	Bone + Assoc
DAVID BARNES	Poyner + Spruill
Rick Zechini	NC Assn. of Realtors
Joe Stewart	IFNC
Nancy Rendleman	Maupin Taylor
Vance Holloman	State Treasurer
Bill Flournoy	NCDENR
Jamie Fenwick	TNC
Cheryl Causey	BB&T

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — Nov. 16, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Wayne Goodwin	NCDOT
Patrick Baffkin	Alley Associates, Inc.
John Goodman	NCCBE
Kathy Hawkins	Progress Energy
John McAlister	Duke Energy
Jamie Wrenn	JD, AC, PA
Jennifer Mills	Wake County
John Mehaffey	Governor's
Daniel Baum	Kennedy Covington
R. Rogers	NC DENR
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — Nov. 16, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Rebecca Troutman	NCACC

REVENUE LAWS STUDY COMMITTEE
Tuesday, October 3, 2006 at 9:30 AM
Room 544, Legislative Office Building

MINUTES

The Revenue Laws Study Committee met at 9:30 AM on October 3, 2006, in Room 544 of the Legislative Office Building. Eleven members of the committee were present. Representative Luebke presided.

Dave Crotts, Fiscal Research, introduced the new member of the staff, Barry Boardman, a fiscal analyst with the Fiscal Research Division.

Approval of the Minutes.

Rep. Carney motioned for the approval of the September 5, 2006 minutes and the motion carried. A copy of the minutes is attached.

Gift Tax – Overview of the Tax and Alternatives for Simplification.

Canaan Huie, a staff attorney with the Bill Drafting Division was recognized to explain the State's gift tax. A copy of the power point presentation is attached.

Hearings and Appeal Process for Disputed Tax Matters

Overview of Current Process
Sabra Faires, Senate Tax Counsel, was recognized to explain the current process for tax appeals. David Baker, Director of Property Tax, Department of Revenue and Chuck Neely, representing the Council on State Taxation were recognized to answer questions. A copy of Ms. Faires' power point presentation is attached.

Refunds of Tax Paid under Protest and other Tax Refunds.
Trina Griffin, a staff attorney with the Research Division, was recognized to explain the refund process for appealed taxes. A copy of her report is attached.

Joe Crosby, legislative director for the Council on State Taxation; Jody Joyner, representing Moore & Van Allen; and Royce Powell, representing Maupin Taylor, PA; were recognized to speak in favor of updating the tax appeal process. Copies of their statements are attached.

Linda Millsaps, Assistant Secretary for Tax Administration, Department of Revenue, was recognized to explain the Department's view on the tax appeal hearings.

Chuck Neely was again recognized to speak in favor of bypassing the Department of Revenue and allowing business tax appeals to go to directly to court.

The meeting adjourned at 12:22 pm.

Senator John H. Kerr, III, Co-Chair
Revenue Laws Study Committee

Representative Paul Luebke, Co-Chair
Revenue Laws Study Committee

DeAnne Mangum, Committee Clerk

Simplify Additional Fire & Lightning Tax Rate

S.L. 2006-196: House Bill 1891

Supplemental Fire Tax:

A 1.33% supplemental State tax is imposed on gross premiums applicable to fire and lightning coverage. For as long as can be remembered, the tax has been applied to 100% of premiums from insurance that covers only fire losses and on a percentage of the premiums from insurance that covers losses from fire and other risks considered allocable to fire. The percentages are neither statutory nor imposed by administrative rule.

Issue:

The Department of Revenue received inquiries as to how the percentages are determined as well as requests to use individual insurance carrier experience in lieu of an overall percentage.

- No statutory authority for the Department to set percentages.
- A 2002 letter from the Chief Deputy Commissioner of the Department of Insurance finding that the General Statutes do not provide a legal basis for applying the supplemental fire tax to only a percentage of a policy.
- The Department of Revenue states that the attorneys assigned to the Department from the Attorney General's Office agreed with this interpretation.

Revenue Laws Proposal:

- Specify the percentage of a policy to which the supplemental fire tax applies by codifying the existing percentages. (Committee asked the Department of Insurance, working with the insurance industry, to review the percentages to verify that they accurately reflect the fire and lightning loss experience for the different types of policies.)
- Expand the tax base to include marine and automobile physical damage policies to conform the State supplemental tax to the local supplemental tax. (Also, Committee learned that NC was the only state that imposes a supplemental fire and lightning tax that excluded marine and automobile coverage from the tax.)

Session Deliberation:

The Committee staff met several times with representatives of the Department of Insurance, the Department of Revenue, and the insurance industry.

- Experience ratings differ.
- New policies offered that do not fit within any category.
- Recognition that fire departments' role has grown from strictly responding to fires to 'first responders'.
- Local fire and lightning tax imposed on policies applicable to fire and lightning coverage within fire districts – costly and time-consuming to calculate and administer.

Legislation:

- Codified the current administrative practice for 2 years.
- Established a new supplemental tax, effective January 1, 2008.
    - The new tax replaces the supplemental State and local tax with one supplemental tax that is based on a broader base.
    - The new tax applies to all insurance contracts that provide property coverage, thus a broader base.
    - The legislation does not limit the application of the tax to fire districts, thus a broader base.
    - The intent is to generate the same amount of revenue with greater simplicity and administrative ease for both the Department and the industry. Under the new tax, insurance companies do not have to account for the amount of premiums written in fire districts.

Remaining Issues:

- Rate.
- Distribution.
    - The local supplemental fire tax applied to contracts of insurance applicable to fire and lightning coverage within fire districts. A portion of the revenue from the local tax is distributed to these specific fire districts. The legislation proposed a new method of distribution based upon a per capita allocation among fire districts.
    - Percentage allocation to the Volunteer Fire Department Fund.

Gross Premiums Tax Distribution
Current Distribution

Statewide Fire and Lightning Tax
Rate = 1.33% of gross premiums of applicable coverage.
Generated $18.2 million in FY 2005-06

- 75% General Fund ($13.6 m.)
- 25% Volunteer Fire Dept Fund ($4.6 m.)
  - Provides matching grants to volunteer fire departments to purchase equipment and make capital improvements.
  - 2% may be used by Dept of Insurance for resources to administer the fund.

Additional Local Fire and Lightning Tax
Rate = 0.5% of gross premiums of applicable coverage.
Generated $5.9 million in FY 2005-06

- 95% distributed to fire districts for Firemen's Local Relief Fund.
  - Provides financial protection for firemen, including support for firemen injured in service, support for family members of firemen killed in service, and supplemental retirement and workers compensation benefits.
  - Distribution in proportion to the amount of premiums written in each fire district.
- 3% distributed to State Firemen's Association for general purposes
- 2% retained by Dept of Insurance for administration

New Distribution
(effective January 1, 2008)

- Combined Statewide Rate = 0.85%
  - Intended to be revenue neutral
  - New distribution intended to provide a proportional share to each purpose
- 20% Volunteer Fire Dept. Fund
- 25% Firemen's Relief Fund to be distributed on a per capita basis
  - 3% Retained by State Firemen's Association
  - 2% Retained Dept of Insurance
- 55% General Fund

Issues for Further Consideration

- Per capita distribution
  - Population data for fire districts not readily available
  - Other alternatives include distribution based on assessed value or number of firefighters.

DEPARTMENT OF INSURANCE
State of North Carolina
1201 MAIL SERVICE CENTER
RALEIGH, N.C. 27699-1201

JIM LONG
COMMISSIONER OF INSURANCE

(919) 733-3058

Summary of Remarks by Jim Long, Insurance Commissioner to Revenue Laws Study Committee of the NC General Assembly Re: HB 1891, Gross Premium Taxes and Fire Grant Funds Awarded by DOI November 13, 2006

Good morning.

It is good to be back with you again. In preparation for the last meeting of Revenue Laws you should have received some of the information about why I am here before you. Specifically, I am here to recommend certain changes to the State's volunteer fire department grant fund and the firemen's relief fund. These changes are designed to preserve and improve upon those funds.

You have also already received a brief history of these funds from Fiscal Research this morning, namely from Cindy Avrette and Rodney Bizzell.

As for the portion dedicated to grants for volunteer fire departments in North Carolina, between 1988 and 2006 we have been able to provide grants totaling $47 Million to fire departments in your districts. Overall, we have awarded more than $64 million among the two funds over the last 18 years.

However, each and every year between 1988 and 2006 the matching grant dollars requested by your volunteer fire departments has never been enough.

For the 2006 cycle there is a difference of approximately $3.5 Million - That means up to 175 more grants could have been awarded to fire departments around the State but were not because of the shortfall.

Each of you has received a copy of my 2006 report. In it you will see that fire departments in practically every county received monies from the grant fund this year. In fact, many of you have been invited to attend and have actually attended when these grants were awarded in past years in your districts.

Some fire departments, especially those in the more urban areas with a stronger tax base, do not receive these grants as the computer grading system awards the grants to Departments that do not have a large bank balance.

However, as fire and rescue equipment and supplies become more and more expensive, the $20,000 cap on these grants lessens the value of these grants to those who are eligible. The devalued cap makes the grants even less appealing for some departments.

Furthermore, as more and more volunteer fire departments must have more than 3 paid firefighters in order to keep up their operations, then more volunteer fire departments become ineligible for the grants.

And, as more and more departments serve a district of greater than 6,000 persons, those departments also become ineligible for the grants.

For all these reasons, I believe it is time for the following legislative actions to be taken in the 2007 session of the General Assembly:

The percentage of the gross premium taxes received from the insurance companies should be revised to allow additional percentage points to go to the fire grant fund instead of the State's General Fund - after all, the reason the State of North Carolina collected those premium surcharges was for the fire grants ... *Shouldn't a majority of those monies go to the fire departments and not to the General Fund?* Right now the law has the State's General Fund receiving approximately 55%. The present formula does a disservice to our firefighters and, in my opinion, is not in keeping with the legislative intent behind the fund's creation.

▶ I recommend that the split be reversed to allow 55% or more to go to the volunteer fire department grants and firemen's relief funds and with 45% to the General Fund; at the very least, a revised split should be 50-50 or better, in favor of the fire departments.

▶ Also, I recommend that the cap on the maximum fire grant be raised from $20,000 to $30,000.

I also recommend that this committee consider these additional options:

▶ Raising the cap of the number of paid firefighters from the current three (3) to six (6), or higher.

▶ Raising the population cap for individual departments from the current 6,000 to 12,000.

▶ Changing the match required of the volunteer fire departments. In other words, instead of the fire departments providing 50% and the grant fund providing 50%, we believe that the fire departments should provide 40% and the grant fund should provide 60%.

Any one or a combination of these will help tremendously.

Please note, though, that using several of these options together will increase the number of fire grants sought and, accordingly, will make it all the more imperative that the gap of between $1 Million and $3 Million be closed with this legislation.

If firefighters, the Department of Insurance and I had to choose among the legislative options, the number one need is for the fire grant fund to receive more of what it should have been receiving all along from the overall gross premiums tax.

In the end, making one or more of these changes will have multiple positive effects for everyone:

- More volunteer fire departments will be eligible for fire grants;
- More volunteer fire departments will receive fire grants, meaning that more firefighters in your district will benefit each year; and,
- With newer equipment and supplies, the official insurance ratings for each fire district will improve, which translates to lower homeowners' insurance premiums for your constituents, greater goodwill, and, most importantly, increased safety.

If some or all of these positive changes in the formula or eligibility are not enacted, then either (1) fewer and fewer volunteer fire departments will receive fire grants; or, (2) the General Assembly may need to consider increasing the surcharge on insurance companies – results that will create heartache and opposition among both firefighters and the insurance industry.

Thank you for your consideration this morning.

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VOLUNTEER FIRE DEPARTMENT FUND

During the 1987 Legislative Session, House Bill 166 was ratified creating the "Volunteer Fire Department Fund" (G.S. 118-50) which has been recodified and is now 58-87-1.

This fund was established to assist volunteer fire departments in purchasing equipment and making capital improvements. The fund is administered by the Department of Insurance, Fire and Rescue Services Division, under the direction of the Commissioner of Insurance. The State Treasurer invests its assets according to law and the earnings remain in the fund.

Grants are eligible to fire departments subject to the following limitations:

1. The size of the grant may not exceed $20,000.00;

2. The applicant shall match the grant on a dollar-for-dollar basis;

3. The grant may be used only for equipment purchases, payment of highway use taxes on those purchases, or capital expenditures necessary to provide fire protection services; and

4. An applicant may receive no more than one grant per fiscal year.

A fire department is eligible for a grant through this fund if:

1. It serves a response area of 6,000 or less in population;

2. It is volunteer, may have three (3) paid positions; and

3. It has been certified by the Department of Insurance

The major emphasis on this program is firefighter safety. It is our opinion highest priority should be given for firefighter safety equipment. However, requests for vehicle and capital expenditures are also considered. Each application is reviewed and scored using a non-subjective point system. The point system is based on each aspect of an application's per capita income, population served, number and age of vehicles, all volunteer or paid personnel, financial status and type of request being made.

Applications and detailed letters of instruction were mailed to every fire department in North Carolina January 2, 2006. Applications were accepted through March 1, 2006.

There were 568 applications received for evaluation, of these, 493 fire departments received matching funds through the Volunteer Fire Department Fund.

Requested Monies:	$7,911,759.02
Available Monies:	$4,443,507.39
Approved Monies:	$4,441,447.82

Attached to this report you will find a list of approved and non-approved departments along with the amounts awarded. The amounts shown in this report are one-half the cost of the equipment to be purchased.

All fire departments submitting a Volunteer Fire Department Fund application were notified by letter of their approved or non-approved status May 15, 2006.

Approved fire departments are presently purchasing and receiving their approved equipment. Upon delivery of their equipment, they will submit to this office all required agreement forms and invoices for reimbursement. The deadline for submitting this information to this office is September 30, 2006.

The checks are delivered to each approved fire department either by a staff member of the Department of Insurance or sent by mail. The equipment purchased through this grant must remain in the possession of the fire department for a minimum of five years and is subject to inspection or audit.

2006 Volunteer Fire Department Fund

County	Status	Fire Department			Requested	Approved
ALAMANCE						
	Y	North Central Alamance Fire Department, Inc.			$7,408.50	$7,408.50
	N	E M Holt Community Volunteer Fire Department, Inc			$19,553.51	$0.00
	TOTALS:	Approved	1			
		Not Approved	1			
		Departments	2	Total Amount	$26,962.01	$7,408.50
ALEXANDER						
	Y	Central Alexander Fire Department Inc.			$19,232.50	$19,232.50
	Y	Ellendale Community V.F.D., Inc.			$5,113.50	$4,927.50
	Y	Hiddenite Fire Department, Inc.			$6,925.40	$6,925.40
	Y	Stony Point V.F.D., Inc.			$10,045.69	$10,045.69
	Y	Sugarloaf V.F.D., Inc.			$10,000.00	$10,000.00
	Y	Vashti V.F.D., Inc.			$100,000.00	$20,000.00
	Y	Wittenburg V.F.D.			$15,652.50	$15,652.50
	TOTALS:	Approved	7			
		Not Approved	0			
		Departments	7	Total Amount	$166,969.59	$86,783.59
ALLEGHANY						
	Y	Cherry Lane Fire Department, Inc.			$13,345.00	$13,345.00
	Y	Glade Creek Volunteer Fire Department Inc.			$8,756.50	$8,366.50
	Y	Laurel Springs Fire Department Inc.			$5,712.20	$5,528.20
	Y	Piney Creek Vol. Fire Department, Inc.			$20,000.00	$20,000.00
	Y	Sparta-Alleghany Volunteer Fire Dept. Inc.			$16,525.45	$16,525.44
	TOTALS:	Approved	5			
		Not Approved	0			
		Departments	5	Total Amount	$64,339.15	$63,765.14

County	Status	Fire Department			Requested	Approved
ANSON						
	Y	Ansonville V.F.D., Inc.			$5,850.00	$5,850.00
	Y	Burnsville F&R Ambulance Service			$11,970.50	$11,970.50
	Y	Gulledge V.F.D., Inc.			$9,728.98	$9,128.98
	Y	Lanesboro #1 Fire District			$5,551.00	$5,551.00
	Y	Lilesville Fire Department			$3,680.00	$3,680.00
	Y	Morven Volunteer Fire Department Inc.			$9,181.00	$9,181.00
	Y	Peachland Fire Dist Of Anson Co			$7,500.00	$7,500.00
	TOTALS:	**Approved**	**7**			
		Not Approved	**0**			
		Departments	**7**	**Total Amount**	**$53,461.48**	**$52,861.48**
ASHE						
	Y	Creston Volunteer Fire Department Inc.			$14,922.00	$14,922.00
	Y	Fleetwood Volunteer Fire & Rescue, Inc.			$5,704.71	$5,704.71
	Y	Glendale Springs V.F.D., Inc.			$4,972.50	$4,972.50
	Y	Lansing V.F.D. & Rescue, Inc.			$2,774.50	$2,774.50
	Y	New River Volunteer Fire And Rescue Dept., Inc.			$7,144.92	$7,144.92
	Y	Pond Mountain Volunteer Fire And Rescue,Inc.			$2,090.00	$2,090.00
	Y	Todd Volunteer Fire & Rescue Department, Inc.			$4,200.00	$4,200.00
	Y	Warrensville Volunteer Fire & Rescue Dept., Inc.			$4,147.00	$4,147.00
	N	Jefferson Volunteer Fire Department, Inc.			$14,500.00	$0.00
	TOTALS:	**Approved**	**8**			
		Not Approved	**1**			
		Departments	**9**	**Total Amount**	**$60,455.63**	**$45,955.63**
AVERY						
	Y	Banner Elk Fire Department Inc.			$9,582.50	$9,582.50
	Y	Crossnore V.F.D., Inc.			$5,737.50	$5,737.50
	Y	Elk Park V.F.D., Inc.			$8,496.00	$8,496.00
	Y	Fall Creek V.F.D. Of Avery County Inc.			$9,460.00	$9,460.00
	Y	Green Valley V.F.D., Inc.			$14,428.00	$14,428.00
	Y	Newland V.F.D., Inc.			$5,466.09	$5,466.09
	TOTALS:	**Approved**	**6**			
		Not Approved	**0**			
		Departments	**6**	**Total Amount**	**$53,170.09**	**$53,170.09**

County	Status	Fire Department			Requested	Approved
BEAUFORT						
	Y	Aurora Volunteer Fire Department, Inc.			$5,125.00	$5,125.00
	Y	Bath Volunteer Fire Department,Inc.			$17,202.00	$17,202.00
	Y	Blounts Creek Volunteer Fire Department Inc.			$5,471.28	$5,471.28
	Y	Chocowinity Fire District Vol. Fire Dept.,INC.			$13,715.00	$13,715.00
	Y	Old Ford Volunteer Fire Department,Inc.			$7,450.00	$7,450.00
	Y	Pantego Community Fire Protection Assoc. Inc.			$11,100.00	$11,100.00
	Y	Pinetown Volunteer Firemen's Assn.,Inc.			$180,000.00	$20,000.00
	Y	Pungo River Volunteer Fire Department,Inc.			$7,357.95	$7,357.95
	N	Belhaven Fire & Rescue Department			$17,799.33	$0.00
	TOTALS:	**Approved**	**8**			
		Not Approved	**1**			
		Departments	**9**	**Total Amount**	**$265,220.56**	**$87,421.23**
BERTIE						
	Y	Askewville Volunteer Fire Department,Inc.			$5,126.75	$5,126.75
	Y	Aulander Fire Department			$8,474.90	$8,474.90
	Y	Colerain Fire Department			$2,476.15	$2,476.15
	Y	Lewiston-Woodville Vol. Fire & E.M.S., Inc.			$5,748.39	$5,748.39
	Y	Merry-Hill Midway V.F.D., Inc.			$5,602.50	$5,602.50
	Y	Powellsville Volunteer Fire Department,Inc.			$5,207.42	$5,207.42
	TOTALS:	**Approved**	**6**			
		Not Approved	**0**			
		Departments	**6**	**Total Amount**	**$32,636.11**	**$32,636.11**
BLADEN						
	Y	Ammon V.F.D., Inc.			$7,054.50	$7,054.50
	Y	Bay Tree Lakes Volunteer Fire Department, Inc.			$9,558.50	$9,558.50
	Y	Bladenboro Fire Department			$7,308.93	$7,308.93
	Y	Clarkton Fire Department			$17,271.57	$17,271.57
	Y	Dublin Fire Department			$20,000.00	$19,550.00
	Y	East Arcadia Fire Department, Inc.			$750.00	$750.00
	Y	Kelly V.F.D., Inc.			$1,065.00	$1,065.00
	Y	Tobermory Volunteer Fire Dept., Inc.			$3,710.75	$3,710.75
	Y	White Lake Fire Department			$15,405.00	$15,405.00
	Y	White Oak Fire Department, Inc.			$6,448.00	$6,448.00
	TOTALS:	**Approved**	**10**			
		Not Approved	**0**			
		Departments	**10**	**Total Amount**	**$88,572.25**	**$88,122.25**

County	Status	Fire Department			Requested	Approved
BRUNSWICK						
	Y	N.W. Volunteer Fire/Rescue Department, Inc.			$14,128.00	$14,128.00
	Y	Navassa Volunteer Fire Department			$1,450.00	$1,450.00
	Y	Winnabow Volunteer Fire Department,Inc.			$10,005.00	$10,005.00
	Y	Yaupon Beach Volunteer Fire Department, Inc.			$12,390.00	$12,390.00
	N	Civietown Volunteer Fire Department, Inc.			$31,561.60	$0.00
	N	Shallotte Point Volunteer Fire Department,Inc.			$4,285.00	$0.00
	N	Southport Fire Department			$23,953.00	$0.00
	N	St. James Fire Department, Inc.			$8,250.00	$0.00
	N	Supply Volunteer Fire Department, Inc.			$7,038.86	$0.00
	TOTALS:	**Approved**	**4**			
		Not Approved	**5**			
		Departments	**9**	**Total Amount**	**$113,061.46**	**$37,973.00**
BUNCOMBE						
	N	Garren Creek V.F.D., Inc.			$12,600.00	$0.00
	TOTALS:	**Approved**	**0**			
		Not Approved	**1**			
		Departments	**1**	**Total Amount**	**$12,600.00**	**$0.00**
BURKE						
	Y	Enola Volunteer Fire Department			$7,757.53	$7,757.53
	Y	George Hildebran Fire and Rescue Department Inc.			$9,500.00	$9,500.00
	Y	Glen Alpine Volunteer Fire Department			$2,346.25	$2,346.25
	Y	Jonas Ridge Fire Department And Service Center Inc			$7,593.38	$7,593.38
	Y	South Mountains Volunteer Fire Department, Inc.			$4,764.50	$4,624.50
	N	Lake James Community Volunteer Fire Department			$9,308.10	$0.00
	TOTALS:	**Approved**	**5**			
		Not Approved	**1**			
		Departments	**6**	**Total Amount**	**$41,269.76**	**$31,821.66**
CABARRUS						
	Y	Mount Mitchell V.F.D., Inc.			$9,794.40	$9,794.40
	Y	North East Cabarrus County V.F.D., Inc.			$7,415.00	$7,415.00
	Y	Rimer V.F.D.			$9,320.00	$9,320.00
	TOTALS:	**Approved**	**3**			
		Not Approved	**0**			
		Departments	**3**	**Total Amount**	**$26,529.40**	**$26,529.40**

County	Status	Fire Department			Requested	Approved
CALDWELL						
	Y	Collettsville Volunteer Fire & Rescue Dept., Inc.			$5,702.00	$5,702.00
	Y	King Creek V.F.D., Inc.			$8,487.08	$8,487.08
	Y	Little River Fire Dept. Inc.			$1,097.50	$1,097.50
	Y	Patterson V.F.D., Inc.			$7,259.00	$6,096.50
	Y	Rhodhiss Fire Department			$3,470.00	$3,470.00
	Y	The Yadkin Valley Volunteer Fire Department			$1,000.00	$1,000.00
	Y	Valmead V.F.D., Inc.			$6,951.57	$6,951.97
	TOTALS:	**Approved**	**7**			
		Not Approved	**0**			
		Departments	**7**	**Total Amount**	**$33,967.15**	**$32,805.05**
CAMDEN						
	Y	South Mills Vol. Fire Dept., Inc.			$17,565.13	$17,565.12
	N	South Camden Fire Department, Inc.			$6,500.00	$0.00
	TOTALS:	**Approved**	**1**			
		Not Approved	**1**			
		Departments	**2**	**Total Amount**	**$24,065.13**	**$17,565.12**
CARTERET						
	Y	Atlantic Fire Department, Inc.			$3,260.00	$3,260.00
	Y	Broad & Gales Creek Community Association, Inc.			$14,899.65	$14,899.65
	Y	Davis Volunteer Fire Department Inc.			$4,162.50	$4,162.50
	Y	Mill Creek Fire Association, Inc.			$5,750.00	$5,750.00
	Y	Stacy V.F.D., Inc.			$5,382.50	$5,382.50
	Y	Stella V.F.D.			$5,723.20	$5,723.20
	N	Otway Vol. Fire & Rescue Dept. Inc.			$5,150.82	$0.00
	TOTALS:	**Approved**	**6**			
		Not Approved	**1**			
		Departments	**7**	**Total Amount**	**$44,328.67**	**$39,177.85**

County	Status	Fire Department			Requested	Approved
CASWELL						
	Y	Anderson Township V.F.D., Inc.			$20,000.00	$20,000.00
	Y	Casville V.F.D., Inc.			$7,115.00	$7,115.00
	Y	Cherry Grove V.F.D.			$1,075.00	$1,075.00
	Y	Leasburg V.F.D. Inc.			$8,129.00	$8,129.00
	Y	Milton V.F.D. Inc.			$2,675.00	$2,675.00
	Y	Pelham V.F.D. Of Caswell County Inc.			$5,110.50	$5,110.50
	Y	Prospect Hill V.F.D.			$8,596.00	$8,596.00
	Y	Providence Fire And Rescue, Inc.			$6,703.50	$6,703.50
	Y	Semora V.F.D., Inc.			$19,377.43	$19,377.42
	Y	Yanceyville Fire Department			$7,250.00	$7,250.00
	TOTALS:	**Approved**	**10**			
		Not Approved	**0**			
		Departments	**10**	**Total Amount**	**$86,031.43**	**$86,031.42**
CHATHAM						
	N	Moncure V.F.D., Inc.			$4,356.51	$0.00
	TOTALS:	**Approved**	**0**			
		Not Approved	**1**			
		Departments	**1**	**Total Amount**	**$4,356.51**	**$0.00**
CHEROKEE						
	Y	Andrews Fire Department			$4,996.00	$4,996.00
	Y	Bellview V.F.D., Inc.			$4,977.50	$4,977.50
	Y	Grape Creek V.F.D., Inc.			$1,312.12	$1,312.12
	Y	Hanging Dog V.F.D. Inc.			$1,450.00	$1,450.00
	Y	Hiwassee Dam V.F.D. Inc.			$10,234.50	$10,234.50
	Y	Martins Creek Volunteer Fire Department Inc.			$90,000.00	$20,000.00
	Y	Peachtree Fire District, Inc.			$16,449.04	$16,449.04
	Y	Ranger V.F.D. Inc.			$8,355.48	$8,355.47
	Y	Unaka V.F.D. Inc.			$2,288.98	$2,288.98
	Y	Wolf Creek Volunteer Fire Dept., Inc.			$4,640.00	$4,640.00
	N	Murphy Fire Department			$7,199.66	$0.00
	N	Valleytown Rural Fire Department			$25,150.00	$0.00
	TOTALS:	**Approved**	**10**			
		Not Approved	**2**			
		Departments	**12**	**Total Amount**	**$177,053.28**	**$74,703.61**

County	Status	Fire Department			Requested	Approved
CLAY						
	Y	Brasstown Fire Dept			$20,000.00	$20,000.00
	Y	Warne V.F.D., Inc.			$8,453.83	$8,453.83
	N	Clay County Fire & Rescue Squad, Inc.			$19,980.00	$0.00
	TOTALS:	**Approved**	**2**			
		Not Approved	**1**			
		Departments	**3**	**Total Amount**	**$48,433.83**	**$28,453.83**
CLEVELAND						
	Y	Boiling Springs City Fire Department			$18,825.00	$18,825.00
	Y	Grover Rural V.F.D.			$18,873.10	$18,873.10
	Y	Lawndale Volunteer Fire Department			$8,025.00	$8,025.00
	Y	Polkville Volunteer Fire Department Inc.			$8,118.95	$7,643.95
	Y	Shanghai Volunteer Fire Department Inc.			$15,568.50	$10,818.50
	Y	Waco Community Volunteer Fire Department Inc.			$25,078.13	$20,000.00
	TOTALS:	**Approved**	**6**			
		Not Approved	**0**			
		Departments	**6**	**Total Amount**	**$94,488.68**	**$84,185.55**
COLUMBUS						
	Y	Lake Waccamaw Fire Dept.			$3,831.00	$3,831.00
	Y	Nakina Fire & Rescue Squad, Inc.			$8,598.50	$8,598.50
	Y	North Whiteville V.F.D			$14,697.50	$14,697.50
	Y	Old Dock/Cypress Creek V.F.D. And Auxiliary			$57,000.00	$20,000.00
	Y	St. James Vol. Fire Department, Inc.			$3,677.00	$3,677.00
	Y	Williams Township Community Fire Department			$3,358.00	$3,358.00
	N	Acme-Delco Riegelwood Fire & Rescue, Inc.			$10,580.00	$0.00
	N	Tabor City Fire Department			$19,983.00	$0.00
	TOTALS:	**Approved**	**6**			
		Not Approved	**2**			
		Departments	**8**	**Total Amount**	**$121,725.00**	**$54,162.00**
CRAVEN						
	Y	Cove City Fire & Rescue, Inc.			$18,206.00	$18,206.00
	Y	Dover Fire Department			$18,826.50	$18,826.50
	Y	Fort Barnwell Rural Volunteer Fire Department,Inc.			$17,208.31	$17,208.31
	Y	Little Swift Creek Volunteer Fire Department			$5,555.75	$5,555.75
	N	Township Six Fire Department Of Craven County, NC			$19,757.68	$0.00
	TOTALS:	**Approved**	**4**			
		Not Approved	**1**			
		Departments	**5**	**Total Amount**	**$79,554.24**	**$59,796.56**

County	Status	Fire Department			Requested	Approved
CUMBERLAND						
	Y	Wade Community Fire Department, Inc.			$16,498.00	$16,498.00
	TOTALS:	Approved	1			
		Not Approved	0			
		Departments	1	Total Amount	$16,498.00	$16,498.00
DARE						
	Y	Stumpy Point Volunteer Fire Department, Inc.			$1,532.00	$1,532.00
	N	Frisco Fire Prevention Association, Inc.			$20,000.00	$0.00
	N	Southern Shores V.F.D., Inc.			$238,315.00	$0.00
	TOTALS:	Approved	1			
		Not Approved	2			
		Departments	3	Total Amount	$259,847.00	$1,532.00
DAVIDSON						
	Y	Denton Fire Department			$10,005.00	$10,005.00
	Y	Holly Grove Fire Department, Inc.			$9,663.80	$9,663.80
	Y	South Davidson Fire Department, Inc.			$9,722.50	$9,722.50
	N	Central Fire Department Of Davidson County Inc.			$9,000.00	$0.00
	N	Pilot F.D. And Community Center Of Davidson Co.Inc			$875.84	$0.00
	N	Silver Valley Fire Department, Inc.			$13,622.50	$0.00
	N	South Lexington V.F.D. Inc.			$13,359.50	$0.00
	TOTALS:	Approved	3			
		Not Approved	4			
		Departments	7	Total Amount	$66,249.14	$29,391.30
DAVIE						
	Y	Advance Fire Department, Inc.			$19,040.00	$19,040.00
	Y	Cooleemee V.F.D., Inc.			$10,334.38	$10,334.38
	Y	Cornatzer-Dulin V.F.D., Inc.			$4,751.00	$4,751.00
	Y	Davie Center V.F.D., Inc.			$20,000.00	$20,000.00
	Y	Jerusalem Township Volunteer Fire Department Inc.			$16,975.00	$16,975.00
	Y	Sheffield-Calahaln V.F.D. Inc.			$13,281.50	$13,281.50
	Y	The Farmington Volunteer Fire Department. Inc.			$10,249.90	$10,249.90
	Y	The Fork Volunteer Fire Department Inc.			$11,995.00	$9,395.00
	Y	William R. Davie V.F.D., Inc.			$11,917.75	$11,317.75
	N	County Line V.F.D. Inc.			$18,632.50	$0.00
	TOTALS:	Approved	9			
		Not Approved	1			
		Departments	10	Total Amount	$137,177.03	$115,344.53

County	Status	Fire Department			Requested	Approved
DUPLIN						
	Y	Albertson Volunteer Fire Department			$4,112.50	$4,112.50
	Y	Calypso Volunteer Fire Department, Inc.			$5,500.00	$5,500.00
	Y	Lyman Volunteer Fire Department,Inc.			$2,709.50	$2,709.50
	Y	Magnolia Volunteer Fire Department,Inc.			$937.80	$937.80
	Y	Northeast Volunteer Fire Department,Inc.			$20,011.00	$19,760.50
	Y	Oak Wolfe Fire Department			$5,779.60	$5,779.60
	Y	Pin Hook Volunteer Fire Department,Inc.			$6,687.50	$6,687.50
	Y	Rose Hill Fire & Rescue Dept.			$7,500.00	$7,500.00
	Y	Sarecta Fire Department			$8,750.00	$8,750.00
	TOTALS:	**Approved**	**9**			
		Not Approved	**0**			
		Departments	**9**	**Total Amount**	**$61,987.90**	**$61,737.40**
EDGECOMBE						
	Y	Conetoe Vol. Fire/EMS Company			$10,000.00	$10,000.00
	Y	Heartsease V.F.D., Inc.			$8,970.00	$8,970.00
	Y	Leggett Vol. Fire Department, Inc.			$3,335.79	$3,335.79
	Y	Macclesfield Rural V. F. D.			$2,952.50	$2,952.50
	Y	Pinetops Fire Department			$20,000.00	$20,000.00
	Y	Princeville V.F.D., Inc.			$3,000.00	$3,000.00
	Y	South Edgecombe Rural Fire Department			$7,445.06	$7,445.06
	Y	Speed V.F.D., Inc.			$3,505.50	$3,505.50
	Y	West Edgecombe V.F.D., Inc.			$4,980.48	$4,980.48
	N	Lewis Community Vol. Fire Department, Inc.			$1,110.00	$0.00
	TOTALS:	**Approved**	**9**			
		Not Approved	**1**			
		Departments	**10**	**Total Amount**	**$65,299.33**	**$64,189.33**
FORSYTH						
	Y	Belews Creek Volunteer Fire & Rescue Dept., Inc.			$19,217.50	$19,217.50
	Y	The Salem Chapel Volunteer Fire Department.Inc.			$3,540.00	$3,540.00
	N	Horneytown V.F.D. Of Forsyth County, Inc.			$19,957.69	$0.00
	TOTALS:	**Approved**	**2**			
		Not Approved	**1**			
		Departments	**3**	**Total Amount**	**$42,715.19**	**$22,757.50**

County	Status	Fire Department			Requested	Approved
FRANKLIN						
	Y	Fire And Rescue Association, Inc. Epsom, N.C.			$15,072.50	$15,072.50
	Y	Gold Sand Rural Fire Department, Inc.			$9,170.64	$9,170.64
	Y	Justice Rural Vol Fire Association, Inc.			$41,586.37	$20,000.00
	Y	White Level Rural Fire Dept., Inc.			$7,410.68	$7,410.67
	N	Franklinton Fire Dept. Inc.			$106,550.00	$0.00
	TOTALS:	**Approved**	**4**			
		Not Approved	**1**			
		Departments	**5**	**Total Amount**	**$179,790.19**	**$51,653.81**
GASTON						
	Y	Dallas Volunteer Fire Department.			$10,000.00	$10,000.00
	Y	High Shoals V.F.D. Inc.			$5,273.00	$5,273.00
	Y	Hughs Pond V.F.D. Inc.			$5,986.50	$5,986.50
	Y	Lowell V.F.D. Inc.			$8,000.00	$8,000.00
	Y	Ranlo Fire And Rescue Inc.			$11,500.00	$11,500.00
	Y	Spencer Mountain Road V.F.D. Inc.			$14,195.21	$14,195.21
	N	Lucia-Riverbend Volunteer Fire Department Inc.			$8,140.45	$0.00
	TOTALS:	**Approved**	**6**			
		Not Approved	**1**			
		Departments	**7**	**Total Amount**	**$63,095.16**	**$54,954.71**
GATES						
	Y	Eure Volunteer Fire Department, Inc.			$2,400.00	$2,400.21
	Y	Gatesville Fire Department			$2,723.63	$2,723.63
	Y	Sunbury V.F.D., Inc.			$15,164.06	$15,164.06
	TOTALS:	**Approved**	**3**			
		Not Approved	**0**			
		Departments	**3**	**Total Amount**	**$20,287.69**	**$20,287.90**
GRAHAM						
	Y	Graham County V.F.D. Inc.			$4,553.05	$4,553.05
	Y	Stecoah Township Rescue Squad & Fire Dept. Inc.			$4,050.00	$4,050.00
	TOTALS:	**Approved**	**2**			
		Not Approved	**0**			
		Departments	**2**	**Total Amount**	**$8,603.05**	**$8,603.05**

County	Status	Fire Department			Requested	Approved
GRANVILLE						
	Y	Antioch-Fishing Creek Vol. Fire Dept. Inc.			$6,500.00	$6,500.00
	Y	Brassfield Vol. Fire Dept.			$13,429.12	$13,429.12
	Y	Bullock Vol. Fire Dept.			$5,178.50	$5,178.50
	Y	Corinth Vol. Fire Dept.			$7,883.50	$7,883.50
	Y	Cornwall V.F.D.			$9,128.81	$9,128.81
	Y	Creedmoor Volunteer Fire Department			$20,000.00	$20,000.00
	Y	Granville Rural Fire Department			$3,810.00	$3,810.00
	Y	Providence Community Fire Department, Inc.			$9,975.07	$9,975.07
	Y	Stem Comm. Fire Dept. And EMS, Inc.			$11,254.09	$11,254.09
	Y	Stovall Fire Department, Inc.			$6,335.56	$6,335.55
	Y	Total Community Fire Dept. Of Berea			$7,400.00	$7,400.00
	Y	Virgilina Volunteer Fire Association			$11,166.28	$11,166.28
	TOTALS:	**Approved**	**12**			
		Not Approved	**0**			
		Departments	**12**	**Total Amount**	**$112,060.93**	**$112,060.92**
GREENE						
	Y	Arba Rural Fire Association, Inc.			$5,322.50	$5,322.50
	Y	Bull Head Rural Fire Association, Inc.			$3,032.00	$3,032.00
	Y	Castoria Rural Fire Association, Inc.			$3,581.50	$3,581.50
	Y	Fort Run Rural Fire & E.M.S. Assoc., Inc.			$8,342.50	$8,342.50
	Y	Jason Rural Fire Association			$7,425.50	$7,425.50
	Y	Maury Vol. Fire & Rescue Assoc., Inc.			$13,655.00	$13,655.00
	Y	Scuffleton Rural Fire Assoc. , Inc.			$4,664.60	$4,603.07
	Y	Shine Rural Fire & Rescue Association, Inc.			$6,528.86	$6,528.86
	Y	Snow Hill Fire Department			$2,825.00	$2,825.00
	Y	Snow Hill Rural Fire Department, Inc.			$3,870.00	$3,870.00
	Y	Walstonburg Rural Fire Assoc., Inc			$3,410.00	$2,910.00
	TOTALS:	**Approved**	**11**			
		Not Approved	**0**			
		Departments	**11**	**Total Amount**	**$62,657.46**	**$62,095.93**
GUILFORD						
	N	Fire District #28, Inc.			$1,843.32	$0.00
	TOTALS:	**Approved**	**0**			
		Not Approved	**1**			
		Departments	**1**	**Total Amount**	**$1,843.32**	**$0.00**

County	Status	Fire Department			Requested	Approved
HALIFAX						
	Y	Darlington Fire Dept.			$148,000.00	$20,000.00
	Y	Halifax Fire and Rescue, Inc.			$3,047.50	$3,047.50
	Y	Hobgood Volunteer Fire Department, Inc.			$3,137.78	$3,137.78
	Y	Rheasville Vol. Fire Department, Inc.			$14,900.00	$14,500.00
	TOTALS:	**Approved**	**4**			
		Not Approved	**0**			
		Departments	**4**	**Total Amount**	**$169,085.28**	**$40,685.28**
HARNETT						
	Y	Flatwoods Community Fire Department, Inc.			$8,755.00	$8,755.00
	TOTALS:	**Approved**	**1**			
		Not Approved	**0**			
		Departments	**1**	**Total Amount**	**$8,755.00**	**$8,755.00**
HAYWOOD						
	Y	Crabtree Iron Duff V.F.D., Inc.			$3,870.60	$3,870.60
	Y	Cruso Volunteer Fire Department			$9,636.18	$9,636.18
	Y	Lake Logan-Cecil Volunteer Fire Dept., Inc.			$4,675.00	$4,675.00
	TOTALS:	**Approved**	**3**			
		Not Approved	**0**			
		Departments	**3**	**Total Amount**	**$18,181.78**	**$18,181.78**
HENDERSON						
	Y	Bat Cave Volunteer Fire And Rescue Dept., Inc			$10,287.50	$10,287.50
	TOTALS:	**Approved**	**1**			
		Not Approved	**0**			
		Departments	**1**	**Total Amount**	**$10,287.50**	**$10,287.50**
HERTFORD						
	Y	Como V.F.D., Inc.			$2,246.50	$2,246.50
	Y	St. John Fire Department, Inc.			$6,120.00	$6,120.00
	Y	Union Rural F. D. Of Hertford County, Inc.			$21,300.00	$20,000.00
	Y	Winton Fire Department			$7,316.72	$7,316.72
	TOTALS:	**Approved**	**4**			
		Not Approved	**0**			
		Departments	**4**	**Total Amount**	**$36,983.22**	**$35,683.22**

County	Status	Fire Department			Requested	Approved
HOKE						
	Y	Pine Hill Fire Department, Inc.			$11,384.39	$11,384.39
	Y	Raeford Fire Department			$19,714.61	$19,714.60
	Y	Stonewall Rural Fire Department, Inc.			$19,542.50	$19,542.50
	N	Hillcrest Fire Department			$10,482.00	$0.00
	TOTALS:	**Approved**	**3**			
		Not Approved	**1**			
		Departments	**4**	**Total Amount**	**$61,123.50**	**$50,641.49**
HYDE						
	Y	Fairfield Volunteer Fire Department			$2,025.00	$2,025.00
	Y	Ocracoke Fire Department			$11,320.00	$11,320.00
	Y	Scranton Volunteer Fire Department			$23,978.00	$20,000.00
	Y	Swan Quarter Volunteer Fire Department, Inc.			$5,854.00	$5,854.00
	TOTALS:	**Approved**	**4**			
		Not Approved	**0**			
		Departments	**4**	**Total Amount**	**$43,177.00**	**$39,199.00**
JACKSON						
	Y	Balsam-Willets-Ochre Hill Fire Department Inc.			$10,371.76	$10,371.76
	Y	Qualla Volunteer Fire Department			$2,650.00	$2,650.00
	Y	Savannah Volunteer Fire Department			$13,471.59	$13,471.59
	TOTALS:	**Approved**	**3**			
		Not Approved	**0**			
		Departments	**3**	**Total Amount**	**$26,493.35**	**$26,493.35**
JOHNSTON						
	Y	Bethany Rural Fire Dept. Of Johnston County, Inc.			$16,672.50	$16,672.50
	Y	Blackmon's Crossroads V.F.D., Inc.			$10,057.50	$10,057.50
	Y	Micro Volunteer Fire Department, Inc.			$704,000.00	$20,000.00
	Y	Pine Level Volunteer Fire Department Inc.			$11,242.50	$11,242.50
	Y	Princeton Volunteer Fire Department, Inc.			$10,000.00	$10,000.00
	Y	Strickland Crossroads Fire Department, Inc.			$6,217.50	$6,217.50
	Y	Thanksgiving Fire Department			$19,988.00	$19,988.00
	Y	West Johnston Fire Department, Inc.			$10,284.00	$10,284.00
	N	Antioch Fire Department, Inc.			$13,991.00	$0.00
	N	Elevation Fire Department, Inc.			$2,374.50	$0.00
	TOTALS:	**Approved**	**8**			
		Not Approved	**2**			
		Departments	**10**	**Total Amount**	**$804,827.50**	**$104,462.00**

County	Status	Fire Department			Requested	Approved
JONES						
	Y	Maysville Volunteer Fire Department,Inc.			$16,165.50	$16,165.50
	Y	Phillips Crossroad Fire Department, Inc.			$7,900.95	$7,900.95
	Y	Trenton Volunteer Fire Department Inc.			$9,548.21	$9,548.21
	Y	Wyse Fork Volunteer Fire Department,Inc.			$9,840.86	$9,840.86
	TOTALS:	**Approved**	**4**			
		Not Approved	**0**			
		Departments	**4**	**Total Amount**	**$43,455.52**	**$43,455.52**
LEE						
	Y	Deep River Rural Fire Department, Inc.			$5,827.50	$5,827.50
	Y	Northwest Pocket V.F.D., Inc.			$4,991.44	$4,991.44
	Y	West Sanford Rural V. F. D., Inc.			$3,501.68	$3,501.67
	N	Lemon Springs V. F. D.			$5,083.01	$0.00
	TOTALS:	**Approved**	**3**			
		Not Approved	**1**			
		Departments	**4**	**Total Amount**	**$19,403.63**	**$14,320.61**
LENOIR						
	Y	Pink Hill Fire Department			$9,223.20	$9,223.20
	Y	Sand Hill Vol. Fire Department, Inc.			$5,594.75	$5,594.75
	TOTALS:	**Approved**	**2**			
		Not Approved	**0**			
		Departments	**2**	**Total Amount**	**$14,817.95**	**$14,817.95**
LINCOLN						
	Y	Howards Creek V.F.D. Inc.			$11,995.50	$8,117.50
	Y	Union V.F.D. Inc. Of Vale N.C.			$20,000.00	$20,000.00
	TOTALS:	**Approved**	**2**			
		Not Approved	**0**			
		Departments	**2**	**Total Amount**	**$31,995.50**	**$28,117.50**

County	Status	Fire Department			Requested	Approved
MACON						
	Y	Burningtown-Iotla Volunteer Fire & Rescue, Inc.			$9,997.80	$9,997.80
	Y	Mountain Valley Volunteer Fire/Rescue, Inc.			$9,287.62	$9,287.62
	Y	Sky Valley-Scaly Mtn. Vol. Fire & Rescue Dept,Inc.			$21,780.00	$20,000.00
	N	Clarks Chapel Fire And Rescue Department, Inc.			$9,655.00	$0.00
	N	Cowee Volunteer Fire/Rescue, Inc.			$9,996.64	$0.00
	N	Nantahala Volunteer Fire And Rescue, Inc.			$10,026.92	$0.00
	N	Otto Vol. Fire & Rescue, Inc.			$11,508.57	$0.00
	N	West Macon Fire And Rescue, Inc.			$6,216.00	$0.00
	TOTALS:	**Approved**	**3**			
		Not Approved	**5**			
		Departments	**8**	**Total Amount**	**$88,468.55**	**$39,285.42**
MADISON						
	Y	The Country Volunteer Fire Department, Inc.			$1,492.00	$1,492.00
	Y	Walnut Community Volunteer Fire Department			$11,534.70	$11,534.70
	N	Ebbs Chapel V.F.D. Inc.			$18,639.90	$0.00
	TOTALS:	**Approved**	**2**			
		Not Approved	**1**			
		Departments	**3**	**Total Amount**	**$31,666.60**	**$13,026.70**
MARTIN						
	Y	Bear Grass Fire Rescue, Inc.			$8,481.46	$8,481.46
	Y	Griffins Township Fire Dept., Inc.			$7,539.74	$6,486.90
	Y	The Oak City V. F. D., Inc.			$7,680.00	$7,680.00
	TOTALS:	**Approved**	**3**			
		Not Approved	**0**			
		Departments	**3**	**Total Amount**	**$23,701.20**	**$22,648.36**
MCDOWELL						
	Y	Dysartsville V.F.D. Inc.			$2,730.50	$2,730.50
	Y	Glenwood Volunteer Fire Department Inc.			$9,706.04	$9,706.04
	Y	Nebo V.F.D.			$20,447.00	$20,000.00
	Y	Old Fort V.F.D. Inc.			$4,769.45	$4,769.45
	Y	P.G. Volunteer Fire Department Inc.			$10,898.02	$10,898.02
	Y	Sugar Hill/Montford Cove V.F.D. Inc.			$4,661.00	$4,661.00
	Y	The Crooked Creek Township V.F.D.			$1,219.25	$880.00
	Y	Woodlawn-Sevier Volunteer Fire Dept.Inc.			$6,922.21	$6,922.21
	TOTALS:	**Approved**	**8**			
		Not Approved	**0**			
		Departments	**8**	**Total Amount**	**$61,353.47**	**$60,567.22**

County	Status	Fire Department			Requested	Approved
MITCHELL						
	Y	Bakersville Fire And Rescue			$19,684.00	$19,684.00
	Y	Fork Mountain Volunteer Fire & Rescue, Inc.			$6,513.00	$6,513.00
	Y	Ledger Fire Department Inc.			$7,928.43	$7,928.43
	N	Spruce Pine Fire & Rescue Squad, Inc.			$19,248.00	$0.00
	TOTALS:	Approved	3			
		Not Approved	1			
		Departments	4	Total Amount	$53,373.43	$34,125.43
MONTGOMERY						
	Y	Candor Volunteer Fire Department			$8,574.50	$8,397.00
	Y	Lake Tillery Fire/Rescue, Inc.			$9,808.50	$9,808.50
	Y	Mount Gilead Volunteer Fire Department			$7,052.84	$7,052.84
	Y	Wadeville Volunteer Fire Department Inc.			$2,321.00	$2,321.00
	TOTALS:	Approved	4			
		Not Approved	0			
		Departments	4	Total Amount	$27,756.84	$27,579.34
MOORE						
	Y	Crains Creek Volunteer Fire Department, Inc.			$2,025.00	$2,025.00
	Y	Crestline Volunteer Fire Department, Inc.			$4,997.50	$4,997.50
	Y	Eastwood Volunteer Fire Department Inc.			$9,512.50	$9,512.50
	Y	Robbins Fire Department			$19,951.14	$19,951.14
	N	Cameron Rural Fire Department, Inc.			$3,869.93	$0.00
	N	Seven Lakes Volunteer Fire Department,Inc.			$9,750.00	$0.00
	N	West End Fire & Rescue, Inc.			$20,000.00	$0.00
	TOTALS:	Approved	4			
		Not Approved	3			
		Departments	7	Total Amount	$70,106.07	$36,486.14
NASH						
	Y	Castalia V. F. D., Inc.			$1,977.89	$1,608.16
	Y	Middlesex Vol. Fire Department			$13,757.50	$13,757.50
	Y	Momeyer Volunteer Fire-Rescue, Inc.			$5,116.00	$5,116.00
	Y	Salem District Volunteer Fire Department, Inc.			$4,746.25	$4,746.25
	Y	Stanhope Community V. F. D.,Inc.			$15,781.42	$15,781.42
	N	Coopers Vol. Fire Dept. & Rescue Squad, Inc.			$5,060.00	$0.00
	TOTALS:	Approved	5			
		Not Approved	1			
		Departments	6	Total Amount	$46,439.06	$41,009.33

County	Status	Fire Department			Requested	Approved
NORTHAMPTON						
	Y	Conway Volunteer Fire Department, Inc.			$5,468.13	$5,468.13
	Y	Garysburg Fire Department			$4,242.50	$4,242.50
	Y	Gaston Fire Department			$1,942.87	$1,942.87
	Y	Jackson Volunteer Fire Department			$3,647.00	$3,647.00
	Y	Rich Square Fire & Rescue, Inc.			$8,645.00	$8,645.00
	Y	Seaboard Fire Department			$2,300.21	$2,300.21
	Y	Severn Fire Department			$13,058.10	$13,058.10
	TOTALS:	**Approved**	**7**			
		Not Approved	**0**			
		Departments	**7**	**Total Amount**	**$39,303.81**	**$39,303.81**
ONSLOW						
	Y	Back Swamp Volunteer Fire Department,Inc.			$4,142.00	$4,142.00
	Y	Belgrade Volunteer Fire Department,Inc.			$20,000.00	$20,000.00
	Y	Haws Run Volunteer Fire Department, Inc.			$5,884.40	$5,884.40
	Y	Hubert Volunteer Fire Department,Inc.			$12,050.00	$12,050.00
	Y	Loco Volunteer Fire Department,Inc.			$3,870.51	$3,870.51
	Y	Nine Mile Voluntary Fire Department,Inc.			$19,270.80	$19,270.80
	Y	Piney Green Volunteer Fire Department,Inc.			$19,999.00	$19,999.00
	Y	Pumpkin Center Volunteer Fire Department,Inc.			$9,997.50	$9,997.50
	Y	Rhodestown Volunteer Fire Department,Inc.			$6,334.31	$6,334.31
	Y	Richlands Volunteer Fire Department,Inc.			$5,191.75	$5,191.75
	Y	Southwest Volunteer Fire Department,Inc.			$6,160.65	$6,160.65
	Y	Turkey Creek Volunteer Fire Department, Inc.			$10,122.50	$10,122.50
	Y	Verona Volunteer Fire Department,Inc.			$4,294.00	$4,038.00
	N	Swansboro Fire Department			$11,500.34	$0.00
	TOTALS:	**Approved**	**13**			
		Not Approved	**1**			
		Departments	**14**	**Total Amount**	**$138,817.76**	**$127,061.42**
PAMLICO						
	Y	Florence-Whortonsville V.F.D., Inc.			$8,360.00	$8,360.00
	Y	Olympia V.F.D.			$350.00	$350.00
	Y	Vandemere Fire Department, Inc.			$3,005.00	$3,005.00
	TOTALS:	**Approved**	**3**			
		Not Approved	**0**			
		Departments	**3**	**Total Amount**	**$11,715.00**	**$11,715.00**

County	Status	Fire Department			Requested	Approved
PASQUOTANK						
	Y	Pasquotank-Newland V.F.D., Inc.			$9,042.50	$9,042.50
	Y	Pasquotank-Nixonton V.F.D., Inc.			$3,096.93	$3,096.93
	Y	Pasquotank-Providence V.F.D., Inc.			$9,203.75	$9,203.75
	Y	Weeksville V.F.D., Inc.			$6,830.00	$6,830.00
	TOTALS:	**Approved**	**4**			
		Not Approved	**0**			
		Departments	**4**	**Total Amount**	**$28,173.18**	**$28,173.18**
PENDER						
	Y	Atkinson Fire Department			$7,550.50	$7,550.50
	Y	Penderlea Fire Department			$150,000.00	$20,000.00
	Y	Shiloh-Columbia V.F.D., Inc.			$8,750.00	$8,750.00
	Y	Surf City V. F. D.,Inc.			$3,530.00	$3,530.00
	TOTALS:	**Approved**	**4**			
		Not Approved	**0**			
		Departments	**4**	**Total Amount**	**$169,830.50**	**$39,830.50**
PERQUIMANS						
	Y	Bethel Community Fire Protection Association, Inc.			$15,235.00	$15,235.00
	Y	Durants Neck V.F.D.			$8,017.50	$8,017.50
	Y	Hertford Fire Department			$7,478.00	$7,478.00
	Y	Inter-County V.F.D., Inc.			$6,778.50	$6,778.50
	Y	The Belvidere-Chappell Hill V.F.D., Inc.			$3,792.00	$3,792.00
	Y	Winfall Fire Department			$3,288.50	$3,288.50
	TOTALS:	**Approved**	**6**			
		Not Approved	**0**			
		Departments	**6**	**Total Amount**	**$44,589.50**	**$44,589.50**
PERSON						
	Y	Allensville Volunteer Fire Dept., Inc.			$5,288.82	$5,288.82
	Y	Ceffo Volunteer Fire Department			$4,174.80	$3,924.79
	Y	Moriah Volunteer Fire And Rescue Department			$2,862.20	$2,862.20
	Y	Timberlake Volunteer Fire And Rescue, Inc.			$9,640.00	$9,640.00
	Y	Triple Springs V.F.D.			$2,485.87	$2,485.87
	TOTALS:	**Approved**	**5**			
		Not Approved	**0**			
		Departments	**5**	**Total Amount**	**$24,451.69**	**$24,201.68**

County	Status	Fire Department			Requested	Approved
PITT						
	Y	Ayden Fire Department			$19,944.76	$19,944.76
	Y	Ayden Rural Fire Association, Inc.			$8,069.24	$8,069.24
	Y	Bell Arthur Fire Department, Inc.			$6,025.00	$6,025.00
	Y	Belvoir V.F.D., Inc.			$5,733.55	$5,011.05
	Y	Bethel Fire & Rescue Department			$1,634.00	$1,634.00
	Y	Black Jack Vol. Fire Department, Inc.			$2,967.50	$2,967.50
	Y	Carolina Township Vol. Fire Department, Inc.			$4,514.00	$4,514.00
	Y	Clarks Neck V.F.D., Inc.			$141,886.00	$20,000.00
	Y	Farmville Rural Fire Association, Inc.			$17,250.00	$17,250.00
	Y	Fountain Rural Fire Association, Inc.			$10,871.12	$10,871.12
	Y	Grifton Fire Department			$6,887.50	$6,887.50
	Y	Grimesland Fire Department			$371.23	$371.23
	Y	Grimesland Vol. Fire Department, Inc.			$1,038.68	$1,038.68
	Y	Pactolus Fire And Rescue Dept., Inc.			$5,570.80	$5,570.80
	Y	Red Oak Community Rural Fire Dept., Inc.			$21,260.00	$20,000.00
	Y	Sharp Point V.F.D., Inc.			$3,097.50	$3,097.50
	Y	Simpson Rural Fire Dept., Inc.			$11,000.00	$11,000.00
	Y	Staton House Fire and Rescue Department, Inc.			$9,250.00	$9,250.00
	Y	The Grifton Community Fire Assoc., Inc.			$9,325.00	$9,325.00
	TOTALS:	**Approved**	**19**			
		Not Approved	**0**			
		Departments	**19**	**Total Amount**	**$286,695.88**	**$162,827.38**
POLK						
	Y	Mill Spring V.F.D., Inc.			$10,099.83	$10,099.83
	Y	Sunny View Fire & Rescue			$9,913.13	$9,913.13
	TOTALS:	**Approved**	**2**			
		Not Approved	**0**			
		Departments	**2**	**Total Amount**	**$20,012.96**	**$20,012.96**
RANDOLPH						
	Y	Farmer Volunteer Fire Department Inc.			$6,450.00	$6,450.00
	Y	New Hope V.F.D. Of Randolph County, Inc.			$3,564.97	$3,564.97
	Y	Ramseur Volunteer Fire Department			$6,853.18	$6,853.17
	N	Level Cross Voluntary Fire Department, Inc.			$4,750.00	$0.00
	TOTALS:	**Approved**	**3**			
		Not Approved	**1**			
		Departments	**4**	**Total Amount**	**$21,618.15**	**$16,868.14**

County	Status	Fire Department			Requested	Approved
RICHMOND						
	Y	Hoffman Fire Department & Rescue Squad, Inc			$1,937.50	$1,937.50
	TOTALS:	Approved	1			
		Not Approved	0			
		Departments	1	Total Amount	$1,937.50	$1,937.50
ROBESON						
	Y	Britts Township Vol. Fire Dept., Inc.			$5,670.99	$5,670.99
	Y	Burnt Swamp Philadelphus Rural Fire Department			$6,583.75	$6,583.75
	Y	Deep Branch Vol. Fire Department, Inc.			$19,950.00	$19,950.00
	Y	East Howellsville Vol. Fire Department, Inc.			$9,020.00	$9,020.00
	Y	Evans Crossroads Vol. Fire Department, Inc.			$5,030.90	$5,030.90
	Y	Fairmont Fire Department			$19,407.98	$19,407.98
	Y	Fairmont Rural Fire Department, Inc.			$6,443.50	$6,443.50
	Y	Lumber Bridge Vol. Fire Department, Inc.			$11,529.65	$11,529.65
	Y	Northwood's Vol. Fire Department			$19,283.50	$19,283.50
	Y	Orrum Township Vol. Fire Department, Inc.			$2,322.50	$2,322.50
	Y	Parkton Volunteer Fire Department, Inc			$15,729.50	$15,729.50
	Y	Pembroke Rural Vol. Fire Department, Inc.			$11,002.48	$11,002.48
	Y	Pine Terrace Vol. Fire Department			$1,512.29	$1,512.29
	Y	Prospect Vol. Fire Department, Inc.			$10,301.86	$10,301.86
	Y	Raft Swamp Fire Department, Inc.			$9,228.75	$9,228.75
	Y	Raynham-McDonald Volunteer Fire Department			$6,485.00	$6,485.00
	Y	Red Springs Fire Department			$8,030.00	$8,030.00
	Y	Rowland Rural Fire Department, Inc.			$3,487.00	$3,487.00
	Y	Shannon Vol. Fire Department, Inc.			$9,102.11	$9,102.10
	Y	Smyrna Township Vol. Fire Department			$8,064.35	$8,064.35
	Y	St. Pauls Fire Department			$9,622.37	$9,622.37
	Y	Whitehouse Vol. Fire Department			$1,221.00	$621.50
	N	Queheel Fire Department			$17,350.33	$0.00
	TOTALS:	Approved	22			
		Not Approved	1			
		Departments	23	Total Amount	$216,379.81	$198,429.97

County	Status	Fire Department			Requested	Approved
ROCKINGHAM						
	Y	Draper Volunteer Fire Department Inc.			$4,920.00	$4,920.00
	Y	Jacobs Creek Fire Tax District Inc.			$5,011.50	$5,011.50
	Y	North Stoneyview Volunteer Fire Department, Inc.			$2,005.00	$2,005.00
	Y	Northwest Rockingham County Fire Prot. Assoc.			$16,406.00	$16,406.00
	Y	Ruffin Volunteer Fire Department, Inc.			$13,510.00	$13,510.00
	Y	Stoneville Fire Department			$9,105.00	$9,105.00
	Y	Yanceyville Road Volunteer Fire Department Inc.			$5,775.05	$5,775.05
	N	Shiloh Community Fire Protection Association Inc.			$6,000.00	$0.00
	N	Williamsburg Fire Department And Rescue, Inc.			$9,673.50	$0.00
	TOTALS:	**Approved**	**7**			
		Not Approved	**2**			
		Departments	**9**	**Total Amount**	**$72,406.05**	**$56,732.55**
ROWAN						
	Y	East Gold Hill Volunteer Fire Department Inc.			$5,250.00	$5,250.00
	Y	Faith Fire Department			$20,189.00	$20,000.00
	Y	Pooltown Volunteer Fire Department Inc.			$15,978.12	$15,978.12
	Y	Rowan-Iredell Volunteer Fire Department, Inc.			$20,000.00	$20,000.00
	Y	Scotch Irish Fire Department, Inc.			$9,000.00	$9,000.00
	N	Landis Volunteer Fire Department			$20,000.00	$0.00
	N	West Liberty Volunteer Fire Department, Inc.			$10,405.00	$0.00
	TOTALS:	**Approved**	**5**			
		Not Approved	**2**			
		Departments	**7**	**Total Amount**	**$100,822.12**	**$70,228.12**
RUTHERFORD						
	Y	Bills Creek Community Vol Fire Dept.Inc.			$9,630.00	$9,630.00
	Y	Cherry Mountain V.F.D., Inc.			$11,261.25	$11,261.25
	Y	Chimney Rock V.F.D., Inc.			$1,890.00	$1,890.00
	Y	Shingle Hollow V.F.D., Inc.			$11,110.60	$11,110.60
	N	Cliffside Area Fire Dept., Inc.			$8,067.03	$0.00
	N	Green Hill V.F.D.			$16,858.87	$0.00
	N	Hudlow V.F.D., Inc.			$19,000.00	$0.00
	N	Shiloh-Danieltown-Oakland V.F.D., Inc.			$16,100.00	$0.00
	N	Spindale Fire Dept.			$19,985.00	$0.00
	TOTALS:	**Approved**	**4**			
		Not Approved	**5**			
		Departments	**9**	**Total Amount**	**$113,902.75**	**$33,891.85**

County	Status	Fire Department			Requested	Approved
SAMPSON						
	Y	Garland Fire Department			$2,500.00	$2,500.00
	Y	Harrells Volunteer Fire Department, Inc.			$4,347.00	$4,347.00
	Y	Herring Volunteer Fire Department, Inc.			$2,075.00	$2,075.00
	Y	Salemburg Volunteer Fire Dept. Inc.			$9,572.50	$9,572.50
	Y	Spivey's Corner Volunteer Fire Department, Inc.			$9,972.50	$9,972.50
	Y	Taylors Bridge Fire Department			$4,985.00	$4,985.00
	Y	Turkey Volunteer Fire Department,Inc.			$3,842.96	$3,842.96
	Y	Vann Crossroads Fire Department, Inc.			$5,180.48	$5,180.48
	N	Plain View V.F.D., Inc.			$5,235.60	$0.00
	N	Roseboro Fire Department			$7,193.66	$0.00
	TOTALS:	**Approved**	**8**			
		Not Approved	**2**			
		Departments	**10**	**Total Amount**	**$54,904.70**	**$42,475.44**
SCOTLAND						
	Y	Gibson Fire Dept.			$5,523.27	$5,523.27
	Y	Laurel Hill Fire Department, Inc.			$8,089.00	$8,089.00
	Y	North Scotland Vol. Fire/Rescue Department, Inc.			$3,488.45	$3,488.45
	Y	Spring Hill-Friendship Fire Department			$2,337.95	$2,337.95
	TOTALS:	**Approved**	**4**			
		Not Approved	**0**			
		Departments	**4**	**Total Amount**	**$19,438.67**	**$19,438.67**
STANLY						
	Y	Aquadale Rural V.F.D., Inc.			$4,023.38	$4,023.38
	Y	Badin Fire Department			$10,659.00	$10,659.00
	Y	Bethany Community Fire Department Inc.			$10,562.00	$10,562.00
	Y	East Side V.F.D., Inc.			$19,423.00	$18,642.50
	Y	Endy V.F.D., Inc.			$3,517.50	$3,517.50
	Y	Millingport V.F.D., Inc.			$6,111.01	$6,111.01
	Y	New London V.F.D., Inc.			$5,135.50	$5,135.50
	Y	Oakboro Rural Fire Department Inc.			$17,181.45	$17,181.45
	Y	Richfield-Misenhiemer Fire Department, Inc.			$19,549.00	$19,049.00
	Y	Ridgecrest V.F.D., Inc.			$14,948.00	$14,948.00
	Y	Rocky River V.F.D., Inc.			$3,480.50	$3,480.50
	Y	South Side Volunteer Fire Dept. Inc.			$7,248.88	$7,248.88
	TOTALS:	**Approved**	**12**			
		Not Approved	**0**			
		Departments	**12**	**Total Amount**	**$121,839.22**	**$120,558.72**

County	Status	Fire Department			Requested	Approved
STOKES						
	Y	Francisco Volunteer Fire Department, Inc.			$5,572.50	$5,572.50
	Y	South Stokes Volunteer Fire Department			$19,963.41	$19,738.71
	N	Northeast Stokes V.F.D. And Rescue Squad, Inc.			$11,325.00	$0.00
	TOTALS:	**Approved**	**2**			
		Not Approved	**1**			
		Departments	**3**	**Total Amount**	**$36,860.91**	**$25,311.21**
SURRY						
	Y	Ararat Volunteer Fire Department Inc.			$12,225.00	$12,225.00
	Y	Dobson Fire Department			$2,195.00	$2,195.00
	Y	Jot-Um-Down V.F.D.			$7,531.50	$7,531.50
	Y	Mountain Park V.F.D., Inc.			$4,175.68	$4,175.68
	Y	Pine Ridge V.F.D., Inc.			$17,069.50	$16,139.50
	Y	State Road V.F.D., Inc.			$24,665.00	$20,000.00
	Y	Westfield V.F.D., Inc.			$17,201.00	$17,201.00
	Y	White Plains V.F.D., Inc.			$14,835.72	$14,835.71
	N	Bannertown Fire Department, Inc.			$16,787.32	$0.00
	N	Central Surry V.F.D., Inc.			$9,410.00	$0.00
	N	Elkin Fire Department			$6,724.95	$0.00
	N	Pilot Knob V.F.D., Inc.			$16,087.46	$0.00
	TOTALS:	**Approved**	**8**			
		Not Approved	**4**			
		Departments	**12**	**Total Amount**	**$148,908.13**	**$94,303.39**
SWAIN						
	Y	Alarka Volunteer Fire Department, Inc.			$3,996.77	$3,621.76
	Y	Bryson City Fire Department			$19,910.00	$19,910.00
	TOTALS:	**Approved**	**2**			
		Not Approved	**0**			
		Departments	**2**	**Total Amount**	**$23,906.77**	**$23,531.76**
TRANSYLVANIA						
	Y	Cedar Mountain Volunteer Fire / Rescue, Inc.			$8,670.05	$8,670.05
	Y	North Transylvania Volunteer Fire Department Inc.			$10,495.00	$10,495.00
	N	Connestee Fire Rescue, Inc.			$22,894.70	$0.00
	TOTALS:	**Approved**	**2**			
		Not Approved	**1**			
		Departments	**3**	**Total Amount**	**$42,059.75**	**$19,165.05**

County	Status	Fire Department			Requested	Approved
UNION						
	Y	Griffith Road V.F.D., Inc.			$7,109.50	$7,109.50
	Y	Jackson Volunteer Fire Department, Inc.			$10,000.80	$10,000.80
	Y	Lanes Creek V.F.D., Inc.			$9,725.45	$9,725.45
	Y	Sandy Ridge V.F.D., Inc.			$2,606.53	$2,606.53
	Y	Stack Road V.F.D. & Rescue Squad, Inc.			$5,000.00	$5,000.00
	TOTALS:	**Approved**	**5**			
		Not Approved	**0**			
		Departments	**5**	**Total Amount**	**$34,442.28**	**$34,442.28**
VANCE						
	Y	Bear Pond Rural Fire Department .Inc.			$3,000.00	$3,000.00
	Y	Cokesbury Volunteer Fire Department,Inc.			$8,297.59	$8,297.59
	Y	Hicksboro V.F.D. Inc.			$5,531.50	$5,531.50
	Y	Kittrell V.F.D., Inc.			$6,747.05	$6,747.05
	Y	Townsville Rural Volunteer Fire Department ,Inc.			$3,304.88	$3,304.88
	Y	Watkins Community Volunteer Fire Department,Inc.			$4,271.50	$4,271.50
	TOTALS:	**Approved**	**6**			
		Not Approved	**0**			
		Departments	**6**	**Total Amount**	**$31,152.52**	**$31,152.52**
WARREN						
	Y	Afton-Elberon V.F.D., Inc.			$6,925.38	$6,925.38
	Y	Arcola Rural Vol. Fire Department, Inc.			$6,033.15	$6,033.15
	Y	Churchill-Five Forks Vol. Fire Department,Inc.			$15,002.00	$15,002.00
	Y	Drewry V.F.D., Inc.			$20,000.00	$20,000.00
	Y	Hawtree V.F.D., Inc.			$500.00	$500.00
	Y	Inez V.F.D., Inc.			$13,780.00	$13,780.00
	Y	Lake Gaston Volunteer Fire Department, Inc.			$1,508.00	$1,508.00
	Y	Long Bridge Volunteer Fire Dept, Inc.			$5,213.57	$5,213.57
	Y	Macon Rural Fire Department, Inc.			$6,000.00	$6,000.00
	Y	Norlina Volunteer Fire Department			$5,005.66	$5,005.66
	Y	Ridgeway Volunteer Rural Fire Association, Inc.			$10,080.00	$10,080.00
	Y	Soul City Volunteer Rural Fire Association,Inc.			$210,000.00	$20,000.00
	N	Warrenton Rural Voluntary Fire Association, Inc.			$20,000.00	$0.00
	TOTALS:	**Approved**	**12**			
		Not Approved	**1**			
		Departments	**13**	**Total Amount**	**$320,047.76**	**$110,047.76**

County	Status	Fire Department			Requested	Approved
WASHINGTON						
	Y	Lake Phelps Fire Department			$980.00	$980.00
	Y	Mid-County V.F.D., Inc.			$20,000.00	$20,000.00
	Y	Roper Fire Department, Inc.			$180,000.00	$20,000.00
	Y	The Creswell V. F. D., Inc.			$4,151.80	$4,151.80
	TOTALS:	**Approved**	**4**			
		Not Approved	**0**			
		Departments	**4**	**Total Amount**	**$205,131.80**	**$45,131.80**
WATAUGA						
	Y	Beaverdam V.F.D. Of Watauga County Inc.			$5,167.68	$5,167.68
	Y	Deep Gap Volunteer Fire Department Inc.			$3,760.00	$3,760.00
	Y	Meat Camp Volunteer Fire Department Inc.			$10,602.00	$10,602.00
	Y	Shawneehaw Volunteer Fire Department			$15,240.30	$15,240.30
	Y	Stewart Simmons Vol. Fire Dept. Of Watauga Co. Inc			$19,858.00	$19,858.00
	Y	The Beech Mountain Vol. Fire Department, Inc.			$5,682.50	$5,607.50
	TOTALS:	**Approved**	**6**			
		Not Approved	**0**			
		Departments	**6**	**Total Amount**	**$60,310.48**	**$60,235.48**
WAYNE						
	Y	Antioch Rural Fire Department, Inc.			$1,788.29	$1,788.29
	Y	Arrington Vol. Fire Department, Inc.			$5,097.00	$5,097.00
	Y	Faro V.F.District, Inc.			$3,267.50	$3,267.50
	Y	Fremont Fire Department			$19,642.54	$17,942.54
	Y	Grantham Vol. Fire Department, Inc.			$9,440.00	$9,440.00
	Y	Indian Springs V.F.D., Inc.			$16,828.50	$16,828.50
	Y	Jordan's Chapel Fire Department, Inc.			$15,952.50	$15,952.50
	Y	Little River Vol. Fire Department,Inc.			$5,000.00	$5,000.00
	Y	Nahunta Vol. Fire Department, Inc.			$20,085.03	$20,000.00
	Y	Patetown Vol. Fire Department			$3,262.00	$3,262.00
	Y	Pikeville-Pleasant Grove V. F. D., Inc.			$19,670.00	$19,670.00
	Y	Pinewood Vol. Fire Department, Inc.			$3,457.00	$2,994.50
	Y	Pricetown Vol. Fire Department, Inc.			$6,650.00	$6,650.00
	Y	Saulston Vol. Fire Department, Inc.			$2,559.00	$2,559.00
	Y	Seven Springs Community V.F.D., Inc.			$15,446.43	$15,446.43
	Y	Smith Chapel V.F.D., Inc.			$16,157.73	$16,157.73
	Y	Thoroughfare Vol. Fire Department, Inc.			$5,950.00	$4,600.00
	N	Mar-Mac Vol. Fire Department, Inc.			$13,200.00	$0.00
	TOTALS:	**Approved**	**17**			
		Not Approved	**1**			
		Departments	**18**	**Total Amount**	**$183,453.52**	**$166,655.99**

County	Status	Fire Department			Requested	Approved
WILKES						
	Y	Austin Volunteer Fire Department Inc.			$10,554.00	$10,554.00
	Y	Boomer Volunteer Fire Department Inc.			$33,447.00	$20,000.00
	Y	Brushy Mountain Volunteer Fire Department Inc.			$9,213.08	$9,213.08
	Y	Cricket Volunteer Fire Department Inc.			$6,063.13	$6,063.13
	Y	Ferguson Volunteer Fire Department Inc.			$9,952.50	$9,952.50
	Y	Goshen Volunteer Fire Department Inc.			$17,582.47	$17,582.47
	Y	Knotville Volunteer Fire Department Inc.			$9,070.00	$9,070.00
	Y	Little Brushy Mountain Volunteer Fire Dept. Inc.			$230,000.00	$20,000.00
	Y	McGrady Volunteer Fire Department Inc.			$7,317.75	$7,317.75
	Y	Mountain View Volunteer Fire Department Inc.			$5,017.51	$5,017.51
	Y	Mulberry-Fairplains Volunteer Fire Department Inc.			$20,000.00	$20,000.00
	Y	Pleasant Hill Volunteer Fire Department Inc.			$15,200.00	$15,200.00
	Y	Roaring River Volunteer Fire Department Inc.			$9,405.00	$9,405.00
	Y	Ronda Community Volunteer Fire Department Inc.			$11,220.56	$11,220.56
	Y	Shepherds Crossroads Volunteer Fire Dept. Inc.			$180,000.00	$20,000.00
	Y	Traphill Volunteer Fire Department Inc.			$5,761.50	$5,761.50
	Y	Wilbar Volunteer Fire Department Inc.			$8,552.50	$8,342.50
	Y	Wilkes Iredell Volunteer Fire Department Inc.			$8,125.50	$8,125.50
	N	Millers Creek Volunteer Fire Department Inc.			$1,815.00	$0.00
	TOTALS:	**Approved**	**18**			
		Not Approved	**1**			
		Departments	**19**	**Total Amount**	**$598,297.50**	**$212,825.50**
WILSON						
	Y	Contentnea V. F. D.,Inc.			$3,940.00	$3,940.00
	Y	Crossroads V.F.D., Inc.			$16,975.00	$16,175.00
	Y	Rock Ridge Fire Department, Inc.			$5,592.50	$5,592.50
	Y	Sanoca Rural Fire District, Inc.			$13,806.00	$13,806.00
	Y	Silver Lake V. F. D., Inc.			$11,530.00	$10,090.00
	Y	Sims Community Rural Fire Department			$13,267.78	$13,267.78
	N	East Nash V. F. D., Inc.			$20,000.00	$0.00
	TOTALS:	**Approved**	**6**			
		Not Approved	**1**			
		Departments	**7**	**Total Amount**	**$85,111.28**	**$62,871.28**

County	Status	Fire Department			Requested	Approved
YADKIN						
	Y	Courtney V.F.D., Inc.			$19,550.00	$6,670.00
	Y	Jonesville Volunteer Fire Department			$12,925.00	$9,885.99
	Y	Lone Hickory V.F.D., Inc.			$6,670.00	$11,844.50
	Y	The Fall Creek Community V.F.D., Inc.			$11,844.50	$11,975.00
	N	Arlington Fire And Rescue, Inc.			$11,262.00	$0.00
	N	Buck Shoals V.F.D., Inc.			$13,019.00	$0.00
	N	East Bend V.F.D., Inc.			$13,182.50	$0.00
	N	The Boonville Community Volunteer Fire Department			$9,885.99	$0.00
	N	Yadkinville Volunteer Fire Department Inc.			$11,975.00	$0.00
	TOTALS:	Approved	4			
		Not Approved	5			
		Departments	9	Total Amount	$110,313.99	$40,375.49
YANCEY						
	Y	Clearmont Volunteer Fire Department, Inc.			$5,055.00	$5,055.00
	Y	Egypt-Ramseytown V.F.D., Inc.			$7,121.95	$7,121.95
	Y	Newdale V.F.D., Inc.			$2,681.38	$2,681.38
	Y	South Toe Volunteer Fire & Rescue, Inc.			$21,250.00	$20,000.00
	TOTALS:	Approved	4			
		Not Approved	0			
		Departments	4	Total Amount	$36,108.33	$34,858.33

Grand Totals

		$7,911,759.02	$4,441,447.82
Not Approved	75		
Approved	493		
Departments	568		

Tax Exemption for In-State Municipal Bonds: An Overview of *Dunn v. State of North Carolina* and its Impact on the Protest Rule

Prepared by Trina Griffin
Revenue Laws Study Committee
November 16, 2006

Summary

The Dunn case is important for two reasons:

1. Substantively – If North Carolina's tax treatment of interest income earned on non-State versus State-issued obligations is found unconstitutional, it could have a profound impact on the municipal bond market, both locally and nationwide, it could result in a significant revenue loss if the State is required to issue refunds to holders of out-of-state bonds, and it could foreshadow future litigation over similar preferential tax exemptions for in-state activity.
2. Procedurally - Its interpretation of G.S. 105-267 greatly expands the protest rule beyond the scope of *Bailey II*, which has the potential to put the State in a precarious position with regard to its ability to budget for refunds in the future, and fails to provide clear guidance to taxpayers about the procedural requirements that must be met to preserve a refund claim.

Nature of Municipal Bonds

Municipal bonds are debt obligations issued by states, cities, counties and other governmental entities to raise money to build schools, highways, hospitals and sewer systems, as well as many other projects for the public good. By purchasing a municipal bond, the purchaser is lending money to an issuer who promises to pay a specified amount of interest and return the principal on a specific maturity date.

Tax Treatment of Municipal Bond Income

- Exempt from federal income tax.
- Over 40 states provide a tax exemption on obligations issued by the home state while levying a tax on interest income derived from obligations issued by other states.
- 9 states do not tax interest derived from out-of-state bonds.

Legal Challenges

There are three ongoing cases, in Kentucky, Arizona, and North Carolina, challenging state tax exemptions for interest income derived from home-state bond obligations.

Kentucky

Davis v. Department of Revenue, 193 S.W.3d 557 (Ky. App. 2006)

In *Davis*, the Kentucky Court of Appeals held that it is unconstitutional for the state to tax interest received by its residents earned on bonds issued by other states and their political subdivisions. Specifically, the court found that the taxation scheme discriminates against interstate commerce because it affords more favorable taxation treatment to in-state bonds than it does to extraterritorially-issued bonds. The Kentucky Supreme Court declined to hear the case, and the state has filed a petition for review with the United States Supreme Court.

North Carolina

Dunn v. Department of Revenue, COA05-1178 (October 2006)

In *Dunn v. Department of Revenue*, the plaintiffs are individual taxpayers who paid tax on income earned on out-of-state obligations and filed a demand for a refund for tax years 2001 and 2002. The Superior Court certified the case as a class action with class membership consisting of all persons and entities who paid the tax at issue "from October 29, 2000 through the date of final judgment." The State appealed the order certifying the class, and on October 17, 2006, the North Carolina Court of Appeals upheld the order. The court did not reach the merits. The State has appealed the decision to the North Carolina Supreme Court.

Possible Ramifications of Litigation

1. *Creation of competitive disadvantage for some states* .- If the U.S. Supreme Court declines to hear the Kentucky case, the short-term impact would be that states with decisions striking down the exemption would be at a competitive disadvantage in the municipal bond market compared to states whose courts have either not issued an opinion on the matter or have found the exemption constitutional.

If the Kentucky decision is made the law of the land, the potential ramifications could include:

2. *Changing the tax treatment of municipal bonds.* – North Carolina, along with many other states, would be faced with two options: make all bonds exempt from tax, or tax the interest on all bonds.
3. *Revenue loss.* – The State would be required to issue refunds to bondholders who had been previously taxed.
4. *Impact on municipal bond market.* – The decision would tend to drive the yields on all states' bonds to the same level because, without an incentive to invest in bonds from one's own state, investors would be indifferent to which bonds they owned. States would likely have to raise their rates to shop around for customers. This ruling could create a national market in municipal bonds, rather than the fragmented, regional one we have now. Finally, some industry observers have speculated that taxing all municipal bonds at the state level would increase the cost of borrowing.

5. *Challenges to other taxation schemes favoring in-state activity.* – The decision would likely lead to litigation over whether other tax schemes offering preferential tax treatment for in-state activity are also unconstitutional. For example, numerous states confer a tax-exemption or deduction to residents who participate in the state's Section 529 college savings plan, but not for investments in another state's Section 529 plan. While the issues may very well be distinguishable and the result may not be the same, there may still be legal challenges to face.

Dunn and the Protest Rule

The recent North Carolina Court of Appeals decision further undercuts, and virtually obliterates, the protest rule and greatly expands the scope of *Bailey II* in unprecedented ways.

- The court certified a class consisting of members who have not paid the tax in question under the particular statute being challenged.
- The court included as members of the class all persons or entities who have paid the tax on interest from out-of-state obligations from October 29, 2000 through the date of final judgment, regardless of whether they filed a protest.

  ➔"...[O]nce the State is put on notice that a tax provision is being challenged, not every taxpayer seeking restitution under G.S. 105-267 must comply with the statute. . .Once notice is received, the burden is on the State to determine its potential exposure and to plan accordingly." This holding seems to suggest that notice of a tax being challenged, without additional qualification, is all that is required regardless of the burden on the State to determine its fiscal liability.

- The court adopted, and further muddied, an already unclear and problematic "post-facto" test.

Points to Consider

1. Does the law as currently written and interpreted by our state Supreme Court serve the purpose for which it was intended?
2. If not, does the statute need to be either repealed or rewritten to effectuate its purpose? If so, how?

Conclusion

The *Bailey II* case has made North Carolina susceptible to being targeted for additional class action litigation, like the *Dunn* case. Now, the *Dunn* case has further complicated an already muddy area of the law and has put the State in a precarious position with regard to its ability to properly plan for its potential liability for tax refunds in the future. Consequently, this Committee may want to consider clarifying the policy with regard to how constitutional taxation claims should be handled and what, if any, procedural requirements a taxpayer should meet in order to be eligible for relief.

REPORT

To

REVENUE LAWS STUDY COMMITTEE

Of The NORTH CAROLINA GENERAL ASSEMBLY

Regarding the

IMPACT OF CONSERVATION EASEMENTS ON LOCAL PROPERTY TAX APPRAISALS and ASSESSMENTS

Faithfully Submitted for Consideration

Thursday, 16 November 2006

By

Stan C. Duncan
Henderson County Assessor

STATUTORY DIRECTION:

N.C.G.S. 105-317(1)(a) sets forth the following mandate:

> "(a) Whenever any real property is appraised it shall be the duty of the persons making appraisals:
>
> (1) **In determining the true value of land, to consider as to each tract, parcel, or lot separately listed at least its advantages and disadvantages as to** location; zoning; quality of soil; waterpower; water privileges; dedication as a nature preserve; **conservation or preservation agreements;** mineral, quarry, or other valuable deposits; fertility; adaptability for agricultural, timber-producing, commercial, industrial, or other uses; past income; probable future income; and any other factors **that may affect its value** except growing crops of a seasonal or annual nature." [emphasis added]

The case of *Rainbow Springs Partnership v. County of Macon* [79 N.C. App. 335, 339 S.E.2d 681 (1986), cert. denied, 316 N.C. 736, 345 S.E.2d 392 (1986)], provides directions regarding the methodology to be applied when appraising parcels of real property encumbered with a conservation or preservation easement. It reads:

> "To find the true value of property subject to conservation easements, the Commission must determine the market value prior to the granting of the easements and then reduce that value by applying a damage factor caused by the granting of the conservation easements. Determining the highest and best use of the property prior to the granting of the easement is a critical part of the appraisal process. "

From this language in the Court of Appeals Decision, counties have adopted the following procedures:

1. **Determine the highest and best use of the property <u>prior</u> to the granting of the easement.** This should have already occurred as part of the most current general reappraisal. With this determination, the market value of the property can be ascertained based on the Schedules of Values, Standards, and Rules adopted for the reappraisal. This appraised value represents the "before" value.

2. **Review the particulars of each Conservation Easement document on a case-by-case basis.** This review is critical to the appraisal process as the majority of easements are constructed to the requirements of the grantor and differ substantially in their specifics, which must be carefully considered in determining the highest and best use of the property after granting the easement.

3. **Determine the highest and best use of the property after the granting of the easement.** This determination is equally as critical to the appraisal process as the earlier determination of the highest and best use prior to granting the easement.

4. **Subtract the "after" value** (based on the restrictions enumerated in the easement document) **from the "before" value to arrive at the diminution in value.**

IMPORTANT NOTE #1: For property tax purposes, the values discussed above must always be measured based on the Schedules of Values, Standards, and Rules adopted effective for January 1 of the most recent general reappraisal. In seeking property tax relief, property owners encumbering their property with Conservation Easements will generally submit fee appraisals stating "before" and "after" values in order to support their claim for diminution in value sought. Those appraisals are generally performed in compliance with IRS guidelines with effective valuation dates not always applicable for property tax purposes.

IMPORTANT NOTE #2: Identical restrictions in two separate Conservation Easement documents will not necessarily render the same diminution in value when the highest and best uses of the property "before" the granting of the easements are different.

Consider two tracts of vacant land measuring 100 acres each. One is located in an extremely rural area of the county where there is no market for development, while the other is adjoins the corporate limits of the county seat where there is substantial demand for commercial development. An easement restriction removing the potential for development has substantially greater adverse impact on the market value of the tract located near the county seat versus the tract located in the rural area.

IMPORTANT NOTE #3: The value of the "before" highest and best use, the diminution in highest and best use, and the "after" highest and best use value are all likely to change over time.

Consider the example above. When the demand for development reaches the rural area of the county, that particular 100-acre tract will suddenly reflect a higher "before" value than previously (due to a change in market demand), a substantially greater "diminution" value (due to the particulars of the easement document restricting development), and a likely change in the "after" value.

Exemption Facts for the Revenue Laws Study Committee

1. $629,942,376,900 — The total state-wide net taxable value of real and personal property (excluding registered motor vehicles and public service property) for 2005.

2. $4,089,144,951 — The total amount of county taxes (state-wide) levied on real and personal property.

3. $86,996,386,590 — The total value of all exemptions reported to the Property Tax Division of the Department of Revenue for 2005.

4. These exemptions represent about 12% of the net taxable real and personal property base.

5. $565,000,000 — The amount of exempted county tax revenue the above exemptions represent.

6. $16,082,463,936 — The total deferred value for properties classified in Present-Use Value. This is the single largest form of exemption/deferral after governmental exemptions.

7. $118,395,000 — The approximate amount of deferred county taxes for 2005. On average, this equates to almost 2 cents on the state-wide effective tax rate.

8. 20% — The percentage of the total net tax base deferred by Bertie and Martin Counties. These two counties are impacted more adversely by Present-Use Value deferrals than any other North Carolina counties.

Improving Property Tax Incentives for Voluntary Land Conservation

Presentation to the Revenue Laws Study Committee
Edgar Miller, Conservation Trust for NC
Will McDow, Environmental Defense
November 16, 2006

Problem Statement

- Inconsistent implementation of Present Use Value (PUV) statute (NCGS 105-277)
- Conflict with state conservation programs/goals
- Lack of property tax incentives when not involved in commercial agriculture, forestry or horticulture
- Landowners being removed from PUV program for placing conservation easements on land or participating in other conservation programs

Examples

- Scenario #1 - "No Touch" Easement purchased by by state for mitigation/water quality protection
  - Land taken out of PUV
  - Roll back collected
  - Property reassessed at residential home site FMV
- Scenario #2 - Landowner Managing for Endangered Species and Promoting Agritourism
  - No commercially viable timber
  - Income from agritourism not counted towards ag use income requirements
  - denied enrollment in PUV program

Examples

- Scenario #3 - Landowner Considering Selling Easement to State Agency at Reduced Value (bargain sale) for protection of water quality
  - Uncertainty of applicability of 2002 Hartsell Amendment (100% donated vs. % donated)
  - Discouraged from conserving land
- Scenario #4 - Landowner Desiring to Manage for Forest Stewardship, Wildlife Habitat or Water Quality
  - No property tax break available
  - Must manage for undesired outcomes
  - Must harvest trees/produce ag income to qualify

Background on Issue

- 2002 Hartsell Amendment
- Legislation Introduced in 2003 (S 884)
- Property Tax Subcommittee of RLSC - '04
- NCACC Convened Conservation Lands Working Group -March '05 report
  - Agreement on goals, but not legislation

2005 Legislation

S 405 (Hartsell)/H 1722 (Brubaker, Hackney, Gibson, Harrison)

- Creates new PUV category for wildlife lands
- Approved management or stewardship plan
- Clarifies sound management criteria
- Extends roll back
- Eliminates roll back payment when PUV land is sold at discount to state/nonprofit for long-term conservation
- Defines bargain sale as 75% of market value
- Clarifies applicability of Hartsell Amendment to cases where at least 25% is donated
- H 1722 clarifies property tax exemption for conservation properties owned by nonprofits

Need for Property Tax Incentives and Reform

- Critical for landowners to maintain property
- Landowners expressing interest in forest stewardship and wildlife habitat
- Allows landowner to hold onto land and slow pace of development
- Incentive to protect forests and open space
- Landowner receiving tax break has obligation to manage property for outcomes

Policy Goals- Conservation Lands Working Group

- Conservation of land is a worthy goal
- Public/tax policy should encourage protection of:
  - working farms and forests
  - water quality
  - wildlife habitat
- Revenue Neutral for Counties
- Should not penalize landowners for conservation

Policy Goals

- Greater Choice for Landowners
- Greater Consistency Across Counties
- Greater Compatibility Between
  - State conservation programs/goals and
  - State/local tax policy
- Greater Certainty for Landowners
  - Impact of conservation on property taxes
  - Definition of sound management criteria

Challenges

- Maintain Existing Program Benefits
- Provide More Landowner Choice/Flexibility
- Make Revenue Neutral for Counties
- How To Define Wildlife/Conservation Lands?
  - State Wildlife Plan
  - Water Quality Goals
  - Sound Management Criteria
- How To Value?

Conclusion

- Work with RLSC members, staff and other stakeholders to develop legislative solution
- Remove Disincentive and Create Incentive for private landowners protecting:
  - Wildlife habitat
  - Water Quality
  - Other Conservation Values??
- Open to Other Incentives/Options

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LEGISLATIVE OPTIONS TO UPDATE THE PRESENT USE VALUE PROGRAM:
Examples from Other States

Prepared by Environmental Defense, November 16, 2006

In discussions with stakeholders, three issues consistently arise. Other states have successfully addressed these issues. Examples are below.

1. **Options to Ensure Revenue Neutrality for County Budgets**
   A. *Extend Rollback Payment Period:* When lands are removed from North Carolina's PUVT program, landowners are obligated to pay the previous three year's deferred taxes plus the current year's taxes. Several Southern states have longer rollback periods when land fails to qualify for present use programs. The longer rollback payments increase the amount of revenue returned to county governments. Extending North Carolina's rollback payment period from three (3) years to five (5) or even ten (10) years could increase rollback revenue to counties by 66% to over 300%.
      - Virginia: Rollback payments of five (5) years.
      - Tennessee: Rollback payments of up to five (5) years deferred taxes, depending on land use.
      - Georgia: Withdrawal penalty of up to five (5) times the current year's deferred taxes are due, based on length of enrollment.
      - South Carolina: Rollback payments due for the amount of deferred taxes during the previous five (5) years.
      - Maryland: Imposes a transfer tax of 4% to 5% of market value in lieu of rollback taxes when land no longer qualifies for use value.

   B. *Establish Enrollment Contracts:* North Carolina does not require lands to be enrolled in PUV for any length of time. Creating a contract of 10 to 15 years would limit potential abuses and discourage those seeking a short-term profit. Several states use contract enrollments for their present use programs.
      - Georgia requires a 10-year covenant for enrollment in agriculture (including forestry) and conservation purposes.
      - Maryland requires woodland in the state's Forest Conservation and Management Program to record an agreement with the state for 15 year period.
      - Texas requires owners of scenic land and recreation land to record a deed restriction of at least 10 years to qualify for present use program.

   C. *Limit land and / or landowner eligibility:* North Carolina already limits forest land enrollments to a minimum of 20 acres and agricultural land to a minimum of 10 acres. No maximum acreage limits exist in the program. Landowners must meet certain legal definitions to qualify for use value.
      - Georgia limits conservation lands to less than 2000 acres per landowner. Alabama's program has a similar acreage cap.

2. **Options to Value Wildlife or Conservation Land:** Most wildlife or conservation lands do not produce an annual income (as in agriculture), nor does a simple productivity index exist (as in forestry). For these reasons, questions remain about how to value wildlife and conservation lands. Other Southern states offer several options.

A. Value the same as if land enrolled as forestry or agriculture:

- Tennessee values open space land the same as agricultural land, utilizing a formula that considers farm income, soil productivity, topography, rental value and other factors.
- Texas values wildlife land as if that land were enrolled as agricultural lands.

B. Value as a percentage (%) of fair market value:

- Georgia values conservation lands at 40% of its current use value.
- South Carolina taxes agricultural land at 4% of fair market value.

3. **Options to Define Wildlife or Conservation Management:** Reforming the Present Use Value program to allow wildlife and other conservation lands will require a definition of wildlife lands. Other states offer several options as does the North Carolina Wildlife Action Plan.

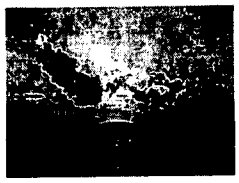
- Georgia defines "Bona Fide Conservation Property" as 1) productive agricultural and forestry lands and 2) environmentally sensitive property, including wetland areas, significant ground-water recharge areas, undeveloped barrier islands, areas containing endangered or threatened species habitat, river corridors or steep slopes.
- Tennessee defines "open space land" as any area of land other than agricultural and forest land, of not less than 3 acres, characterized principally by open or natural conditions, and whose preservation would tend to provide the public with 1 or more enumerated benefits, including conservation of air, water and wildlife, "relief from the monotony of continued urban sprawl," and the "preservation of open land for the general welfare."
- Texas defines "Wildlife Management" as actively using land to propagate a sustaining breed, migrating or wintering population of indigenous wild animals for human use, including food, medicine or recreation by providing at least 3 of 7 listed services. These services include erosion control, habitat control, and providing supplemental supplies of food and water.
- Virginia defines "Open-space Use" to "mean real estate used as or preserved for (i) recreational purposes, (ii) conservation of land or other natural resources, (iii) floodways, (iv) wetlands ..., (v) riparian buffers ..., (vi) historic or scenic purposes, or (viii) assisting in the shaping of the character, direction and timing of community development or for the public interest consistent with the local land-use plan..."
- North Carolina's State Wildlife Plan provides for eight endangered ecosystems, 67 state endangered or threatened species, and critical areas for freshwater conservation.

North Carolina Conservation Tax Credit

Daniel A. Ettefagh
Legislative Drafting Division
Revenue Laws Study Committee
November 16, 2006

Overview

- Current law
- Legislative History
- Pass-through Entities
- Other Issues



Current Law: G.S. 105-130.34 and 105-151.12

- The Conservation Tax Credit is a credit against income tax available to corporate and individual taxpayers who make certain donations of real property located in North Carolina
- Credit equals 25% of the FMV of the donated property interest capped at $500,000 for corporate taxpayers and $250,000 for individual taxpayers
- Five year carry-forward



Requirements

- To qualify, the land must be useful for:
  - Public beach access or use
  - Public access to public waters or trails
  - Fish or wildlife conservation
  - Other similar land conservation purposes
- Exception: required by local regulation/ordinance or increases building density
- Donations must be in perpetuity to:
  - The State
  - A local government
  - A body organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions



Program Statistics

Based on representations by taxpayers, DENR has accumulated the following statistics:

- Cumulative donations:
  - Land: 154,300 acres
  - Value: $617.7M
- Excess value: $230.4M
- Bargain Sale Savings: $131M



Legislative History: The Partnership Paradox

- The CTC was enacted in 1983, and the only significant change in the 80's and 90's was to increase the cap from $5,000 to current levels
- In 2001, the Revenue Laws Study Committee proposed a statutory correction regarding allocation of partnership tax credits to apply specific dollar amount limitations to the total credit allocated by the partnership



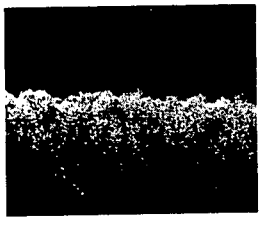
Pass-through Entities

- This proposal became HB 146 and affected the following credits:
  - Worker training (105-129.11)
  - Investing in central administrative office property (105-129.12), business property (105-129.16), and renewable energy property (105-129.16A)
  - Real property donations (105-151.12)
  - Conservation tillage equipment (105-151.13)
  - Construction of a poultry composting facility (105-151.25)

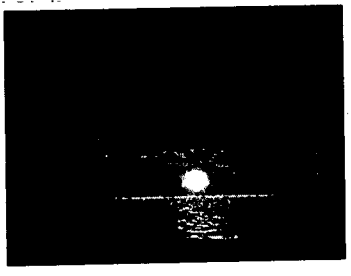


Pass-through Entities

- HB 146, which became S.L. 2001-335, was amended to delay the imposition of the dollar amount limitations for real property donations until 2005
- The 2005 sunset date has been twice extended for one year each
- In 2006, SB 521 would have recodified the CTC with three substantive changes:
  - Elimination of CTC exemption for partnerships
  - Increase of CTC cap to $500,000.
  - Increase in types of taxes against which the CTC could be taken to income tax, franchise tax, or gross premiums tax.



Questions?



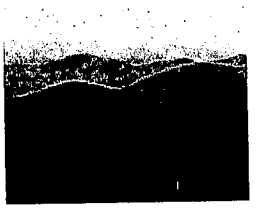
NC Conservation Tax Credit

Presentation to the
Revenue Laws Study Committee
November 16, 2006
Jason Walser
LandTrust for Central NC

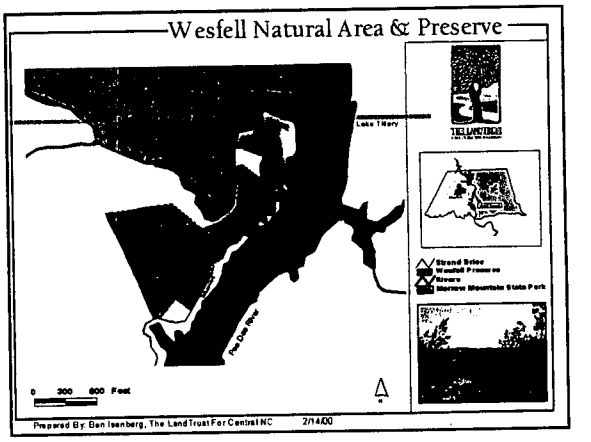
Importance of Conservation Tax Credit (CTC)

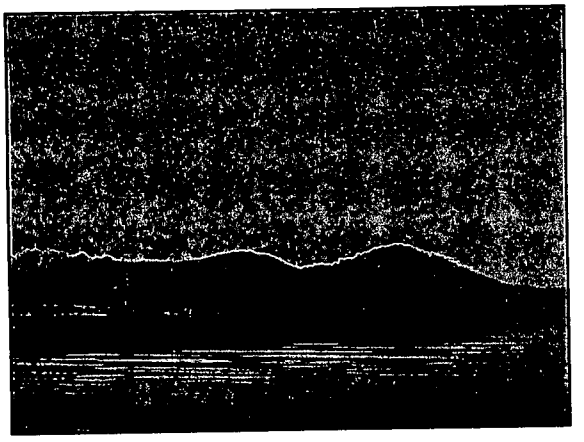
- Critical to High Profile Projects
- Environmental Protection Benefits
  - Wildlife habitat
  - Water quality
- Cost Effective
- Versatile
  - Natural areas
  - Working lands
  - Historic landscapes
  - Public Access/Tourist Attractions

CTC Role in Important Projects



- Grandfather Mountain
- Land Along Blue Ridge Parkway
- Arlie Gardens
- Cooleemee
- Corporate Donations
  - Weyerhaeuser – Neuse River 927 acres
  - Dupont – Bladen/Cumberland Co – 427 acres



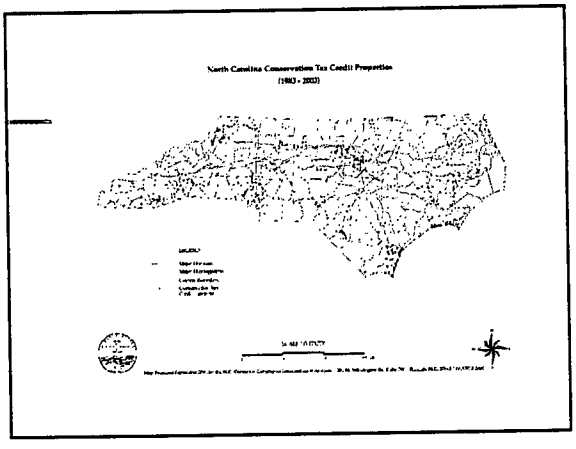




THE BARBER FARM



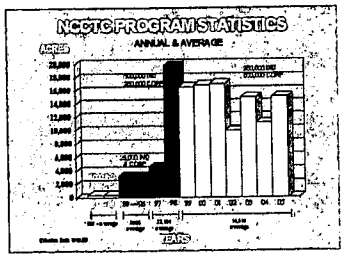




Impact of CTC

- 154,000 acres Permanently Protected
- Valued at $617M
- Estimated Cost to State - $97M
- Leveraged - More Than $230M
- Creates Incentive for "Bargain Sales"
  - Fee Simple Acquisitions
  - Conservation Easement Purchases

Impact of CTC on Pace of Conservation



- When Caps Increased
- Tripled Pace of Conservation

NC Conservation Leader



- NC First to Pass State-Level CTC
- Important for NC to Maintain Incentive and Leadership Role

* Map from Conservation Resource Center, Boulder, Colorado

National and State Tax Issues

- Federal Pension Bill
  - Temporary Expansion of Federal Tax Benefits for Easement Donations
  - Increased Penalties for Inflated Appraisals
- IRS Auditing 700 Returns/Appraisals
- NC Land Trust Council Members Committed to Ensuring Projects Achieve Public Benefits
- Land trusts NOT responsible for accuracy of appraisal – Taxpayer/Appraiser/DOR

Changes in Federal Law

- Carrots
  - Raises allowable tax deduction from 30% of AGI to 50%
  - 100% for farmers
  - Carry forward increased from 5 yrs to 15 yrs
- Sticks
  - Appraiser must have professional designations
    - IRS guidance forthcoming
  - Increased penalties for overvalued appraisals

National and State Land Trust Initiatives

- Land Trust Alliance Standards and Practices
  - NC Land Trust Council members required to adopt/follow
  - Includes conflict of interest standards
  - Recommends land trusts review appraisals before accepting donation
- National Accreditation Process Under Development - 2008

NC Land Trusts Recommendations

Administrative

- NCDENR strengthen guidelines for certifying CTC projects achieve public conservation benefit
- NCDOR increase oversight and enforcement in cases of fraudulent returns claiming CTC

- Educational
  - Work with appraiser organizations to develop guidance/training on valuation of easements
  - Certification process or approved list of appraisers who do CTC donations

NC Land Trusts Recommendations

- Legislative
  - cap for pass through entities at $500K
  - index caps to keep pace w/ increasing land values
  - make CTC refundable/transferable
  - increase carry forward period for CTC

Hunt Club Animal Bedding, LLC	8	$37,500.00	no
Inception Micro Angel Fund LLC	n/a	n/a	no
Intell-Mark Technologies	2	$30,000.00	no
InfoStrength, Inc.	n/a	n/a	YES
3-C Institute For Social Development, Inc.	n/a	n/a	no
Intercede, Inc.	5	$46,700.00	no
International Garment Technologies, L.L.C.	42	$23,423.00	no
International IT Services, Ltd.	4	$70,000.00	YES
Intersouth Affiliates V, L.P.	n/a	n/a	no
Intersouth Partners V, L.P.	n/a	n/a	no
Intersouth Partners VI, L.P.	n/a	n/a	no
Intersouth Partners VII, L.P.	n/a	n/a	no
Intervolve, Inc.	7	$64,285.71	no
KBI BioPharma, Inc.	11	$69,273.00	no
Klein Decisions LLC	6	$83,050.00	no
Krenitsky Pharmaceuticals, Inc.	0	$0.00	no
LaamScience, Inc.	n/a	n/a	no
Learning Management Systems, Inc.	5	$37,000.00	no
Linwood, Inc.	n/a	n/a	no
Liquidia Technologies, Inc.	5	$54,600.00	no
Listingbook, LLC	n/a	n/a	no
Live Cargo, Inc.	12	$80,000.00	no
Mardil, Inc.	0	n/a	Yes
Maximum Advantage Building Solutions, LLC (Exceeded $5 M)	60	$37,150.00	no
Mediplay, Inc.	n/a	n/a	no
MD Scientific, LLC	n/a	n/a	no
Meal Portal, Inc.	0	$0.00	no
MediWave Star Techology Inc.	5	$36,150.00	no
Microphase Coatings Inc.	1	$60,000.00	no
Moving Midway, LLC	0	$0.00	no
MyBode, Inc.	2	$50,000.00	no
MyStoreCredit, Inc.	3	$36,000.00	no
NanoLume, Inc.	n/a	$0.00	no
Neos Discovery, Inc.	n/a	n/a	no
Neuisys, LLC	n/a	n/a	no
OroBridge, Inc.	0	$0.00	no
Oryel, Inc.	2	$32,000.00	no
Overture Networks, Inc.	11	$95,500.00	no

P4S, LLC	n/a	n/a	no
Paladin Laboratories, LLC	1	$75,000.00	no
Parion Sciences, Inc.	11	$107,233.00	no
Patriot Software Systems, Inc.	n/a	n/a	no
Paula Lee Haller Productions LLC	0	$0.00	YES
Piedmont Angel Network LLC	0	$0.00	no
Piedmont Angel Network TWO LLC	n/a	n/a	no
Piedmont Pharmaceuticals LLC	n/a	n/a	no
Pogo Health LLC	n/a	n/a	no
Polyglot Systems, Inc.	n/a	n/a	YES
Primo Water Corporation (fka Primier Corporation)	17	$85,000.00	no
Qualyst, Inc. (fka ADMETech, Inc.)	3	$91,000.00	no
Quill Medical, Inc.	5	$35,500.00	no
RadarFind Corporation	5	$70,000.00	no
Regado Biosciences, Inc.	n/a	n/a	no
Respirics, Inc.	2	$45,000.00	no
Roy G Biv Networks, Inc.	n/a	n/a	no
rPath, Inc.	20	$95,675.00	no
Run Lightning 1956, LLC	0	$0.00	no
Sicel Technologies, Inc.	0	$0.00	no
Southern Capitol Technology Fund II, LP	0	$40,000.00	no
Southeast Techinventures, Inc.	0	n/a	no
Starta Development, Inc.	0	$0.00	no
SunDog Productions, LLC	n/a	n/a	
Synergem Emergency Services, L.L.C.	4	$52,500.00	no
Synermed Select Partners, Inc.	8	$40,000.00	no
Syntherica Corporation (fka Sylvanus Pharma, Inc.)	1	$65,000.00	no
Table Rock Springwater Co.	24	$27,474.00	no
Textile Film Initiative L.L.C.	n/a	n/a	no
The Elevator Channel, Inc.	n/a	n/a	no
The List Productions, LLC	0	$0.00	no
Trificient Technologies of Mount Airy, LLC	3	$25,000.00	no
Tri-State Investment Group IV, LLC	n/a	n/a	no
Triad Specialty Products LLC	1	$35,000.00	no
U.S. Environmental Protection Service, LLC	8	$45,000.00	no
VTFLEX, INC.	0	$0.00	no

ViTech Enterprises, Inc.	0	$0.00	no
Wilmington Pharmaceuticals, LLC	0	$0.00	no
Yap, Inc.	0	$0.00	no
ZellComp, Inc.	0	$0.00	no
Zenph Studios, Inc.	3	$62,000.00	no
ZyCare, Inc. (FKA Healthware Corporation	4	$24,914.00	no

Minority	7
# of Jobs Created	623
Total Wages	$3,927,741.59
Average Wage	$63,045.60

Brief Description of Business Activity

Engaged in the development, financing, production, distribution, and exploitation of motion pictures.
Organized to locate, analyze and invest in new and emerging companies located in NC with an emphasis on the Charlotte and Piedmont Triad regions of NC.
Organized to locate, analyze and invest in new and emerging companies located in NC with an emphasis on the Charlotte and Piedmont Triad regions of NC.
Develops and manufactures golf products to golf research and development facilities, retailers, club fitters, and OEM's nationally & internationally.
Provide personal information management software by developing a pen-on-paper-based user-interface.
The company is in the business of design, development, manufacture and sale of equipment to manipulate fluids at the nanoscale.
The company has developed the innovative technology of "interfacial biomaterials" or IFBMs.
The company is engaged in the development, the manufacture, and the distribution of a series of proprietary medical device products designed to improve therapeutic transplantation of adult hematopoetic stem and progenitor cells.
The company is primairly focused on commercialization of pharmaceutical and related technology and intellectual property.
An early stage research and development company that will commercialize a vaccine targeting mosquito-borne diseases.
Development and production of vector based delivery vehicles for genes and gene products for therapeutic applications.
Engaged in early-stage development of a patent-pending hearing device used in the treatment of tinnitus (chronic ringing in the ears).
The company operates as a venture capital fund formed to invest in early and later stage investments in existing informatio technology and life science companies located in N.C. and the Southeastern U.S.
The company will operate as a venture capital fund formed to invest primarily in seed and early stage investments.
The company will invest primarily in seed, and early stage and follow on investments in information technology and life sciences .
Provides software that lets organizations know how bills are electronically routed for approval within the company.
Engaged primarily in the service-related industry of installing, supporting and servicing computer networksm hardware and software.
Develops, manufactures, and markets products as a specialty chemicals company focused on product preservation.
It researches commodities and analyzes their performance worldwide using proprietary software.
R&D directed to the discovery and preclinical development of new drugs for the treatment of diseases such as asthma, chronic bronchitis, and cystic fibrosis.
Bioptigen is developing Optical Coherence Tomography instrumentation for imaging of humans and small animals for pre-clinical research .
Research and development of industrial enzymes for animal feed applications.
Engaged in research and development of models that predict onset for certain chronic diseases, such as heart, stroke & diabetes.
Develops computer applications based on Analogue Based Reasoning Technology, a multi-dimensional type software.
Provide a new Internet based outsourcing option for employers.
Waste oil is converted into biodiesel fuel at production facility.
Development of technology permitting creation and replication of complex microstructures over large areas and application of this technology to design and production of new products.
Develops and markets software for building departments and building contractors.
Provider of integrated web-based and wireless/mobile software applications for the homebuilding industry.
Developer of a proprietary process for the treatment of garments with a specialized finish which protects the wearer from insects and insect bites.
A medical device company engaged in research, design, production, assembly and sales of a line of surgical patient temperature management products.
Builder and operator of a low-cost wireless broadband internet infastructure to be used in multi-family dwelling communities.
CGS Bonded Warehouse, Inc operates a warehouse for the storage of the cotton bales.
Venture capital investments.

This company develops and delivers automated support software for personal computers that will improve rsistance to various types of threats, while automating the process of detecting, diagnosing, and repairing trouble conditions.
Will develop and manufacture a medical device which will allow radiation therapy for the treatment of cancer.
Sell, market, manufacture, warehouse & distribute technology in fluid filtration.
Is a disease management service provider that makes its own hardware and software.
The applicant business engages in the financing, production, distribution and exploitation of motion pictures.
Will design and manufacture a medical device that will allow a physician to tailor the delivery of supplemental oxygen to newborns in need of oxygen therapy.
This is a software package for the cabinet industry.
The business is to create revenues and profit from outsourced use of its proprietary technology platform and full service.
Discover and develop agrochemicals, including herbicides, insecticides, and fungicides.
Is focused on the treatment of metabolic diseases and central nervous system disorders.
Designs and imports various Christmas products for wholesale to U.S. retailers.
Formational activities for a scheduled airline.
Is a marketing and distribution company specializing in the digital content market with immediate focus on the music industry.
Develops, designs, maufactures, and markets optical solutions which are used in semiconductor fabrication equipment, printers, sensors, data communication, bar code scanners, and medical instruments
To provide online software applications to automated real estate transactions for mortgage lending industry.
The company will engage in the processing of recycled soda-lime consumer container glass from the raw collection state and the manufacture of theat glass intake into various forms of sand that will be able to be used in the production of other products.
Develop implantable medical products capable of evading the human immune system.
Business intends to develop the endotoxin detection kit first for industrial use and subsequently for clinical diagnostic use, developing a drug for asthma
Entegrion, Inc. is engaged in the research & development of biological products for the treatment of blood or other conditions.
To provide academic instruction and cultural enrichment courses for Home Schooled children.
A North Carolina based corporation specializing in the production of an original feature film for motion pictures.
Engaged in the processing of genomic samples (RNA and DNA) submitted by academic, commercial and government research organizations for the purpose of hybridization and scanning of those genetic materials to microarrays and the subsequent analysis of the resulting data.
Participates in the financing, production, distribution and exploitation of motion pictures.
Offers a highly mobile communications solution to its end users via use of the Tablet PC and certain proprietary software.
Provides motion picture processing services.
Directs the design, development, manufacture and markets an automatic fluid shutoff valve for installation.
Engages in research, development and commercialization of software and hardware relating to portable handheld devices.
Researches and develops, and out sources manufacturing and distribution of wholesale medical products.
This was formed to produce a feature film, to be shot in Asheville, and hire local people.
To develop, produce and subsequently arrange distribution of a motion picture based on the true story of John Wesley.
Engaged in the R & D and commercialization of proprietary clinical pharmacogenomic product and services.
Develops product placement in the television show and then promotes that placement in the pages of GET magazine and on-line at GetTV,tv, connecting the viewer to their favorite content.
Operate a venture capital fund formed to invest primarily in information technology and life science companies.
Prinicpal purposes are to locate, analyze and invest in equity or debt securities of privately held businesses generally considered to be venture capital investments.
Intended to be a venture capital fund to invest primarily in companies engaged in the biotechnology, medical device and similar related industries.
The applicant business engages in the financing, production, distribution and exploitation of motion pictures.
Develop a custom horticultural software product that will enable professionals to evaluate the installed landscape and to produce a product that predicts the replacement value of horticultural assets and provides a horticulturally correct specimen and care guide.

Engages in the manufacturing,distribution, and sale of a form of animal bedding based on a proprietary patneted production method.
Angel investor investment fund focusing on the Piedmont triad area.
A leading provider of secure access control infrastructure solutions to the travel, logistics and entertainment industries.
Produces software for life science companies to manage their intellectual property, key processes, quality and regulatory needs
A research and development company devoted to promotion positive mental health and adaptive functions of children and families through evidence based on educational materials.
Corporate human resources consulting, software development and training.
The company is creating the manufacturing capability to treat apparel using the Buzz Off proprietary system to treat garments with a fabric finish which has the capability of repelling insects.
Provides information technology services to other businesses in areas such as eCommerce, web application, quality assurance testing, etc.
Venture capital firm focusing on early stage investments in the high technology and life sciences industries.
Venture capital firm focusing on early stage investments in the high technology and life sciences industries.
Venture capital firm focusing on early stage investments in the high technology and life sciences industries.
Venture capital firm focusing on early stage investments in the high technology and life sciences industries.
Development, marketing and sale of customized solutions for the information technology needs of the beverage.
Organized for the purpose of providing contract process development and cGMP clinical manufacturing services to the biotechnology industry.
Engaged in the manufacture, production, sales and service of web-based decision software for the financial services industry.
Engaged in the discovery and early development of drugs that provide new therapies or improve existing ones and lower overall medical costs.
Research/development of innovative technology of applying materials to substances, surfaces and the like to achieve antibiological activity to destroy microscopic, ultramicroscopic or infectious agents, etc.
Provides distance learning technology and professional services.
Will design, engineer, manufacture, assemble, finish, warehouse, distribute and sell at wholesale to other manufacturers/retailers wood components to make furniture.
Research and development of chemical compounds
Software solutions for real estate agents and their customers.
A Secure Messaging software company that provides products and services to transfer, store, and ensure secure delivery of digital documents.
The company is a medical device company focused on developing invasive procedures and devices for the cardiovascular disease market.
Business engages in the manufacture, sales and shipping of modular buildings to general contractors.
Providing digital marketing solutions for health care professionals.
Engaged in research and development to improve healthcare through commercialization of medical innovations developed by physicians.
Meal Portal, Inc. is a supplier of web-based online sales and marking systems for the restaurant industry.
Research and development of technology and devices which incorporate such technology, for use in the field of medical diagnostics.
Engaged in marine vessel coating development.
The applicant business is engaged in the financing,production,distribution and explitation of a motion picture.
Developing, marketing, and selling proprietary Internet applications to the real estate industry.
To provide products and service as a credit payments manager to allow a seller on eBay to offer and administer credit amounts.
Engaged in nanotechnology research and development , specializing in nanoscale semiconductor materials and products.
Engaged in a licensing agreement to commercialize technology developed at North Carolina State University.
The company engages in the business of distributing medical equipment at wholesale.
The company has designed and intends to manufacture solid-state thermoelectric heating devices to produce electricity from heat.
Provides web-based human capital management solutions including payroll, human resources, benefits administration employee/manager self-service
Developing a class of networking products that will enable telecommunication service providers to offer a full array of network services to their customers.

Will develop and produce a full-length feature film for distribution through major or minor studios.
Engaged in the refurbishment and sale of new and refurbished medical equipment and instruments.
The company develops a collection of compounds that act as specific blockers of the epithelial sodium channel.
Engaged in research and development of computer software.
The business is engaged in the development, financing, production, distribution and exploitation of motion pictures.
Invests in capital stock or debt instruments of growth companies, including but not limited to, early stage privately-held companies.
Will invest in capital stock or debt instruments of growth companies, including but not linited to early stage, privately-companies.
Pharmaceutical research & development
Primarily engaged in providing a service & products business to business getting them to offer as part of companies hmo's.
Will develop software products to integrate medical informatics, clinical decision analysis and multimedia technology.
To provide bottled water products and services to retailers at wholesale.
Developing ADMET technologies to be licensed to the life sciences industry.
A medical device company with a core mission to develop and commercialize innovative surgical aids for wound closure and tissue management.
Developing an asset tracking system for hospitals and care centers. "Indoor GPS system" for mobile medical devices used in hospitals (beds, infusion pumps, incubators).
Is a biopharmaceutical company developing antidote-controlled therapeutics, focusing on the acute care antithrombotics market.
Respirics is a respiartory drug delivery and development company serving pharmaceutitial biotechnology and diagnostic industries.
Will provide a secure, universally accessible, user authenticated, advertising supported online directory and communication service developed for households, etc.
Provides application (software) companies the opportunity to reduce developmental, installation/operational costs of installing and maintaining enterprise software applications as well as custom OS platforms.
Business is producing a single movie, "Run Lightning", and will exploit it in all available markets.
A medical device company focused on systems, monitors, and software for cancer treatments.
Venture capital investments.
They are a technology accelerator focused on migrating technologies from universities into commercial marketplace.
An internet based service that manages date and documents for the development of affordable-housing apartments.
The principal business of SunDog Productions, LLC is the development, production and distribution of a motion picture.
Provides comprehensive, fully integrated public safety and emergency management solutions to city, county, and federal agenices and Commercial sector companies.
Refurbish medical equipment and instruments.
The company is engaged in activities related to the research & development of a proprietary surrogate antibody technology.
Manufactures and distributes bottled water.
Engages in the financing, and exploitation of motion pictures.
Uses patented technology to reach consumers through high-resolution displays that can be deployed inside elevators.
Formed to participate in the financing, production, distribution and exploitation of a feature-length motion picture.
Provides wireless high-speed access to data, voice and video communications.
Acquires capital stock or debt instruments of growth companies, including but not limited to early stage privately-held companies.
Will function as an animal pharmaceutical company.
Develops and produces proprietary erosion controlled processes, products, and systems.
Design, enginer, manufacture, market VT Flex therapeutic exercise devices for consumers, hospitals, and physical therapy clinics.

ViTech proposes to destroy unwanted prescription and non-prescription pharmaceuticals into hydrogen gases using its technology.
A research and development company of user-friendly dosage forms for established prescription pharmaceutical products.
Develops and markets speech and voice-enabled mobile software.
Researching, developing. manufacturing and commercializing innovative fiber-reinforced products for a variety of uses.
Development of software to create, analyze and record music.
Engages in research and development with a primary focus in cost effective clinical management of insulin-requiring diabetes mellitus.

REVENUE LAWS STUDY COMMITTEE
Tuesday, December 12, 2006 at 9:30 AM
Room 544, Legislative Office Building

MINUTES

The Revenue Laws Study Committee met at 9:30 AM on December 12, 2006, in Room 544 of the Legislative Office Building. Fifteen members of the committee were present. Senator Kerr and Representative Luebke presided.

Approval of the Minutes.

Representative Hill motioned for the approval of the November 16, 2006 minutes and the motion carried. A copy of the minutes is attached.

Gift Tax Simplification.

Canaan Huie, a staff attorney with the Bill Drafting Division, was recognized to review the bill draft proposal for gift tax simplification. Representative Brubaker motioned to adopt the recommendation. A copy of the summary and the bill draft is attached.

IRC Update.

Heather Fennell, a staff attorney with the Research Division, was recognized to explain the proposed "IRC Update" bill draft. Mike Pate, Committee member, was recognized for comment and had a handout of the new federal tax provisions which was distributed to the committee. Barry Board, a fiscal analyst with the Fiscal Research Division, was recognized to answer questions. A copy of the proposed bill draft, the summary and the federal tax provisions are attached.

Tax Refund Procedure.

Trina Griffin, a staff attorney with the Research Division, was recognized to explain the proposed "Tax Refund Procedure" bill draft. Senator Clodfelter requested that staff review the time limit placed for class action refund requests. Chuck Neely, representing the Council on State Taxation, was recognized for comment. A copy of the proposed bill draft and the summary are attached.

Administrative Appeal Process.

Trina Griffin was recognized to explain the administrative appeal process and referred to the October 3, 2006 statements by Royce Powell, an attorney with Maupin Taylor. Copies of his comments are attached. Linda Millsaps, Assistant Secretary for Tax Administration, Department of Revenue, was recognized to explain the Department's view of the process. She distributed a chart on tax hearing statistics which is attached. Chuck Neely was recognized to for comment.

Mandatory Corporate Returns.

Cindy Avrette, a staff attorney with the Research Division, was recognized to explain mandatory corporate returns. A copy of her presentation is attached.

Streamlined Sales Tax: Bundled Transactions.

Cindy Avrette was recognized to explain the proposed "Streamlined Sales Tax Changes" bill draft. A copy of the proposed bill draft and the summary are attached.

Motor Fuels Tax Changes.

This item was not taken up due to time constraints.

The meeting adjourned at 12:20 pm.

Senator John H. Kerr, III, Co-Chair
Revenue Laws Study Committee

Representative Paul Luebke, Co-Chair
Revenue Laws Study Committee

DeAnne Mangum, Committee Clerk



REVENUE LAWS STUDY COMMITTEE
State Legislative Building
Raleigh, North Carolina 27603

Senator John H. Kerr, III, Co-Chair *Representative Paul Luebke, Co-Chair*

December 4, 2006

NOTICE

TO: Members, Revenue Laws Study Committee

FROM: Senator John Kerr, Co-Chair
Representative Paul Luebke, Co-Chair

SUBJECT: Revenue Laws Study Committee Meeting

There will be a meeting of the **Revenue Laws Study Committee** as follows:

DAY:	**Tuesday**
DATE:	**December 12, 2006**
TIME:	**9:30 am**
LOCATION:	**Room 544, Legislative Office Building**

Please advise DeAnne Mangum, at (919) 733-2405 or e-mail deannem@ncleg.net if you will be unable to attend.

REVENUE LAWS STUDY COMMITTEE AGENDA

Sen. John Kerr Rep. Paul Luebke

Tuesday, December 12, 2006
Room 544, Legislative Office Building
9:30 a.m.

I. Approval of the Minutes from the November 16, 2006, Meeting

II. Gift Tax Simplification

Canaan Huie, Legislative Drafting Division
Barry Boardman, Fiscal Research Division

III. IRC Update

Heather Fennell, Research Division
David Crotts and Barry Boardman, Fiscal Research Division

IV. Tax Refund Procedure

Trina Griffin, Research Division

V. Administrative Appeal Process

- Trina Griffin, Research Division
- Linda Millsaps, Assistant Secretary of Tax Administration, Department of Revenue

VI. Mandatory Combined Returns

Cindy Avrette, Research Division

VII. Streamlined Sales Tax: Bundled Transactions

Cindy Avrette, Research Division

VIII. Motor Fuels Tax Changes

Cindy Avrette, Research Division

IX. Adjournment

Future Meeting Dates: Jan. 16 and Jan. 23
Room 544, LOB, at 9:30 a.m.

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — Dec. 12, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Greg Rudford	NC DOR
MICHAEL YOUTH	NC DOJ
Steve Cornwell	NC DOR
GAIL BEAMON	NC DOR
Angie Harris	Maupin Taylor
Edgar Miller	CTNC
ANTHONY NASH	NCACC
Owen Franklin	NCLM
Michael Houser	NCHE

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — Dec. 12, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Joe Stewart	IFNC
CB Nabby	MT
Nancy Readleman	MT
Cam Creer	BPMHC
Cam Brawley	EY
[illegible]	SA
DAVID BARNES	Bynum Sprouse
Dana Simpson	SA
John Poteat	NCCMA
Jennie New	Kennedy Covington
Sharon Miller	CUCA

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — Dec. 12, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Janice Davidson	DOR
Dana Alderman	DOR
Paul Kaiser	TWC
Paul Stock	NC Bankers Assn
Steve Wheeler	NCFB
Starla Pfleeger	DST
Doug Howey	NCPMA
Kathy Hawkins	Progress Energy

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — Dec. 12, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Roger Bone	Bone + Assoc.
David Baker	NCDOR
Janet Shires	NC DOR
Becki Gray	Civitas Institute
JE Hobbs	Hobbs & Company
Jack Cummings	Alston + Bird
John Dillard	CSX
Tim Holmes	DOR
Linda Millsaps	DOR
Donna Powell	DOR
Lennie Collins	DOR

(1) Rep Brubaker motioned to adopt recommendation.

DRAFT 2007-LYxz-6A: Simplify Gift Tax

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	December 11, 2006
Introduced by:		**Summary by:**	Y. Canaan Huie
Version:	v.4 2007-LYxz-6A		Committee Counsel

SUMMARY: This bill would simplify the State gift tax by eliminating the tax on many gifts, by eliminating different tax rates based on the relationship between the donor and donee, and by more closely tying the State gift tax to the federal gift tax. This bill would become effective for gifts made on or after January 1, 2008.

CURRENT LAW: Under the North Carolina gift tax gifts not exceeding a value of $12,000 from any particular donor to any particular donee are excluded from taxation[1]. In addition, several types of gifts, such as gifts to cover medical or educational expenses, gifts between spouses, or charitable contributions, are not subject to the gift tax. After applying these exclusions, gifts are taxed at varying graduated rates based on the relationship between the donor and the donee. Gifts that are made to lineal descendants, lineal ancestors, adopted children, or stepchildren are taxed at the lowest rates and are subject to a lifetime cumulative exemption of $100,000. Gifts that are made to siblings, descendants of siblings, or aunts or uncles by blood are taxed at higher rates and do not enjoy the benefit of the exemption. Gifts that are made to other donees are taxed at the highest rates and do not enjoy the benefit of the exemption. Thus, North Carolina's gift tax rate structure favors transfers to children and parents by giving those transfers the lowest rates and an exemption and prefers transfers to other close family members over transfers to more distant relatives or to persons who are not related. Other than a change in the annual exclusion amount from a flat rate of $10,000 to the amount of the annual exclusion amount set under the Code, the General Assembly has not enacted any major changes to the gift tax since before 1998.

North Carolina's gift tax is similar to the federal gift tax in some limited ways, but is extremely different in some other important ways. As with the North Carolina gift, the federal gift tax has an annual exclusion amount and excludes gifts to cover medical or educational expenses, gifts between spouses, and charitable contributions. However, the federal gift tax rate does not vary based on the relationship between the donor and donee. In addition, the federal gift tax is part of a somewhat unified gift-estate tax system at the federal level. As part of that system, the federal gift tax has a lifetime exemption amount of $1,000,000. This amount is much larger than the State exemption amount and is available regardless of the relationship between the donor and donee. In addition, there are sometimes differences in the valuation of a gift for State and federal tax purposes. This most commonly occurs with respect to the valuation of annuities. For State purposes, statutes mandate an interest rate of 6% be used in determining the value of the annuity; for federal purposes, the current prevailing interest rate is used.

BILL ANALYSIS: This bill would more closely conform North Carolina's gift tax to the federal gift tax. This bill would include the following key changes:

- A State gift tax would be imposed only if a federal gift tax were imposed. This is similar to the manner in which the State imposes an estate tax. By imposing a State gift tax only when a federal gift tax is due, the practical effect is greatly increase the lifetime exemption amount.

[1] The annual exclusion amount does not apply to gifts of a future interest.

A federal tax is only due once the taxpayer's lifetime taxable gifts have exceeded $1 million; by imposing a State gift tax only when a federal tax imposed, the State effectively incorporates the $1 million lifetime exclusion amount.

- The bill eliminates different treatment of gifts based on the relationship between the donor and donee. This bill would institute a single rate structure for all taxable gifts and would effectively incorporate a single lifetime exemption amount for all types of gifts.
- The bill would conform the valuation of gifts for State purposes to the valuation of gifts for federal purposes.
- The bill is designed to be revenue-neutral. Given that fewer taxpayers would owe State gift tax under this bill than under current law, the rates on the remaining taxable gift would rise under this bill. Gift tax rates under this bill would range from 12% to 32%. This will have the effect of shifting more of the burden of the gift tax to donors who make larger gifts.

EFFECTIVE DATE: This bill would become effective for gifts made on or after January 1, 2008.

2007-LYxz-6Av3-SMLY-LYxz-6A

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-LYxz-6A [v.4] (9/20)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
12/11/2006 3:39:29 PM

Short Title: Simplify Gift Tax. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REFORM THE STATE GIFT TAX SO THAT IT IS BASED ON THE FEDERAL GIFT TAX, AS RECOMMENDED BY THE REVENUE LAWS STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6 of Chapter 105 of the General Statutes is repealed.

SECTION 2. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 1B.

"Gift Taxes.

"**§ 105-32.20. Gift taxes; rates of tax.**

(a) Definitions. – As used in this Article, 'taxable gift' has the same meaning as under section 2503 of the Code.

(b) Tax. – A gift tax is imposed on a gift when a federal gift tax is imposed on the gift under section 2501 of the Code and any of the following applies:

(1) The donor was a resident of this State at the time the gift was made.

(2) The donor was not a resident of this State at the time the gift was made and the gift consisted of either of the following:

a. Real property or tangible personal property that was located in this State at the time the gift was made.

b. Intangible personal property that had a tax situs in this State at the time the gift was made.

(c) Rate. – The rates of tax, which are based on the value of the taxable gift, are as follows:

Amount of Taxable Gift	Rate
Up to $10,000	12%
Over $10,000 up to $20,000	13%

Over $20,000 up to $40,000	15%
Over $40,000 up to $60,000	16%
Over $60,000 up to $80,000	17%
Over $80,000 up to $100,000	19%
Over $100,000 up to $150,000	20%
Over $150,000 up to $250,000	21%
Over $250,000 up to $500,000	23%
Over $500,000 up to $750,000	25%
Over $750,000 up to $1,000,000	26%
Over $1,000,000 up to $1,250,000	27%
Over $1,250,000 up to $1,500,000	29%
Over $1,500,000 up to $2,000,000	30%
Over $2,000,000	32%

(d) Value of Gift. – The value of a gift is determined in accordance with the Code. If any property composing part of the gift is located in a state other than North Carolina, the amount of tax payable depends on whether the donor was a resident of this State at the time of the gift. If the donor was a resident of this State at the time of the gift, the amount of tax due under this section is reduced by the lesser of the amount of the gift tax paid the other state or an amount computed by multiplying the amount otherwise due by a fraction, the numerator of which is the value of the taxable gift that was located or had a tax situs in another state at the time of the gift and the denominator of which is the value of the total taxable gift. If the donor was not a resident of this State at the time of the gift, the amount of tax due under this section is an amount computed by multiplying the amount otherwise due by a fraction, the numerator of which is the value of real or tangible personal property that was located in North Carolina at the time of the gift plus the value of any intangible property that had a tax situs in North Carolina at the time of the gift and the denominator of which is the value of the taxable gift.

"**§ 105-32.21. Lien for tax; collection of tax.**

The tax imposed by this Article is a lien upon all gifts that constitute the basis for the tax for a period of 10 years from the time they are made. If the tax is not paid by the donor when due, each donee is personally liable, to the extent of his or her respective gifts, for so much of the tax as has been assessed, or may be assessed, thereon. Any part of the property comprised in the gift that has been sold by the donee to a bona fide purchaser is divested of the lien imposed by this section and the lien, to the extent of the value of the gift, shall attach to all the property of the donee (including after-acquired property) except any part sold to a bona fide purchaser.

If the tax is not paid within 30 days after it has become due, the Department of Revenue may use any of the methods authorized in this Subchapter for the collection of other taxes to enforce the payment of taxes assessed under this Article.

In any proceeding by warrant or otherwise to enforce the collection of the tax, the donor is liable for the full amount of the tax due by reason of all the gifts constituting the basis for the tax, and each donee is liable only for so much of the tax as may be due on account of his or her respective gift.

"**§ 105-32.22. Death of donor within three years; time of assessment.**

If a donor dies within three years after filing a return, gift taxes may be assessed at any time within those three years, or on or before the date of final settlement of the donor's State estate taxes, whichever is later.

"**§ 105-32.23. When return required; due date of tax and return.**

(a) When Return Required. – A gift tax return must be filed under this Article if a federal gift tax return is required. The return must be filed on a form provided by the Secretary.

(b) Due Date. – The gift tax imposed by this Article is due when the gift tax return is due. The gift tax return is due on the date a federal gift tax return is due.

(c) Extension. – An extension of time to file a federal gift tax return is an automatic extension of the time to file a gift tax return under this Article. The Secretary may, in accordance with G.S. 105-263, extend the time for filing a gift tax return or paying the tax imposed under this Article.

(d) Administration. – Article 9 of this Chapter applies to this Article.

"**§ 105-32.24. Federal corrections.**

If the amount of a taxpayer's taxable gifts is corrected or otherwise determined by the federal government, the taxpayer must, within six months after being notified of the correction or final determination by the federal government, file a gift tax return with the Secretary of Revenue reflecting the corrected or determined taxable gifts. The Secretary of Revenue shall determine from all available evidence the taxpayer's correct tax liability for the taxable year. As used in this section, the term 'all available evidence' means evidence of any kind that becomes available to the Secretary from any source, whether or not the evidence was considered in the federal correction or determination.

The Secretary shall assess and collect any additional tax due from the taxpayer as provided in Article 9 of this Chapter. The Secretary shall refund any overpayment of tax as provided in Article 9 of this Chapter. A taxpayer who fails to comply with this section is subject to the penalties in G.S. 105-236 and forfeits the right to any refund due by reason of the determination."

SECTION 3. This act becomes effective January 1, 2008, and applies to gifts made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-SVxz-1 [v.3] (12/06)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
12/8/2006 9:18:23 AM

Short Title: IRC Update. (Public)

Sponsors: Unknown.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-228.90(b)(1b) reads as rewritten:

"(b) Definitions. – The following definitions apply in this Article:

...

(1b) Code. – The Internal Revenue Code as enacted as of ~~January 1, 2006,~~ January 1, 2007, including any provisions enacted as of that date which become effective either before or after that date.

SECTION 2. Notwithstanding Section 1 of this bill, any amendments to the Internal Revenue Code enacted after January 1, 2006 that increase North Carolina taxable income for the 2006 taxable year become effective for taxable years beginning on or after January 1, 2007.

SECTION 3. This act is effective when it becomes law.

2007-SVxz-1: IRC Update

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	December 12, 2006
Introduced by:		**Summary by:**	Heather Fennell
Version:			Committee Counsel

SUMMARY: This proposal would update the reference to the Internal Revenue Code used in defining and determining certain State tax provisions.

CURRENT LAW: North Carolina's tax law tracks many provisions of the federal Internal Revenue Code by reference to the Code.[1] The General Assembly determines each year whether to update its reference to the Internal Revenue Code.[2] Updating the Internal Revenue Code reference makes recent amendments to the Code applicable to the State to the extent that State law tracks federal law. The General Assembly's decision whether to conform to federal changes is based on the fiscal, practical, and policy implications of the federal changes and is normally enacted in the following year, rather than in the same year the federal changes are made.

BILL ANALYSIS:

IRC Update

This bill would change the reference date to January 1, 2007, effective when the bill becomes law. Changing the reference date to January 1, 2007 would incorporate the changes made in the following acts: the Deficit Reduction Act of 2005, the Tax Increase Prevention and Reconciliation act of 2005, the Heroes Earned Retirement Opportunities Act, the Pension Protection Act of 2006.

Between January 1, 2006 and August 19, 2006 there were four major pieces of federal legislation that made changes to the Internal Revenue Code. This federal legislation includes the Deficit Reduction Act of 2005 (P.L. 109-71) signed into law February 9, 2006, the Tax Increase Prevention and Reconciliation act of 2005 (P.L. 109-222) signed into law May 18, 2006, the Heroes Earned Retirement Opportunities Act (P.L. 109-227) signed into law May 23, 2006, the Pension Protection Act of 2006 (P.L. 109-280) signed into law August 19, 2006.

Deficit Reduction Act of 2005 (P.L. 109-171)

Although this act makes numerous tax changes at the federal level, these changes have little to no direct impact at the state level.

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[1] North Carolina first began referencing the Internal Revenue Code in 1967, the year it changed its taxation of corporate income to a percentage of federal taxable income.

[2] The North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Article V, Section 2(1) of the Constitution provides in pertinent part that the "power of taxation ... shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would ... be invalidated as an unconstitutional delegation of legislative power."

Tax Increase Prevention and Reconciliation Act of 2005 (P.L. 109-222)

• *Amortization treatment of musical compositions.* Under current law, taxpayers are allowed to recover, through annual depreciation deductions, the costs of certain property used in a trade or business or for the production of income. The costs associated with the creation or acquisition of musical compositions may be depreciated using the income forecast method. Under this method, the depreciation is determined by multiplying the adjusted basis for the property by the proportion the income generated by the property during the tax year to the total forecasted income for the property for ten years. A "look-back" method is used to recapture any underpayment created by forecasting. In the third and tenth year, actual income of the property is used to determine what the taxpayer's deduction should have been if the forecast method was not used. If the forecasted income is within 10 percent of the estimated income in these years, the "look-back" method does not need to be applied.

Under the act, expenses incurred for the creation or acquisition of musical compositions may be amortized over five years. Taxpayers can elect to amortize these expenses or use the previous forecast method. This provision applies to tax years beginning after December 31, 2005 and before January 1, 2011.

• *Amortization treatment of G & G expenditures.* The geological and geophysical (G &G) costs incurred for the purpose of accumulating data to serve as the basis for the decision about acquisition or retention of mineral rights by taxpayers in the business of exploring for minerals (including gas and oil) were previously considered capital expenditures and allocated to the property (or properties) purchased as a result of this data. If no property was purchased, these costs were taken as a loss in the year the project was abandoned. Last year, the Energy Tax Incentive Act of 2005 allowed these expenses to be amortized over two years.

The act allows for these costs to be amortized over five years for large integrated oil companies. Large integrated oil companies are defined as companies that have an average daily worldwide production of crude oil of at least 500,000 barrels for the taxable year, gross receipts in excess of $1 billion in the last taxable year ending during calendar year 2005, and an ownership interest in a crude oil refiner of 15 percent or more. This provision is effective for tax years beginning after August 8, 2005.

• *Extension of taxation of passive income of minors.* Special rules apply to the unearned income of a child who is under age 14. The special tax, colloquially called the "kiddie tax," is applied if: 1) the child has not reached the age of 14 by the close of the taxable year; 2) the child's unearned income was more than $1,700; 3) the child is required to file a return for the year. The tax applies regardless of whether the child may be claimed as a dependent on the parent's return. For children under age 14, unearned income is taxed at the parent's rate if the parent's rate is higher than the child's rate. The remainder of a child's taxable income is taxed at the child's rates, regardless of whether the tax applies to the child.

The act expands the rule to include all minors under the age 18 in the "kiddie tax." There is an exception for distributions from certain qualified disability trusts. The minor child tax does not

apply to a child that is married and files a joint tax return. This provision applies to taxable years beginning after December 31, 2005.

• *Increased expensing for small businesses.* Prior to the *American Jobs Creation Act of 2004*, small businesses were eligible to expense up to $25,000 of the cost of qualifying property placed in service for the taxable year. Qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. The $25,000 amount was reduced dollar-for-dollar by the amount by which the cost of the qualifying property exceeded $200,000. The deduction was increased to $100,000, with costs exceeding $400,000 reducing the deduction by the *American Jobs Creation Act of 2004.* This provision was set to expire for tax years beginning after December 31, 2006.

This act extends the enhanced small business expensing thresholds until tax years beginning after 2007 and before 2010.

• *Increased income limit for conversion of traditional IRAs to Roth IRAs.* There are two general types of individual retirement arrangements (IRAs): traditional IRAs and Roth IRAs. The total amount an individual may contribute is limited to the lesser of a dollar amount ($4,000 for 2006), or the amount of the individual's taxable income for the year. Contributions to a traditional IRA are generally deductible. Distributions from a traditional IRA are included in gross income to the extent the distributions are not attributable to a return of nondeductible contributions. Contributions to a Roth IRA are not deductible. Distributions from a Roth IRA are excludable from gross income. A taxpayer with an adjusted gross income of $100,000 or less may convert all or a portion of a traditional IRA to a Roth IRA. Married taxpayers filing separate returns may not convert a traditional IRA into a Roth IRA.

This act eliminates the income limits on conversions of traditional IRAs to Roth IRAs. The amount converted is treated as taxable income in the year it is converted; however, taxpayers who convert in 2010 and do not take distributions from the converted plan until after 2012, have the option of either recognizing all of the income in 2011 or including the income ratably over the tax years 2011 and 2012. This provision is effective for tax years beginning after December 31, 2009.

Heroes Earned Retirement Opportunities Act (P.L. 109-227)

The sole purpose of this act is to allow members of the Armed Forces serving in a combat zone to make contributions to retirement plans. Contributions to individual retirement plans are limited to the lesser of $4,000 or the individual's taxable income. Combat pay is not considered taxable income; therefore, many members of the Armed Forces are currently unable to make retirement contributions. This provision will treat combat pay as taxable income for the purposes of making contributions to an individual retirement account. This provision is retroactive to tax years beginning after December 31, 2003. This act will lower Federal and state taxable income and can result in amended returns for earlier years.

Pension Protection Act of 2006 (P.L. 109-280)

Contributions and Benefits

- *Increase in employer deduction limitations for contribution to defined benefit plans.* An employer's contributions to a qualified retirement plan are generally deductible, but the amount that qualifies for the deduction is limited. Under the level funding method, the limitation on the amount of deductible contributions is the amount necessary to provide the remaining unfunded cost of the participant's past and current service credits distributed as a level amount of the remaining future service of each participant. Under the normal cost method, the limitation on the amount of deductible contributions is the amount equal to the normal cost of the plan, plus, if past service or other supplementary pension or annuity credits are provided by the plan, an amount necessary to amortize the unfunded costs attributable to such credits in equal annual payments over ten years. Regardless of the type of defined benefit plan, the maximum limitation for contribution deductions cannot be any less than the unfunded current liability.

  The act increases the deduction limits for contributions to defined benefit plans with different limits placed upon single-employer plans, multiemployer plans, and combined plans.

  Single-employer plans: For years beginning in 2006 and 2007, the maximum deduction limitation cannot be any less than the unfunded current liability. However, when calculating unfunded current liability a single-employer plan subtracts the value of the plan's assets from 150 percent of the current liability of the plan. In years beginning after December 31, 2007 the annual deduction limitation is the greater of 1) the minimum contribution or 2) the excess of the sum of: (i) the funding target for the plan year, (ii) the target normal cost for the plan year, the "cushion amount" for the plan year; over the value of the assets held in the plan. For plans that are not "at risk," the cushion amount is removed from the computation in (ii). The "cushion amount" is generally the sum of 50 percent of the funding target for the plan year and the amount by which the funding target would increase for the year if the plan took into account expected future increases in compensation or, if the plan does not base benefits for past service on compensation, expected increases in benefits in succeeding plan years.

  Multiemployer plans: For years beginning in 2006 and 2007, the maximum amount of the deduction limitation for contributions to multiemployer plans cannot be less than 140 percent of the current liability of the plan minus the plan's assets. For years beginning after December 31, 2007, the formula for the deduction is the same, but benefits that are nonforfeitable under the plan after termination of the plan should not be taken into account in computing the current liability of the plan.

  Combined plans: The deduction limit for combined plans only applies to contributions that exceed six percent of the compensation otherwise paid or accrued to the beneficiaries under the plan year.

- *Increased IRA contributions for individuals affected by employer's bankruptcy.* Both traditional and Roth IRAs are subject to annual contribution limits. For 2006 the annual limit is lesser of $4,000 or the individual's taxable income. Individuals who have reached the age of 50

are allowed to make annual "catch-up" contributions. The annual limit on "catch-up contributions is $1,000.

The act provides employees affected by an employer's bankruptcy the option to make additional contributions to an IRA. For the years 2007 – 2009, increased contributions up to an additional $3,000 per year over the yearly contribution limit are allowed for individuals affected by an employer's bankruptcy. All of the following requirements must be met:

1) the employee must have participated in the employer's 401(k) plan on the date six months preceding the employer filing for bankruptcy:
2) the employer matched at least 50 percent of the employee's contribution with employer stock:
3) the employer is a debtor in bankruptcy in a preceding tax year:
4) the employer or any other person must have been subject to an indictment or conviction in a preceding tax year resulting from business transactions related to the bankruptcy case.

Health and Medical Benefits

- *Health insurance premiums for retired public safety officers.* Distributions from a qualified retirement plan are generally included in taxable income the year of the distribution except to the extent attributable to after-tax contributions.

Retired public safety officers may exclude from taxable income up to $3,000 of otherwise taxable distributions from a government pension if used to pay for health insurance premiums. The individual must have separated from service either due to disability or by reaching normal retirement age. The term "public safety officer" is defined using the *Omnibus Crime Control and Safe Street Act of 1986* definition rather than the definition of public safety officer used in other provisions of the PPA. [3] This provision is effective for tax years beginning after December 31, 2006.

Plan Distributions and Rollovers

- *Modification of hardship and unforeseen financial emergency rules.* Currently, early distributions from 401(k) plans, tax sheltered annuities, 457 plans or nonqualified deferred compensation plans are allowed for hardship and unforeseen financial emergencies of the individual plan participant, or the individual's spouse or dependent.

The act directs the Secretary of Treasury to modify regulations for determining whether a participant has had a hardship or unforeseen financial emergencies for purposes of receiving an early distribution from a qualified retirement plan. The new regulations must provide that a hardship or unforeseen financial emergency of any beneficiary of a plan participant, regardless of the beneficiary's relationship to the plan participant, qualifies for an early distribution. This provision is considered effective after August 17, 2006.

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[3] Under the Omnibus Crime Control Act a "public safety officer" includes an individuals who 1) are involved in crime control or reduction, or enforcement of criminal laws, including but not limited to police, corrections, probation, parole and judicial officers; 2) professional firefighters; 3) officially recognized or designated public employee members of a rescue squad or ambulance crew; 4) officially recognized or designated members of a legally organized volunteer fire department; and 5) officially recognized or designated chaplains of volunteer fire departments, fire departments, and police departments.

• *Treatment of certain distributions to public safety employees.* Unless an exception to the penalty applies, distributions from a qualified retirement plan prior to age 59 ½, death or disability of a plan participant, are subject to a 10% early withdrawal penalty.

Under this act, the early withdrawal penalty will not apply to distributions from a government plan to a qualified public safety employee who separates from service after the age of 50. A qualified public safety employee is "any employee of a State or political subdivision of a State who provides police protection, fire-fighting services, or emergency medical services for any area within the jurisdiction of the state or political subdivision." This provision is considered effective after August 17, 2006.

• *Treatment of distributions to individuals called to active duty in excess of 179 Days.* Unless an exception to the penalty applies, distributions from a qualified retirement plan prior to age 59 ½, death or disability of a plan participant, are subject to a 10% early withdrawal penalty.

Under this act, the early withdrawal penalty will not apply to distributions to a qualified reservist if the reservist or national guardsman is ordered or called to duty for a period in *excess* of 179 days or for an indefinite period.[4] To qualify for the exception to the penalty, the distribution must be made during the period from when the reservist was called to duty and the close of active duty. The individual may repay the amount withdrawn up to two years after the end of active duty. Limitations on IRA contributions are lifted for this two year period of repayment, but no deductions can be taken for contributions made for repayment purposes. This provision applies to distributions made after September 11, 2001.

• *Direct rollovers from eligible retirement plans to Roth IRAs.* Previously, distributions from tax-qualified retirement plans, tax-sheltered annuities and section 457 plans could be not be directly rolled into a Roth IRA. These distributions could only be rolled into a Roth IRA by first rolling the distributions into a traditional IRA and then into a Roth IRA provided the individual met the additional limitations on rolling over a traditional IRA into a Roth IRA.

The act provides that starting in January 2008, distributions from tax-qualified retirement plans, tax-sheltered annuities and section 457 plans can be rolled directly into a Roth IRA. For tax years prior to January 1, 2010, taxpayers with adjusted gross income less than $100,000 and either single or married filing jointly are allowed to rollover a traditional IRA to a Roth IRA. For later tax years, the income limit is eliminated (see *Tax Increase Prevention and Reconciliation Act of 2005*). This provision applies to distributions after December 31, 2007.

• *Rollovers by nonspouse beneficiaries.* Generally, distributions from tax-qualified retirement plans, tax-sheltered annuities and section 457 plans are taxed in the year distributed. Certain eligible distributions can be rolled over to eligible retirement plans, tax free, within 60 days of the distribution. A surviving spouse beneficiary of a plan participant can roll over distributions from the decedent's plan as if the surviving spouse were the original plan participant.

This act provides that nonspouse beneficiaries can now rollover the distributions of a decedent's eligible retirement plan tax-free into an IRA via a trustee-to-trustee transfers. However, the new

[4] "Short tour opportunities" defined by military guidelines are 179 days *or less.*

IRA is treated as an inherited account (no further rollovers allowed), and required minimum distribution rules apply. This provision is effective for distributions after December 31, 2006.

Charitable Contributions

• *Tax-free IRA distributions to charities.* Generally, to make a charitable donation from an IRA, a distribution must be taken and the applicable rules regarding taxable income apply. The distribution is included in taxable income to the extent the distributions are not attributable to a return of nondeductible contributions. The standard charitable deduction rules then apply to the donation.

This act provides that individuals 70 ½ or older can now distribute up to $100,000 per taxable year from their IRAs to charitable institutions without recognizing the income. The distribution must be made directly to the charitable organization from the trustee. This distribution counts towards the required minimum distribution. The provision is effective for distributions made after December 31, 2005 and before January 1, 2008.

• *Charitable contributions of clothing and household items.* The charitable deduction of noncash property is generally the property's fair market value. For contributed items used in a manner unrelated to the donee's exempt purpose, the deduction is generally the donor's basis in the item. For donations of clothing and household items with a value of less than the original basis, most taxpayers deduct the fair market value of the item.

The act provides that contributions of clothing or household goods are limited to items that are in "good" used conditions or better unless the deduction for a single item exceeds $500 and the taxpayer includes a qualified appraisal. This provision applies to contributions made after August 17, 2006.

• *Charitable Contributions of Taxidermy Property.* The charitable deduction of noncash property is generally the property's fair market value. For contributed items used in a manner unrelated to the donee's exempt purpose, the deduction is generally the donor's basis in the item.

The act provides that the charitable deduction allowed for contributions of taxidermy property is the lesser of either the donor's basis in the property, or the fair market value of the property. In determining the donor's basis in the property, only direct costs paid or incurred by the donor for preparing, stuffing, or mounting the property are included.

• *Real property contributions for conservation.* The deduction for capital gain appreciated real property is generally limited to 30 percent of the donor's adjusted gross income if the donor uses the fair market value of the donated property. If the donor's basis is used as the value of the property, and the property is donated to a "maximum deduction" organization, the deduction is limited to 50 percent of the donor's adjusted gross income.[5] Deductions for donations to non-

[5] Maximum deduction organizations include public charities, private operating foundations, private non-operating foundations that distribute contributions within two and one-half months of the year's end, and private non-operating foundations that maintain a common fund.

maximum donation organizations are limited to 20 percent of the donor's adjusted gross income. Contributions that exceed the deduction limit can be carried forward for five years.

The act allows for donations of conservation easements an individual may deduct the value of the easement, based on fair market value, up to 50 percent of adjusted gross income, with a 15-year carryforward for any excess. A "qualified farmer or rancher" may deduct the value of the gift up to 100 percent of adjusted gross income with a 15-year carryforward. A "qualified farmer or rancher" is an individual whose gross income from the trade or business of farming is greater than 50 percent of the taxpayer's gross income for the tax year. The land donated by a farmer or rancher also must "be available" for agricultural use, but it need not be used for that purpose. This provision applies to contributions made in tax years beginning after December 31, 2006.

• *Charitable contributions of façade easements.* A façade easement is a real property contribution for conservation that can be used to preserve the architectural, historic and cultural features of the façade of a building. Homes listed in either the National Register of Historic Places or located in a historic district and certified by the National Park Service as being of historical significance to the district qualify for this treatment.

The act allows for deductions for charitable contributions of façade easements of private residences only if the residence is listed individually in the National Register of Historic Places. For properties that are located in a historic district and certified by the National Park Service as being of historical significance to the district, the charitable deduction is allowed only if the restrictions relate to the entire exterior of the building, including the space above the building, the sides, the rear and the front of the building. The deduction for all properties is reduced to take account any rehabilitation credit previously claimed. The deduction for the façade easement is reduced by the percentage the rehabilitation credit represents of the fair market value of the home. This provision applies to contributions made after August 17, 2006.

• *Charitable deduction for contribution of food inventories.* A taxpayer's deduction for charitable contributions of inventory is generally limited to the lesser of the taxpayer's basis in the inventory (usually cost) or the fair market value of the inventory. For certain contributions of inventory, a C corporation may claim an enhanced deduction equal to the lesser of 1) basis plus one-half on the item's appreciation or 2) two times basis. To be eligible for the enhanced deduction, the contributed property must generally be inventory of the corporation, contributed to a charitable organization described in section 501(c)(3) of the Code, and the donee must 1) use the property consistent with the donee's exempt purpose only for the care of the ill, the needy, or infants, 2) not transfer the property in exchange for money, other property, or services, and 3) provide the taxpayer with a written statement attesting to the proper use of the property.

This act allows the enhanced deduction to any taxpayer engaged in a trade or business that makes a donation of food inventory. For taxpayers other than C corporations, the total deduction for contributions of food inventory may not exceed 10% of the taxpayer's income from all business entities from which a contribution of food inventory is made. The enhanced deduction is available only for food that qualifies as "apparently wholesome food," – food intended for human consumption that meets all quality and labeling standards imposed by federal, state, and local laws even though the food may not be readily marketable for any number of reasons. The act extends for two additional years the enhanced deduction for the charitable deduction for

contribution of food inventories. This provision is now set to expire for contributions made after December 31, 2007.

• *Charitable deduction for contribution of book inventories.* . A taxpayer's deduction for charitable contributions of inventory is generally limited to the lesser of the taxpayer's basis in the inventory (usually cost) or the fair market value of the inventory. For certain contributions of inventory, a C corporation may claim an enhanced deduction equal to the lesser of 1) basis plus one-half on the item's appreciation or 2) two times basis. To be eligible for the enhanced deduction, the contributed property must generally be inventory of the corporation, contributed to a charitable organization described in section 501(c)(3) of the Code, and the donee must 1) use the property consistent with the donee's exempt purpose only for the care of the ill, the needy, or infants, 2) not transfer the property in exchange for money, other property, or services, and 3) provide the taxpayer with a written statement attesting to the proper use of the property.

This act extends the enhanced deduction for C corporations to qualified book contributions. A "qualified book contribution" is a charitable contribution of books to a public school that provides elementary education or secondary education and that is an educational organization that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils in attendance at the place where its education activities are regularly carried on. The act extends for two additional years the enhanced deduction for the charitable deduction for contribution of book inventories. This provision is now set to expire for contributions made after December 31, 2007

H0050e3-SMTD

Committee on Ways and Means

The Tax Relief and Health Care Act of 2006

Overview of Tax and Other Provisions

EXTENSION AND MODIFICATION OF CERTAIN TAX RELIEF PROVISIONS

- The *Tax Relief and Health Care Act of 2006* provides an extension through 2007 of numerous provisions, such as the deduction for state and local sales taxes, that expired at the end of 2005 or will expire at the end of 2006. In addition, a number of provisions, such as the Research and Development Tax Credit and the Work Opportunity Tax Credit, have been enhanced to provide more valuable incentives and additional tax relief.

- This extension provides for a "seamless" extension of those provisions that expired at the end of 2005 and gives taxpayers certainty through 2007.

EXTENSION OF CERTAIN EXPIRING ENERGY PROVISIONS AND OTHER ENERGY PROVISIONS

- The *Tax Relief and Health Care Act of 2006* provides an extension through 2008 of numerous energy provisions that will expire at the end of 2007. This extension provides taxpayers certainty through 2008. The *Tax Relief and Health Care Act of 2006* also contains a package of other energy provisions.

HEALTH SAVINGS ACCOUNT PROVISIONS

- The *Tax Relief and Health Care Act of 2006* also contains a package of provisions designed to improve Health Savings Accounts (HSAs).

OTHER TAX RELIEF PROVISIONS

- The *Tax Relief and Health Care Act of 2006* also contains a package of other tax provisions designed to provide additional tax relief and certainty to taxpayers.

MISCELLANEOUS PROVISIONS

- The *Tax Relief and Health Care Act of 2006* also contains a package of miscellaneous provisions, including provisions regarding the exploration of the Outer Continental Shelf and a package of modifications to the Abandoned Mine Land (AML) program.

Committee on Ways and Means

The Tax Relief and Health Care Act of 2006

Short Summary of Tax and Other Provisions

EXTENSION AND MODIFICATION OF CERTAIN TAX RELIEF PROVISIONS

The *Tax Relief and Health Care Act of 2006* extends through 2007, and in certain circumstances modifies, provisions which either expired at the end of 2005 or will expire at the end of 2006.

1. Above-the-line deduction for higher education expenses.
2. Extension of new markets tax credit and modification for rural counties.
3. State and local sales tax deduction.
4. Extension of the Research and Development (R&D) Tax Credit and expansion to enhance alternative methods of determining the credit.
5. Extension and expansion of the Work Opportunity Tax Credit (WOTC) for hiring individuals who face barriers to employment – and combination of the credit with the Welfare-to-Work Tax Credit in 2007.
6. Welfare-to-Work Tax Credit for hiring individuals who have received public assistance for an extended period of time – and combination with the WOTC in 2007.
7. Treating combat pay as earned income for purposes of the earned income credit calculation.
8. Authority to issue Qualified Zone Academy Bonds (QZABs) for school modernization, equipment and teacher training in high-poverty areas.
9. Above-the-line deduction for out-of-pocket teacher classroom expenses.
10. Expensing of brownfields remediation costs. In addition to the extension, the definition of a contaminated site is expanded to include sites contaminated by petroleum products.
11. Tax incentives to revitalize the District of Columbia.
12. Incentives for business activity on Indian reservations.
13. Fifteen-year depreciation for leasehold improvements.
14. Fifteen-year depreciation for restaurant improvements.
15. Transfer of rum excise taxes to Puerto Rico and the Virgin Islands.
16. Mental health benefit parity rules.

17. Enhanced charitable deduction for scientific property and computer donations.

18. Availability of Archer MSAs (Medical Savings Accounts).

19. Suspension of limit on percentage depletion for oil and gas produced from marginal wells.

20. Creation of the economic development credit for American Samoa.

21. Extension of Gulf Opportunity Zone bonus depreciation to certain highly damaged areas.

22. Authority for IRS undercover operations.

23. Authority for the IRS to disclose certain tax information for certain purposes.

24. Special rule for election under expired provisions.

EXTENSION OF CERTAIN EXPIRING ENERGY PROVISIONS AND OTHER ENERGY PROVISIONS

The *Tax Relief and Health Care Act of 2006* provides an extension through 2008 of numerous energy provisions that will expire at the end of 2007. The *Tax Relief and Health Care Act of 2006* also contains a package of other energy provisions.

1. Extension of credit for electricity produced from certain renewable resources.

2. Extension of credit to holders of clean renewable energy bonds.

3. Modification of the clean coal gasification tax credit.

4. Extension of deduction for energy efficient commercial buildings.

5. Extension of credit for new energy efficient homes.

6. Extension of credit for residential energy efficient property.

7. Extension of energy credit for businesses producing electricity from solar energy, fuel cells or microturbines.

8. Extension of reduced excise tax rate for qualified methanol or ethanol fuel produced from coal.

9. New special depreciation allowance for cellulosic biomass ethanol plant property.

10. Expands qualified expenditures permitted from the Leaking Underground Storage Tank (LUST) Trust Fund.

11. Modification of the coke and coke gas production tax credit.

HEALTH SAVINGS ACCOUNT PROVISIONS

The *Tax Relief and Health Care Act of 2006* also contains a package of provisions designed to improve Health Savings Accounts (HSAs).

1. FSA and HRA terminations to fund HSAs.
   a. Allow rollovers from health FSAs and HRAs into HSAs.
   b. Certain FSA coverage treated as disregarded coverage.
2. Repeal of annual plan deductible limitation on HSA contributions.
3. Modification of cost-of-living adjustment.
4. Expanded contribution limitation for part-year coverage.
5. Modification of employer comparable contribution requirements for contributions made to non-highly compensated employees.
6. One-time rollovers from IRAs into HSAs.

OTHER TAX RELIEF PROVISIONS

The *Tax Relief and Health Care Act of 2006* also contains a package of other tax provisions designed to provide additional tax relief and certainty to taxpayers.

1. Manufacturing deduction for U.S. businesses with branches in Puerto Rico.
2. Refundable credit with respect to certain long-term unused AMT credits.
3. Mine safety tax incentives.
4. Reform of the IRS Whistleblower Program.
5. Increase and expansion of the frivolous tax submission penalty.
6. Addition of the meningococcal and human papillomavirus vaccines to the list of taxable vaccines.
7. Permanency of certain provisions enacted in the *Tax Increase Prevention and Reconciliation Act of 2005*.
8. Modification of the treatment of shipping within the Great Lakes to ensure that vessel operators in this region can qualify for the alternative tonnage tax regime.
9. Modification of the mortgage revenue bond rules to make affordable mortgages more accessible to veterans.

10. Capital gains exclusion on sales of homes by non-military intelligence officers who are stationed abroad.

11. Special rollover rules for certain Federal judicial officers who sell property to comply with certain conflict-of-interest requirements.

12. Itemized deduction for the cost of premiums for mortgage insurance on qualified personal residences.

13. Modification of the refund rules with respect to kerosene used for certain exempt aviation purposes.

14. Enhancement of tax administration by municipalities.

15. Implementation of wine labeling trade agreement with the European Union.

16. Clarification of the railroad track maintenance credit.

17. Modification of excise tax on unrelated business taxable income of charitable remainder trusts.

18. Permanency of provision regarding the tax treatment of loans to qualified continuing care facilities contained in the *Tax Increase Prevention and Reconciliation Act of 2005*.

19. Technical corrections to recent tax legislation.

MISCELLANEOUS PROVISIONS

The *Tax Relief and Health Care Act of 2006* also contains a package of miscellaneous provisions.

1. Exploration of the Outer Continental Shelf.

2. Modification to the Abandoned Mine Land (AML) program.

3. Limitations on imported cigarettes.

4. Extension of the ethanol tariff schedule.

5. Sales of interests on federal land.

6. Continued scholarships for children in working families in Washington, D.C.

7. Study of national database on elder abuse.

Tax Refund Procedure Proposal

Revenue Laws Study Committee

December 12, 2006

Guiding principles:

- Consolidate refund process into single, uniform procedure.
- Protect State's fiscal stability.
- Clarify class action procedure.

The draft reflects these principles by making the following substantive changes to current law:

1. It creates a new statutory section governing refund claims without making any distinction based on the type of claim. That is, refund claims for overpayments and refund claims for payments under protest would be subject to the same procedural requirements.
2. It changes the statutes of limitation for demanding a refund and for bringing a civil action after the denial of a demand for a refund as follows:

	Overpayments (Current Law)	Payments Under Protest (Current Law)	All Refund Claims (Draft Proposal)
For demanding a refund	3 years after date for filing return, or 6 months after payment of tax, whichever is later	3 years after payment of tax	3 years after date for filing return, or 6 months after payment of tax, whichever is later
For bringing a civil action after denial of a refund claim	90 days after notification of Secretary's decision	3 years after expiration of 90-day period	90 days after denial of refund by Secretary.

3. The draft would require that, in order to maintain a class action, every member of the class must have filed a written demand for a refund.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U D

BILL DRAFT 2007-SVz-2A [v.6] (12/06)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
12/11/2006 10:43:55 PM

Short Title: Uniform Tax Refund Procedure. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A UNIFORM PROCEDURE FOR TAX REFUND CLAIMS .

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-266 and G.S. 105-266.1 are repealed.

SECTION 2. Article 9 of Chapter 105 is amended by adding a new section to read:

"**§ 105-265.1. Refunds of overpayment of taxes.**

(a) Without Demand. – If the Secretary discovers that a taxpayer has overpaid the correct amount of a tax, the overpayment must be refunded to the taxpayer as soon as possible together with any applicable interest. The Secretary may issue a refund of an overpayment only after the taxpayer has filed the final return for the tax period.

(b) Upon Demand. – A taxpayer who claims to have overpaid a tax may file a demand for a refund with the Secretary. The taxpayer must file the demand within the statute of limitations set out in G.S. 105-265.3. A demand for refund must be in a form prescribed by the Secretary and must identify the taxpayer, the type and amount of tax overpaid, the period included, and the reasons for the refund, including law or other authority upon which the taxpayer relies. The Secretary must either grant or deny the demand for a refund within six months from the date the demand is filed, unless this period is extended by written agreement of the taxpayer and the Secretary. The Secretary must notify the taxpayer of the decision to grant or deny the refund demand and must issue or adjust the refund, if applicable, in accordance with the decision. If the Secretary fails to grant a refund within the six-month period, the demand for refund is deemed denied.

(c) Hearing. – A taxpayer who receives a written decision from the Secretary denying a refund demand may file a written request for a hearing before the Secretary at any time within 30 days after the date the decision was mailed. A taxpayer whose

demand for refund is deemed denied may file a written request for a hearing at any time within 60 days after the expiration of the six-month period set out in subsection (b) of this section. The Secretary must grant a hearing on each timely demand for a hearing. Within 60 days after a timely demand for a hearing has been filed and at least 10 days before the date set for the hearing, the Secretary shall notify the taxpayer in writing of the time and place at which the hearing will be conducted. The date set for the hearing shall be within 90 days after the timely request for a hearing was filed or at a later date mutually agreed upon by the taxpayer and the Secretary. The date set for the hearing may be postponed once, at the request of the taxpayer or the Secretary, for a period of up to 90 days or for a longer period mutually agreed upon by the taxpayer and the Secretary. The rules of evidence do not apply in a hearing before the Secretary under this section.

Within 90 days after conducting a hearing under this subsection, the Secretary must make a decision on the refund demand, notify the taxpayer of the decision, and adjust the computation of the tax in accordance with the decision. The Secretary must refund to the taxpayer in accordance with this Article the amount of any overpayment of tax.

(d) Civil Action. – Instead of requesting a hearing in accordance with subsection (c) of this section, a taxpayer may within 90 days of the denial of a refund demand bring a civil action against the Secretary for recovery of the alleged overpayment. No suit shall be maintained in any court for the recovery of any overpayment of tax unless the taxpayer seeking a refund has filed a written demand for a refund in accordance with subsection (b) of this section and the Secretary has denied the demand for refund.

If upon the trial it is determined that all or part of the tax constituted an overpayment, judgment shall be rendered therefor, with interest, and the judgment shall be collected as in other cases. The amount of taxes for which judgment is rendered shall be refunded by the State. The court may not order in its judgment the issuance of a refund to any taxpayer who has not filed a written request for a refund in accordance with this section.

(e) Venue. – If the alleged overpayment is more than two hundred dollars ($200.00), the taxpayer may bring the action either in the Superior Court of Wake County or in the superior court of the county in which the taxpayer resides; if the alleged overpayment is two hundred dollars ($200.00) or less, the taxpayer may bring the action in any State court of competent jurisdiction in Wake County.

(f) Limitation on Class Actions. – No class action for a refund of overpayment of tax may be maintained in any court unless each taxpayer in the class has filed a written demand for a refund in accordance with subsection (b) of this section.

(g) Appeal. – Either party may appeal to the appellate division from the judgment of the superior court under the rules and regulations prescribed by law for appeals, except that if the Secretary appeals, the Secretary is not required to give any undertaking or make any deposit to secure the cost of the appeal.

(h) Refunds Prohibited. – The Secretary may not refund any of the following:

(1) An overpayment set off under Chapter 105A, the Setoff Debt Collection Act, or under another setoff debt collection program authorized by law.

(2) An income tax overpayment the taxpayer has elected to apply to another purpose as provided in this Article.

(3) An individual income tax overpayment of less than one dollar ($1.00) or another tax overpayment of less than three dollars ($3.00), unless the taxpayer makes a written demand for the refund."

SECTION 3. Article 9 of Chapter 105 is amended by adding a new section to read:

"**§ 105-265.2. Statute of limitations for refunds.**

The period in which a refund must be demanded or discovered under this Article is determined as follows:

(1) General Rule. – No overpayment shall be refunded, whether upon discovery or receipt of written demand, if the discovery is not made or the demand is not received within three years after the date set by the statute for the filing of the return or within six months after the payment of the tax alleged to be an overpayment, whichever is later. An agreement by a taxpayer to extend the time in which the Department can assess the taxpayer for an underpayment automatically extends the time in which the taxpayer can demand a refund.

(2) Worthless Debts or Securities. – Section 6511(d)(1) of the Code applies to an overpayment of the tax levied in Part 2 or 3 of Article 4 of this Chapter to the extent the overpayment is attributable to either of the following:

a. The deductibility by the taxpayer under section 166 of the Code of a debt that becomes worthless, or under section 165(g) of the Code of a loss from a security that becomes worthless.

b. The effect of the deductibility of a debt or loss described in subpart a. of this subdivision on the application of a carryover to the taxpayer.

(3) Capital Loss and Net Operating Loss Carrybacks. – Section 6511(d)(2) of the Code applies to an overpayment of the tax levied in Part 2 or 3 of Article 4 of this Chapter to the extent the overpayment is attributable to a capital loss carryback under section 1212(c) of the Code or to a net operating loss carryback under section 172 of the Code.

(4) Federal Determination. – When a taxpayer files with the Secretary a return that reflects a federal determination and the return is filed within the required time, the period in which a refund must be demanded or discovered is one year after the return reflecting the federal determination is filed or three years after the original return was filed or due to be filed, whichever is later."

SECTION 4. Article 9 of Chapter 105 is amended by adding a new section to read:

"**§ 105-265.3. Interest on refunds.**

An overpayment of tax bears interest at the rate established in G.S. 105-241.1(i) from the date that interest begins to accrue until a refund is paid. A refund sent to a taxpayer is considered paid on a date determined by the Secretary that is no sooner than five days after a refund check is mailed.

A refund set off against a debt pursuant to Chapter 105A of the General Statutes is considered paid five days after the Department mails the taxpayer a notice of the setoff, unless G.S. 105A-5 or G.S. 105A-8 requires the agency that requested the setoff to return the refund to the taxpayer. In this circumstance, the refund that was set off is not considered paid until five days after the agency that requested the refund mails the taxpayer a check for the refund.

Interest on an overpayment of a tax, other than a tax levied under Article 4 or Article 8B of this Chapter, accrues from a date 90 days after the date the tax was originally paid by the taxpayer until the refund is paid. Interest on an overpayment of a tax levied under Article 4 or Article 8B of this Chapter accrues from a date 45 days after the latest of the following dates until the refund is paid:

(1) The date the final return was filed.

(2) The date the final return was due to be filed.

(3) The date of the overpayment.

The date of an overpayment of a tax levied under Article 4 or Article 8B of this Chapter is determined in accordance with section 6611(d), (f), (g), and (h) of the Code.

SECTION 5. G.S. 105-267 reads as rewritten:

"**§ 105-267. ~~Taxes to be paid;~~ Limitation on suits for recovery of taxes.**

No court of this State shall entertain a suit of any kind brought for the purpose of preventing the collection of any tax imposed in this Subchapter. Whenever a person has a valid defense to the enforcement of the collection of a tax, the person shall pay the tax to the proper ~~officer,~~ officer and demand a refund in accordance with G.S. 105-265.1. ~~and that payment~~ The payment of the tax shall be without prejudice to any defense of rights the person may have regarding the tax. ~~At any time within the applicable protest period, the taxpayer may demand a refund of the tax paid in writing from the Secretary and if the tax is not refunded within 90 days thereafter, may sue the Secretary in the courts of the State for the amount demanded. The protest period for a tax levied in Article 2A, 2C, or 2D of this Chapter is 30 days after payment. The protest period for all other taxes is three years after payment.~~

~~The suit may be brought in the Superior Court of Wake County, or in the county in which the taxpayer resides at any time within three years after the expiration of the 90-day period allowed for making the refund. If upon the trial it is determined that all or part of the tax was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the judgment shall be collected as in other cases. The amount of taxes for which judgment is rendered in such an action shall be refunded by the State. G.S. 105-241.2 provides an alternate procedure for a taxpayer to contest a tax and is not in conflict with or superseded by this section.~~"

SECTION 6. G.S. 105-113.113(a) reads as rewritten:

"(a) Special Account. – The Secretary shall credit the proceeds of the tax levied by this Article to a special nonreverting account, to be called the State Unauthorized Substances Tax Account, until the tax proceeds are unencumbered. The Secretary shall remit the unencumbered tax proceeds as provided in this section on a quarterly or more frequent basis. Tax proceeds are unencumbered when either of the following occurs:

(1) The tax has been fully paid and the taxpayer has no current right under ~~G.S. 105-267~~Article 9 of this Chapter to seek a refund.

(2) The taxpayer has been notified of the final assessment of the tax under G.S. 105-241.1 and has neither fully paid nor timely contested the tax under ~~G.S. 105-241.1 through G.S. 105-241.4 or G.S. 105-267.~~Article 9 of this Chapter."

SECTION 7. G.S. 105-239.1(c) reads as rewritten:

"(c) The provisions of G.S. 105-241.1, 105-241.2, 105-241.3, 105-241.4, ~~105-266.1 and 105-267~~and 105-265.1 with respect to assessment procedure, demand for refund, review, and appeal ~~shall~~ apply to the liability of any transferee assessed under this section or of any property subject to the liability imposed by this section and to the assertion of a lien upon property in the hands of the transferee."

SECTION 8. G.S. 1-52(15) reads as rewritten:

"(15) For the recovery of taxes paid as provided in ~~G.S. 105-267 and~~ G.S. 105-381."

SECTION 9. G.S. 20-99(b)(3) reads as rewritten:

"(3) Shall be accompanied by a copy of this subsection, and thereupon the procedure shall be as follows:

If the garnishee has no defense to offer or no setoff against the taxpayer, he shall, within 10 days after service of said notice, answer the same by sending to the Commissioner of Motor Vehicles by registered mail a statement to that effect, and if the amount due or belonging to the taxpayer is then due or subject to his demand, it shall be remitted to the Commissioner with said statement, but if said amount is to mature in the future, the statement shall set forth that fact and the same shall be paid to the Commissioner upon maturity, and any payment by the garnishee hereunder shall be a complete extinguishment of any liability therefor on his part to the taxpayer. If the garnishee has any defense or setoff, he shall state the same in writing under oath, and, within 10 days after service of said notice, shall send two copies of said statement to the Commissioner by registered mail; if the Commissioner admits such defense or setoff, he shall so advise the garnishee in writing within 10 days after receipt of such statement and the attachment or garnishment shall thereupon be discharged to the amount required by such defense or setoff, and any amount attached or garnished hereunder which is not affected by such defense or setoff shall be remitted to the Commissioner as above provided in cases where the garnishee has no defense or setoff, and with like effect. If the Commissioner shall not admit the defense or

setoff, he shall set forth in writing his objections thereto and shall send a copy thereof to the garnishee within 10 days after receipt of the garnishee's statement, or within such further time as may be agreed on by the garnishee, and at the same time he shall file a copy of said notice, a copy of the garnishee's statement, and a copy of his objections thereto in the superior court of the county where the garnishee resides or does business where the issues made shall be tried as in civil actions.

If judgment is entered in favor of the Commissioner of Motor Vehicles by default or after hearing, the garnishee shall become liable for the taxes, interest and penalties due by the taxpayer to the extent of the amount over and above any defense or setoff of the garnishee belonging, owing, or to become due to the taxpayer, but payments shall not be required from amounts which are to become due to the taxpayer until the maturity thereof, nor shall more than ten percent (10%) of any taxpayer's salary or wages be required to be paid hereunder in any one month. The garnishee may satisfy said judgment upon paying said amount, and if he fails to do so, execution may issue as provided by law. From any judgment or order entered upon such hearing either the Commissioner of Motor Vehicles or the garnishee may appeal as provided by law. If, before or after judgment, adequate security is filed for the payment of said taxes, interest, penalties, and costs, the attachment or garnishment may be released or execution stayed pending appeal, but the final judgment shall be paid or enforced as above provided. The taxpayer's sole remedies to question his liability for said taxes, interest, and penalties shall be those provided in ~~G.S. 105-267, as now or hereafter amended or supplemented.~~ Article 9 of Chapter 105 of the General Statutes. If any third person claims any intangible attached or garnished hereunder and his lawful right thereto, or to any part thereof, is shown to the Commissioner, he shall discharge the attachment or garnishment to the extent necessary to protect such right, and if such right is asserted after the filing of said copies as aforesaid, it may be established by interpleader as now or hereafter provided by the General Statutes in cases of attachment and garnishment. In case such third party has no notice of proceedings hereunder, he shall have the right to file his petition under oath with the Commissioner at any time within 12 months after said intangible is paid to him and if the Commissioner finds that such party is lawfully entitled thereto or to any part thereof, he shall pay the same to such party as provided for refunds by G.S. 105-407 and if such payment is denied, said party may appeal from the determination of the Commissioner to the Superior Court of Wake County or to the superior court of the county wherein he resides or does business. The intangibles of a taxpayer shall be paid or collected hereunder only to

the extent necessary to satisfy said taxes, interest, penalties, and costs. Except as hereinafter set forth, the remedy provided in this section shall not be resorted to unless a warrant for collection or execution against the taxpayer has been returned unsatisfied: Provided, however, if the Commissioner is of opinion that the only effective remedy is that herein provided, it shall not be necessary that a warrant for collection or execution shall be first returned unsatisfied, and in no case shall it be a defense to the remedy herein provided that a warrant for collection or execution has not been first returned unsatisfied: Provided, however, that no salary or wage at the rate of less than two hundred dollars ($200.00) per month, whether paid weekly or monthly, shall be attached or garnished under the provisions of this section."

SECTION 10. This act becomes effective January 1, 2007, and applies to taxes paid on or after that date.

Statement to Revenue Laws
Study Committee at its October 3, 2006,
Meeting Concerning Proposed
Changes in North Carolina's Tax Appeals System

By

Royce Powell*

My tax controversy practice is primarily in the federal system against the IRS. However, I have also represented clients with disputes with the North Carolina Department of Revenue so I do have personal experience with the current North Carolina system. I am here today speaking on my own behalf, and not representing any group, because of my personal interest in ensuring that North Carolina has a tax dispute forum which business taxpayers perceive to be fair and unbiased.

I just want to say a few words about how the federal system has gone a long way toward achieving a taxpayer perception of fairness and actual fairness by providing the option to go directly to the U.S. Tax Court, which functions much like our North Carolina Business Court would function under the proposal being discussed at this meeting today. When I have represented clients in the U.S. Tax Court (which fills basically the same role as the North Carolina Business Court would fill under the proposal), my clients and I have been satisfied that the U.S. Tax Court is objective and knowledgeable, that the procedure is fair, and that many cases settle because the IRS is hesitant to try doubtful cases before a truly neutral judge.

The federal system starts with an IRS agent who audits a tax return and provides written notice as to how much additional tax the agent believes is owed and why. If you can't convince the IRS agent that he or she is wrong about the additional tax claimed, and you want to continue to challenge the additional tax, there are basically two choices for the taxpayer. First, you can pursue an administrative appeal with the IRS Office of Appeals (run by the IRS) which I view as much like the appeal to the Assistant Secretary in the North Carolina Department of Revenue system. (However, even if you choose to go to the IRS Office of Appeals, you are not stuck with

*D. Royce Powell, Esq. practices tax and corporate law in Raleigh with the Maupin Taylor law firm.

a record or findings set by the IRS Appeals Officer and you are entitled to proceed further to federal court, where the case will be tried before an independent judge, if you get an unsatisfactory result from IRS Appeals). Or, secondly, you can choose to skip the federal administrative appeals process and go directly to U.S. Tax Court, without first having to pay the tax the IRS agent contends is due. [1]

In the federal system, taxpayers who choose to exercise their right to skip an administrative appeal and go directly to court most frequently decide to go to the U.S. Tax Court which they can access without first having to pay the tax alleged and where they find a judge that is accustomed to hearing tax cases. This is much like the proposal for certain taxpayers now being discussed at this meeting for the North Carolina Business Court. Of course, the proposal under discussion would also preserve the present North Carolina Department of Revenue administrative appeal if the taxpayer does not want to go directly to the North Carolina Business Court.

Since the IRS Office of Appeals was formed in 1952, there have been repeated questions about whether it is truly independent of the IRS agents and attorneys since its representatives occupy offices near and communicate freely with IRS attorneys and agents. Taxpayers frequently want to avoid the administrative step of IRS Appeals when they know that the IRS has taken a hard line on their type case or know that the IRS has provided IRS appeals with special hard nose guidelines for settlement of their type case.

None of my remarks should be interpreted as a suspicion that IRS Appeals officials and North Carolina Department of Revenue officials involved in administrative appeals don't try to be fair and impartial in listening to tax appeals. Rather, in my view, these officials are given a nearly impossible job when they are simultaneously asked to be assertive in collecting the revenue and to be totally impartial in listening to a tax appeal involving a significant amount of money.

[1] Taxpayers can also choose to go directly to two other federal courts, but they must first pay the tax alleged in full.

In summary, at least in the federal system, there is a way to skip over the administrative process controlled by the IRS and get directly into an impartial court with tax expertise without having to pay the tax assessed if you want to avoid the time and expense of an administrative proceeding which your client perceives will not be impartially conducted. I wholeheartedly support the proposal being discussed at this meeting to permit certain North Carolina taxpayers to go directly to our Business Court.

Thanks for listening to my remarks.

COST
COUNCIL ON STATE TAXATION

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Testimony to the
Revenue Laws Study Committee
October 3, 2006

Fair, Efficient and Customer-Focused Tax Administration

Joseph R. Crosby
Legislative Director, Council On State Taxation

Senator Kerr, Representative Luebke, and Members of the Committee, thank you for the opportunity to testify on issues associated with the administration of North Carolina's tax system. My name is Joe Crosby, and I am Legislative Director for the Council On State Taxation (COST).

About COST

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of 580 major corporations engaged in interstate and international business. COST's objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities

Assessing North Carolina's Business Tax System

COST has long been concerned with business climate issues among the States. One critical component of a state's business climate is the perceived fairness of the rules and requirements for administration and appeal of state tax statutes. Why are these issues so important? Although state tax statutes and regulations are subject to audit scrutiny, the percentage of taxpayers actually audited is very small. As a result, our federal and state tax systems are premised, to a large degree, on voluntary compliance. It is a common truth that taxpayers will more fully and willingly comply with a tax system they perceive to be balanced, fair, and effective. State legislatures must also be sensitive to competitiveness concerns created by a poor business climate when companies face decisions of where to expand or relocate.

Fair, Efficient and Customer-Focused Tax Administration

Every other year, COST releases a "scorecard" that attempts to objectively analyze state treatment of significant procedural issues that reflect whether states provide fair, efficient, and customer-focused tax administration. The scorecard evaluates each state's statutory scheme against objective criteria rather than subjective surveys of taxpayers' views. Thus, any criticism I offer regarding North Carolina's tax administration system does not relate in any way to those charged with enforcing the law; rather, the criticism is directed at the law.

The scorecard measures states based on the answers to the following questions:

1) Does the state have even-handed statutes of limitation (equal for refunds and assessments)?
2) Does the state have equalized interest rates (equal for refunds and assessments)?
3) Does the state provide for at least a 60 day—and preferably 90 day—protest period?
4) Does a federal filing extension automatically extend the state filing date?
5) Does a federal revenue agent report (RAR) open the entire state return to audit?
6) Does the state provide an independent tax dispute forum?
7) Does the state require payment of tax (or bond) before providing an independent hearing?

Relative to these criteria, North Carolina fares poorly, ranked 43 out of the fifty states. Fortunately, remedying flaws in North Carolina's existing tax administration laws is relatively straightforward and would not require a significant expenditure. The remainder of my testimony will highlight several changes that COST recommends.

Provide for a 90 Day Protest Period

The first step in the administrative process in most states is the issuance of an assessment with notification of a right to protest. That protest period should be at least 60 days and preferably 90 days. Shorter protest periods—such as the 30 days provided for by North Carolina—are unreasonable and could jeopardize a taxpayer's ability to fully respond to a proposed assessment. A notice period of 60 days or longer is of increasing importance in a global economy where taxpayers are working to comply with the laws of numerous jurisdictions. Currently, the majority of the states offer 60 or more days to file protests, with 8 states providing at least 90 days.

Provide for Automatic Extensions with a Federal Extension

Obtaining a federal extension should automatically qualify the taxpayer for an extended state due date. To ease administrative burdens, an automatic extension should only require a taxpayer to attach a copy of the federally extended return with the state return to qualify. Only 7 states, including North Carolina, do not provide an automatic extension of the state filing deadline for taxpayers that obtain a federal extension.

Limit Adjustments to Issues Contained in the RAR

Unless a taxpayer has signed a waiver of the statute of limitations for state tax purposes, federal audit changes (the Revenue Agent Report, or RAR) should not be reason to open an entire year to inspection. If the state return is otherwise beyond the statute, state adjustments should be confined to the issues contained in the federal audit report. Significantly, North Carolina is one of only nine states that use a federal RAR as justification to open a taxpayer's entire return to audit.

Eliminate "Pay to Play"

While no state currently requires payment of a disputed tax during the administrative appeals process, 13 states, including North Carolina, require taxpayers to prepay tax or post a bond to obtain access to the trial court level. The perception of unfairness is more acute in "pay-to-play" states like North Carolina where the initial hearing is before an adjudicatory body that is not independent of the state's department of revenue.

For corporate taxpayers that have made a significant investment in a state by locating factories, facilities, and employees in the state, forcing the corporation to pay an assessment—based solely on the untested theories and assertions of an auditor or audit team—before being given a right to contest that assessment before an independent tribunal is tantamount to suggesting that the company will skip town on an obligation that may or may not come due. The requirement to prepay a proposed tax liability encourages unnecessary delay in the handling of a taxpayer cases and fosters a mutually distrustful atmosphere between the departments of revenue and the business community that reflects poorly on a state's business climate and competitiveness.

Elimination of the pay-to-play rules benefits states and taxpayer alike. States benefit by reducing their backlog of cases, and taxpayers benefit from an administrative atmosphere perceived to be less adversarial. Both sides benefit from the perception that the state has taken a major step towards improving its business climate. If a state department of revenue feels that a particular tax assessment is in jeopardy based on the facts and circumstances before it, it should certainly issue a jeopardy assessment on that amount; such assessments are a legitimate means of protecting the state fisc. However, jeopardy assessments should only be used in extreme circumstances and the burden of proving that the assessment is in jeopardy should fall upon the state.

Provide for Fair, Efficient and Independent Appeals

North Carolina does not have an independent hearing officer for appeals of disputed tax assessments. Appeals are made to an Assistant Secretary who sits in the office of the Secretary of Revenue, across the hallway from the Department of Revenue's lawyer. Taxpayers are therefore appealing disputed assessments to the same office which made the assessment, which is hardly an independent hearing of an appeal. Further exacerbating this perceived unfairness, taxpayers who do not prevail in their protest before an Assistant Secretary then have to appeal on the record set before the Assistant Secretary and the review by the courts is on the findings made by the Secretary. Since the legal system gives great deference to administrative decisions, it is extremely hard to have these decisions over turned in the courts.

North Carolina is one of only 15 states that do not provide an independent, prepayment appeals system (either judicial or nonjudicial). Without independence, the appearance of objectivity is simply not present. That perception, regardless of its accuracy, necessarily detracts from even exemplary personnel and work product of the adjudicative body. Indeed, in national meetings organized by COST, taxpayers frequently cite North Carolina's current appeals process as unfair—a "rubber stamp" for the Department of Revenue's audit findings.

As an alternative to the process described above, taxpayers can pay an assessment and sue for a refund. This presents two problems. The first, as noted previously, is that it is unfair to require a taxpayer to pay a disputed assessment before that taxpayer has the opportunity for a fair hearing before an impartial tribunal. Most states and the federal government allow taxpayers to make their case before an independent body prior to payment of a disputed assessment. The second problem is that many judges in general jurisdiction courts are not experienced with complicated tax cases.

There are different ways to remedy the current system. One potential avenue for reform is through the Business Court. The General Assembly has previously created the Business Court to hear complicated business cases. The Business Court, comprised of three experienced trial judges, could handle tax appeals fairly and competently. Of course, they would need to develop tax expertise, but this is true of any body hearing tax appeals. Providing taxpayers with access to the Business Court, prior to the payment of a disputed assessment, would send a very positive message to the national business community that they can expect fair treatment in North Carolina by independent, experienced judges.

Regardless of the avenue for reform that is ultimately chosen, those who wish to should be able to continue to pursue administrative appeals as they do under current law. The current administrative appeals process is also likely the best process for certain cases, such as tax protester cases, small dollar cases, drug cases and the like. To ensure that the independent tribunal—whether the Business Court or another body—is not inundated with routine cases, qualitative and quantitative jurisdictional standards should be set.

Conclusion

North Carolina is widely perceived as a good state in which to invest and do business. Unfortunately, some of the laws governing tax administration in North Carolina are unfriendly to taxpayers and are markedly out of line with other states' laws. Fortunately, the current deficiencies are relatively easy to remedy by legislative action. COST is very interested in working with you and the Department of Revenue to improve North Carolina's tax administration system.

TAX HEARING STATISTICS

09/28/2006

North Carolina Department of Revenue

January 1, 2004 - June 30, 2006

Divisions	Protests Received			Hearings Held			Cases Before Tax Review Board			Final Decisions and Orders Issued by Property Tax Commission			Cases Bypassing TRB and Going Directly to Superior Court			Opinions Rendered by the Court of Appeals			Opinions Rendered by NC Supreme Court		
	2004	2005	2006	2004	2005	2006	2004	2005	2006	2004	2005	2006	2004	2005	2006	2004	2005	2006	2004	2005	2006
Motor Fuels		68	26			4		2	1												
Personal Taxes	316	347	166	16	25	10	5	11	1				2 [4]		1 [5]	1 [11]	2 [12]		1 [16]		1
Property Tax	614	728	325	30	42	24				277	180	93				5	1				
Sales and Use Tax	142	174	188	12	11	5 *	5	6	1 *				0	1 [6]	1 [7]		1 [13]	1 [14]			
Unauthorized Substance Tax		231	336		219	131		23	3								1 [15]				
TOTAL	1072	1548	1041	58	297	174	10	42	6	277	180	93	2	1	2	6	5	1	1	0	1

**These figures are through August 2006.*

*** Six (6) cases that went straight to Superior Court are currently undecided and not included in the list. One of them affects both corporate and individual income tax.*

**** Two (2) cases that were appealed to the NC Supreme Court are currently undecided and not included in the list.*

1. The year is a reference to the year the complaint was filed.
2. *Dunn v. State*, Forsyth County 04-CVS-844.
3. *Wal-Mart Stores East, Inc. v. Tolson*, Wake County 06-CVS-3928; *Sam's East, Inc. v. Tolson*, Wake County 06-CVS-3929; *DaimlerChrysler North American Holding Corp. v. Tolson*, Wake County 06-CVS-5110 and *Lorillard Tobacco Co. v. Tolson*, Guilford County 06-CVS-9616.
4. *Estate of Linkhaw v. State*, Robeson County 04-CVS-02304 and *Dunn v. State*, Forsyth County 04-CVS-844.
5. *Estate of Heilig Brown v. Tolson*, Wake County 06-CVS-5905.
6. *Carolina Photography, Inc. v. Tolson*, Lincoln County 05-CVS-0676.
7. *Lynnwood Foundation, Inc. v. Department of Revenue*, Mecklenburg County 06-CVS-15228.
8. *In re Central Telephone Co.*, 167 N.C. App. 14, 604 S.E.2d 680 (2004) (attempted judicial review action under Chapter 150B; DOR prevailed); *A&F Trademark, Inc. v. Tolson*, 167 N.C. App. 150, 605 S.E.2d 187 (2004) (judicial review action under Chapter 150B; DOR prevailed).
9. *Central Telephone Co. v. Tolson*, ___ N.C. App. ___, 621 S.E.2d 186 (2005) (judicial review action under Chapter 150B; DOR prevailed).
10. *Navistar Financial Co. v. Tolson*, ___ N.C. App. 625 S.E.2d 852 (2006) (N.C. Gen. Stat. § 105-267 action; DOR prevailed); *Philip Morris USA, Inc. v. Tolson*, ___ N.C. App. ___, 626 S.E.2d 853 (2006) (N.C. Gen. Stat. § 105-267 action following administrative decisions in favor of DOR; DOR prevailed).
11. *Javurek v. Tax Review Bd.*, 165 N.C. App. 834, 605 S.E.2d 1 (2004) (DOR prevailed).
12. *Coley v. State*, 173 N.C. App. 481, 620 S.E.2d 25 (2005) (N.C. Gen. Stat. § 105-267 action; DOR prevailed); *Wendt v. Tolson*, No. COA03-1680, 2005 N.C. App. LEXIS 1721 (Aug. 16, 2005).
13. *Morton Buildings, Inc. v. Tolson*, 172 N.C. App. 119, 615 S.E.2d 906 (2005) (judicial review action under Chapter 150B; DOR prevailed).
14. *DirecTV, Inc. v. State*, ___ N.C. App. ___, 632 S.E.2d 543 (2006) (N.C. Gen. Stat. § 105-267 action; DOR prevailed).
15. *Skewerer v. N.C. Dept. of Revenue*, No. COA04-674, 2005 N.C. App. LEXIS 553 (N.C. Ct. App. Mar. 15, 2005) (DOR prevailed).
16. *Downs v. State*, 358 N.C. 213, 593 S.E.2d 763 (2004) (N.C. Gen. Stat. § 105-267 action; DOR prevailed).
17. *Coley v.* [redacted] 360 N.C. 493, 631 S.E.2d 121 (2006) (N.C. Gen. Stat. § 105-267 action; DOR prevailed).

Combined Reporting

Cindy Avrette
Revenue Laws Study Committee
December 12, 2006

Combined Reporting

- **WHAT IS IT?**
  It is a method of calculating the income of a group of related corporations for tax purposes
- **HOW?**
  It looks beyond the legal structure of separate incorporations to determine whether two or more related corporations are engaged in a **single unitary business**
- **WHY?**
  To ensure the income of a multi-state corporation is computed and apportioned in the same manner as a single corporate business

Advantages of Combined Reporting

- Comprehensive way to nullify income shifting strategies
- Provides a more level playing field
- Means to modernize state tax code to adapt to the growth of multi-state corporations – *Recommended by Governor's Commission to Modernize State Finances in 2002*

What is Combined Reporting?

- An accounting of the total income derived by a group of affiliated corporations from the operation of its unitary business.
- A unitary business is a common enterprise engaged in by one or more members of a group of affiliated entities.

What is a Combined Report?

- It is NOT a tax return.
- It is an accounting document prepared on behalf of a group of affiliated corporations engaged in a unitary business.
- Only those members of a unitary group that have nexus with NC pay corporate income tax to NC – Based on the combined group's net income

Questions to Answer

- Mandatory v. voluntary
- Definitions
  - Affiliated corporations
  - Unitary business
- Type of Combined Reporting
  - Worldwide
  - Water's Edge
- Method of Apportionment

Mandatory v. voluntary

- Elective combined reporting would do nothing to reduce the tax planning opportunities – one of the primary benefits of combined reporting

Questions to Answer

- Mandatory v. voluntary
- Definitions
  - Affiliated corporations
  - Unitary business
- Type of Combined Reporting
  - Worldwide
  - Water's Edge
- Method of Apportionment

Who must file a combined report?

- **Corporations**
- that are **Affiliated**
- and that are engaged in the **same unitary business.**

Corporations ...

- ☐ All corporations that are subject to corporate income tax or would be subject to the tax if doing business in this State
  - Insurance companies - No.
  - Financial institutions. - Yes.
  - REITs and RICs. - Yes.
  - Foreign corporations. - Yes, if worldwide

... that are **affiliated** ...

- ☐ More than 50% common stock ownership
- ☐ Familiar rule with wide spread acceptance

and engaged in the **same unitary business.**

- ☐ No universally accepted definition
- ☐ Vertically or horizontally integrated
- ☐ Established judicial tests
  - Unity of ownership, use, and operation
  - Contribution or dependency
  - Centralized management
  - Functional integration
  - Economies of scale
  - Flow of value

Multistate Tax Commission

A single economic enterprise that is made up either of separate parts of a single business entity or of a commonly controlled group of business entities that are sufficiently interdependent, integrated and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts.

Center for Policy Alternatives

A group of corporations that are related through common ownership, and, by a preponderance of the evidence, are economically interdependent with one another as demonstrated by the following factors:

a. Centralized management;

b. Functional integration; and

c. Economies of scale.

Alaska

- A business is unitary if the entity or entities involved are owned, centrally managed, or controlled, directly or indirectly, under one common direction which can be formal or informal, direct or indirect, or if the operation of the portion of the business done within the state is dependent upon or contributes to the operation of the business outside the state.

California

- Does not have a statutory definition.
- Its Code of Regulations provides guidelines on what a unitary business is.

Colorado

- Unique attempt to provide a bright-line test
- Must find at least three of the following six factors are present for the current year and the two preceding tax years:
  - Intercompany sales or leases
  - Services provided by one for others
  - Long-term debt
  - Use of proprietary materials owned by another
  - Common corporate control
  - Common corporate management

Illinois

- A group of persons related through common ownership whose business activities are integrated with, dependent upon and contribute to each other.

Hawaii

- Business carried on by a group of entities that includes the taxpayer where there are flows of value among the entities resulting from (1) functional integration, (2) centralization of management, or (3) economies of scale.

Minnesota

- Business activities or operations which result in a flow of value between them. ... Flow of value is determined by reviewing the totality of facts and circumstances of business activities and operations.

Montana

- The business operations conducted by the corporations in the affiliated group are interrelated or interdependent to the extent that the net income of one corporation cannot reasonably be determined without reference to the operation conducted by the other corporation.

Nebraska

- A business that is conducted as a single economic unit by one or more corporations with common ownership and shall include all activities in different lines of business that contribute to the single economic unit.

New Hampshire and Vermont

- One or more related business organizations engaged in business activity both within and without this state among which there exists a unity of ownership, operation, and use; or an interdependence in their functions.

Oregon

- A corporation or group of corporations engaged in business activities that constitute a single trade or business.
- A single trade or business is a business enterprise in which there exists directly or indirectly between the members ... a sharing or exchange of values ...

Utah

- A group of corporations that are related through common ownership and by a preponderance of the evidence as determined by a court of competent jurisdiction or the commission, are economically interdependent with one another as demonstrated by the following factors:
  - Centralized management
  - Functional integration
  - Economies of scale

Definition of unitary business

- Different definitions – Same result
- Proposal: Broad definition
  - Less opportunity for manipulation
  - Lower compliance costs

Questions to Answer

- Mandatory v. voluntary
- Definitions
  - Affiliated corporations
  - Unitary business
- Type of Combined Reporting
  - Worldwide
  - Water's Edge
- Method of Apportionment

Worldwide v. Water's Edge

- ☐ Two general approaches on how to deal with a unitary group member that is incorporated in a foreign country
- ☐ Prevailing position is worldwide combination with a water's edge election

Worldwide combination

- ☐ Consistent with concept that a unitary business should be taxed without regard to its organizational structure.
- ☐ Constitutionality valid.
- ☐ Controversial.
  - Distortions in property and payroll factors.
  - Difficulty of accounting and audit.
  - Business community does not favor it.
- ☐ No major industrialized country requires it for income tax purposes.

Water's edge combination

- ☐ Exclude 80/20 corporations – A corporation whose business activity outside the US is 80% or more of the corporation's total business activity.
- ☐ Avoids the compliance burden of a worldwide combination.

Worldwide Combination with Water's Edge Election

- ☐ Water's edge group includes:
  - U.S. corporations
  - Foreign corporations that meet the 80/20 test
  - Corporations doing business in tax-haven countries
  - Related intangible holding companies
- ☐ MTC recommendations to prevent tax avoidance strategies

Water's Edge Election

- ☐ Election must be in writing
- ☐ Election binding for an initial period of time (MTC = 10 yrs)
- ☐ Election automatically extended unless notice given of intent not to renew before the end of the last two years of the election period
- ☐ If election terminated, cannot be renewed for minimum period of time

Questions to Answer

- ☐ Mandatory v. voluntary
- ☐ Definitions
  - Affiliated corporations
  - Unitary business
- ☐ Type of Combined Reporting
  - Worldwide
  - Water's Edge
- ☐ Method of Apportionment

Apportionment Formula

- ☐ Prevent income from being taxed twice
- ☐ Three factor formula
  - Property in NC/Total property
  - Payroll in NC/Total payroll
  - Sales in NC/Total sales
- ☐ Property + Payroll + 2(Sales)/4 = Apportionment Percentage

Apportionment of Income – Single entity reporting

- ☐ Calculate apportionable taxable income under NC law
- ☐ Calculate apportionment percentage using the apportionment formula (Property + Payroll + 2(Sales)/4)
- ☐ Multiply apportionable taxable income by apportionment percentage to determine taxable income
- ☐ Apply the tax rate to taxable income

Apportionment of Income – Combined Reporting

- ☐ Calculate apportionable taxable income under NC law for entire combined group (subtracting income from inter-company transactions)
- ☐ Calculate apportionment percentage by applying the apportionment formula using the aggregate factors of the combined group (payroll, property, sales)
- ☐ Multiply apportionable taxable income for entire combined group by apportionment percentage to determine taxable income to NC

Taxation of individual members of unitary group

- Tax return filed by individual members of the unitary group subject to tax in NC
- Individual member calculates its own apportionment percentage based upon its payroll, property, sales
- Could allow for certain members of the combined group to file a combined return
- Apply apportionment percentage to the combined group's taxable income = net taxable income of taxpayer subject to tax rate

Apportionment of Income – Combined Reporting

- Calculate apportionment percentage by applying the apportionment formula using the aggregate factors of the combined group (payroll, property, sales)
  - Property in NC/**Aggregate property**
  - Payroll in NC/**Aggregate payroll**
  - Sales in NC/**Aggregate sales** X 2

Method of Apportionment: "... in North Carolina"

- Finnigan: include the property, payroll, and sales of those members in the State, regardless of nexus
  - Prevents tax planning techniques for isolating sales in non-nexus affiliates
  - Constitutionality unclear/Litigation more likely
- Joyce: include only the property, payroll, and sales of those members that have nexus with the State in the numerator
  - Most accepted method
  - Tax avoidance strategies exist

Multistate Recommendation

- ☐ Joyce method of apportionment
- ☐ Adopt a throwback provision
  - Resolve some of the tax avoidance strategies
  - Sales are sourced to the destination state
  - Throw-back causes the sales to be sourced to the state from which the property was shipped if the destination state does not impose income tax

Proposal ...

- ☐ Mandatory combined returns
- ☐ Definitions
  - Affiliated corporations – 50%
  - Unitary business – Broad
- ☐ Type of Combined Reporting
  - Worldwide with Water's Edge Election
- ☐ Method of Apportionment
  - Joyce method
  - Throw-back provision

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U D

BILL DRAFT 2007-RB-2 [v.1] (12/11)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
12/11/2006 4:02:59 PM

Short Title:	Streamlined Sales Tax Changes.	(Public)
Sponsors:	.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO AMEND THE SALES TAX DEFINITIONS TO COMPLY WITH THE STREAMLINED SALES TAX AGREEMENT AND TO MAKE OTHER SALES TAX CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.3 reads as rewritten:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

(1) Ancillary service. – A service associated with or incidental to the provision of a telecommunications service. The term includes detailed communications billing, directory assistance, vertical service, and voice mail service. A vertical service is a service, such as call forwarding, caller ID, three-way calling, and conference bridging, that allows a customer to identify a caller or manage multiple calls and call connections.

(1b) Bundled transaction. – A retail sale of two or more distinct and identifiable products, at least one of which is taxable and one of which is exempt, for one non-itemized price. Products are not sold for one non-itemized price if an invoice or another sales document made available to the purchaser separately identifies the price of each product. A bundled transaction does not include the retail sale of any of the following:

a. A product and any packaging item that accompanies the product and is exempt under G.S. 105-164.13(23).

b. A sale of two or more products whose combined price varies, or is negotiable, depending on the products the purchaser selects.

c. A sale of a product accompanied by a transfer of another product with no additional consideration.
d. A product and the delivery or installation of the product.
e. A product and any service necessary to complete the sale.

~~(1a)~~(1d) Business. – Includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, profit, benefit or advantage, either direct or indirect. The term "business" shall not be construed in this Article to include occasional and isolated sales or transactions by a person who does not hold himself out as engaged in business.

~~(1b)~~(1f) Cable service. – The one-way transmission to subscribers of video programming or other programming service and any subscriber interaction required to select or use the service.

...

(37) Sales price. – The total amount or consideration for which personal property or services are sold, leased, or rented. The consideration may be in the form of cash, credit, property, or services. The sales price must be valued in money, regardless of whether it is received in money.

a. The term includes all of the following:
1. The retailer's cost of the property sold.
2. The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, and any other expense of the retailer.
3. Charges by the retailer for any services necessary to complete the sale.
4. Delivery charges.
5. Installation charges.
~~6. The value of exempt personal property given to the consumer when taxable and exempt personal property are bundled together and sold by the retailer as a single product or piece of merchandise.~~
7. Credit for trade-in.
8. Discounts that are reimbursable by a third party and can be determined at the time of sale through any of the following:
a. Presentation by the consumer of a coupon or other documentation.
b. Identification of the consumer as a member of a group eligible for a discount.
c. The invoice the retailer gives the consumer.

b. The term does not include any of the following:

1. ~~Discounts, including cash, term, or coupons, that are not reimbursed~~ Discounts that are not reimbursable by a third party, are allowed by the retailer, and are taken by a consumer on a sale.
2. Interest, financing, and carrying charges from credit extended on the sale, if the amount is separately stated on the invoice, bill of sale, or a similar document given to the consumer.
3. Any taxes imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the consumer.

...

(45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement as amended ~~in November 2005.~~as of December 12, 2006.

SECTION 2. G.S. 105-164.4D, as enacted by Section 5 of S.L. 2006-151, reads as rewritten:

"**§ 105-164.4D. Bundled ~~services.~~transactions.**

~~When a taxable service is bundled with a service that is not taxable, the tax applies to the gross receipts from the taxable service in the bundle as follows:~~

~~(1) If the service provider offers all the services in the bundle on an unbundled basis, tax is due on the unbundled price of the taxable service, less the discount resulting from the bundling. The discount for a service as the result of bundling is the proportionate price decrease of the service, determined on the basis of the total unbundled price of all the services in the bundle compared to the bundled price of the services.~~

~~(2) If the service provider does not offer one or more of the services in the bundle on an unbundled basis, tax is due on the taxable service based on a reasonable allocation of revenue to that service. If the service provider maintains an account for revenue from a taxable service, the service provider's allocation of revenue to that service for the purpose of determining the tax due on the service must reflect its accounting allocation of revenue to that service.~~

(a) Tax Application. – Tax applies to the sales price of a bundled transaction unless one of the following applies:

(1) 50% Test. – All of the products in the bundle are tangible personal property, the bundle includes one or more of the exempt products listed in this subdivision, and the price of the taxable products in the bundle does not exceed fifty percent (50%) of the price of the bundle:

a. Food exempt under G.S. 105-164.13B.

b. A drug exempt under G.S. 105-164.13(13).

c. Medical devices, equipment, or supplies exempt under G.S. 105-164.13(12).

(2) Allocation. – The bundle includes a service and the retailer determines an allocated price for each product in the bundle based on a reasonable allocation of revenue that is supported by the retailer's business records kept in the ordinary course of business. In this circumstance, tax applies to the allocated price of each taxable product in the bundle.

(3) 10% Test. – The price of the taxable products in the bundle does not exceed the lesser of the following and no other subdivision in this subsection applies:

a. Ten percent (10%) of the price of the bundle.

b. Ten thousand dollars ($10,000).

(b) Determining Threshold. – A retailer of a bundled transaction subject to this section may use either the retailer's cost price or the retailer's sales price to determine if the transaction meets the 50% test or the 10% test set out in subdivisions (a)(1) and (a)(3) of this section. A retailer may not use a combination of cost price and sales price to make this determination. If a bundled transaction subject to subdivision (a)(3) of this section includes a service contract, the retailer must use the full term of the contract in determining whether the transaction meets the threshold set in the subdivision."

SECTION 3. G.S. 105-164.12B reads as rewritten:

"**§ 105-164.12B. Tangible personal property ~~bundled~~ sold below cost with conditional service contract.**

(a) ~~Bundled Transaction~~ Conditional Service Contract Defined. – A ~~bundled transaction is a transaction~~ conditional service contract is a contract in which all of the following conditions are met:

(1) A seller transfers an item of tangible personal property to a consumer on the condition that the consumer enter into an agreement to purchase services on an ongoing basis for a minimum period of at least six months.

(2) The agreement requires the consumer to pay a cancellation fee to the ~~service provider~~ seller if the consumer cancels the contract for services within the minimum period.

(3) For the item transferred, the ~~seller:~~

~~a. Does not charge the consumer; or~~

~~b.~~ ~~Charges~~ seller charges the consumer a price that, after any ~~discount or rebate~~ price reduction the seller gives the consumer, is below the purchase price the seller paid for the item. The seller's purchase price is presumed to be no greater than the price the seller paid, as shown on the seller's purchase invoice, for the same item within 12 months before the seller entered into the conditional service contract.

(b) ~~Bundled Transaction Is a Sale; Sales Price.~~ Tax. – If a seller transfers an item of tangible personal property as part of a ~~bundled transaction,~~ conditional service contract, a sale has ~~occurred, and the~~ occurred. The sales price of the item is presumed to be the retail price at which the item would sell ~~if no agreement for services were entered into. Part of this price may be paid by the consumer at the time of the transfer;~~

~~the remainder of the price is considered paid as part of the price to be paid for the services contracted for.~~ in the absence of the conditional service contract. Sales tax is due ~~on any part of the price paid by the consumer~~ at the time of the ~~transfer.~~transfer on the following:

(1) Any part of the presumed sales price the consumer pays at that time, if the service in the contract is taxable at the combined rate.

(2) The presumed sales price, if the service in the contract is not taxable at the combined general rate.

~~(c) No Additional Sales Tax if Services Taxed. If the services for which the consumer was required to contract are subject to services taxes at a combined rate equal to or greater than the combined State and local general rate of sales and use tax, then no additional sales tax is due on the transfer. However, if the consumer cancels the contract for services before the expiration of the minimum period, sales tax applies to the cancellation fee paid by the consumer.~~

~~(d) Additional Sales Tax if Services Not Taxed. If the services for which the consumer was required to contract are not subject to services taxes at a combined rate equal to or greater than the combined State and local general rate of sales and use tax, then sales tax is due at the time of the transfer on the remainder of the sales price not paid at that time.~~

~~(e) Services Taxes Defined. For the purpose of this section, the term "services taxes" means any combination of State franchise tax on gross receipts, State sales tax, or local sales tax levied on the sale of or gross receipts from the services.~~

~~(f) Determination of Purchase Price. For the purpose of this section, the purchase price a seller paid for an item is presumed to be no greater than the price the seller paid for the same model within 12 months before the bundled transaction, as shown on the seller's invoices.~~"

SECTION 4. G.S. 105-164.13(9) reads as rewritten:

"**§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property and services are specifically exempted from the tax imposed by this Article:

Agricultural Group.

....

(9) ~~Sales of boats,~~ Boats, fuel oil, lubricating oils, machinery, equipment, nets, rigging, paints, parts, accessories, and supplies sold to ~~persons~~ any of the following:

a The holder of a standard commercial fishing license issued under G.S. 113-168.2 for principal use ~~by them principally~~ in commercial fishing ~~operations within the meaning of G.S. 113-168, except when the property is for use by persons principally to take fish for recreation or personal use or consumption.~~ operations.

b. The holder of a shellfish license issued under G.S. 113-169.2 for principal use in commercial shellfishing operations.

c. The operator of a for hire boat, as defined in G.S. 113-174, for principal use in the commercial use of the boat. ~~As used in this subdivision, "fish" is defined as in G.S. 113-129(7).~~"

SECTION 5. G.S. 105-164.42L reads as rewritten:

"**§ 105-164.42L. Databases on taxing jurisdictions.**

The Secretary may develop databases that provide information on the boundaries of taxing jurisdictions and the tax rates applicable to those taxing jurisdictions. A ~~seller that~~ person who relies on the information provided in these databases is not liable for underpayments of tax attributable to erroneous information provided by the Secretary in those databases."

SECTION 6. G.S. 105-467(a) reads as rewritten:

"**§ 105-467. Scope of sales tax.**

(a) Sales Tax. – The sales tax that may be imposed under this Article is limited to a tax at the rate of one percent (1%) of the transactions listed in this subsection. The sales tax authorized by this Article does not apply to sales that are taxable by the State under G.S. 105-164.4 but are not specifically included in this subsection.

(1) The sales price of tangible personal property subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(1) and (a)(4b).

(2) The gross receipts derived from the lease or rental of tangible personal property when the lease or rental of the property is subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(2).

(3) The gross receipts derived from the rental of any room or other accommodations subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(3).

(4) The gross receipts derived from services rendered by laundries, dry cleaners, and other businesses subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(4).

(5) The sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but is exempt from the State sales and use tax pursuant to G.S. 105-164.13B.

(5a) The sales price of a bundled transaction that includes food subject to tax under subdivision (5) of this subsection, if the price of the food exceeds ten percent (10%) of the price of the bundle. A retailer must determine the price of food in a bundled transaction in accordance with G.S. 105-164.4D.

(6) The sales price of prepaid telephone calling service taxed as tangible personal property under G.S. 105-164.4(a)(4d).

(7) The gross receipts derived from providing satellite digital audio radio service subject to the general rate of tax under G.S. 105-164.4(a)(6a).

SECTION 7. This act becomes effective October 1, 2007.

BILL DRAFT 2007-RBxz-1: Motor Fuel Tax Changes

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	December 12, 2006
Introduced by:		**Summary by:**	
Version:	Draft		

SUMMARY: Draft Proposal 2007-RBxz-1 makes the following changes to the motor fuel tax laws, as requested by the Department of Revenue:

Section	Explanation
1	Provides that the Secretary of Revenue's authority to summon records also applies to the motor fuel tax statutes. The section makes this change by using the defined term 'tax'. G.S. 105-228.90 defines 'tax' includes all of the State levied taxes. This section would be effective when it becomes law.
2	Makes a technical change to the statute to require that a civil penalty is payable to the agency that assessed the penalty. In addition to the Department of Revenue, G.S. 105-269.3 provides that the State Highway Patrol, law enforcement officers, and other appropriate personnel in the Department of Crime Control and Public Safety may enforce the motor fuel tax laws. The reorganization of the Division of Motor Vehicles in 2003 moved the State Highway Patrol from DMV to the Department of Crime Control and Public Safety. This substantive change in 2003 necessitated technical, conforming changes to the tax statutes. The wording proposed by this section would eliminate the need for similar conforming changes in the future. This section would be effective when it becomes law.
3	Provides that a fuel alcohol provider and a biodiesel provider whose annual motor fuel tax liability is at least $2,000 must post a bond. The required bond amount would be two times the applicant's average expected monthly tax liability. The amount would not be less than $2,000 and could not be more than $5,000, Under current law a blender is required to post a bond of this amount if its annual tax liability is at least $2,000. This section would be effective October 1, 2007.
4	Repeals an unnecessary statute. Article 3 of Chapter 119 directs the Commissioner of Agriculture to inspect alternative fuel, motor fuel, and kerosene to protect the public. This statute says that various fuels are subject to inspection. It does not appear to be a necessary statute because the provisions of Article 3 govern what fuel is inspected and what standards the fuel must meet. The terms 'alternative fuel', 'motor fuel', and 'kerosene' are defined terms in Article 3. This section would be effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U D

BILL DRAFT 2007-RB-1 [v.3] (12/30)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
12/12/2006 5:50:55 AM

Short Title: Motor Fuel Tax Administrative Changes. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE MOTOR FUEL TAX LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-258(a) reads as rewritten:

"(a) Secretary May Examine Data and Summon Persons. The Secretary of Revenue, for the purpose of ascertaining the correctness of any return, making a return where none has been made, or determining the liability of any person for ~~any tax imposed by this Subchapter,~~ a tax, or collecting any such tax, shall have the power to examine, personally, or by an agent designated by him, any books, papers, records, or other data which may be relevant or material to such inquiry, and the Secretary may summon the person liable for the tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, care or control of books of account containing entries relevant or material to the income and expenditures of the person liable for the tax or required to perform the act, or any other person having knowledge in the premises, to appear before the Secretary, or his agent, at a time and place named in the summons, and to produce such books, papers, records or other data, and to give such testimony under oath as may be relevant or material to such inquiry, and the Secretary or his agent may administer oaths to such person or persons. If any person so summoned refuses to obey such summons or to give testimony when summoned, the Secretary may apply to the Superior Court of Wake County for an order requiring such person or persons to comply with the summons of the Secretary, and the failure to comply with such court order shall be punished as for contempt."

SECTION 2.(a) G.S. 105-449.52 reads as rewritten:

"**§ 105-449.52. Civil penalties applicable to motor carriers.**

(a) Penalty. – A motor carrier who does any of the following is subject to a civil penalty:

(1) Operates in this State or causes to be operated in this State a motor vehicle that either fails to carry the registration card required by this Article or fails to display an identification marker in accordance with this Article. The amount of the penalty is one hundred dollars ($100.00).

(2) Is unable to account for identification markers the Secretary issues the motor carrier, as required by G.S. 105-449.47. The amount of the penalty is one hundred dollars ($100.00) for each identification marker the carrier is unable to account for.

(3) Displays an identification marker on a motor vehicle operated by a motor carrier that was not issued to the carrier by the Secretary under G.S. 105-449.47. The amount of the penalty is one thousand dollars ($1,000) for each identification marker unlawfully obtained. Both the licensed motor carrier to whom the Secretary issued the identification marker and the motor carrier displaying the unlawfully obtained identification marker are jointly and severally liable for the penalty under this subdivision.

~~A~~

(a1) Payment. – A penalty imposed under this section is payable to the ~~Department of Revenue, the Department of Crime Control and Public Safety, or the Division of Motor Vehicles.~~ agency that assessed the penalty. When a motor vehicle is found to be operating without a registration card or an identification marker or with an identification marker the Secretary did not issue for the vehicle, the motor vehicle may not be driven for a purpose other than to park the motor vehicle until the penalty imposed under this section is paid unless the officer that imposes the penalty determines that operation of the motor vehicle will not jeopardize collection of the penalty.

(b) Hearing. – The procedure set out in G.S. 105-449.119 for protesting a penalty imposed under Article 36C, Part 6, of this Chapter applies to a penalty imposed under this section."

SECTION 2.(b) G.S. 105-449.115(f) reads as rewritten:

"(f) Sanctions Against Transporter. – The following acts are grounds for a civil ~~penalty payable to the Department of Crime Control and Public Safety or the Department of Revenue:~~penalty:

(1) Transporting motor fuel in a railroad tank car or transport truck without a shipping document or with a false or an incomplete shipping document.

(2) Delivering motor fuel to a destination state other than that shown on the shipping document.

The penalty ~~imposed under this subsection~~ is payable to the agency that assessed the penalty and is payable by the person in whose name the conveyance is registered, if the conveyance is a transport truck, and is payable by the person responsible for the movement of motor fuel in the conveyance, if the conveyance is a railroad tank car. The amount of the penalty is five thousand dollars ($5,000). A penalty imposed under this subsection is in addition to any motor fuel tax assessed."

SECTION 2.(c) G.S. 105-449.115A(c) reads as rewritten:

"(c) Sanctions. – Transporting motor fuel in a tank wagon without an invoice, bill of sale, or shipping document containing the information required by this section is grounds for a civil ~~penalty payable to the Department of Crime Control and Public Safety or the Department of Revenue.~~penalty. The penalty ~~imposed under this subsection~~ is payable to the agency that assessed the penalty and is payable by the person in whose name the tank wagon is registered. The amount of the penalty is one thousand dollars ($1,000). A penalty imposed under this subsection is in addition to any motor fuel tax assessed."

SECTION 2.(d) G.S. 105-449.117(b) reads as rewritten:

"(b) Civil Penalty. – The civil penalty is payable to the ~~Department of Transportation, Division of Motor Vehicles, or the Department of Revenue~~ agency that assessed the penalty and is payable by the person in whose name the highway vehicle is registered. The amount of the penalty depends on the amount of fuel in the supply tank of the highway vehicle. The penalty is the greater of one thousand dollars ($1,000) or five times the amount of motor fuel tax payable on the fuel in the supply tank. A penalty imposed under this section is in addition to any motor fuel tax assessed."

SECTION 2.(e) G.S. 105-449.118 reads as rewritten:

"§ 105-449.118. Civil penalty for buying or selling non-tax-paid motor fuel.

A person who dispenses non-tax-paid motor fuel into the supply tank of a highway vehicle or who allows non-tax-paid motor fuel to be dispensed into the supply tank of a highway vehicle is subject to a civil penalty of two hundred fifty dollars ($250.00) per occurrence.

The penalty is payable to the ~~Department of Transportation, Division of Motor Vehicles, or the Department of Revenue.~~ agency that assessed the penalty. Failure to pay a penalty imposed under this section is grounds under G.S. 20-88.01(b) to withhold or revoke the registration plate of the motor vehicle into which the motor fuel was dispensed."

SECTION 2.(f) G.S. 105-449.118A reads as rewritten:

"§ 105-449.118A. Civil penalty for refusing to allow the taking of a motor fuel sample.

A person who refuses to allow the taking of a motor fuel sample is subject to a civil penalty of one thousand dollars ($1,000). The penalty is payable to the ~~Department of Transportation, Division of Motor Vehicles, or the Department of Revenue.~~ agency that assessed the penalty. If the refusal is for a sample to be taken from a vehicle, the penalty is payable by the person in whose name the vehicle is registered. If the refusal is for a sample to be taken from any other storage tank or container, the penalty is payable by the owner of the container."

SECTION 3. G.S. 105-449.72(a)(3) reads as rewritten:

"(a) Initial Bond. – An applicant for a license as a refiner, a terminal operator, a supplier, an importer, a blender, a permissive supplier, or a distributor must file with the Secretary a bond or an irrevocable letter of credit. A bond or an irrevocable letter of credit must be conditioned upon compliance with the requirements of this Article, be

payable to the State, and be in the form required by the Secretary. The amount of the bond or irrevocable letter of credit is determined as follows:

(1) For an applicant for a license as any of the following, the amount is two million dollars ($2,000,000):
  a. A refiner.
  b. A terminal operator.
  c. A supplier that is a position holder or a person that receives motor fuel pursuant to a two-party exchange.
  d. A bonded importer.
  e. A permissive supplier.

(2) For an applicant for a license as any of the following, the amount is two times the applicant's average expected monthly tax liability under this Article, as determined by the Secretary. The amount may not be less than two thousand dollars ($2,000) and may not be more than five hundred thousand dollars ($500,000):
  a. A supplier that is a fuel alcohol provider or a biodiesel provider but is neither a position holder nor a person that receives motor fuel pursuant to a two-party exchange.
  b. An occasional importer.
  c. A tank wagon importer.
  d. A distributor.
  e. Repealed by Session Laws 1997-60, s. 5, effective October 5, 1997.

(3) For an applicant for a license ~~as a blender,~~ as any of the following, a bond is required only if the applicant's average expected annual tax liability under this Article, as determined by the Secretary, is at least two thousand dollars ($2,000). When a bond is required, the bond amount is the same as under subdivision (2) of this subsection.
  a. A blender.
  b. A fuel alcohol provider.
  c. A biodiesel provider."

SECTION 4. G.S. 119-17 is repealed.

SECTION 5. Section 3 of this act becomes effective October 1, 2007. The remainder of this act is effective when it becomes law.

REVENUE LAWS STUDY COMMITTEE
Tuesday, January 16, 2007
Room 544, Legislative Office Building
9:30 a.m.

MINUTES

The Revenue Laws Study Committee met at 9:30 a.m. on Tuesday, January 16, 2007, in Room 544 of the Legislative Office Building. Nine members of the committee were present. Senator Kerr and Representative Luebke presided.

Motor Vehicle Property Tax Changes

David Baker, Department of Revenue – Property Tax Division Director, was recognized to present an update on the implementation and support costs of combining payment of property taxes and registration fees on motor vehicles. Paul Meyer, Assistant General Counsel, NCACC, was recognized to answer question regarding motor vehicle dealers' possible issues with the changes. John Policastro, NC Automobile Dealers Association, was recognized to express concern over dealer responsibilities and possible higher fees.

Enhance Collection Procedures

Charlie Helms, Department of Revenue – Collection Division Director, was recognized to request that clarifying language be written into existing statutes regarding Revenue's ability to place a lien on real property and to request legislation allowing its administrative assessment process to hold garnishees liable for amounts that they failed to withhold and remit. Linda Millsaps, Assistant Secretary of Tax Administration, was available to answer questions. Representative Brubaker motioned to create a bill draft addressing the Department of Revenue's request for the ability to place liens on real property. The motion passed.

Review of Disputed Tax Matters

This issue was removed from the agenda.

Combined Returns

Cindy Avrette, a staff attorney with the Research Division, was recognized to explain the bill draft on combined returns. Chuck Neely, Maupin Taylor, was recognized to address the corporate opinion on forced combination. Greg Radford, Department of Revenue – Director of Corporate Income, was recognized to answer questions. A copy of the bill draft and summary is attached.

Tax Credit for Real Property Donations

Dan Ettefagh, a staff attorney with the Bill Drafting Division, was recognized to review the bill draft. Karl Knapp, Department of Revenue, Policy Analysis and Statistics Division, was recognized to answer questions. A copy of the bill draft and summary is attached.

IRC Update

Heather Fennell, a staff attorney with the Research Division, was recognized to explain the bill draft. Dave Crotts, a fiscal analyst with the Fiscal Research Division, was recognized to answer questions. A copy of the bill draft, the summary and the fiscal information is attached.

Motor Fuels Tax Changes

Cindy Avrette was recognized to review the bill draft. Senator Hartsell moved to include the bill draft in the final report and the motion passed unanimously. A copy of the bill draft and summary are attached.

Technical and Administrative Changes

Heather Fennell was recognized to explain the Revenue Laws Technical Changes bill draft. Canaan Huie, a staff attorney with the Bill Drafting Division, was recognized to answer questions regarding Bill Lee issues. A copy of the bill draft and summary is attached.

The meeting adjourned at 12:20 PM.

Senator John H. Kerr, III, Co-Chair
Revenue Laws Study Committee

Representative Paul Luebke, Co-Chair
Revenue Laws Study Committee

DeAnne Mangum, Committee Clerk

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — Jan. 16, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jim Ahler	NCACPA, Raleigh
Bill Nelson	Smith Anderson, Raleigh
Janet Shires	NC Department of Revenue
Steve Woodson	NC Farm Bureau
Kirk Boone	NC DOR Property Tax Div
David Baker	NC DOR Property Tax Div
Bill Wilkes	NC DOR Property Tax Division
Dave Duty	DOR PTD
Cam Brantley	EY Raleigh, NC
Emily Atkinson	Capstrat Raleigh, NC
Andy Romanet	NCLM

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — Jan. 16, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Mia Bailey	Electricities of NC, Inc.
JACK Cummings	Alston + Bird
Ram Carpenter	
DANIEL BAUM	KENNEDY COVINGTON
Will Culpepper	Moore + Van Allen, PLLC
Nancy Rendleman	Maupin Taylor
BNERLY	MAUPIN TAYLOR
Cam Coves	BPMHL
Sarah Sawyer	WCSR
Paul Stod	NC Bankers Assoc.
Bill Flournoy	NC DENR

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — **Name of Committee**

Jan. 16, 2006 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Sharon Miller	CUCA
[illegible]	S.A.
Amy McConkey	S.A.
Jon Carr	Jordan Price
Elizabeth Dalton	NCLA
John Mobley	Governor's
Cliff Vaught	Gov Office
Patrick Buffkin	NELSON MULLINS
Tazza Mitchell	Staff intern
Andy Ellen	NCRMT

VISITOR REGISTRATION SHEET

Revenue Law — 1/16/07

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NCAMVR
Barbara Conder	BBCOR
Ed Turlington	BPMHL
Mitch Kokai	John Locke Foundation
Linda Millsaps	NC DOR
Julian Mann	OAH
Will McDaw	Environmental Defense
Gordon Myers	NC Wildlife Commission
Anna Mitchell	NC DOR
Karl Knapp	DOR
Janice W Davidson	NC DOR

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Donna Alderman	DOR
Dana Powell	DOR
Nancy Pomerance	DOR
Greg Radford	DOR
Lennie Collins	DOR
Charlie Helms	DOR
Terence Friedman	AG
Mike Hamrick	PwC
David Walker	First Charter
Jamie Fenwick	Time Warner Cable
Cheryl Causey	BB&T

VISITOR REGISTRATION SHEET

Revenue Law — 1/16/18 @ 9
Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JS Andrews	DOR
TL Dixon	DOR
Robert Stromberg	Luebke
Joan Dillard	CSX
Angie Harris	Maupin Taylor
Johanna Reese	DOT
Portia Manley	DOT/DMV
Wayne Hurdle	DOT/DMV
Stephanie Kins	DOT/FISCAL
Ken Melton	D.O.R.
Sir Douglas Hoover	GOS, INC.

VISITOR REGISTRATION SHEET

Revenue Laws — 1/16/07

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Thompson	NCPIRG
Jeff Mixon	Civitas

REVENUE LAWS STUDY COMMITTEE AGENDA

Sen. John Kerr Rep. Paul Luebke

Tuesday, January 16, 2007
Room 544, Legislative Office Building
9:30 a.m.

I. Approval of the Minutes from the December 12, 2006, Meeting

II. Motor Vehicle Property Tax Changes
David Baker, Director of Property Tax Division of Revenue,

David will give an update on the implementation and support costs of combining payment of property taxes and registration fees on motor vehicles.

III. Enhance Collection Procedures
Charlie Helms, Revenue of Revenue

The Department would like to do the following:
--Allow the Department to place a lien on real property
--Allow the Department to use its administrative assessment process to hold garnishees liable for amounts that they failed to withhold and remit
Charlie will give the case for these two requests. The Committee needs to decide if it wants to recommend legislation doing these two things.

IV. Review of Disputed Tax Matters
Trina Griffin, Research Division

Presentation of Proposal. Committee needs to decide if it would like to recommend legislation on this issue. Key issues to be decided:
--what entity should serve as a taxpayer's "independent forum for review"
--whether the taxpayer has to pay the tax prior to a hearing in that forum.

V. Combined Returns
Cindy Avrette, Research Division

Bill draft to review. NO VOTE. Incorporates the issues agreed upon at the last meeting. It does change the current law regarding forced combinations. If committee would like to make any changes in the direction of the draft, please let staff know.

Next Meeting Date: January 23
Room 544, LOB, at 9:30 a.m.

VI. **Tax Credit for Real Property Donations**
Dan Ettefagh, Bill Drafting Division

Bill draft to review. NO VOTE. If Committee wants to make any changes in the direction of the draft, please let staff know.

VII. **IRC Update**
Heather Fennell, Research Division
Barry Boardman, Fiscal Research

Committee gave tentative approval to the IRC Update at the last meeting. This draft includes an explanation of the latest changes Congress made as well as a fiscal memorandum.

VIII. **Motor Fuels Tax Changes**
Cindy Avrette, Research Division

Bill draft distributed at last meeting.

IX. **Technical and Administrative Changes**
Heather Fennell, Research Division

Bill draft to consider.

X. **Adjournment**

Next Meeting Date: January 23
Room 544, LOB, at 9:30 a.m.

Proposal for Review of Disputed Tax Matters

Revenue Laws Study Committee
January 16, 2007

A fair, efficient, and transparent tax appeals process is a critical element of the effective administration of a State's tax system. The Revenue Laws Study Committee, in its recent review of this issue, has heard from the Council on State Taxation (COST), which had the opportunity to express concerns about the current system and to make recommendations for improvement. The Committee also heard from the Department of Revenue, which had the opportunity to explain the current system, to offer counterpoints regarding the system's strengths, and to suggest its own recommendations.

Issues

In light of the testimony presented at prior meetings, the following issues have been identified as the areas of most concern that impact the appeals process:

1. **Independent forum for review.**
   COST position: Tax appeals cases should be heard by the North Carolina Business Court or some other body outside the Department of Revenue to ensure an impartial hearing. Also, the reviewing forum should have the ability to develop tax expertise.
   Department position: No systemic changes to the current administrative system are necessary because the Department provides an impartial hearing by an independent hearings officer, and the Tax Review Board provides an impartial review. Instead, clarifying statutory changes are needed to more accurately describe the existing administrative practice.
2. **Payment of tax to obtain judicial review of a disputed tax matter.**
   COST position: The requirement that a taxpayer pay a proposed tax liability in order to obtain an independent hearing in a neutral forum outside the Department should be eliminated.
   Department position: The payment requirement should be maintained because without it, the Department's ability to collect would be compromised and litigation would substantially increase.
3. **Length of time to object to a notice of proposed assessment.**
   COST position: Taxpayers should be given at least 60, but ideally 90, days to request a hearing on a notice of a proposed assessment.
   Department position: The time period should remain 30 days because the extension of time delays collection and potentially compromises the State's likelihood of collection.

Principles

Based on the above-stated issues, the following principles have been identified as a guideline for making improvements to the current system:

- **Simplicity** – An effective tax appeals system should be easily understandable by taxpayers and practitioners, produce a resolution in a timely manner, and apply the same procedures for assessments and refunds.
- **Fairness** – An effective tax appeals system should afford all taxpayers, regardless of their resources, the opportunity to have a hearing before an independent arbiter with expertise in the subject matter without first having to pay the disputed liability.
- **Emphasis on Informal Resolution** – An effective tax appeals system should encourage the informal resolution of tax controversies, without litigation, in a manner that will enhance voluntary compliance and public confidence in the integrity of the system.

Proposed Changes & Application of Principles

Applying these principles to the identified issues, the proposal makes the following changes to the law:

1. **Independent forum for review.** – The proposal establishes the Office of Administrative Hearings (OAH) as the independent forum for the review of contested tax matters. Under current law, administrative review of a disputed tax matter involves a hearing before a hearings

officer within the Department followed by an appeal to the Tax Review Board. The proposal modifies the current law by requiring an initial, informal review process within the Department. A taxpayer who is not satisfied with the outcome of the informal process must commence a contested case with the OAH. OAH would issue a final decision, reserving constitutional questions for determination by the Business and Tax Court. If OAH issues a final decision in the case, either party would have the option of seeking judicial review of the decision in the Business and Tax Court. Alternatively, OAH may transfer the case to Business and Tax Court if the only issue involves the constitutionality of a statute.

This proposed change addresses at least two of the above-stated principles. First, it promotes informal resolution by requiring an informal review and conference with the Department, which is designed to encourage settlement without litigation. It also addresses the fairness principle by establishing OAH as the independent arbiter of disputed tax matters.

2. **Payment of tax to obtain judicial review of a disputed tax matter.** – The proposal provides that a taxpayer does not have to pay a proposed tax liability in order to obtain an independent hearing on the merits. However, a taxpayer would be required to pay the tax in order to obtain judicial review of a decision resulting from that independent hearing. Therefore, a taxpayer would not have to pay the tax in order to have an independent hearing at OAH, but would have to pay the tax in order to appeal an ALJ's final decision to Business and Tax Court. If, however, OAH determines the case involves a question only about the constitutionality of a statute, then OAH would not render a decision on the merits and would transfer the case to Business and Tax Court. No payment of tax would be required if the case is transferred based on OAH's lack of jurisdiction because the taxpayer has not yet received an independent hearing on the merits. However, a taxpayer seeking judicial review of the Business and Tax Court's decision on the constitutional matter would be required to pay the tax to appeal to the Court of Appeals.

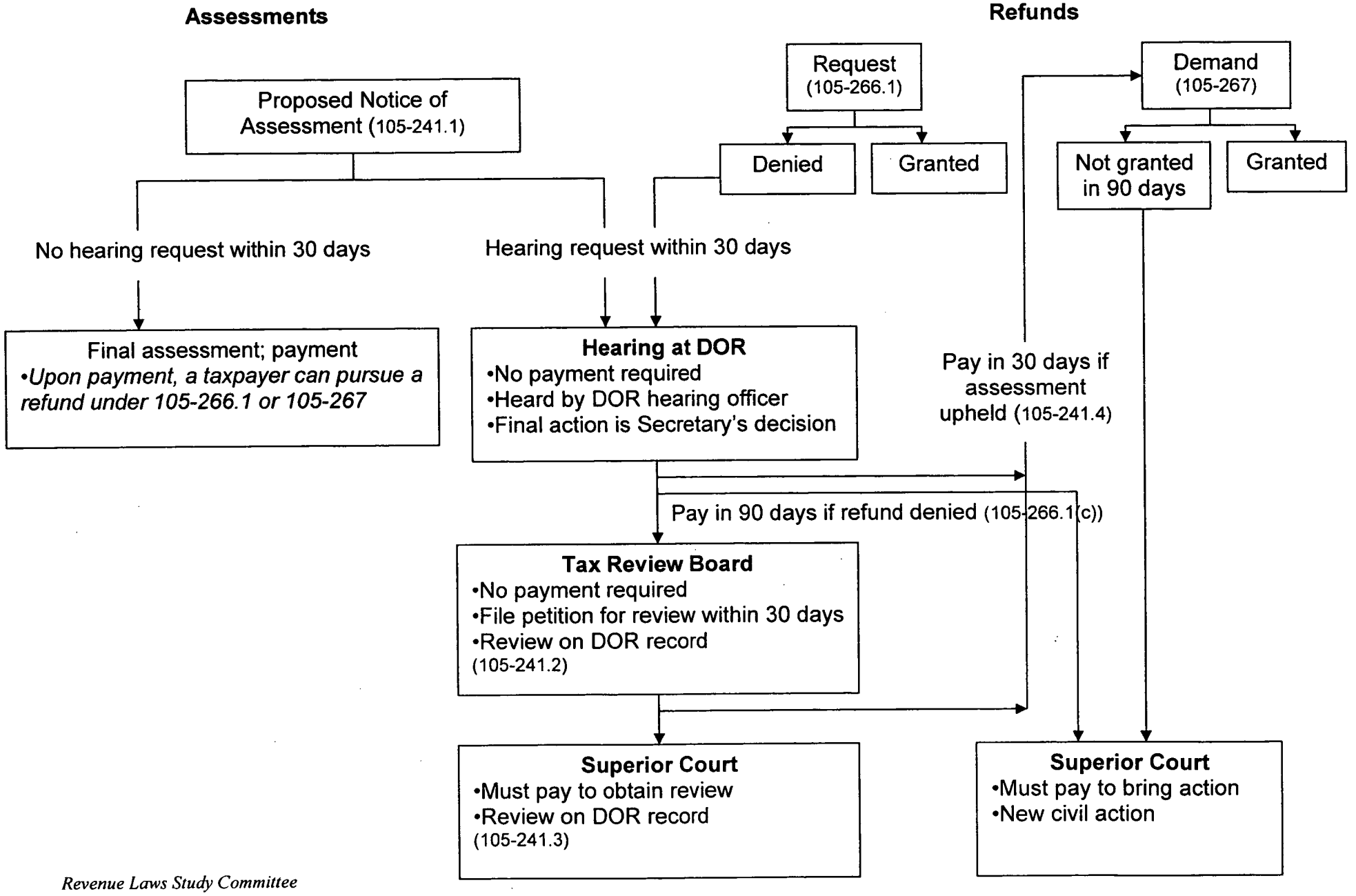
   This proposed change addresses two of the above-stated principles. First, it promotes fairness by providing all taxpayers, regardless of their resources, with the same avenues for recourse when challenging a tax dispute. Moreover, by not requiring payment of the tax until after a taxpayer has had the opportunity to have an expeditious and impartial hearing, the proposal strikes the appropriate balance between protecting the fiscal stability of the State and protecting the rights of the taxpayer to be heard. Second, the proposed change promotes simplicity by establishing a consistent method for determining when a taxpayer must pay the tax during the tax appeals process, regardless of tax type or whether the dispute involves an assessment or a refund.

3. **Elimination of Tax Review Board.** – The proposal eliminates the Tax Review Board. Under this proposal, the role of the Tax Review Board is no longer needed because OAH would be the independent arbiter of disputed tax matters and the jurisdiction of the Business and Tax Court would include the review of tax cases. This change promotes simplicity and efficiency by eliminating an unnecessary step in the administrative review process.

4. **Expansion of Business Court jurisdiction.** – Currently, the North Carolina Business Court only handles cases involving complex and significant issues of corporate and commercial law, which are assigned by the Chief Justice of the North Carolina Supreme Court and designated "Complex Business Cases." This proposal contemplates adding all tax cases to the jurisdiction of the Business Court, which would be renamed the "North Carolina Business and Tax Court." This change addresses the fairness principle by providing both taxpayers and the State alike with a specialized forum for tax cases where it is anticipated that the court will develop expertise in this often complex area of the law.

5. **Length of time to object to a proposed assessment.** – The proposal adopts a 45-day time period for taxpayers to request an informal review of a notice of a proposed assessment, which reflects a balance between the positions of the taxpayer advocacy group COST and the Department of Revenue. This compromise applies the fairness principle by providing taxpayers with 15 additional days while not delaying unreasonably the Department's collection efforts.

Current Process
Review of Disputed Tax Matters



Proposed Process
Review of Disputed Tax Matters

Assessments

Proposed Notice of Assessment

No hearing request within 45 days

Final assessment, payment
Upon payment, a taxpayer can pursue a refund

Hearing request within 45 days

Refunds

Request for Refund

Granted

Review at DOR
- No payment required; informal process; no record established.
- If assessment is not resolved in 120 days, taxpayer can request final assessment and then file petition at OAH.
- If refund denied or not granted in 120 days, taxpayer can file petition at OAH.

Office of Administrative Hearings
- No payment required.
- File petition for review within 60 days.
- Independent tribunal.
- Record created here.
- Constitutional questions transferred to or reserved for Business and Tax Court

Business and Tax Court
- Must pay to obtain review, unless case transferred from OAH on constitutional issues.
- Review on OAH record, except when court develops record on constitutional issues.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-MCxz-17 [v.3] (1/8)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/11/2007 4:52:53 PM

Short Title: Conservation Tax Credit Modifications. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE CREDIT FOR CERTAIN REAL PROPERTY DONATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.34 reads as rewritten:

"**§ 105-130.34. Credit for certain real property donations.**

(a) Any corporation that makes a qualified donation of an interest in real property located in North Carolina during the taxable year that is useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, ~~or other similar land conservation purposes~~ (iv) forestland or farmland conservation, (v) watershed protection, (vi) conservation of natural areas as that term is defined in G.S. 113A-164.3(3), (vii) conservation of natural or scenic river areas as those terms are used in G.S. 113A-34, (viii) conservation of predominantly natural parkland, or (ix) historic landscape conservation is allowed a credit against the tax imposed by this Part equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in real property must be donated in perpetuity to and accepted by the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions pursuant to G.S. 105-130.9. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance are not eligible for this credit. The credit allowed under this section may not exceed five hundred thousand dollars ($500,000). To support the credit allowed by this section, the taxpayer must file with ~~its~~ the income tax ~~return,~~return for the taxable year in which the credit is ~~claimed, a certification by the Department of Environment and Natural~~

~~Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection.~~claimed the following:

(1) A certification by the Department of Environment and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection.

(2) A self-contained or summary appraisal report as defined in Standards Rule 2-2 in the latest edition of the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Foundation for the property. For fee simple absolute donations of real property, a taxpayer may submit documentation of the county's appraised value of the donated property, as adjusted by the sales assessment ratio, in lieu of an appraisal report.

(b) The credit allowed by this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer.

(c) Any unused portion of this credit may be carried forward for the next succeeding five years.

(d) That portion of a qualifying donation that is the basis for a credit allowed under this section is not eligible for deduction as a charitable contribution under G.S. 105-130.9."

SECTION 2. G.S. 105-151.12 reads as rewritten:

"**§ 105-151.12. Credit for certain real property donations.**

(a) ~~A person who~~An individual or pass-through entity that makes a qualified donation of an interest in real property located in North Carolina during the taxable year that is useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, ~~or (iv) other similar land conservation purposes~~(iv) forestland or farmland conservation, (v) watershed protection, (vi) conservation of natural areas as that term is defined in G.S. 113A-164.3(3), (vii) conservation of natural or scenic river areas as those terms are used in G.S. 113A-34, (viii) conservation of predominantly natural parkland, or (ix) historic landscape conservation is allowed a credit against the tax imposed by this Part equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in property must be donated in perpetuity to and accepted by the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions under the Code. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance are not eligible for this credit. ~~The credit allowed under this section may not exceed two hundred fifty thousand dollars ($250,000).~~ To support the credit allowed by this section, the taxpayer must file with the income tax return for the taxable year in which the credit is claimed ~~a certification by the Department of Environment and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection.~~the following:

(1) A certification by the Department of Environment and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection. The certification for a qualified donation made by a pass-through entity must be filed by the pass-through entity.

(2) A self-contained or summary appraisal report as defined in Standards Rule 2-2 in the latest edition of the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Foundation for the property. For fee simple absolute donations of real property, a taxpayer may submit documentation of the county's appraised value of the donated property, as adjusted by the sales assessment ratio, in lieu of an appraisal report.

(a1) Individuals. – The aggregate amount of credit allowed to an individual in a taxable year under this section for one or more qualified donations, whether made directly or indirectly as owner of a pass-through entity, may not exceed two hundred fifty thousand dollars ($250,000). In the case of property owned by a married couple, if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint return. If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this section on a separate return.

(a2) Pass-Through Entities. – The aggregate amount of credit allowed to a pass-through entity in a taxable year under this section for one or more qualified donations, whether made directly or indirectly as owner of another pass-through entity, may not exceed five hundred thousand dollars ($500,000). Each individual who is an owner of a pass-through entity is allowed as a credit an amount equal to the owner's allocated share of the credit to which the pass-through entity is eligible under this subsection, not to exceed two hundred fifty thousand dollars ($250,000). Each corporation that is an owner of a pass-through entity is allowed as a credit an amount equal to the owner's allocated share of the credit to which the pass-through entity is eligible under this subsection, not to exceed five hundred thousand dollars ($500,000).

(b) The credit allowed by this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer.

Any unused portion of this credit may be carried forward for the next succeeding five years.

(c) Repealed by Session Laws 1998-212, s. 29A.13(b).

~~(d) In the case of property owned by a married couple, if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint return. If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this section on a separate return.~~

(e) In the case of marshland for which a claim has been filed pursuant to G.S. 113-205, the offer of donation must be made before December 31, 2003 to qualify for the credit allowed by this section.

~~(f) Notwithstanding G.S. 105-269.15, the maximum dollar limit that applies in determining the amount of the credit applicable to a partnership that qualifies for the credit applies separately to each partner.~~"

SECTION 3. This act becomes effective for taxable years beginning on or after January 1, 2007.

DRAFT 2007-MCxz-17:
Conservation Tax Credit Modifications

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	January 12, 2007
Introduced by:		**Summary by:**	Dan Ettefagh Committee Counsel
Version:			

SUMMARY: ***This legislative proposal would equalize the cap for the conservation tax credit for corporations and pass-through entities at $500,000. The bill would also require any taxpayer claiming the credit to support the claim's represented value of the real property donation by using either certain appraisal reports or the county's appraisal value as adjusted by the sales assessment ratio. Finally, the bill narrows the conservation purposes which qualify the land for a credit.***

CURRENT LAW: Under current law, a taxpayer receives an income tax credit for certain donations of real property located in North Carolina. The amount of the credit is 25% of the fair market value of the donated property interest, capped at $250,000 for individuals and $500,000 for corporations. To be eligible for the credit, the land must be useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, or (iv) other similar land conservation purposes, and the land must be donated in perpetuity to and accepted by the State, a local government, or a body organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions.

In support of the claim of the credit, a taxpayer is required to file with the income tax return a certification by DENR that the property is suitable for the statutorily listed conservation purposes. DENR does not review the documentation in an effort to verify the taxpayer's representation as to the fair market value of the donated property interest.

BILL ANALYSIS: Prior to January 1, 2007, the $250,000 cap for individuals claiming a conservation tax credit was not applied to pass-through entities as a whole. Rather, the pass-through entity received tax credits of up to $250,000 for each member making a qualifying donation. After January 1, 2007, pass-through entities were eligible only for a credit of $250,000 while corporations were eligible for a credit of $500,000. This legislative proposal raises the conservation tax credit dollar limitation for pass-through entities to $500,000 in order to bring the credit to the same level as that which is available to corporate taxpayers.

This bill also addresses concerns regarding the accuracy of the stated fair market value of donated property interests. Current law does not require any specific documentation, other than a certification by DENR of a proper conservation purpose, to establish the fair market value of the donation. The Department has reported problems associated with taxpayer use of restricted appraisal reports to establish the fair market value of the donation. Restricted appraisal reports are reports done specifically for one person and contain little or no information relied upon by the appraiser to formulate the property's value. The bill addresses this issue by requiring a taxpayer claiming the credit to submit as support for the credit either a self-contained or a summary appraisal report, which are two types of reports defined by Standards rule 2-2 of the Uniform Standards of Professional Appraisal Practice and required to have certain information included supporting the valuation determination. A taxpayer may elect, for fee simple donations of property only, to use the county's appraised value of the property as adjusted by the sales assessment ratio.

Under current law, the qualifying conservation purposes include the catch-all phrase, "other similar land conservation purposes." Differences in the statutory construction of this phrase developed between DENR and Revenue. The bill addresses this discrepancy by eliminating this phrase and substituting six, new, specific conservation purposes: forestland or farmland conservation, watershed protection, conservation of natural areas as that term is defined in G.S. 113A-164.3(3), conservation of natural or scenic river areas as those terms are used in G.S. 113A-34, conservation of predominantly natural parkland, or historic landscape conservation.

EFFECTIVE DATE: This bill would become effective for taxable years beginning on or after January 1, 2007.

BACKGROUND: The conservation tax credit was enacted in 1983 with a dollar limitation for all taxpayers of $5,000. That cap was raised in 1989 (to $25,000 for all taxpayers), 1997 (to $100,000 for individuals and $250,000 for corporations), and in 1999 (to $250,000 for individuals and $500,000 for corporations).

In 2001, the Revenue Laws Study Committee proposed that North Carolina begin applying dollar amount limitations of most tax credits to pass-through entities as a whole as well as to each individual partner. Doing so brought North Carolina into conformity with how federal law allowed pass-through entities to take tax credits. While the original proposal applied to the conservation tax credit, the bill that was ultimately enacted excluded the conservation tax credit and preserved the historic treatment of pass-through entities taking the tax credit by applying the cap only to the individual members of the pass-through entity and not to the entity as a whole. Accordingly, the conservation tax credit available to pass-through entities was the statutory dollar amount limitation multiplied by the number of members within the pass-through entity making a qualifying real property interest donation. This exception, originally set to expire in 2005, was twice extended, thus preserving this treatment of pass-through entities for purposes of the conservation tax credit to January 1, 2007. After January 1, 2007, pass-through entities were limited, as were all individual taxpayers, to a cap of $250,000.

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-SVxz-1 [v.5] (12/06)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/12/2007 11:28:09 AM

Short Title: IRC Update. (Public)

Sponsors: Unknown.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-228.90(b)(1b) reads as rewritten:

"(b) Definitions. – The following definitions apply in this Article:

...

(1b) Code. – The Internal Revenue Code as enacted as of ~~January 1, 2006,~~ January 1, 2007, including any provisions enacted as of that date which become effective either before or after that date.

SECTION 2. Notwithstanding Section 1 of this bill, any amendments to the Internal Revenue Code enacted after January 1, 2006 that increase North Carolina taxable income for the 2006 taxable year become effective for taxable years beginning on or after January 1, 2007.

SECTION 3. This act is effective when it becomes law.

2007-SVxz-1: IRC Update

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	January 12, 2007
Introduced by:		**Summary by:**	Heather Fennell Committee Counsel
Version:			

SUMMARY: ***This proposal would update the reference to the Internal Revenue Code used in defining and determining certain State tax provisions.***

CURRENT LAW: North Carolina's tax law tracks many provisions of the federal Internal Revenue Code by reference to the Code.[1] The General Assembly determines each year whether to update its reference to the Internal Revenue Code.[2] Updating the Internal Revenue Code reference makes recent amendments to the Code applicable to the State to the extent that State law tracks federal law. The General Assembly's decision whether to conform to federal changes is based on the fiscal, practical, and policy implications of the federal changes and is normally enacted in the following year, rather than in the same year the federal changes are made.

BILL ANALYSIS:

IRC Update

This bill would change the reference date to January 1, 2007, effective when the bill becomes law. Changing the reference date to January 1, 2007 would incorporate the changes made in the following acts: the Deficit Reduction Act of 2005, the Tax Increase Prevention and Reconciliation act of 2005, the Heroes Earned Retirement Opportunities Act, the Pension Protection Act of 2006, and the Tax Relief and Health Care Act of 2006.

Between January 1, 2006 and December 20, 2006 there were five major pieces of federal legislation that made changes to the Internal Revenue Code. This federal legislation includes the Deficit Reduction Act of 2005 (P.L. 109-71) signed into law February 9, 2006, the Tax Increase Prevention and Reconciliation act of 2005 (P.L. 109-222) signed into law May 18, 2006, the Heroes Earned Retirement Opportunities Act (P.L. 109-227) signed into law May 23, 2006, the Pension Protection Act of 2006 (P.L. 109-280) signed into law August 19, 2006 and the Tax Relief and Health Care Act of 2006 (P.L. 109-432) signed into law December 20, 2006. This summary only presents the applicable changes from the Tax Relief and Health Care Act of 2006.

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[1] North Carolina first began referencing the Internal Revenue Code in 1967, the year it changed its taxation of corporate income to a percentage of federal taxable income.

[2] The North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Article V, Section 2(1) of the Constitution provides in pertinent part that the "power of taxation ... shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would ... be invalidated as an unconstitutional delegation of legislative power."

Tax Relief and Health Care Act of 2006 (P.L. 109-432)

Extension of prior provisions:

This act extends for two years, until the tax year ending December 31, 2007, the following provisions:

- *Above the line deduction for higher education expenses.* Under prior law, individuals were allowed an above-the-line deduction for qualified tuition and related expenses for higher education paid by the individual during the taxable year. The maximum deduction is $4,000 for an individual whose adjusted gross income for the taxable year does not exceed $65,000 ($130,000 in the case of a joint return), or $42,000 for other individuals whose adjusted gross income does not exceed $80,000 ($160,000 in the case of a joint return). This deduction was available for tax years beginning prior to December 31, 2005.

  This provision is extended for two years, until the tax year ending December 31, 2007.

- *Deduction of state and local general sales taxes.* The American Jobs Creation Act (ACJA) of 2004 allowed taxpayers to deduct state and local sales taxes in lieu of deducting state and local income taxes, real property taxes, and personal property taxes. This provision became effective with the 2004 taxable year and was set to expire for tax years beginning in 2006 and thereafter. This provision extends the deduction for two years, through December 31, 2007.

  The General Assembly did not conform to this change under the ACJA. In order to allow this deduction for North Carolina income tax purposes, affirmative action must be taken to conform to the initial change as well as the extension of the provision as provided in this act. The current bill takes no action on this matter.

- *Above the line deduction for qualified expenses of elementary and secondary school teachers.* Under prior law, an eligible educator was allowed an above-the-line deduction of up to $250 for amounts paid by the teacher for books or supplies used in the class room. An eligible educator is a kindergarten through grade 12 teacher, instructor, counselor, principal, or aide in a school for at least 900 hours during the school year. This deduction was available for tax years beginning prior to December 31, 2005.

  This provision is extended for two years, until the tax year ending December 31, 2007.

- *Fifteen-year straight-line cost recovery for qualified leasehold improvements and qualified restaurant property.* Prior law provided for 15-year straight-line depreciation for qualified leasehold improvements to nonresidential real property placed into service after the date of enactment (October 22, 2004) and prior to January 1, 2006. A qualified leasehold improvement is an improvement made to the interior of a building by either the lessor or lessee and placed in service more than three years after the building is placed in service. Under prior law, a qualified leasehold improvement was depreciated using straight-line depreciation over a 39-year period – the same period as for depreciation of nonresidential property in general.

A similar depreciation schedule is put into place for qualified restaurant property placed into service after the date of enactment (October 22, 2004) and prior to January 1, 2006. In order to qualify as "qualified restaurant property", the property must be a building improvement placed in service more than three years after the building is placed in service and the restaurant must use more than half of the square footage of the building. This deduction was available for tax years beginning prior to December 31, 2005.

This provision is extended for two years, until the tax year ending December 31, 2007.

• *Enhanced deduction for the charitable donation of computer technology and equipment.* Prior law allowed an enhanced deduction for contributions of computer technology or equipment to schools or public libraries that would use the computer equipment for educational purposes. This deduction was available for tax years beginning prior to December 31, 2005.

This provision is extended for two years, until the tax year ending December 31, 2007.

This act extends for one year, until the tax years ending December 31, 2009, the following provision:

• *Deduction for energy efficient commercial buildings.* Prior law allowed a deduction for energy efficient commercial buildings. Energy efficient expenditures are certified as being installed as part of a plan designed to reduce the total annual energy and power costs with respect to the interior lighting systems, heating, cooling, and ventilation, and hot water systems of the building by 50 percent or more in comparison to a reference building. The deduction is limited to $1.80 per square foot of property for which such expenditures are made. A partial allowance of the deduction is allowed for buildings that do not meet the requirement of a 50 percent energy savings but are certified by a qualified profession as meeting or exceeding the applicable system specific savings targets established by the Secretary of the Treasury. This deduction is available for property placed in service after December 31, 2005 and prior to January 1, 2008.

This provision extends the deduction to property placed in service prior to January 1, 2009.

New provisions:

• *Change in contribution limitations for Health Savings Accounts.* Under current law individuals with a high deductible health plan may establish health savings accounts ("HSA") for the payment of current and future medical costs. Contributions to HSAs made by or on behalf of an individual are deductible by the individual. The contributions are limited to the lesser of (1) the annual deductible of the health plan or (2) $2,850 for individual coverage and 55,650 for family coverage.

The act modifies the contribution limitation for HSAs. Contributions are now limited to $2,850 for individual coverage and 55,650 for family coverage. This provision is effective for taxable years beginning after December 31, 2006.

• *Deduction allowable with respect to income attributable to domestic production activities in Puerto Rico.* Present law provides a deduction from taxable income that is equal to a portion of the taxpayer's qualified production activities income in the United States. For the taxable year

beginning in 2006 the deduction is three percent of income. For the taxable year beginning in 2007 the deduction is six percent of income. Currently, Puerto Rico is not in the definition of the United States.

The act includes Puerto Rico in the definition of the United States for the purposes of determining domestic production activities, but only if all of the taxpayer's gross receipts from sources within Puerto Rico are currently taxable for U.S. Federal Income tax purposes. This provision is effective for the first two taxable years beginning after December 31, 2005, and before January 1, 2008.

• *Deduction for premiums for mortgage insurance.* Present law provides for a deduction for qualified residence interest. The maximum amount of home equity indebtedness is $100,000. The maximum amount or acquisition indebtedness is $1 million. The act provides that premiums paid for mortgage insurance on a qualified residence of the taxpayer are treated as interest that is qualified residence interest and thus deductible. The amount allowable as a deduction under the provision is phased out ratably by 10 percent for each $1,000 by which the taxpayer's adjusted gross income exceeds $100,000 ($500 and $50,000 respectively, in the case of a married individual filing a separate return). The deduction is not allowed if the taxpayer's adjusted gross income exceeds $110,000 ($55,000 in the case of a married individual filing a separate return).

This provision does not apply with respect to any mortgage insurance contract issued before January 1, 2007. The provision terminates for any amount paid or accrued after December 21, 2007, or property allocable to any period after that date.

H0050e3-SMTD

INTERNAL REVENUE CODE UPDATE
ESTIMATED GENERAL FUND REVENUE IMPACT ($MILL)

Provision	Recurring?	2006-07	2007-08	2008-09	2009-10	2010-11
Tax Increase Prevention and Reconciliation Act						
Extension of taxation of passive income minors	Yes	1.7	1.7	1.8	1.8	1.9
Increased expensing for small businesses	No	0.0	-35.8	-27.9	-8.5	11.4
Increased income limit for conversion of traditional IRA's to Roth IRA's	Yes	0.0	0.0	-1.3	-2.5	-21.9
Pension Protection Act 2006						
IRA inflation indexing	Yes	0.0	0.0	-0.4	-0.8	-0.9
Health Insurance premiums for retired public safety officers	Yes	0.0	-2.0	-2.2	-2.5	-2.8
Tax free IRA distributions to charities	No	0.0	-1.8	-0.8	-.2	0.0
Charitable deductions for contribution of food inventories	No	-0.6	-0.9	-0.7	0.0	0.0
Tax Relief and Health Care Act of 2006						
Deduction for higher education tuition, etc.	No	0.0	-13.9	-14.4	0.0	0.0
Deductions for qualified expenses of K-12 teachers	No	0.0	-2.3	-1.3	0.0	0.0
Depreciation for qualified leasehold improvements and qualified restaurant property	No	-1.0	-1.3	-1.5	-1.5	-1.4
Deduction for the donation of computer technology and equipment	No	-0.4	-0.2	0.0	0.0	0.0
Deduction for energy efficient commercial buildings	No	0.0	0.0	0.0	0.0	0.0
Change in contribution limitations for Health Savings Accounts	Yes	-0.5	-0.4	-0.4	-0.4	-0.4
Total Impact		**-$0.8**	**-$56.9**	**-$49.1**	**-$14.4**	**-$14.1**
Recurring		**1.2**	**-0.7**	**-2.5**	**-4.4**	**-24.1**
One-Time		**-$2.0**	**-$56.2**	**-$46.6**	**-$10.0**	**$10.0**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-RBxz-1 [v.8] (12/30)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/16/2007 8:06:35 AM

Short Title: Motor Fuel Tax Administrative Changes. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE MOTOR FUEL TAX LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-258(a) reads as rewritten:

"(a) Secretary May Examine Data and Summon Persons. The Secretary of Revenue, for the purpose of ascertaining the correctness of any return, making a return where none has been made, or determining the liability of any person for ~~any tax imposed by this Subchapter,~~ a tax, or collecting any such tax, shall have the power to examine, personally, or by an agent designated by him, any books, papers, records, or other data which may be relevant or material to such inquiry, and the Secretary may summon the person liable for the tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, care or control of books of account containing entries relevant or material to the income and expenditures of the person liable for the tax or required to perform the act, or any other person having knowledge in the premises, to appear before the Secretary, or his agent, at a time and place named in the summons, and to produce such books, papers, records or other data, and to give such testimony under oath as may be relevant or material to such inquiry, and the Secretary or his agent may administer oaths to such person or persons. If any person so summoned refuses to obey such summons or to give testimony when summoned, the Secretary may apply to the Superior Court of Wake County for an order requiring such person or persons to comply with the summons of the Secretary, and the failure to comply with such court order shall be punished as for contempt."

SECTION 2.(a) G.S. 105-449.52 reads as rewritten:

"**§ 105-449.52. Civil penalties applicable to motor carriers.**

(a) Penalty. – A motor carrier who does any of the following is subject to a civil penalty:

(1) Operates in this State or causes to be operated in this State a motor vehicle that either fails to carry the registration card required by this Article or fails to display an identification marker in accordance with this Article. The amount of the penalty is one hundred dollars ($100.00).

(2) Is unable to account for identification markers the Secretary issues the motor carrier, as required by G.S. 105-449.47. The amount of the penalty is one hundred dollars ($100.00) for each identification marker the carrier is unable to account for.

(3) Displays an identification marker on a motor vehicle operated by a motor carrier that was not issued to the carrier by the Secretary under G.S. 105-449.47. The amount of the penalty is one thousand dollars ($1,000) for each identification marker unlawfully obtained. Both the licensed motor carrier to whom the Secretary issued the identification marker and the motor carrier displaying the unlawfully obtained identification marker are jointly and severally liable for the penalty under this subdivision.

~~A~~

(a1) Payment. – A penalty imposed under this section is payable to the ~~Department of Revenue, the Department of Crime Control and Public Safety, or the Division of Motor Vehicles.~~ agency that assessed the penalty. When a motor vehicle is found to be operating without a registration card or an identification marker or with an identification marker the Secretary did not issue for the vehicle, the motor vehicle may not be driven for a purpose other than to park the motor vehicle until the penalty imposed under this section is paid unless the officer that imposes the penalty determines that operation of the motor vehicle will not jeopardize collection of the penalty.

(b) Hearing. – The procedure set out in G.S. 105-449.119 for protesting a penalty imposed under Article 36C, Part 6, of this Chapter applies to a penalty imposed under this section."

SECTION 2.(b) G.S. 105-449.115(f) reads as rewritten:

"(f) Sanctions Against Transporter. – The following acts are grounds for a civil ~~penalty payable to the Department of Crime Control and Public Safety or the Department of Revenue:~~penalty:

(1) Transporting motor fuel in a railroad tank car or transport truck without a shipping document or with a false or an incomplete shipping document.

(2) Delivering motor fuel to a destination state other than that shown on the shipping document.

The penalty ~~imposed under this subsection~~ is payable to the agency that assessed the penalty and is payable by the person in whose name the conveyance is registered, if the conveyance is a transport truck, and is payable by the person responsible for the movement of motor fuel in the conveyance, if the conveyance is a railroad tank car. The amount of the penalty is five thousand dollars ($5,000). A penalty imposed under this subsection is in addition to any motor fuel tax assessed."

SECTION 2.(c) G.S. 105-449.115A(c) reads as rewritten:

"(c) Sanctions. – Transporting motor fuel in a tank wagon without an invoice, bill of sale, or shipping document containing the information required by this section is grounds for a civil ~~penalty payable to the Department of Crime Control and Public Safety or the Department of Revenue.~~penalty. The penalty ~~imposed under this subsection~~ is payable to the agency that assessed the penalty and is payable by the person in whose name the tank wagon is registered. The amount of the penalty is one thousand dollars ($1,000). A penalty imposed under this subsection is in addition to any motor fuel tax assessed."

SECTION 2.(d) G.S. 105-449.117(b) reads as rewritten:

"(b) Civil Penalty. – The civil penalty is payable to the ~~Department of Transportation, Division of Motor Vehicles, or the Department of Revenue~~ agency that assessed the penalty and is payable by the person in whose name the highway vehicle is registered. The amount of the penalty depends on the amount of fuel in the supply tank of the highway vehicle. The penalty is the greater of one thousand dollars ($1,000) or five times the amount of motor fuel tax payable on the fuel in the supply tank. A penalty imposed under this section is in addition to any motor fuel tax assessed."

SECTION 2.(e) G.S. 105-449.118 reads as rewritten:

"§ 105-449.118. Civil penalty for buying or selling non-tax-paid motor fuel.

A person who dispenses non-tax-paid motor fuel into the supply tank of a highway vehicle or who allows non-tax-paid motor fuel to be dispensed into the supply tank of a highway vehicle is subject to a civil penalty of two hundred fifty dollars ($250.00) per occurrence.

The penalty is payable to the ~~Department of Transportation, Division of Motor Vehicles, or the Department of Revenue.~~ agency that assessed the penalty. Failure to pay a penalty imposed under this section is grounds under G.S. 20-88.01(b) to withhold or revoke the registration plate of the motor vehicle into which the motor fuel was dispensed."

SECTION 2.(f) G.S. 105-449.118A reads as rewritten:

"§ 105-449.118A. Civil penalty for refusing to allow the taking of a motor fuel sample.

A person who refuses to allow the taking of a motor fuel sample is subject to a civil penalty of one thousand dollars ($1,000). The penalty is payable to the ~~Department of Transportation, Division of Motor Vehicles, or the Department of Revenue.~~ agency that assessed the penalty. If the refusal is for a sample to be taken from a vehicle, the penalty is payable by the person in whose name the vehicle is registered. If the refusal is for a sample to be taken from any other storage tank or container, the penalty is payable by the owner of the container."

SECTION 3. G.S. 105-449.72(a)(3) reads as rewritten:

"(a) Initial Bond. – An applicant for a license as a refiner, a terminal operator, a supplier, an importer, a blender, a permissive supplier, or a distributor must file with the Secretary a bond or an irrevocable letter of credit. A bond or an irrevocable letter of credit must be conditioned upon compliance with the requirements of this Article, be

payable to the State, and be in the form required by the Secretary. The amount of the bond or irrevocable letter of credit is determined as follows:

(1) For an applicant for a license as any of the following, the amount is two million dollars ($2,000,000):
  a. A refiner.
  b. A terminal operator.
  c. A supplier that is a position holder or a person that receives motor fuel pursuant to a two-party exchange.
  d. A bonded importer.
  e. A permissive supplier.

(2) For an applicant for a license as any of the following, the amount is two times the applicant's average expected monthly tax liability under this Article, as determined by the Secretary. The amount may not be less than two thousand dollars ($2,000) and may not be more than five hundred thousand dollars ($500,000):
  a. ~~A supplier that is a fuel alcohol provider or a biodiesel provider but is neither a position holder nor a person that receives motor fuel pursuant to a two-party exchange.~~
  b. An occasional importer.
  c. A tank wagon importer.
  d. A distributor.
  e. Repealed by Session Laws 1997-60, s. 5, effective October 5, 1997.

(3) For an applicant for a license ~~as a blender,~~ as any of the following, a bond is required only if the applicant's average expected annual tax liability under this Article, as determined by the Secretary, is at least two thousand dollars ($2,000). When a bond is required, the bond amount is the same as under subdivision (2) of this subsection.
  a. A blender.
  b. A supplier that is a fuel alcohol provider or a biodiesel provider but is neither a position holder nor a person that receives motor fuel pursuant to a two-party exchange."

SECTION 4. G.S. 105-449.115(g) reads as rewritten:

"(g) Penalty Defense. – Compliance with the conditions set out in this subsection is a defense to a civil penalty imposed under subsection (f) of this section as a result of the delivery of fuel to a state other than the destination state printed on the shipping document for the fuel. The Secretary must waive a penalty imposed against a person under that subsection if the person establishes a defense under this subsection. The conditions for the defense are:

(1) The person notified the Secretary of the diversion ~~within seven days after the diversion occurred~~ and received a confirmation number for the ~~diversion.~~diversion before the imposition of the penalty.

(2) Tax was timely paid on the diverted ~~fuel.~~fuel, unless the person is a motor fuel transporter."

SECTION 5. G.S. 119-17 is repealed.

SECTION 6. Section 3 of this act becomes effective October 1, 2007. The remainder of this act is effective when it becomes law. Section 4 of this act applies to penalties assessed on or after the effective date of this act and to refund requests that have not been finally determined as of the effective date of this act.

BILL DRAFT 2007-RBxz-1: Motor Fuel Tax Changes

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	January 16, 2007
Introduced by:		**Summary by:**	
Version:	Draft		

SUMMARY: Draft Proposal 2007-RBxz-1 makes the following changes to the motor fuel tax laws, as requested by the Department of Revenue:

Section	Explanation
1	Provides that the Secretary of Revenue's authority to summon records also applies to the motor fuel tax statutes. The section makes this change by using the defined term 'tax'. G.S. 105-228.90 defines 'tax' includes all of the State levied taxes. This section would be effective when it becomes law.
2	Makes a technical change to the statute to require that a civil penalty is payable to the agency that assessed the penalty. In addition to the Department of Revenue, G.S. 105-269.3 provides that the State Highway Patrol, law enforcement officers, and other appropriate personnel in the Department of Crime Control and Public Safety may enforce the motor fuel tax laws. The reorganization of the Division of Motor Vehicles in 2003 moved the State Highway Patrol from DMV to the Department of Crime Control and Public Safety. This substantive change in 2003 necessitated technical, conforming changes to the tax statutes. The wording proposed by this section would eliminate the need for similar conforming changes in the future. This section would be effective when it becomes law.
3	Provides that a fuel alcohol provider and a biodiesel provider need only post a bond to receive a license as a supplier[1] if its annual motor fuel tax liability is at least $2,000. Under current law, to be licensed as a supplier, a fuel alcohol provider or a biodiesel provider must post a bond in an amount that is two times the applicant's average expected monthly tax liability. The amount may not be less than $2,000 and may not be more than $5,000. Under this section, if a fuel alcohol provider or biodiesel provider must post a bond, then the amount would be the same as the current law bond requirement. This section would be effective October 1, 2007.
4	Modifies the defense to imposition of a penalty for failure to obtain a diversion number for motor fuel delivered to a state other than the destination state printed on the shipping document. Under current law, the defense is that the person notified the Secretary of the diversion within 7 days after the diversion occurred and timely paid the tax on the diverted fuel.[2] This section removes the 7-day time period by providing that the notification must have occurred prior to the imposition of the penalty. It also removes the requirement that the tax be timely paid if the person assessed with the penalty is the motor fuel transporter because it is not the motor

[1] A supplier is defined as any of the following: a position holder or a person who receives motor fuel pursuant to a two-party exchange, a fuel alcohol provider, a biodiesel provider, or a refiner. (G.S. 105-449.60)

[2] The General Assembly established this defense in 2005. (S.L. 2005-435.)

	fuel transporter's responsibility to pay the tax.
5	Repeals an unnecessary statute. Article 3 of Chapter 119 directs the Commissioner of Agriculture to inspect alternative fuel, motor fuel, and kerosene to protect the public. This statute says that various fuels are subject to inspection. It does not appear to be a necessary statute because the provisions of Article 3 govern what fuel is inspected and what standards the fuel must meet. The terms 'alternative fuel', 'motor fuel', and 'kerosene' are defined terms in Article 3. This section would be effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-TDz-4 [v.13] (01/08)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/12/2007 11:27:55 AM

Short Title: Revenue Laws Technical Changes. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE REVENUE LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53B-4(2) reads as rewritten:

"(2) Authorization under G.S. 105-251, ~~105-251.1,~~ or 105-258."

SECTION 2. G.S. 105-40(7a) reads as rewritten:

"(7a) All exhibitions, performances, and entertainments promoted and managed by 'a nonprofit arts organization.' ~~organization' that is exempt from income tax under G.S. 105-130.11(a)(3).~~ This exemption does not apply to athletic events. A 'non-profit arts organization' means:

a. An organization that is exempt from income tax under G.S. 105-130.11(a)(3).

b. An organization whose primary purpose is to offer choral and theatrical performances."

SECTION 3. G.S. 105-40(10) reads as rewritten:

"(10) Arts festivals held by a person that is exempt from income tax under Article 4 of this Chapter and that meets the following conditions:

a. The person holds no more than two arts festivals during a calendar year.

b. Each of the person's arts festivals last no more than seven consecutive days.

c. The arts festivals are held outdoors on public property and involve a variety of exhibitions, entertainments, and activities."

SECTION 4. G.S.105-40(11) reads as rewritten:

"(11) Community festivals held by a person who is exempt from income tax under Article 4 of this Chapter and that meets all of the following conditions:

a. The person holds no more than one community festival during a calendar year.

b. The community festival lasts no more than seven consecutive days.

c. The community festival involves a variety of exhibitions, entertainments, and activities, the majority of which are held outdoors and are open to the public."

SECTION 5. G.S.105-113.82(a) reads as rewritten:

"(a) Amount, Method. – The Secretary shall distribute annually the following percentages of the net amount of excise taxes collected on the sale of malt beverages and wine during the preceding 12-month period ending March 31~~, less the amount of the net proceeds credited to the Department of Commerce under G.S. 105-113.81A,~~ to the counties and cities in which the retail sale of these beverages is authorized in the entire county or city:

(1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty-three and three-fourths percent (23¾%);

(2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), sixty-two percent (62%); and

(3) Of the tax on fortified wine levied under G.S. 105-113.80(b), twenty-two percent (22%).

For purposes of this subsection, 'net amount' means gross collections less refunds and amounts credited to the Department of Commerce under G.S. 105-113.81A. If malt beverages, unfortified wine, or fortified wine may be licensed to be sold at retail in both a county and a city located in the county, both the county and city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. If one of these beverages may be licensed to be sold at retail in a city located in a county in which the sale of the beverage is otherwise prohibited, only the city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. The amounts distributed under subdivisions (1), (2), and (3) shall be computed separately."

SECTION 6. G.S. 105-127.87(b) reads as rewritten:

"(b) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier designation of the county where the new jobs are created during the taxable year.

(1) If the taxpayer creates new jobs at more than one eligible establishment in a county during the taxable year, the threshold applies to the aggregate number of new jobs created at all eligible establishments within the county during that year. If the taxpayer creates new jobs at eligible establishments in different counties during the taxable year, the threshold applies separately to the aggregate number of new jobs created at eligible establishments in each county.

(2) If the taxpayer creates new jobs in an urban progress zone or an agrarian growth zone, the applicable threshold is the one for a development tier one area. New jobs created in an urban progress zone or an agrarian growth zone can not be aggregated with jobs created at any other eligible establishments regardless of county.

Area Development Tier	Threshold
Tier One	5
Tier Two	10
Tier Three	15"

SECTION 7. G.S.105-129.16E(b) reads as rewritten:

"(b) Allocation. – If the taxpayer is an individual who is a nonresident or a part-year resident, the taxpayer must reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. If the taxpayer is not an individual and is required to apportion its multistate business income to this State, the taxpayer must reduce the amount of the credit by multiplying it by the apportionment fraction used to apportion its ~~business~~ apportionable income to this State."

SECTION 8. G.S. 105-129.88(c) reads as rewritten:

"(c) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier where the eligible business property is placed in service during the taxable year.

(1) If the taxpayer places business property in service in an urban progress zone or an agrarian growth zone, the applicable threshold is the one for a development tier one area. Business property placed in service in an urban progress zone or an agrarian growth zone can not be aggregated with business property placed in service created at any other eligible establishments regardless of county.

(2) If the taxpayer places eligible business property in service at more than one establishment in a county during the taxable year, the threshold applies to the aggregate amount of eligible business property placed in service during the taxable year at all establishments in the county. If the taxpayer places eligible business property in service at establishments in different counties, the threshold applies separately to the aggregate amount of eligible business property placed in service in each county. If the taxpayer places eligible ~~machinery and equipment~~business property in service at an establishment over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Development Tier	Threshold
Tier One	$ -0-
Tier Two	1,000,000
Tier Three	2,000,000"

SECTION 9. G.S.105-129.88(e) reads as rewritten:

"(e) Transferred Property. – If, in one of the four years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is moved to a county in a higher-numbered development tier or ~~to~~ out of an urban progress zone or an agrarian growth zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the business property had been placed in service initially in the area to which it was moved. If, in one of the four years in which the installment of a credit accrues, the business property with respect to which a credit was claimed is moved to a county in a lower-numbered development tier or an urban progress zone or an agrarian growth zone, the remaining installments of the credit shall be calculated as if the business property had been placed in service initially in the area to which it was moved."

SECTION 10. G.S. 105-130.48(e) reads as rewritten:

"(e) Documentation of Credit. – ~~To~~ Upon request, to support the credit allowed by this section, the taxpayer must file with its income tax return, for the taxable year in which the credit is claimed, a certification by the Department of Environment and Natural Resources stating the number of bushels of oyster shells donated by the taxpayer."

SECTION 11. G.S. 105-151.30(d) reads as rewritten:

"(d) Documentation of Credit. – ~~To~~ Upon request, to support the credit allowed by this section, the taxpayer must file with its income tax return, for the taxable year in which the credit is claimed, a certification by the Department of Environment and Natural Resources stating the number of bushels of oyster shells donated by the taxpayer."

SECTION 12. G.S.105-164.13(9) reads as rewritten:

"(9) Sales of boats, fuel oil, lubricating oils, machinery, equipment, nets, rigging, paints, parts, accessories, and supplies to persons for use by them principally in commercial fishing operations within the meaning of G.S. 113-168, except when the property is for use by persons principally to take fish for recreation or personal use or consumption. As used in this subdivision, "fish" is defined as in G.S. 113-129(7). For the purposes of this subsection 'commercial fishing operations' also includes charter boat and head boat operators. "

SECTION 13. G.S. 105-164.13(52) reads as rewritten:

"(52) Items subject to sales and use tax under G.S. 105-164.4, other than ~~electricity and~~ electricity, telecommunications service, and ancillary service as defined in G.S. 105-164.4, if all of the following conditions are met:

(a) The items are purchased by a State agency for its own use and in accordance with G.S. 105-164.29A.

(b) The items are purchased pursuant to a valid purchase order issued by the State agency that contains the exemption number of the agency and a description of the property purchased, or the items purchased are paid for with a State-issued check,

electronic deposit, credit card, procurement card, or credit account of the State agency.

(c) For all purchases other than by an agency-issued purchase order, the agency must provide to or have on file with the retailer the agency's exemption number."

SECTION 14. G.S. 105-164.16(b1) reads as rewritten:

"(b1) Monthly. – A taxpayer who is consistently liable for ~~more than~~at least one hundred dollars ($100.00) but less than ten thousand dollars ($10,000) a month in State and local sales and use taxes must file a return and pay the taxes due on a monthly basis. A monthly return is due by the 20th day of the month following the calendar month covered by the return."

SECTION 15. G.S. 105-164.16(d) reads as rewritten:

"(d) Use Tax on Out-of-State Purchases. – Use tax payable by an individual who purchases tangible personal ~~property~~property, excluding purchases of boats and aircrafts, outside the State for a nonbusiness purpose is due on an annual basis. For an individual who is not required to file an individual income tax return under Part 2 of Article 4 of this Chapter, the annual reporting period ends on the last day of the calendar year and a use tax return is due by the following April 15. For an individual who is required to file an individual income tax return, the annual reporting period ends on the last day of the individual's income tax year, and the use tax must be paid on the income tax return as provided in G.S. 105-269.14."

SECTION 16. G.S.105-164.16(d) as amended by section 9 of S.L. 2006-33 reads as rewritten:

"(d) Use Tax on Out-of-State Purchases. – Notwithstanding subsection (b), an individual who purchases tangible personal ~~property~~property, excluding purchases of boats and aircrafts, outside the State for a nonbusiness purpose shall file a use tax return on an annual basis. The annual reporting period ends on the last day of the calendar year. The return is due by the due date, including any approved extensions, for filing the individual's income tax return."

SECTION 17. G.S. 105-187.51B(a) as amended by section 24.9(a) of S.L.2006-66 reads as rewritten:

"(a) Tax. – A privilege tax is imposed on the following:

(1) A major recycling facility that purchases any of the following tangible personal property for use in connection with the facility:

a. Cranes, structural steel crane support systems, and foundations related to the cranes and support systems.

b. Port and dock facilities.

c. Rail equipment.

d. Material handling equipment.

e. Mill machinery parts and accessories."

SECTION 18. Subsection (c) is added to G.S. 105-187.52 and reads as:

"(c) Exemption. State agencies are exempted from the privilege taxes imposed by this article."

SECTION 19. G.S. 105-268.1 reads as rewritten:

"**§ 105-268.1. Agreements to coordinate the administration and collection of taxes.**

(a) The Secretary of Revenue is hereby authorized, with the approval of the Governor and Council of State, to enter into agreements with the United States government or any department or agency thereof, or with a state or any political subdivision thereof, for the purpose of coordinating the administration and collection of taxes imposed by this State and administered and collected by said Secretary with taxes imposed by the United States or by any other state or political subdivision thereof.

(b) The Secretary of Revenue is hereby authorized, with the approval of the Governor and Council of State, to share information with the United States government or any department or agency thereof, or with a state or any political subdivision thereof, for the purpose of obtaining data for statistical reports and revenue estimates."

SECTION 20. G.S. 115D-31.3(j) reads as rewritten:

"(j) Use of funds in low-wealth counties. – Funds retained by colleges or distributed to colleges pursuant to this section may be used to supplement local funding for maintenance of plant if the college does not receive maintenance of plant funds pursuant to G.S. 115D-31.2, and if the county in which the main campus of the community college is located:

(1) Is designated as a Tier 1 or Tier 2 county in accordance with G.S. 115D-31.4;~~G.S. 105-129.3;~~

(2) Had an unemployment rate of at least two percent (2%) above the State average or greater than seven percent (7%), whichever is higher, in the prior calendar year; and

(3) Is a county whose wealth, as calculated under the formula for distributing supplemental funding for schools in low-wealth counties, is eighty percent (80%) or less of the State average.

Funds may be used for this purpose only after all local funds appropriated for maintenance of plant have been expended."

SECTION 21. Article 3 of Chapter 115D is amended by adding a new section to read:

"**§ 115D-31.4. Development tier designation.**

(a) Tiers Defined. – A development tier one area is a county whose annual ranking is one of the 40 highest in the State. A development tier two area is a county whose annual ranking is one of the next 40 highest in the State. A development tier three area is a county that is not in a lower-numbered development tier.

(b) Development Factor. – Each year, on or before November 30, the Secretary of Commerce shall assign to each county in the State a development factor that is the sum of the following:

(1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the most recent 12 months for which data are available.

(2) The county's rank in a ranking of counties by median household income from highest to lowest, for the most recent 12 months for which data are available.

(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest, for the most recent 36 months for which data are available.

(4) The county's rank in a ranking of counties by adjusted assessed property value per capita as published by the Department of Public Instruction, from highest to lowest, for the most recent taxable year.

(c) Annual Ranking. – After computing the development factor as provided in this section and making the adjustments required in this section, the Secretary of Commerce shall rank all the counties within the State according to their development factor from highest to lowest. The Secretary shall then identify all the areas of the State by development tier and publish this information. A development tier designation is effective only for the calendar year following the designation.

(d) Data. – In measuring rates of unemployment and median household income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population and population growth, the Secretary shall use the most recent estimates of population certified by the State Budget Officer. For the purposes of this section, population statistics do not include people incarcerated in federal or State prisons.

(e) Adjustment for Certain Small Counties. – Regardless of the actual development factor, any county that has a population of less than 12,000 shall automatically be ranked one of the 40 highest counties, any county that has a population of less than 50,000 shall automatically be ranked one of the 80 highest counties, and any county that has a population of less than 50,000 and more than nineteen percent (19%) of its population below the federal poverty level according to the most recent federal decennial census shall automatically be ranked one of the 40 highest counties.

(f) Adjustment for Development Tier One Areas. – Regardless of the actual development factor, a county designated as a development tier one area shall automatically be ranked one of the 40 highest counties until it has been a development tier one area for at least two consecutive years.

(g) Exception for Two-County Industrial Park. – An eligible two-county industrial park has the lower development tier designation of the designations of the two counties in which it is located if it meets all of the following conditions:

(1) It is located in two contiguous counties, one of which has a lower development tier designation than the other.

(2) At least one-third of the park is located in the county with the lower tier designation.

(3) It is owned by the two counties or a joint agency of the counties, is under contractual control of designated agencies working on behalf of both counties, or is subject to a development agreement between both counties and third-party owners.

(4) The county with the lower tier designation contributed at least the lesser of one-half of the cost of developing the park or a proportion of the cost of developing the park equal to the proportion of land in the park located in the county with the lower tier designation.

(h) Exception for Certain Multijurisdictional Industrial Parks. – An eligible industrial park created by interlocal agreement under G.S. 158-7.4 has the lowest development tier designation of the designations of the counties in which it is located if all of the following conditions are satisfied:

(1) The industrial park is located, at one or more sites, in three or more contiguous counties.

(2) At least one of the counties in which the industrial park is located is a development tier one area.

(3) The industrial park is owned by three or more units of local government or a nonprofit corporation owned or controlled by three or more units of local government.

(4) In each county in which the industrial park is located, the park has at least 250 developable acres. For the purposes of this subdivision, 'developable acres' includes acreage that is owned directly by the

industrial park or its owners or that is the subject of a development agreement between the industrial park or its owners and a third-party owner.

(5) The total population of all of the counties in which the industrial park is located is less than 200,000.

(6) In each county in which the industrial park is located, at least sixteen and eight-tenths percent (16.8%) of the population was Medicaid eligible for the 2003-2004 fiscal year based on 2003 population estimates."

SECTION 22. Subsection (a) of Section 12 of Part V. of Chapter 908 of the 1983 Session Laws reads as rewritten:

"(a) Any tax levied under this Part is due and payable to the county in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied."

SECTION 23. Section 39 of Part IX of Chapter 908 of the 1983 Session Laws reads as rewritten:

"Every owner of a business subject to the tax levied by this Part shall, on and after the first day of the calendar month set by the governing body in the resolution levying the tax, collect the occupancy tax provided by this Part. This tax shall be collected as part of the charge for the furnishing of any taxable accommodations. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the owner of the business as trustee for and on account of the city. The occupancy tax levied under this Part shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the owner of the business. The city tax collector shall design, print, and furnish to all appropriate businesses in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. Every person liable for the tax imposed pursuant to this Part shall, on or before the ~~15th~~ 20th day of each month, prepare and submit a return on the prescribed form stating the total gross receipts derived during the preceding month from rentals upon which the tax is levied. The tax shall be due and payable to the tax collector on a monthly basis.

Any person who fails or refuses to file the return required by this Part shall pay a penalty of ten dollars ($10.00) for each day's omission. In addition, any person who refuses to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax shall pay a penalty of five percent (5%) of the tax due. An additional penalty of five percent (5%) shall be imposed for each additional month or fraction thereof in which the occupancy tax is not paid.

Any person who willfully attempts in any manner to evade the occupancy tax or who willfully fails to pay the tax or make and file the required return, shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both."

SECTION 24. Subsection (a) of Section 26 of Part VII of Chapter 908 of the 1983 Session Laws reads as rewritten:

"(a) Any tax levied under this Part is due and payable to the county in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied."

SECTION 25. Subsection (a) of Section 4 of Chapter 988 of the 1983 Session Laws reads as rewritten:

"(a) Any tax levied under this act is due and payable to the county in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied."

SECTION 26. Subsection (a) of Section 3 of Chapter 1055 of the 1983 Session Laws reads as rewritten:

"(a) Any tax levied under this act is due and payable to the county in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied."

SECTION 27. Section 10 of Part IV of Chapter 570 of the 1985 Session Laws reads as rewritten:

"Every owner of a business subject to the tax levied by this Part shall, on and after the first day of the calendar month set by the governing body in the resolution levying the tax, collect the occupancy tax provided by this Part. This tax shall be collected as part of the charge for the furnishing of any taxable accommodations. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the owner of the business as trustee for and on account of the city. The occupancy tax levied under this Part shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the owner of the business. The city tax collector shall design, print, and furnish to all appropriate businesses in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. Every person liable for the tax imposed pursuant to this Part shall, on or before the ~~15th~~ 20th day of each month, prepare and submit a return on the prescribed form stating the total gross receipts derived during the preceding month from rentals upon which the tax is levied. The tax shall be due and payable to the tax collector on a monthly basis.

Any person who fails or refuses to file the return required by this Part shall pay a penalty of ten dollars ($10.00) for each day's omission. In addition, any person who refuses to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax shall pay a penalty of five percent (5%) of the tax due. An additional penalty of five percent (5%) shall be imposed for each additional month or fraction thereof in which the occupancy tax is not paid."

SECTION 28. Subsection (a) of Section 4 of Chapter 857 of the 1985 Session Laws reads as rewritten:

"(a) Any tax levied under this act is due and payable to the county in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by Onslow County. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied."

SECTION 29. Subsection (c) of Section 1 of Chapter 892 of the 1985 Session Laws as amended by Chapter 154 of the 1991 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 30. Subsection (c) of Section 1 of Chapter 923 of the 1985 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals and sales upon which the tax is levied.

A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law. "

SECTION 31. Subsection (a) of Section 4 of Chapter 929 of the 1985 Session Laws as amended by S.L.1985-929 reads as rewritten:

"(a) Any tax levied under this act is due and payable to the levying jurisdiction in monthly installments on or before the ~~25th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~25th~~ 20th day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A return filed under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 32. Subsection (c) of Section 1 of Chapter 969 of the 1985 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly

installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 33. Subsection (c) of Section 1 of Chapter 140 of the 1987 Session Laws reads as rewritten:

"(c) Administration. The county shall administer the tax levied under this act. The tax shall be due and payable to the county in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax is collected. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and submit a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals subject to the tax. A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 34. Subsection (c) of Section 1 of Chapter 141 of the 1987 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 35. Subsection (c) of Section 1 of Chapter 143 of the 1987 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 36. Subsection (c) of Section 1 of Chapter 170 of the 1987 Session Laws reads as rewritten:

"(c) Administration. The town shall administer a tax levied under this section. A tax levied under this section is due and payable to the town finance officer in

monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the town finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 37. Subsection (c) of Section 5 of Chapter 172 of the 1987 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 38. Subsection (a) of Section 3 of Chapter 188 of the 1987 Session Laws reads as rewritten:

"(a) Any tax levied under this act is due and payable to the county in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied."

SECTION 39. Subsection (c) of Section 1 of Title I. of Chaper 460 of the 1987 Session Laws reads as rewritten:

"(c) Administration. The Town shall administer a tax levied under this section. A tax levied under this section is due and payable to the Town revenue collector in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the Town. The return shall state the total gross receipts derived in the preceding month from rentals and sales upon which the tax is levied."

SECTION 40. Subsection (c) of Section 1 of Chapter 472 of the 1987 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 41. Subsection (c) of Section 1 of Chapter 484 of the 1987 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 42. Subsection (c) of Section 1 of Chapter 538 of the 1987 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 43. Subsection (c) of Section 1 of Chapter 561 of the 1987 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 44. Subsection (c) Section 1 of Chapter 618 of the 1987 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 45. Subsection (a) of Section 4 of Chapter 647 of the 1987 Session Laws reads as rewritten:

"(a) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied."

SECTION 46. Subsection (c) of Section 1 of Chapter 950 of the 1987 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 47. Subsection (c) of Section 1 of Chapter 979 of the 1987 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 48. Subsection (c) of Section 1 of Chapter 173 of the 1989 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 49. Subsection (c) of Section 1 of Chapter 422 of the 1989 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 50. Subsection (e) of Section 8 of Chapter 821 of the 1989 Session Laws reads as rewritten:

"(e) Administration. Mecklenburg County and the City of Charlotte shall determine by agreement which of them will administer and collect each of the taxes levied pursuant to this Part. In the event an agreement cannot be reached, then any tax levied pursuant to this Part shall be administered and collected by Mecklenburg County. The local administrative authority may promulgate additional rules and regulations necessary for the implementation of this Part.

The taxes levied pursuant to this Part are due and payable to the local administrative authority as agent for the taxing entity in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every taxable establishment liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return to the local administrative authority. The local administrative authority shall design, print, and furnish to all taxable establishments the necessary forms for filing returns and instructions to ensure the full collection of the tax.

A return filed with the local administrative authority under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 51. Subsection (c) of Section 1 of Chapter 163 of the 1991 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~fifteenth~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~fifteenth~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 52. Subsection (c) of Section 1 of Chapter 230 of the 1991 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer

in monthly installments on or before the ~~fifteenth~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~fifteenth~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 53. Subsection (c) of Section 1 of Chapter 392 of the 1991 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied."

SECTION 54. Subsection (c) of Section 5 of Chapter 577 of the 1991 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 55. Section 9 of S.L. 1991-594 reads as rewritten:

"Administration. The county shall administer and collect the taxes levied pursuant to this act. Wake County may contract with the City of Raleigh to perform these functions.

The taxes levied pursuant to this act are due and payable to the county in monthly installments on or before the ~~fifteenth~~ 20th day of the month following the month in which the tax accrues. Every taxable establishment liable for the tax shall, on or before the ~~fifteenth~~ 20th day of each month, prepare and render a return to the county. The county shall design, print, and furnish on request to all taxable establishments the necessary forms for filing returns and instructions to ensure the full collection of the tax.

Returns filed with the county pursuant to this act are not public records as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 56. Subsection (c) of Section 1 of Chapter 453 of the 1993 Session Laws reads as rewritten:

"(c) Administration.

The city shall administer a tax levied under this section. A tax levied under this section is due and payable to the city finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the city finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 57. Subsection (c) of Section 1 of Chapter 549 of the 1993 Session Laws reads as rewritten:

"(c) Administration.

The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~fifteenth~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~fifteenth~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 58. Subsection (c) of Section 1 of Part 1 of Chapter 642 of the 1993 Session Laws reads as rewritten:

"(c) **Administration.** The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~fifteenth~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~fifteenth~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 59. Subsection (c) of Section 1 of Chapter 648 of the 1993 Session Laws reads as rewritten:

"(c) Administration. The city shall administer a tax levied under this section. A tax levied under this section is due and payable to the city finance officer in monthly installments on or before the ~~fifteenth~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~fifteenth~~ 20th day of each month, prepare and render a return on a form prescribed by the city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the city finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 60. Subsection (c) of Section 1 of Chapter 695 of the 1993 Session Laws reads as rewritten:

"(c) Administration.

The town shall administer a tax levied under this section. A tax levied under this section is due and payable to the town in monthly installments on or before the ~~fifteenth~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~fifteenth~~ 20th day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the town under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 61. Subsection (c) of Section 1 of Chapter 530 of the 1995 Session Laws reads as rewritten:

"(c) **Administration.** The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1."

SECTION 62. Section 9 of S.L. 2006-30 is repealed.

SECTION 63. S.L. 2006-30 is amending a new section 9.1 to read:

" G.S. 105-330.10, as enacted by Section 8 of this act, reads as rewritten:

"**§ 105-330.10. Disposition of interest.**

~~Sixty percent (60%) of the~~ The first month's interest collected on unpaid ~~taxes~~ registration fees pursuant to G.S. 105-330.4 shall be transferred on a monthly basis to the ~~Combined Motor Vehicle and Registration Account created within the Treasurer's Office.~~North Carolina Highway Fund for technology improvements within the Division of Motor Vehicles. ~~The funds in this account shall be used to develop and implement an integrated computer system within the Division of Motor Vehicles that would allow for the combined assessment, billing, and collection of property taxes on motor vehicles and the issuance of registration plates. The Treasurer shall report to the Revenue Laws Study Committee semi-annually with the first report due by April 30, 2006. The report shall contain a detailed description of the amount of moneys transferred to the Account and distributed from the Account.~~"

SECTION 64. The introductory language of Section 6 of S.L. 2006-128 reads as rewritten:

"G.S.153A-155(g) reads as rewritten:"

SECTION 65. Section 33 of S.L. 2006-162 reads as rewritten:

"**SECTION 33.** ~~Section 4~~Sections 4(a) and 4(b) of this act ~~is~~ are effective for taxable years beginning on or after January 1, 2006. Section 13 of this act becomes effective July 1, 2007, and applies to motor fuel transported on or after that date. Sections 14, 15, and 17 of this act become effective January 1, 2007, and apply to motor

fuel purchased on or after that date. An exempt card or code will not be valid for sales of motor fuel at the terminal rack on or after January 1, 2007. Section 26 of this act is effective when it becomes law and applies to the estates of decedents dying on or after January 1, 2005. Section 32 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law."

SECTION 66. Section 16 is effective January 1, 2010. Section 17 is effective July 1, 2007. Section 66 is effective July 1, 2010, or when the Division of Motor Vehicles and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first. The remainder of this act is effective when it becomes law.

DRAFT 2007-TDz-4:

BILL ANALYSIS

Committee: Revenue Laws Study Committee
Introduced by:
Version:

Date: January 11, 2007
Summary by: Heather Fennell
Committee Counsel

SUMMARY: This bill makes several technical, clarifying, and administrative changes to the revenue laws and related statutes.

Sections 1, 7, 9, 20, 21, 62, 63, and 64 are technical changes. Sections 2, 3, 4, 5, 6, 8, 14, 17, and 18 are clarifying changes. Sections 10, 11, 12, 13, 15, 16, 19, 22-61, and 65 are administrative changes.

BILL ANALYSIS: This bill makes the following technical, clarifying, and administrative changes:

Section	Explanation
1	Deletes an obsolete reference.
2	Clarifies the term "arts organization" in the area of exemptions from the amusement tax.
3	Clarifies the term "arts festivals" in the area of exemptions from the amusement tax.
4	Clarifies the term "community festivals" in the area of exemptions from the amusement tax.
5	Clarifies the amount of excise taxes to be distributed to counties and cities in which the retail sale of alcoholic beverages are authorized to be sold.
6.	Clarifies that for the purposes of granting credits for the creation of new jobs, urban progress and agrarian growth zones should be treated separately from other eligible establishments.
7	Substitutes the appropriate reference "apportionable," for the prior reference "business."
8	Clarifies that for the purposes of granting credits for business property placed in service, urban progress and agrarian growth zones should be treated separately from other eligible establishments. Substitutes the appropriate reference "business property," for the prior reference " machinery and equipment."
9	Substitutes the appropriate reference "out of," for the prior reference "to."
10	Alters the documentation process to reflect the current Department of Revenue practice.
11	Alters the documentation process to reflect the current Department of Revenue practice.
12	Clarifies the Department of Revenue's administration of the commercial fisherman exemption.
13	Adds ancillary services to items for which the sales tax exemption for State agencies does not apply, in order to reflect the amendments to the changes in taxing telecommunications.

14	Clarifies the dollar amount for filing requirements.
15	Clarifies the payment of tax on purchases of boats and airplanes would not be made on the use tax line of the income tax return.
16	Clarifies the payment of tax on purchases of boats and airplanes would not be made on the use tax line of the income tax return.
17	Clarifies the corresponding property for research and development firms eligible for the 1% privilege tax.
18	Clarifies the exemption for State agencies applies to the privilege tax.
19	Clarifies the Department of Revenue's ability to share information with other state agencies and tax officials in other states for the purpose of obtaining data for statistical reports and revenue estimates.
20	Makes a conforming change to the reference for definitions under the Article.
21	Makes a conforming change by adding definitions needed in the article.
22-61	Conforms the date an occupancy tax return is due with the date that the occupancy taxes are due.
62-63	Conforms the language in a session law to language amended by a subsequent session law.
64	Corrects a statutory reference.
65	Conforms the effective date for confidentiality provisions to administrative practices.
66	Section 16 is effective January 1, 2010. Section 17 is effective July 1, 2007. Section 66 is effective July 1, 2010, or when the Division of Motor Vehicles and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first. The remainder of this act is effective when it becomes law.

0000e1-SMTD

Proposal 2007-RBxz-3

- Mandatory combined returns
- Definitions
  - Affiliated corporations
  - Unitary business
- Type of Combined Reporting
  - Worldwide with Water's Edge Election
- Method of Apportionment
  - Joyce method
  - Throw-back provision

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U D

BILL DRAFT 2007-RBxz-3 [v.8] (01/10)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/16/2007 9:12:54 AM

Short Title: Modernize Corporate Income Tax Filing. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CORPORATIONS TO FILE A COMBINED INCOME TAX REPORT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.4(a) reads as rewritten:

"**§ 105-130.4. Allocation and apportionment of income for corporations.**

(a) ~~As used in this section, unless the context otherwise requires:~~The following definitions apply in this section, G.S. 105-130.4A, and G.S. 105-130.4B:

(1) ~~"Apportionable income" means all~~ Affiliated group. – A group of two or more corporations in which more than fifty percent (50%) of the voting stock of each member corporation is directly or indirectly owned by a common owner or owners, either corporate or noncorporate, or by one or more of the member corporations.

(1a) Apportionable income. – All income that is apportionable under the United States Constitution.

(1b) Casual sale of property. – The sale of any property which was not purchased, produced or acquired primarily for sale in the corporation's regular trade or business.

(1c) Combined group. – The collective members of an affiliated group that are engaged in a unitary business.

(2) ~~"Commercial domicile" means the~~ Commercial domicile. – The principal place from which the trade or business of the taxpayer is directed or managed.

(3) ~~"Compensation" means wages,~~ Compensation. – Wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(4) ~~"Excluded corporation" means any~~ Excluded corporation. A corporation engaged in business as a building or construction contractor, a securities dealer, or a loan company or a corporation that receives more than fifty percent (50%) of its ordinary gross income from intangible property.

(5) ~~"Nonapportionable income" means all~~ Nonapportionable income. – All income other than apportionable income.

(6) ~~"Public utility" means any~~ Public utility. – A corporation that is subject to control of one or more of the following entities: the North Carolina Utilities Commission, the Federal Communications Commission, the Interstate Commerce Commission, the Federal Energy Regulatory Commission, or the Federal Aviation Agency; and that owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, the transportation of goods or persons, or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam, oil, oil products, or gas. The term also includes a motor carrier of property whose principal business activity is transporting property by motor vehicle for hire over the public highways of this State.

(7) ~~"Sales" means all~~ Sales. – All gross receipts of the corporation except for the following receipts:

a. Receipts from a casual sale of property.

b. Receipts allocated under subsections (c) through (h) of this section.

c. Receipts exempt from taxation.

d. The portion of receipts realized from the sale or maturity of securities or other obligations that represents a return of principal.

(8) ~~"Casual sale of property" means the sale of any property which was not purchased, produced or acquired primarily for sale in the corporation's regular trade or business.~~

(9) ~~"State" means any~~ State. – A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(10) Unitary group. – One or more related business organizations engaged in business activity both within and without the State among which one or more of the following exist:

a. A unity of ownership, operation, or use.

b. An interdependence in their functions.".

SECTION 2. G.S. 105-130.4(b) reads as rewritten:

"(b) A corporation having income from business activity which is taxable both within and without this State shall allocate and apportion its net income or net loss as provided in this ~~section.~~ section and G.S. 105-130.4A. For purposes of allocation and

apportionment, a corporation is taxable in another state if (i) the corporation's business activity in that state subjects it to a net income tax or a tax measured by net income, or (ii) that state has jurisdiction based on the corporation's business activity in that state to subject the corporation to a tax measured by net income regardless whether that state exercises its jurisdiction. For purposes of this section, "business activity" includes any activity by a corporation that would establish a taxable nexus pursuant to 15 United States Code section 381.

A corporation's taxable income in this State includes all of the following:

(1) Its share of any income apportionable to this State of each of the combined groups of which it is a member.

(2) Its share of any income apportionable to this State of a distinct business activity conducted within or without the State wholly by the taxpayer.

(3) Its income from a business conducted wholly by the taxpayer entirely within this State.

(4) Its nonapportionable income or loss allocable to this State."

SECTION 3. G.S. 105-130.4(i) reads as rewritten:

"(i) All apportionable income of corporations other than public utilities and excluded corporations shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four. Provided, that where the sales factor does not exist, the denominator of the fraction shall be the number of existing factors and where the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction shall be the number of existing factors plus one. The apportionable income of a corporation that is part of an affiliated group engaged in a unitary business shall be apportioned to this State as provided in G.S. 105-130.4A."

SECTION 4. G.S. 105-130.4(l)(2) reads as rewritten:

"(2) Sales of tangible personal property are in this State if the property is received in this State by ~~the purchaser.~~ a purchaser other than the United States government. In addition, a sale of tangible personal property is in this State if the property is shipped from a place in this State and the purchaser is in the United States government or the taxpayer is not taxable in the state of the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State shall constitute delivery to the purchaser in this State."

SECTION 5. Part 1 of Article 4 of Chapter 105 of the General Statutes is amended by adding two new sections to read:

"**§ 105.130.4A. Apportionment of income of combined group.**

(a) Combined Group. – The business income of a combined group is determined by eliminating income and losses from all transactions between the members of the unitary group. The business income of the combined group is apportioned in accordance with G.S. 105-130.4(i) through G.S. 105-130.4(l), including in the numerator the property, payroll, and sales of each member of the combined group associated with the combined group's unitary business in this State and including in the denominator the property, payroll, and sales of all members of the combined group that are associated with the combined group's unitary business. Members of a combined group may elect to determine the combined group's business income pursuant to water's edge election under G.S. 105-130.4B.

(b) Member Share. – A member's share of the business income apportionable to this State of each combined group of which it is a member is the product of the following:

(1) The business income of the combined group apportionable to this State.

(2) The ratio of the member's State apportionment factors associated with the combined group's unitary business to the combined group's aggregate State apportionment factors associated with the combined group's unitary business."

"**§ 105-130.4B. Water's edge election.**

(a) Election. –Members of a combined group may elect to disregard the income and apportionment factors of a member of the combined group that is a foreign corporation that conducts eighty percent (80%) or more of its business activity outside the United States and outside of a tax haven country. A water's edge election must be filed in writing with the Secretary. It is effective for the taxable year in which it is filed and for the following 10 taxable years. The election will be automatically extended at the end of the 10-year period unless notice is given in writing to the Secretary of intent not to renew. The notice of intent not to renew must be made before the end of the last two years of the election period.

(b) Withdrawal of Election. – An election may be withdrawn only upon written request to the Secretary and only with the written permission of the Secretary. If the Secretary grants a withdrawal of election, the Secretary must impose reasonable conditions as necessary to prevent the evasion of tax or to clearly reflect income for the election period prior to or after the withdrawal. A water's edge election, once terminated by either a notice of withdrawal or a failure to renew, may not be renewed for a minimum of three years.

(c) Definition. – For purposes of this section, the term 'tax haven country' has the same meaning as in G.S. 143-59.1.

SECTION 6. G.S. 105-130.14 reads as rewritten:

"**§ 105-130.14. ~~Corporations filing consolidated returns for federal income tax purposes.~~Combined reporting.**

~~Any corporation electing or required to file a consolidated income tax return with the Internal Revenue Service shall not file a consolidated return with the Secretary of~~

~~Revenue, unless specifically directed to do so in writing by the Secretary, and shall determine its State net income as if a separate return had been filed for federal purposes.~~

A corporation which is part of an affiliated group engaged in a unitary business must file a report for the combined group containing the combined net income of the combined group and any other information the Secretary may require. The use of a combined report does not disregard the separate identities of the members of the combined group. Each member of the combined group is responsible for tax based on its taxable income or loss apportioned or allocated to this State."

SECTION 7. This act becomes effective for taxable years beginning on or after January 1, 2009.

REVENUE LAWS STUDY COMMITTEE
Tuesday, January 23, 2007
Room 544, Legislative Office Building
9:30 a.m.

MINUTES

The Revenue Laws Study Committee met at 9:30 a.m. on Tuesday, January 16, 2007, in Room 544 of the Legislative Office Building. Fifteen members of the committee were present. Representative Luebke and Senator Kerr presided.

Review of Disputed Tax Matters

Trina Griffin, a Research Division staff attorney, was recognized to explain the issue and answer questions. William Nelson, Smith Anderson attorney, was recognized to express dissatisfaction with the current system. Jody Joyner, NC Bar Association tax counsel, was recognized to express dissatisfaction with the current system. Julian Mann, Office of Administrative Hearings Director and Chief Administrative Law Judge, was recognized to answer questions. Norris Tolson, Secretary, Department of Revenue, was recognized to comment and defended the process. A copy of Ms. Griffin's handout is attached.

Legislative Proposals

Combined Reporting

Cindy Avrette, a staff attorney with the Research Division, was recognized to explain the bill draft proposal. Representative Brubaker made a motion to include the bill draft in the committee's recommendations to the session. The motion carried.

Tax Refund Procedure

Trina Griffin was recognized to explain the proposed bill draft. Senator Clodfelter made a motion to include the bill draft in the committee's recommendations to the session. The motion carried.

IRC Updates

Heather Fennell, a staff attorney with the Research Division, was recognized to explain the proposed bill draft. Representative Brubaker and Senator Webster made the motion to include the bill draft in the committee's recommendations to the session. The motion carried.

Tax Credit for Real Property Donation

Dan Ettefagh, a staff attorney with the Bill Drafting Division, was recognized to explain the proposed bill draft. Representative Wainwright made the motion to include the bill draft in the committee's recommendations to the session. The motion carried.

Streamlined Sales Tax Changes

Cindy Avrette was recognized to explain two changes needed to stay in compliance with the national guidelines (definitions and commercial fishing language). Andy Sabol, Director, Sales and Use Tax Division, Department of Revenue, was recognized to answer questions regarding "bundling" and the federal status of streamlined sales taxes. Representative Hill requested an amendment regarding bundling and moved for its adoption. The motion carried. Representative Hill motioned that the proposed bill draft as amended be approved. The motion carried. A copy of the amendment is attached.

Gift Tax Simplification

Canaan Huie, a staff attorney with the Bill Drafting Division, was recognized to explain the proposed bill draft. Senator Clodfelter requested that the proposed bill draft be amended to make the gift tax to the

North Carolina estate tax rate and motioned that the amended bill draft be recommended to the session. Representative Luebke motioned to recommend the proposal as amended and the motion carried.

Enhance Collection Procedures

Cindy Avrette was recognized to explain the proposed bill draft. Senator Webster motioned to pull the proposed legislation. The motion carried.

Gross Premiums Tax: Additional Tax on Property Coverage Contracts

Cindy Avrette was recognized to explain the proposed bill draft. Secretary Long, Department of Insurance, was recognized to introduce the department's new legislative liaison, Rose Vaughn Williams. Ms. Williams was recognized to speak briefly. Representative Wilkins motioned to recommend the proposed bill draft and the motion carried.

Technical and Administrative Changes

Heather Fennell was recognized to explain the proposed bill draft. Senator Clodfelter motioned to recommend the proposed bill draft and the motion carried.

A draft copy of the 2007 Revenue Laws Study Committee report to the 2007 General Assembly is attached.

The meeting adjourned at 12:20 PM.

Senator John H. Kerr, III, Co-Chair
Revenue Laws Study Committee

Representative Paul Luebke, Co-Chair
Revenue Laws Study Committee

DeAnne Mangum, Committee Clerk

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — January 23, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	NCWU - NCAMVRC -
Lesley Cates	Office of Speaker Black
Sam McEwen	NCDOR

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — January 23, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Stock	NCBA
Cam Crawley	EY Raleigh, NC
Mia Bailey	ElectriCities of NC, Inc.
DANIEL BAUM	KENNEDY COVINGTON
Emily Atkinson	Capstrat
JASON COURNOYER	NC POLICYWATCH
[illegible]	JD, NC Bar
Rose Williams	Dept. of Insurance
[illegible]	MAUPIN TAYLOR
Nancy Rendleman	Maupin Taylor
DREW MARTZ	RALEIGH CHAMBER

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — January 23, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Miller	N.C. State Firemen's Association
Deatrice Williams	CUCA
Trudy Fraser	TWC
Angie Harris	Maupin Taylor
Larry Beasley	LBA
John McMillan	MF+S
Joe Stewart	IFNC
Carol Covey	TB PMHC
Will Culpepper	Moore + Van Allen
Nancy Thompson	Nye Waccamaw
Winifred Barker	CHPA

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — January 23, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sam McEwen	NCDOR
Ken McHan	NC DOR.
Rob Thompson	NCPIRG

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — January 23, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Edgar Miller	CTNC
Butch Gunnells	NC Beverage A.
Janet Shives	DOR
David Baker	DOR
Bill Wilkes	DOR
Amy Schilder	HANC
Amy McCrinkley	Smith Anderson
John Goodman	NCCRS
John McNabb	Duke Energy
Tazra Mitchell	Staff intern
Chad Essick	Poyner + Spruill

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — January 23, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robert Stromberg	Luebke office
Linda Millsaps	DOR
Kay Hobart	DOJ
Terence Friedman	DOJ
Wm Nelson	Smith Anderson
Joseph D. Joyner, Jr.	Moore & Van Allen
Cheryl Causey	BBFT
David Weaver	First Charter
Michael Hannah	PwC
Janice Davidson	NC DOR
Andy Ellis	NCACPA

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — January 23, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Sabol	DOR
Anna Mitchell	NC DOR
Donna Powell	NC DOR
Greg Rudisill	NC DOR
Lennie Collins	DOR
Beecher "Bus" Gray	NC OAH
Joel L. Webster	NC OAH
Julian Mann	NC OAH
Delta Dew	AT+T
Marty Bocock	EMBARQ
Steve Brewer	Embarq

REVENUE LAWS STUDY COMMITTEE AGENDA

Sen. John Kerr Rep. Paul Luebke

Tuesday, January 23, 2007
Room 544, Legislative Office Building
9:30 a.m.

I. Approval of the Minutes from the January 16, 2007, Meeting

II. Review of Disputed Tax Matters
   A. Trina Griffin, Research Division
   B. Comments from Interested Parties

III. Legislative Proposals

1. Combined Reporting
   Cindy Avrette, Research Division
2. Tax Refund Procedure
   Trina Griffin, Research Division
3. IRC Update
   Heather Fennell, Research Division
   David Crotts, Fiscal Research Division
4. Tax Credit for Real Property Donations
   Dan Ettefagh, Bill Drafting Division
   Barry Boardman, Fiscal Research Division
5. Streamlined Sales Tax Changes
   Andy Sabol, Department of Revenue
   Cindy Avrette, Research Division
6. Gift Tax Simplification
   Canaan Huie, Bill Drafting Division
   Barry Boardman, Fiscal Research Division
7. Enhance Collection Procedures
   Cindy Avrette, Research Division
8. Gross Premiums Tax: Additional Tax on Property Coverage Contracts
   Cindy Avrette, Research Division
   Rodney Bizzell, Fiscal Research Division
9. Technical and Administrative Changes
   Heather Fennell, Research Division

IV. Approval of Final Report

V. Adjournment

REVENUE LAWS STUDY COMMITTEE
Tuesday, January 16, 2007
Room 544, Legislative Office Building
9:30 a.m.

MINUTES

The Revenue Laws Study Committee met at 9:30 a.m. on Tuesday, January 16, 2007, in Room 544 of the Legislative Office Building. Nine members of the committee were present. Senator Kerr and Representative Luebke presided.

Motor Vehicle Property Tax Changes

David Baker, Department of Revenue – Property Tax Division Director, was recognized to present an update on the implementation and support costs of combining payment of property taxes and registration fees on motor vehicles. Paul Meyer, Assistant General Counsel, NCACC, was recognized to answer question regarding motor vehicle dealers' possible issues with the changes. John Policastro, NC Automobile Dealers Association, was recognized to express concern over dealer responsibilities and possible higher fees.

Enhance Collection Procedures

Charlie Helms, Department of Revenue – Collection Division Director, was recognized to request that clarifying language be written into existing statutes regarding Revenue's ability to place a lien on real property and to request legislation allowing its administrative assessment process to hold garnishees liable for amounts that they failed to withhold and remit. Linda Millsaps, Assistant Secretary of Tax Administration, was available to answer questions. Representative Brubaker motioned to create a bill draft addressing the Department of Revenue's request for the ability to place liens on real property. The motion passed.

Review of Disputed Tax Matters

This issue was removed from the agenda.

Combined Returns

Cindy Avrette, a staff attorney with the Research Division, was recognized to explain the bill draft on combined returns. Chuck Neely, Maupin Taylor, was recognized to address the corporate opinion on forced combination. Greg Radford, Department of Revenue – Director of Corporate Income, was recognized to answer questions. A copy of the bill draft and summary is attached.

Tax Credit for Real Property Donations

Dan Ettefagh, a staff attorney with the Bill Drafting Division, was recognized to review the bill draft. Karl Knapp, Department of Revenue, Policy Analysis and Statistics Division, was recognized to answer questions. A copy of the bill draft and summary is attached.

IRC Update

Heather Fennell, a staff attorney with the Research Division, was recognized to explain the bill draft. Dave Crotts, a fiscal analyst with the Fiscal Research Division, was recognized to answer questions. A copy of the bill draft, the summary and the fiscal information is attached.

Motor Fuels Tax Changes

Cindy Avrette was recognized to review the bill draft. Senator Hartsell moved to include the bill draft in the final report and the motion passed unanimously. A copy of the bill draft and summary are attached.

Technical and Administrative Changes

Heather Fennell was recognized to explain the Revenue Laws Technical Changes bill draft. Canaan Huie, a staff attorney with the Bill Drafting Division, was recognized to answer questions regarding Bill Lee issues. A copy of the bill draft and summary is attached.

The meeting adjourned at 12:20 PM.

Senator John H. Kerr, III, Co-Chair
Revenue Laws Study Committee

Representative Paul Luebke, Co-Chair
Revenue Laws Study Committee

DeAnne Mangum, Committee Clerk

Proposal for Review of Disputed Tax Matters

Revenue Laws Study Committee
January 16, 2007

A fair, efficient, and transparent tax appeals process is a critical element of the effective administration of a State's tax system. The Revenue Laws Study Committee, in its recent review of this issue, has heard from the Council on State Taxation (COST), which had the opportunity to express concerns about the current system and to make recommendations for improvement. The Committee also heard from the Department of Revenue, which had the opportunity to explain the current system, to offer counterpoints regarding the system's strengths, and to suggest its own recommendations.

Issues

In light of the testimony presented at prior meetings, the following issues have been identified as the areas of most concern that impact the appeals process:

1. **Independent forum for review.**
   COST position: Tax appeals cases should be heard by the North Carolina Business Court or some other body outside the Department of Revenue to ensure an impartial hearing. Also, the reviewing forum should have the ability to develop tax expertise.
   Department position: No systemic changes to the current administrative system are necessary because the Department provides an impartial hearing by an independent hearings officer, and the Tax Review Board provides an impartial review. Instead, clarifying statutory changes are needed to more accurately describe the existing administrative practice.
2. **Payment of tax to obtain judicial review of a disputed tax matter.**
   COST position: The requirement that a taxpayer pay a proposed tax liability in order to obtain an independent hearing in a neutral forum outside the Department should be eliminated.
   Department position: The payment requirement should be maintained because without it, the Department's ability to collect would be compromised and litigation would substantially increase.
3. **Length of time to object to a notice of proposed assessment.**
   COST position: Taxpayers should be given at least 60, but ideally 90, days to request a hearing on a notice of a proposed assessment.
   Department position: The time period should remain 30 days because the extension of time delays collection and potentially compromises the State's likelihood of collection.

Principles

Based on the above-stated issues, the following principles have been identified as a guideline for making improvements to the current system:

- **Simplicity** – An effective tax appeals system should be easily understandable by taxpayers and practitioners, produce a resolution in a timely manner, and apply the same procedures for assessments and refunds.
- **Fairness** – An effective tax appeals system should afford all taxpayers, regardless of their resources, the opportunity to have a hearing before an independent arbiter with expertise in the subject matter without first having to pay the disputed liability.
- **Emphasis on Informal Resolution** – An effective tax appeals system should encourage the informal resolution of tax controversies, without litigation, in a manner that will enhance voluntary compliance and public confidence in the integrity of the system.

Proposed Changes & Application of Principles

Applying these principles to the identified issues, the proposal makes the following changes to the law:

1. **Independent forum for review.** – The proposal establishes the Office of Administrative Hearings (OAH) as the independent forum for the review of contested tax matters. Under current law, administrative review of a disputed tax matter involves a hearing before a hearings

officer within the Department followed by an appeal to the Tax Review Board. The proposal modifies the current law by requiring an initial, informal review process within the Department. A taxpayer who is not satisfied with the outcome of the informal process must commence a contested case with the OAH. OAH would issue a final decision, reserving constitutional questions for determination by the Business and Tax Court. If OAH issues a final decision in the case, either party would have the option of seeking judicial review of the decision in the Business and Tax Court. Alternatively, OAH may transfer the case to Business and Tax Court if the only issue involves the constitutionality of a statute.

This proposed change addresses at least two of the above-stated principles. First, it promotes informal resolution by requiring an informal review and conference with the Department, which is designed to encourage settlement without litigation. It also addresses the fairness principle by establishing OAH as the independent arbiter of disputed tax matters.

2. **Payment of tax to obtain judicial review of a disputed tax matter.** – The proposal provides that a taxpayer does not have to pay a proposed tax liability in order to obtain an independent hearing on the merits. However, a taxpayer would be required to pay the tax in order to obtain judicial review of a decision resulting from that independent hearing. Therefore, a taxpayer would not have to pay the tax in order to have an independent hearing at OAH, but would have to pay the tax in order to appeal an ALJ's final decision to Business and Tax Court. If, however, OAH determines the case involves a question only about the constitutionality of a statute, then OAH would not render a decision on the merits and would transfer the case to Business and Tax Court. No payment of tax would be required if the case is transferred based on OAH's lack of jurisdiction because the taxpayer has not yet received an independent hearing on the merits. However, a taxpayer seeking judicial review of the Business and Tax Court's decision on the constitutional matter would be required to pay the tax to appeal to the Court of Appeals.

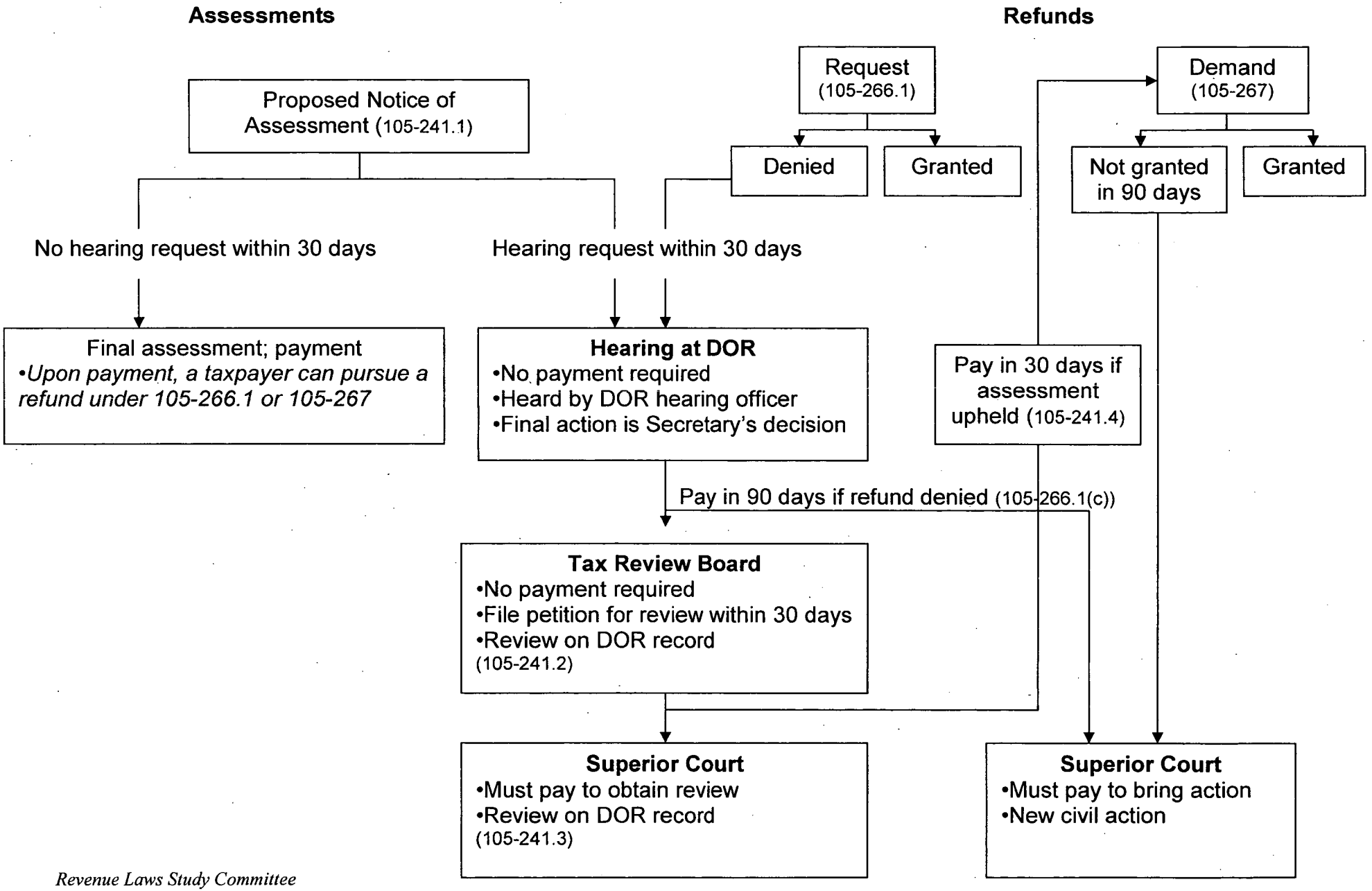
   This proposed change addresses two of the above-stated principles. First, it promotes fairness by providing all taxpayers, regardless of their resources, with the same avenues for recourse when challenging a tax dispute. Moreover, by not requiring payment of the tax until after a taxpayer has had the opportunity to have an expeditious and impartial hearing, the proposal strikes the appropriate balance between protecting the fiscal stability of the State and protecting the rights of the taxpayer to be heard. Second, the proposed change promotes simplicity by establishing a consistent method for determining when a taxpayer must pay the tax during the tax appeals process, regardless of tax type or whether the dispute involves an assessment or a refund.

3. **Elimination of Tax Review Board.** – The proposal eliminates the Tax Review Board. Under this proposal, the role of the Tax Review Board is no longer needed because OAH would be the independent arbiter of disputed tax matters and the jurisdiction of the Business and Tax Court would include the review of tax cases. This change promotes simplicity and efficiency by eliminating an unnecessary step in the administrative review process.

4. **Expansion of Business Court jurisdiction.** – Currently, the North Carolina Business Court only handles cases involving complex and significant issues of corporate and commercial law, which are assigned by the Chief Justice of the North Carolina Supreme Court and designated "Complex Business Cases." This proposal contemplates adding all tax cases to the jurisdiction of the Business Court, which would be renamed the "North Carolina Business and Tax Court." This change addresses the fairness principle by providing both taxpayers and the State alike with a specialized forum for tax cases where it is anticipated that the court will develop expertise in this often complex area of the law.

5. **Length of time to object to a proposed assessment.** – The proposal adopts a 45-day time period for taxpayers to request an informal review of a notice of a proposed assessment, which reflects a balance between the positions of the taxpayer advocacy group COST and the Department of Revenue. This compromise applies the fairness principle by providing taxpayers with 15 additional days while not delaying unreasonably the Department's collection efforts.

Current Process
Review of Disputed Tax Matters



Revenue Laws Study Committee
January 16, 2007

Proposed Process
Review of Disputed Tax Matters

Assessments

Refunds

Proposed Notice of Assessment

Request for Refund

No hearing request within 45 days

Hearing request within 45 days

Final assessment, payment
Upon payment, a taxpayer can pursue a refund

Review at DOR
- No payment required; informal process; no record established.
- If assessment is not resolved in 120 days, taxpayer can request final assessment and then file petition at OAH.
- If refund denied or not granted in 120 days, taxpayer can file petition at OAH.

Granted

Office of Administrative Hearings
- No payment required.
- File petition for review within 60 days.
- Independent tribunal.
- Record created here.
- Constitutional questions transferred to or reserved for Business and Tax Court

Business and Tax Court
- Must pay to obtain review, unless case transferred from OAH on constitutional issues.
- Review on OAH record except when court develops record on constitutional issues.

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January 22, 2007

Senator John H. Kerr, III, Co-Chair
Representative Paul Luebke, Co-Chair
Revenue Laws Study Committee
NC Legislative Office Building
Raleigh, NC 27603

Re: January 16, 2007, Proposal Regarding Review of Disputed Tax Matters

Dear Senator Kerr and Representative Luebke:

I am writing this letter in my capacity as Chair of the Tax Section of the North Carolina Bar Association. We very much appreciate the Committee undertaking a review of North Carolina's tax appeals process. The Tax Section has been deliberating this issue for several years. We have reviewed the recent proposal submitted to the Committee to simplify and improve the tax appeals process and procedure and believe that it is an important step forward in improving our present system. The proposal would provide needed reform to our present system and address concerns that have been expressed by many of our fellow practitioners. We hope that the Committee will endorse the principles expressed in the proposal and continue this process. We would be pleased to offer our assistance in that effort.

Very truly yours,

Jeffrey T. Lawyer

JTL/bbm

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January 22, 2007

Senator John H. Kerr, Co-Chair
Representative Paul Luebke, Co-Chair
Revenue Laws Study Committee
NC Legislative Office Building
Raleigh, North Carolina 27603

Re: Proposal for Review of Disputed Tax Matters

Dear Senator Kerr and Representative Luebke:

I am writing in support of the Proposal for Review of Disputed Tax Matters, dated January 16, 2007, prepared by the Staff of the Revenue Laws Study Committee (the "Proposal").

A significant portion of my practice involves representing taxpayers in matters before the North Carolina Department of Revenue. In my experience, the professionals with whom I have dealt within the Department of Revenue have always conducted themselves with the utmost fairness, collegiality, and professionalism. However, it is my opinion that the statutory scheme for resolving tax disputes, which these professionals are required to administer, lacks some of the fundamental features of a fair and impartial tax system. Specifically:

- Simplicity. The current system, with its tripartite scheme for addressing appeals of assessments, refunds and protests, its varying time limits and jurisdictional standards, is extremely confusing, as is well illustrated by the chart of the "Current Process" attached to the Proposal (even though this schematic diagram of the system represents a significant clarification over the language of the various statutes involved).

- Impartiality. The current system lacks a procedure for taxpayers to obtain a pre-payment review of a disputed tax matter by an impartial and knowledgeable decision maker outside and independent of the Department of Revenue.

- Guidance. The current system does not permit the creation of a body of accessible, reasoned precedential authority on which taxpayers can rely, meaning that taxpayers and their advisors must often operate without guidance and must often litigate issues that have been the subject of prior administrative proceedings.

- Equal Treatment for all Taxpayers. The foregoing shortcomings of the current system place businesses and wealthy individuals at a distinct advantage over taxpayers with more

limited resources, since it is extremely perilous to navigate the current system without paid professional advice.

I reiterate that these criticisms are directed against the existing statutory procedural scheme and not against those who administer it nor against the commendable efforts of the Department to put an end to abusive and overly aggressive tax planning techniques.

While the Proposal leaves a number of issues open for further development, I commend it as a very large step forward.

Thank you very much for your consideration of this matter.

Respectfully submitted,

William W. Nelson

WWN:seh

Moore&VanAllen

January 22, 2007

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Senator John H. Kerr, Co-Chair
Representative Paul Luebke, Co-Chair
Revenue Laws Study Committee
NC Legislative Office Building
Raleigh, North Carolina 27603

Re: Proposal for Review of Disputed Tax Matters Dated January 16, 2007

Dear Senator Kerr and Representative Luebke:

I am writing to express my support for the Proposal for Review of Disputed Tax Matters distributed at the Revenue Laws Study Committee meeting on January 16, 2007 (the "Proposal"). I have been handling state tax matters as part of my tax practice for over 25 years. As part of that practice, I frequently appear before the Department of Revenue and handle appeals of the Department's proposed tax assessments. Through several administrations, I have found the Department's staff to be professional, knowledgeable and courteous. However, the statutory appeals process is less than satisfactory. Several clients have complained about the perception of unfairness when the Department itself holds the formal administrative tax hearing. In addition, the appeals process is viewed as inadequate when there is not an opportunity to be heard by an independent tribunal before a taxpayer is required to pay the tax. In addition, the dual refund claim procedures currently in the North Carolina statutes are confusing and can be a trap for the unwary. A single refund procedure with clearly defined parameters would be preferable to the current system.

Thank you and the other Committee members for considering the Proposal and other issues important to North Carolina taxpayers.

Sincerely,

Moore & Van Allen, PLLC

Joseph D. Joyner, Jr.

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January 22, 2007

The Honorable Paul Luebke
The Honorable John Kerr
Revenue Laws Study Committee
North Carolina General Assembly
Legislative Building
16 West Jones Street
Raleigh, NC 27601

Re: Proposal Distributed January 16, 2006 at Revenue Laws Study Committee Concerning the Review of Disputed Tax Matters (the "Proposal")

Dear Senator Kerr and Representative Luebke:

Over the last twenty years my tax controversy practice has involved the representation of a number of corporate and individual taxpayers in matters before the North Carolina Department of Revenue. One of the major complaints that I have heard from my own clients as well as others who have found themselves involved in this process is the perceived unfairness caused by the lack of a system of independent review short of the ability to pay the tax and seek recourse through the courts. I appreciate the fact that the Committee has been actively examining various proposals to improve the system of review in an attempt to rectify this and other issues. Having reviewed the Proposal, I believe it goes a long way toward improving the fairness of the process as well as providing a simpler and more unified system to deal with the handling of taxpayer disputes. The insertion of the Office of Administrative Hearings into the process allows for independent review of a matter so that taxpayers can feel that the process is fairer as it gives them an opportunity to be heard by an independent body outside of the Department of Revenue. Further, the proposed increases in the length of time to respond to assessments is beneficial in that often taxpayers don't understand what they are faced with and by the time they seek assistance it is often too late.

Despite some understandable systemic reluctance to modify the current system, I applaud the Committee's efforts to move this matter forward in an effort to improve the process. Based on the discussion of the tax gap at the federal level, it is apparent that the general public is more willing to pay their share of the tax burden if they feel the system itself is fair. An independent review helps support that perception. While no system is perfect, I believe that the general public would agree that this Proposal is a marked improvement over our existing system of review.

Respectfully submitted,

Michael J. Wenig

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January 22, 2007

Senator John H. Kerr, III &
Representative Paul Luebke, Co- Chairmen
Revenue Laws Study Committee
Raleigh, NC 27603

Re: Proposal for Review of Disputed Tax Matters dated January 16, 2007

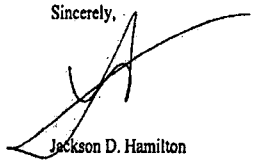
Dear Senator Kerr & Representative Luebke:

I have been engaged in the practice of federal and state taxation matters for more than thirty years, for the past sixteen years within the State of North Carolina. In that time I have had the opportunity to participate in tax controversies in a number of states, including the States of California, Washington and Illinois, among others. I believe along with other tax professionals that the current tax structure in North Carolina is one of the more difficult systems in which to advise clients.

On account of this I was very heartened to discover that the Revenue Laws Study Committee ("Committee") was reviewing the current system. I have reviewed the Proposal for the Review of Disputed Tax Matters, which was presented to you on January 16, 2007. I very much appreciate the Committee's efforts in reviewing the proposal and I believe the proposal is a very good solution to the problems with the current system. The principles stated therein are excellent and, in deed, no one could dispute them.

I am hopeful the Committee will move forward and improve the existing tax system in this great state.

Sincerely,



Jackson D. Hamilton

JDH/dc

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January 22, 2007

Senator John Kerr
Representative Paul Luebke
Revenue Law Study Committee
Raleigh, NC

Re: Independent Tax Forum

Dear Senator Kerr and Representative Luebke:

For many years I have been interested in reform of the North Carolina system for handling tax disputes. In particular the principles of independence and fairness, not to mention simplicity, are not hallmarks of the present system. I have been practicing tax law since 1975. During that time, I have had numerous occasions to handle income tax issues, gift tax issues, inheritance tax issues, as well as sale and use tax issues and even property tax questions on behalf of clients, some of which went to litigation and many of which involved disputes with local revenue officers and their superiors. The taxpayer in this state is always under the dark shadow of having to pay their tax before they can get an independent professional review of their tax situation. You may or may not know, under the federal system there is a U. S. Tax Court composed of experienced judges with expertise in tax matters, which handle only tax matters and to which the taxpayer can appeal without having to pay the tax first. There are of course penalties for frivolous appeals and those help keep the taxpayers who would abuse the system under control. I am aware that recently you received a proposal dated January 16, 2007, which involves the use of the office Administrative Hearings (OAH) as an independent forum to which taxpayers can appeal, after perhaps utilizing an informal procedure within the Department of Revenue. By all means, informal, simple, pro se means of settling tax disputes, particularly of small amounts or narrow issues would be beneficial to the taxpayers of North Carolina. However, as we have seen particularly over the last decade or so where many constitutional issues have arisen; some matters are not as easy to resolve as others. Accordingly if OAH can develop the necessary expertise, I believe that the proposal of January 16th would be a major step in the right direction. I would hope that the committee under your guidance can review and approve this proposal and give your endorsement of it to the legislature. Improvements for the taxpayers of North Carolina would be significant and meaningful compared to the current system.

Very truly yours,

WEBB & GRAVES, PLLC

WY Alex Webb
E:\WPDIR\TAXING TAX COURT\ltr to tax committee 01.07.wpd

REVENUE LAWS STUDY COMMITTEE

DRAFT

REPORT TO THE 2007 GENERAL ASSEMBLY OF NORTH CAROLINA 2007 SESSION

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*All of the meeting handouts, including Power Point presentations, may be accessed online at the Revenue Laws Study Committee website: http://www.ncleg.net/committees/

REVENUE LAWS STUDY COMMITTEE
State Legislative Building
Raleigh, North Carolina 27603

Senator John H. Kerr, III, Cochair *Representative Paul Luebke, Cochair*

January 23, 2007

TO THE MEMBERS OF THE 2006 GENERAL ASSEMBLY:

The Revenue Laws Study Committee submits to you for your consideration its report pursuant to G.S. 120-70.106.

Respectfully Submitted,

Rep. Paul Luebke, Co-Chair

Sen. John Kerr, Co-Chair

2005-2006

REVENUE LAWS STUDY COMMITTEE

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PREFACE

The Revenue Laws Study Committee is established in Article 12L of Chapter 120 of the General Statutes to serve as a permanent legislative commission to review issues relating to taxation and finance. The Committee consists of sixteen members, eight appointed by the President Pro Tempore of the Senate and eight appointed by the Speaker of the House of Representatives. Committee members may be legislators or citizens. The co-chairs for 2005-2006 are Senator John Kerr and Representative Paul Luebke.

G.S. 120-70.106 gives the Revenue Laws Study Committee's study of the revenue laws a very broad scope, stating that the Committee "may review the State's revenue laws to determine which laws need clarification, technical amendment, repeal, or other change to make the laws concise, intelligible, easy to administer, and equitable." A copy of Article 12L of Chapter 120 of the General Statutes is included in Appendix A. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.

In 2002, the General Assembly established a permanent subcommittee under the Revenue Laws Study Committee to study and examine the property tax system.[1] The subcommittee consists of eight members, four appointed by the Senate chair of the Revenue Laws Study Committee and four appointed by the House chair of the Committee. The subcommittee may recommend changes in the property tax system to

[1] S.L. 2002-184, s. 8.

the full Committee for its consideration in its final report to the General Assembly. The Property Tax Subcommittee did not meet during the 2005-2006 interim.

Before it was created as a permanent legislative commission, the Revenue Laws Study Committee was a subcommittee of the Legislative Research Commission. It has studied the revenue laws every year since 1977.

COMMITTEE PROCEEDINGS

The Revenue Laws Study Committee met six times after the adjournment of the 2006 Regular Session of the 2005 General Assembly on July 28, 2006. Appendix B contains a copy of the Committee's agenda for each meeting. All of the materials distributed at the meetings may be viewed on the Committee's website: http://www.ncleg.net/committees/. The Committee received numerous requests from legislators, taxpayers, the Department of Revenue, and interest groups to study various issues of tax policy and tax administration. The Committee considered many issues but was unable to take up all of the issues suggested to it. The Committee considered all proposed tax changes in light of general principles of tax policy and as part of an examination of the existing tax structure as a whole.

REVIEW OF THE RECOMMENDATIONS MADE TO THE 2006 GENERAL ASSEMBLY

The 2006 General Assembly enacted thirteen of the Revenue Laws Study Committee's fourteen legislative proposals in whole or in part. Appendix C lists the Committee's recommendations and the action taken on them in 2006. A document entitled "**2006 Finance Law Changes**" summarizes all of the tax legislation enacted in 2006. It is available in the Legislative Library located in the Legislative Office Building.

COMBINED REPORTING AND 'FORCED COMBINATIONS'

S.L. 2006-196 directed the Revenue Laws Study Committee to review the authority of the Secretary of Revenue to require taxpayers to file consolidated returns and to

consider whether the State should require corporations to file consolidated returns. The Committee began its study of these issues by reviewing how corporate income tax is computed in North Carolina for multi-state corporations.

Generally, a corporation begins its computation of State net income with its federal taxable income. At the federal level, multi-state corporations may file a consolidated federal return. However, under North Carolina law, a corporation may not file a consolidated return unless specifically required to do so by the Secretary of Revenue. North Carolina requires corporations to file as a separate entity, meaning it must determine its State net income as if a separate return had been filed for federal income tax purposes.

Separate entity filing gives corporations with subsidiaries in multiple states the ability to devise ways to shift income from a high effective tax rate state to a low effective state rate state, often through the use of passive investment companies and intercompany transactions. Over the past several years, the General Assembly has enacted changes to the State's corporate income tax laws to address the shifting of income between states by multistate corporations. In 2001, the State enacted the royalty income reporting option. That legislation provided that income from using trademarks in this State is taxable to this State, regardless of where the corporation that holds the trademark is located. That legislation has been 'tweaked' and expanded since 2001, but the problem of income shifting between multi-state corporations continues to be an issue.

The Department of Revenue has also been aggressive in using the tools available to it to require a corporation to file a consolidated return when it believes the corporation's true net income attributable to this State is not accurately reflected on its separate entity filing return. This action by the Department is referred to as 'forced

combinations'. S.L. 2006-192 directed the Committee to study the issue of forced combinations because taxpayers and the Department have very different opinions as to the Department's statutory authority. The Department has used forced combinations for a number of years and it has collected more than $200 million in taxes from forced combinations. Taxpayers, seeking clarity on the law, have filed lawsuits contesting the Department's authority to force combinations. The Committee listened to both the Department and taxpayers on this issue.

The Committee realizes that issues in the area of forced combinations exist. The Committee believes that a more comprehensive way to address the issue of income shifting between affiliated corporations is through the use of combined reporting. The Governor's Commission to Modernize State Finances recommended this change in 2001. The Multi-State Tax Commission adopted a model uniform statute for combined reporting in 2006. Seventeen states currently require combined reporting.[1]

Combined reporting is a method of calculating the income of a group of related corporations for tax purposes. It looks beyond the legal structure of separate incorporations to determine whether two or more related corporations are engaged in a single unitary business. The Committee recognized that changing the State's corporate filing structure from single entity reporting to combined reporting would broaden the tax base and lessen the uncertainty about when corporations need to file combined returns. The Committee directed its fiscal staff to work with the Research Division of the Department of Revenue to determine what the fiscal impact of moving to combined returns would be. The Committee did not have the benefit of a fiscal analysis because the analysis is not expected to be completed until at least March of 2007.

[1] Alaska, Arizona, California, Colorado, Hawaii, Idaho, Illinois, Kentucky, Maine, Minnesota, Montana, Nebraska, New Hampshire, North Dakota, Oregon, Utah, and Vermont. Vermont adopted its law in 2004, effective for taxable years beginning on or after January 1, 2006.

Legislative Proposal 1 contains the Committee's recommendation that the 2007 General Assembly consider moving from single entity reporting to combined reporting. Without the benefits of a fiscal analysis, the Committee did not make a recommendation as to a change in the corporate tax rate. However, the Committee anticipates that broadening the corporate tax base, as this proposal recommends, would generate additional corporate income tax revenue and that the corporate income tax rate could be reduced to a rate that would render the proposal revenue-neutral.

Legislative Proposal 1 sets forth the basic structure for combined reporting:

- It would require a corporation that is part of an affiliated group engaged in a unitary business to file a combined report.
- It would define the terms 'affiliated group' and 'unitary business'. The proposal defines an affiliated group as a group of two more corporations in which more than 50% of the voting stock of each member corporation is directly or indirectly owned by a common owner or owners, either corporate or noncorporate, or by one or more of the member corporations. The term 'unitary business' is defined as one or more related business organizations engaged in business activity both within and without the State among which one or more of the following exist: (1) a unity of ownership, operation, or use; or (2) an interdependence in their functions.
- It would require that all corporations that are part of an affiliated group engaged in a unitary business be part of the combined report - that would include a group member that is a non-US corporation. However, the proposal would give the combined group the option to exclude a group member whose business activity outside the United States is 80% or more of its total

business activity. This election is commonly referred to as a 'water's edge election.'

- It would provide that the numerator of the apportionment formula would include only the property, payroll, and sales of those members that have nexus with the State. The Committee found this method of apportionment to be the most accepted method of apportionment, but also the method that continued to leave room for tax avoidance strategies. To minimize the extent to which a corporation could utilize tax avoidance strategies to shift sales from one tax to another, the Committee's recommendation includes the adoption of a 'throwback' provision. A throwback provision causes sales to be sourced to the state from which the property was shipped if the destination state does not impose a corporate income tax.

The Committee acknowledges that its Legislative Proposal 1 is a draft that will need refinement during the legislative session. The proposal does not address several issues that would need to be addressed before the General Assembly enacted legislation requiring combined reporting. Some of those outstanding issues include the following:

- The relationship between combined reporting and the franchise tax statutes.
- Transitional issues.
- Administrative issues.
- A determination as to what corporations, if any, would be excluded from combined reporting.
- How the income of corporations with special apportionment formulas under the current law would be apportioned under combined reporting.

The Committee realizes that moving to combined reporting may solve some of the uncertainties that exist under the current law as to when corporations must file a consolidated return. However, the issue of the Department's authority

to require corporations to file a consolidated return will continue to exist. **POSSIBLY MORE TO COME BASED UPON 1/23/07 COMMITTEE DISCUSSION.**

IRC UPDATE

North Carolina's tax law tracks many provisions of the federal Internal Revenue Code by reference to the Code.[2] The General Assembly determines each year whether to update its reference to the Internal Revenue Code.[3] Updating the Internal Revenue Code reference makes recent amendments to the Code applicable to the State to the extent that State law previously tracked federal law. Legislative Proposal #3, IRC Update, changes the statutory reference to the Code from January 1, 2006, to January 1, 2007. Between those dates, Congress enacted five pieces of federal legislation that made changes to the Internal Revenue Code. This federal legislation includes the Deficit Reduction Act of 2005 (P.L. 109-71) signed into law February 9, 2006, the Tax Increase Prevention and Reconciliation act of 2005 (P.L. 109-222) signed into law May 18, 2006, the Heroes Earned Retirement Opportunities Act (P.L. 109-227) signed into law May 23, 2006, the Pension Protection Act of 2006 (P.L. 109-280) signed into law August 19, 2006 and the Tax Relief and Health Care Act of 2006 (P.L. 109-432) signed into law December 20, 2006.

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[2] North Carolina first began referencing the Internal Revenue Code in 1967, the year it changed its taxation of corporate income to a percentage of federal taxable income.

[3] The North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Article V, Section 2(1) of the Constitution provides in pertinent part that the "power of taxation ... shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would ... be invalidated as an unconstitutional delegation of legislative power."

CONSERVATION TAX CREDIT

The Revenue Laws Study Committee studied the conservation tax credit this year. In particular, the Committee discussed the issue of how the tax credit differs between corporate and pass-through entity taxpayers, the issue of which types of property qualified for a tax credit under the statute, and the issue of increasing the accuracy of represented fair market values for donated property. The conservation tax credit is a credit given to taxpayers who donate real property in North Carolina useful for conservation purposes. The credit, taken against income tax, is equal to 25% of the fair market value of the donation. Prior to January 1, 2007, the credit was capped for individuals other than pass-through entities at $250,000 and for corporations at $500,000. Pass-through entities have no cap for the entity as a whole, but each member's credit for qualifying donations is capped at $250,000. Anecdotal evidence suggested some disagreement between the departments of the Environment and Natural Resources and Revenue as to what types of land qualified for conservation purposes under the statutory language "other similar land use purposes" and also indicated some instances of taxpayers receiving a tax credits for land based on inaccurate fair market value representations. The Committee modified the conservation tax credit in the following ways: (1) raise the tax cap for pass-through entities to $500,000 and apply it to the pass-through entity as a whole, (2) eliminate "other similar land use purposes" in favor of six specific uses, and (3) require certain appraisal report documentation to support the represented fair market value of the donation. These modifications are set forth in greater detail in the attached Legislative Proposal 4.

STREAMLINED SALES TAX CHANGES

The Revenue Laws Study Committee has spent a considerable amount of time over the past several years on the Streamlined Sales Tax Project, which began in March

2000. The Streamlined Sales Tax Project is an effort by states, with input from local governments and the private sector, to simplify and modernize sales and use tax collection and administration. The goal of the Project is to achieve sufficient simplification and uniformity to encourage sellers without nexus in states to voluntarily collect use tax in participating states.

In November 2002, the implementing states approved the Streamlined Sales and Use Tax Agreement. The Agreement contains the uniformity and simplification provisions developed by the Project. In July 2005, the Agreement became effective when 18 states representing 28% of the population of states imposing a sales tax were found to be in compliance with the terms of the Agreement. On October 1, 2005, the Streamlined Sales Tax Governing Board, Inc. came into existence. The Governing Board consists of representatives of the member states. It oversees administration of the Agreement. North Carolina is one of the full member states because the General Assembly, upon the recommendation of the Revenue Laws Study Committee, has enacted the necessary changes to North Carolina's sales tax laws to bring it into compliance with the Agreement.

Legislative Proposal 5 makes two definitional changes the State must adopt by January 1, 2008, in order to continue to comply with the latest amendments to the Streamlined Sales Tax Agreement. One change is to add a definition of "bundled transaction" and specify how these transactions are to be taxed. The other change is to modify the definition of "sales price" to clarify how third-party discounts, such as a manufacturer's coupon, affect the sales price of an item. The legislative proposal also updates the reference to the Streamlined Sales Tax Agreement to include the latest amendments to that Agreement and it clarifies that anyone who relies on the taxing jurisdiction database developed by the Department to determine the rate of sales tax

applicable in a jurisdiction is not liable for any tax underpayments attributable to reliance on that database. This is the result under current law because the database is a written statement of the Department under G.S. 105-264.

Legislative Proposal 5 makes one change that is unrelated to the Streamlined Sales Tax Agreement. It revises the sales tax exemption for items sold for use in commercial fishing to insert references to holders of a commercial fishing license, a commercial shellfish license, and the operator of a for-hire boat. The reference to the operator of a for-hire boat is an addition to the statute, but reflects the administrative practice of including this group in the commercial fishing group.

GIFT TAX SIMPLIFICATION

The Committee studied North Carolina's gift tax this year. Discussion of the gift tax highlighted the facts that North Carolina is one of only four states that imposes a gift tax and that there is little similarity between the North Carolina and federal gift taxes. The North Carolina gift tax is not unified with the estate tax and is applied differently based on the relationship between the donor and donee. The federal gift tax is part of a unified system with the estate tax and, for the most part, is applied uniformly regardless of the relationship between the donor and donee. The Committee decided to reform the State gift tax to more closely conform it to the federal tax. The results of the Committee's efforts are attached as Proposal 6.

ENHANCE COLLECTION PROCEDURES

The Department of Revenue requested the Revenue Laws Study Committee to consider enhancing its enforcement tools in three ways:

- To allow the Department, through one of its revenue officers, to levy upon and sell real property owned by a delinquent taxpayer. A revenue officer has

the ability under current law to levy upon personal property. To levy upon real property requires the Department to issue a warrant to the sheriff of the county where the property is located.

- To allow the Department to use its administrative assessment process to hold garnishees liable for amounts that they failed to withhold and remit to the Department.
- To require that professional licenses provided by the North Carolina Examining and Licensing Boards be suspended if the taxpayer is not compliant with the State tax statutes regarding filing or payment of taxes.

The Committee discussed all three of these options. It expressed several concerns about the latter two. Legislative Proposal 7 incorporates the recommendations of the Department by allowing a revenue officer to levy upon both real and personal property.

GROSS PREMIUMS TAX

Last session the General Assembly, upon the recommendation of the Revenue Laws Study Committee, clarified and simplified the application of the additional gross premiums taxes on fire and lightning coverage. It established a new method of taxing insurance policies that provide property coverage, effective for taxable years beginning on or after January 1, 2008. The 2006 act broadens the base and lowers the rate applicable to insurance contracts that provide property coverage. The revenue-neutral tax rate was set at 0.85%. The Committee continued to study the rate to ensure that it was the revenue-neutral rate. After much study, the revenue neutral rate has been determined to be 0.74%. Legislative Proposal 8 changes the rate accordingly.

Under the legislative enacted last session, the revenue generated by the additional fire and lightening tax is distributed in the same proportion as the current State and local fire and

lightning tax revenue is distributed. Under the current method of taxation, the local tax is applied to contracts of insurance applicable to fire and lightning coverage within fire districts. A portion of the revenue from this tax is distributed to these fire districts. The act does not limit the application of the tax to fire districts. It also does not require the accounting by insurance companies of the amount of premiums written in fire districts. The act establishes a new method of distribution based upon a per capita allocation among fire districts, effective January 1, 2008. Upon further review, this method of distribution does not appear to ensure a similar distribution of revenues. Legislative Proposal 8 changes the method of distribution. Under the proposal, the distribution to the local fire districts will be based upon the amount received in the preceding year.

As the Committee discussed this proposal, the Commissioner of Insurance asked it to consider increasing the revenues available to the Volunteer Fire Department Fund. The Department of Insurance receives more applications for request that the Fund can grant. Legislative Proposal 8 would change the current distribution between the General Fund and the Volunteer Fire Department Fund so that the Volunteer Fire Department Fund will receive approximately $3 million in additional revenue.

PROPERTY TAX

The Revenue Laws Study Committee spent some time considering two different property tax issues.

At the first meeting of Revenue Laws on September 5, 2006, staff gave an overview of the current system for paying property taxes and registration fees on motor vehicles, and then discussed S.L. 2005-294, AN ACT TO CREATE A COMBINED MOTOR VEHICLE REGISTRATION RENEWAL AND PROPERTY TAX COLLECTION SYSTEM. This legislation provides for a combined computer system that will require payment of property taxes and registration fees on the same date. The goals of the combined system are to reduce the

number of taxpayer interactions with government, to save the State and local governments money by requiring only one billing, and to provide the counties with a more efficient property tax collection system while holding the Division of Motor Vehicles fiscally harmless. Staff noted that during the 2006 Session, two changes were made to the 2005 act. First, clarifying changes were enacted to reflect the intent of the sponsors and supporters of the combined system. Second, the effective date of the new system was moved from July 1, 2009 to July 1, 2010. David Baker, Director of the Property Tax Division in the Department of Revenue, and Stephanie King, Director of Accounting Operations of the Division of Motor Vehicles in the Department of Transportation, then discussed the July 1, 2006 report on the study of the method of valuation of motor vehicles to be taxed and the implementation the combined computer system. They stressed that the findings and recommendations of this report are preliminary and that a task force is continuing to meet monthly to resolve issues raised by the legislation.

At the January 16, 2007 meeting, David Baker gave an update on the implementation and support of the costs of combining payment of property taxes and registration fees on motor vehicles. He noted that the task force was continuing to meet monthly and looking at issues such as credit card usage, payment of tag agents, unregistered vehicles, payment of the new system, and the role of car dealers. He added that members of the task force are visiting the Georgia Department of Revenue later in the month to examine Georgia's system of combining taxes and fees on motor vehicles.

At the November 16, 2006 Revenue Laws meeting, the property tax valuation of conservation land was discussed. Stan Duncan, Henderson County Tax Assessor, questioned the need for legislation in this area since the current law requires that any determination of the value of property subject to a conversation easement must take into consideration the advantages and disadvantages of conservation preservation agreements. Representatives of conservation organizations stressed a need for tax incentives for voluntary wildlife conservation and for improving consistency among the counties in implementing the present-use value system for

farmland. All parties stressed the importance of revenue neutrality when looking at expanding tax benefits to wildlife land. The speakers were instructed by the Co-chairs of the Committee to work together and try to come up with a consensus on this issue. Staff met three times with the speakers and other interested parties and looked at various ways of providing tax benefits to conservation lands including providing an income tax credit and property tax relief for wildlife land. After reviewing these proposals, the Co-chairs determined that the Revenue Laws Committee was not ready to make a recommendation. Specifically, the Co-chairs cited a lack of unanimity for the proposals from the interested parties, constitutional concerns with at least one of the proposals, and the advantages occasioned by first having a conservation legislative committee study both the land that would benefit by the proposals and the overall effect of the proposals.

COMMITTEE RECOMMENDATIONS AND LEGISLATIVE PROPOSALS

The Revenue Laws Study Committee makes the following 9 recommendations to the 2007 General Assembly. Each proposal is followed by an explanation and, if it has a fiscal impact, a fiscal note or memorandum, indicating any anticipated revenue gain or loss resulting from the proposal.

1. Combined Reporting
2. Tax Refund Procedure
3. IRC Update
4. Tax Credit for Real Property Donations
5. Streamlined Sales Tax Changes
6. Gift Tax Simplification
7. Enhance Collection Procedures
8. Gross Premiums Tax
9. Technical and Administrative Changes

LEGISLATIVE PROPOSAL #1

COMBINED REPORTING

LEGISLATIVE PROPOSAL #1

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2007 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO REQUIRE CORPORATIONS TO FILE A COMBINED INCOME TAX REPORT.

SHORTT TITLE: Modernize Corporate Income Tax Filing

SPONSORS: *

BRIEF OVERVIEW: This bill would change the way North Carolina determines the net income of a corporation. Under current law, a corporate files as a separate entity. Under this proposal, a corporation that is part of an affiliated group engaged in a single trade or business would file a combined report and its net income would be based upon the combined income of the group apportioned to this State.

FISCAL IMPACT: *

EFFECTIVE DATE: This act would become effective for taxable years beginning on or after January 1, 2009.

A copy of the proposed legislation, bill analysis, and fiscal analysis begin on the next page.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U D

BILL DRAFT 2007-RBxz-3 [v.10] (01/10)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/22/2007 7:26:49 PM

Short Title: Modernize Corporate Income Tax Filing. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CORPORATIONS TO FILE A COMBINED INCOME TAX REPORT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.2(5c) reads as rewritten:

"**§ 105-130.2. Definitions.**

The following definitions apply in this Part:

...

(5c) State net income. – The taxpayer's federal taxable income as determined under the Code, adjusted as provided in G.S. 105-130.5 and, in the case of a corporation that has income from business activity that is taxable both within and without this State, allocated and apportioned to this State as provided in G.S. 105-130.4. A corporation's net income in this State includes all of the following:

a. Its share of any income apportionable to this State of each of the combined groups of which it is a member.

b. Its share of any income apportionable to this State of a distinct business activity conducted within or without the State wholly by the taxpayer.

c. Its income from a business conducted wholly by the taxpayer entirely within this State.

d. Its nonapportionable income or loss allocable to this State."

SECTION 2. G.S. 105-130.4(a) reads as rewritten:

"**§ 105-130.4. Allocation and apportionment of income for corporations.**

(a) ~~As used in this section, unless the context otherwise requires:~~The following definitions apply in this section, G.S. 105-130.4A, and G.S. 105-130.4B:

(1) ~~"Apportionable income" means all~~ Affiliated group. – A group of two or more corporations in which more than fifty percent (50%) of the voting stock of each member corporation is directly or indirectly owned by a common owner or owners, either corporate or noncorporate, or by one or more of the member corporations.

(1a) Apportionable income. – All income that is apportionable under the United States Constitution.

(1b) Business activity. – Any activity by a corporation that would establish nexus under 15 Unites States Code section 381.

(1c) Casual sale of property. – The sale of any property which was not purchased, produced or acquired primarily for sale in the corporation's regular trade or business.

(1d) Combined group. – The collective members of an affiliated group that are engaged in a unitary business.

(2) ~~"Commercial domicile" means the~~ Commercial domicile. – The principal place from which the trade or business of the taxpayer is directed or managed.

(3) ~~"Compensation" means wages.~~ Compensation. – Wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(4) ~~"Excluded corporation" means any~~ Excluded corporation. A corporation engaged in business as a building or construction contractor, a securities dealer, or a loan company or a corporation that receives more than fifty percent (50%) of its ordinary gross income from intangible property.

(5) ~~"Nonapportionable income" means all~~ Nonapportionable income. – All income other than apportionable income.

(6) ~~"Public utility" means any~~ Public utility. – A corporation that is subject to control of one or more of the following entities: the North Carolina Utilities Commission, the Federal Communications Commission, the Interstate Commerce Commission, the Federal Energy Regulatory Commission, or the Federal Aviation Agency; and that owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, the transportation of goods or persons, or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam, oil, oil products, or gas. The term also includes a motor carrier of property whose principal business activity is transporting property by motor vehicle for hire over the public highways of this State.

(7) ~~"Sales" means all~~ Sales. – All gross receipts of the corporation except for the following receipts:

a. Receipts from a casual sale of property.
b. Receipts allocated under subsections (c) through (h) of this section.
c. Receipts exempt from taxation.
d. The portion of receipts realized from the sale or maturity of securities or other obligations that represents a return of principal.

(8) ~~"Casual sale of property" means the sale of any property which was not purchased, produced or acquired primarily for sale in the corporation's regular trade or business.~~

(9) ~~"State" means any~~ State. – A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(10) Unitary business. – One or more related business organizations engaged in business activity both within and without the State among which one or more of the following exist:
a. A unity of ownership, operation, or use.
b. An interdependence in their functions.".

SECTION 2. G.S. 105-130.4(b) reads as rewritten:

"(b) A corporation having income from business activity which is taxable both within and without this State shall allocate and apportion its net income or net loss as provided in this ~~section.~~ section and G.S. 105-130.4A. For purposes of allocation and apportionment, a corporation is taxable in another state if (i) the corporation's business activity in that state subjects it to a net income tax or a tax measured by net income, or (ii) that state has jurisdiction based on the corporation's business activity in that state to subject the corporation to a tax measured by net income regardless whether that state exercises its jurisdiction. ~~For purposes of this section, "business activity" includes any activity by a corporation that would establish a taxable nexus pursuant to 15 United States Code section 381.~~"

SECTION 3. G.S. 105-130.4(i) reads as rewritten:

"(i) All apportionable income of corporations other than public utilities and excluded corporations shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four. Provided, that where the sales factor does not exist, the denominator of the fraction shall be the number of existing factors and where the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction shall be the number of existing factors plus one. The apportionable income of a corporation that is part of a combined group engaged in a unitary business shall be apportioned to this State as provided in G.S. 105-130.4A."

SECTION 4. G.S. 105-130.4(l)(2) reads as rewritten:

"(2) Sales of tangible personal property are in this State if the property is received in this State by ~~the purchaser.~~ a purchaser other than the

United States government. In addition, a sale of tangible personal property is in this State if the property is shipped from a place in this State and the purchaser is in the United States government or the taxpayer is not taxable in the state of the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State shall constitute delivery to the purchaser in this State."

SECTION 5. Part 1 of Article 4 of Chapter 105 of the General Statutes is amended by adding two new sections to read:

"**§ 105.130.4A. Apportionment of income of combined group.**

(a) Combined Group. – The apportionable income of a combined group's unitary business is determined by eliminating income, deductions, and losses from all transactions between the members of the combined group associated with the combined group's unitary business. The apportionable income of the combined group's unitary business is apportioned in accordance with G.S. 105-130.4(i) through G.S. 105-130.4(l), including in the numerator the property, payroll, and sales associated with the combined group's unitary business in this State of each member of the combined group that has business activity in this State associated with the combined group's unitary business and including in the denominator the property, payroll, and sales of all members of the combined group that are associated with the combined group's unitary business. Members of a combined group may elect to determine the combined group's apportionable income pursuant to water's edge election under G.S. 105-130.4B.

(b) Member Share. – A member's share of the apportionable income of a combined group's unitary business apportioned to this State of which it is a member is the product of the following:

(1) The apportionable income of the combined group's unitary business apportionable to this State.

(2) The ratio of the member's State apportionment factors associated with the combined group's unitary business to the combined group's aggregate State apportionment factors associated with the combined group's unitary business."

"**§ 105-130.4B. Water's edge election.**

(a) Election. –Members of a combined group may elect to disregard the income and apportionment factors of a member of the combined group that is a foreign corporation that conducts eighty percent (80%) or more of its business activity outside the United States and outside of a tax haven country. A water's edge election must be filed in writing with the Secretary. It is effective for the taxable year in which it is filed and for the following 10 taxable years. The election will be automatically extended at the end of the 10-year period unless notice is given in writing to the Secretary of intent

not to renew. The notice of intent not to renew must be made before the end of the last two years of the election period.

(b) Withdrawal of Election. – An election may be withdrawn only upon written request to the Secretary and only with the written permission of the Secretary. If the Secretary grants a withdrawal of election, the Secretary must impose reasonable conditions as necessary to prevent the evasion of tax or to clearly reflect income for the election period prior to or after the withdrawal. A water's edge election, once terminated by either a notice of withdrawal or a failure to renew, may not be renewed for a minimum of three years.

(c) Definition. – For purposes of this section, the term 'tax haven country' has the same meaning as in G.S. 143-59.1.

SECTION 6. G.S. 105-130.14 reads as rewritten:

"**§ 105-130.14. ~~Corporations filing consolidated returns for federal income tax purposes.~~Combined reporting.**

~~Any corporation electing or required to file a consolidated income tax return with the Internal Revenue Service shall not file a consolidated return with the Secretary of Revenue, unless specifically directed to do so in writing by the Secretary, and shall determine its State net income as if a separate return had been filed for federal purposes.~~

A corporation which is part of an affiliated group engaged in a unitary business must file a report for the combined group containing the combined net income of the combined group and any other information the Secretary may require. The use of a combined report does not disregard the separate identities of the members of the combined group. Each member of the combined group is responsible for tax based on its taxable income or loss apportioned or allocated to this State."

SECTION 7. This act becomes effective for taxable years beginning on or after January 1, 2009.

BILL DRAFT 2007-RBxz-3: Modernize Corporate Income Tax Filing

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	January 23, 2007
Introduced by:		**Summary by:**	
Version:	Draft		

SUMMARY: Draft 2007-RBxz-3 would change the way North Carolina determines the net income of a corporation. Under current law, a corporation files as a separate entity. Under this proposal, a corporation that is part of an affiliated group engaged in a single trade or business would file a combined report and its net income would be based upon the combined income of the group apportioned to this State. The proposal would become effective for taxable years beginning on or after January 1, 2009.

CURRENT LAW: To determine its State net taxable income, a corporation must begin with its federal taxable income. Multi-state corporations may file a consolidated federal return. However, under North Carolina law, a corporation may not file a consolidated return unless specifically required to do so by the Secretary of Revenue. North Carolina requires corporations to file as a separate entity, meaning it must determine its State net income as if a separate return had been filed for federal income tax purposes.

Separate entity filing gives corporations with subsidiaries in multiple states the ability to devise ways to shift income from a high effective tax rate state to a low effective state rate state, often through the use of passive investment companies and intercompany transactions. Over the past several years, the General Assembly has enacted changes to the State's corporate income tax laws to address the shifting of income between states of multistate corporations. In 2001, the State enacted the royalty income reporting option. That legislation provided that income from using trademarks in this State is taxable to this State, regardless of where the corporation that holds the trademark is located. That legislation has been 'tweaked' and expanded since 2001, but the problem of income shifting between multi-state corporations continues to be an issue. The Department of Revenue has the ability to require a corporation to file a consolidated return when it believes the corporation's true net income attributable to this State is not accurately reflected on its separate entity filing return.

A more comprehensive way to address the issue of income shifting between affiliated corporations is through the use of combined reporting. The Governor's Commission to Modernize State Finances recommended this change in 2001. The Multi-State Tax Commission adopted a model uniform statute for combined reporting in 2006. Seventeen states currently require combined reporting.*

BILL ANALYSIS: This proposal would require mandatory combined reporting. Combined reporting is a method of calculating the income of a group of related corporations for tax purposes. It looks beyond the legal structure of separate incorporations to determine whether two or more related corporations are engaged in a single unitary business. Mandatory combined reporting would ensure that the income of a multi-state corporation is computed and apportioned in the same manner as a single corporate business.

* Alaska, Arizona, California, Colorado, Hawaii, Idaho, Illinois, Kentucky, Maine, Minnesota, Montana, Nebraska, New Hampshire, North Dakota, Oregon, Utah, and Vermont. Vermont adopted its law in 2004, effective for taxable years beginning on or after January 1, 2006.

A combined report is not a tax return. It is an accounting document prepared on behalf of a group of affiliated corporations engaged in a unitary business. Only those members of a unitary group that have nexus with North Carolina pay corporate income tax to North Carolina; however, the net income of the corporation is based on the combined group's net income apportioned to this State.

The proposal would require a corporation that is part of an affiliated group engaged in a unitary business to file a combined report. For purposes of filing a combined report, an affiliated group is defined as a group of two more corporations in which more than 50% of the voting stock of each member corporation is directly or indirectly owned by a common owner or owners, either corporate or noncorporate, or by one or more of the member corporations. The term 'unitary business' is defined as one or more related business organizations engaged in business activity both within and without the State among which one or more of the following exist:

- A unity of ownership, operation, or use.
- Interdependence in their functions.

The proposal would require that all corporations that are part of an affiliated group engaged in a unitary business be part of the combined report – that would include a group member that is a non-US corporation. However, the proposal would give the taxpayer the option of electing to exclude a group member whose business activity outside the United States is 80% or more of its total business activity. This election is commonly referred to as a 'water's edge election.' If a corporation chooses water's edge election, then the members of the group that would be include in a combined report include the following:

- U.S. corporations
- Non-U.S. corporations whose business activity inside the United States is 20% or more of its total business activity.
- Corporations doing business in a tax haven country, as defined in G.S. 143-59.1.[†]
- Related intangible holding companies.

A corporation desiring to make water's edge election would need to do so in writing and the election would be binding for 10 years. An election would be automatically extended unless notice is given of intent not to renew before the end of the last two years of the election period. An election terminated could not be renewed for a minimum of three years. An election could be terminated prior to the 10-year period if requested in writing and approved by the Secretary of Revenue.

Under this proposal, a corporation's net income in this State would include all of the following:

- Its share of any income apportionable to this State of each of the combined groups of which it is a member.
- Its share of any income apportionable to this State of a distinct business activity conducted within or without the State wholly by the taxpayer.
- Its income from a business conducted wholly by the taxpayer entirely within the State.
- It non-apportionable income or loss allocable to this State.

OUTSTANDING ISSUES: The proposal seeks to provide a vehicle through which the 2007 General Assembly can begin discussing the merits of combined reporting. The proposal does not address all of

[†] G.S. 143-59.1 defines a tax haven country as one or more of the following: Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Gibraltar, Isle of Man, the Principality of Monaco, and the Republic of the Seychelles.

the issues that would need to be addressed if this tax law change is enacted. Some of the outstanding issues that will need to be decided include the following:

- The fiscal impact. – The Tax Research Division of the Department of Revenue, in cooperation with the analysts in the Fiscal Research Division, continues to work on an estimate for this proposal. If the proposal results in an increase in the corporate income tax, the General Assembly could make a policy decision to lower the corporate income tax rate to a sufficient level to make the change revenue-neutral.
- Excluded corporations. – Which, if any, corporations should be excluded from combined reporting?
- Special apportionment formulas. – Current law provides special apportionment formulas for certain taxpayers, such as public utility companies. How will combined reporting affect the special apportionment formulas?
- Franchise tax. – What should the relationship be between the corporate income tax and the corporate franchise tax? Should combined reporting be used for franchise tax purposes also?
- Transitional issues.
- Administrative and compliance issues.

LEGISLATIVE PROPOSAL #2

TAX REFUND PROCEDURE

LEGISLATIVE PROPOSAL #2

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2007 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO ESTABLISH A UNIFORM PROCEDURE FOR TAX REFUND CLAIMS.

SHORT TITLE: Uniform Tax Refund Procedure

SPONSORS: *

BRIEF OVERVIEW: This bill would:

- Consolidate the tax refund process into a single, uniform procedure regardless of the nature of the refund request.
- Change the statute of limitations period for filing (1) a demand for a refund, and (2) a civil action after the denial of a refund claim.
- Limit class actions for tax refunds to only those taxpayers who have filed a written demand for a refund.

FISCAL IMPACT: This bill would *

EFFECTIVE DATE: This act would become effective January 1, 2008, and apply to taxes paid on or after that date.

A copy of the proposed legislation, bill analysis, and fiscal analysis begin on the next page.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-SVz-2A [v.8] (12/06)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/23/2007 12:42:10 AM

Short Title: Uniform Tax Refund Procedure. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A UNIFORM PROCEDURE FOR TAX REFUND CLAIMS .

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-266 and G.S. 105-266.1 are repealed.

SECTION 2. Article 9 of Chapter 105 is amended by adding a new section to read:

"**§ 105-265.1. Refunds of overpayment of taxes.**

(a) Without Demand. – If the Secretary discovers that a taxpayer has overpaid the correct amount of a tax, the overpayment must be refunded to the taxpayer as soon as possible together with any applicable interest. The Secretary may issue a refund of an overpayment only after the taxpayer has filed the final return for the tax period.

(b) Upon Demand. – A taxpayer who claims to have overpaid a tax may file a demand for a refund with the Secretary. The taxpayer must file the demand within the statute of limitations set out in G.S. 105-265.3. A demand for refund must be in a form prescribed by the Secretary and must identify the taxpayer, the type and amount of tax overpaid, the period included, and the reasons for the refund, including law or other authority upon which the taxpayer relies. The Secretary must either grant or deny the demand for a refund within six months from the date the demand is filed, unless this period is extended by written agreement of the taxpayer and the Secretary. The Secretary must notify the taxpayer of the decision to grant or deny the refund demand and must issue or adjust the refund, if applicable, in accordance with the decision. If the Secretary fails to grant a refund within the six-month period, the demand for refund is deemed denied.

(c) Hearing. – A taxpayer who receives a written decision from the Secretary denying a refund demand may file a written request for a hearing before the Secretary at any time within 30 days after the date the decision was mailed. A taxpayer whose

demand for refund is deemed denied may file a written request for a hearing at any time within 60 days after the expiration of the six-month period set out in subsection (b) of this section. The Secretary must grant a hearing on each timely demand for a hearing. Within 60 days after a timely demand for a hearing has been filed and at least 10 days before the date set for the hearing, the Secretary shall notify the taxpayer in writing of the time and place at which the hearing will be conducted. The date set for the hearing shall be within 90 days after the timely request for a hearing was filed or at a later date mutually agreed upon by the taxpayer and the Secretary. The date set for the hearing may be postponed once, at the request of the taxpayer or the Secretary, for a period of up to 90 days or for a longer period mutually agreed upon by the taxpayer and the Secretary. The rules of evidence do not apply in a hearing before the Secretary under this section.

Within 90 days after conducting a hearing under this subsection, the Secretary must make a decision on the refund demand, notify the taxpayer of the decision, and adjust the computation of the tax in accordance with the decision. The Secretary must refund to the taxpayer in accordance with this Article the amount of any overpayment of tax.

(d) Civil Action. – Instead of requesting a hearing in accordance with subsection (c) of this section, a taxpayer may within 90 days of the denial of a refund demand bring a civil action against the Secretary for recovery of the alleged overpayment. No suit shall be maintained in any court for the recovery of any overpayment of tax unless the taxpayer seeking a refund has filed a written demand for a refund in accordance with subsection (b) of this section and the Secretary has denied the demand for refund.

If upon the trial it is determined that all or part of the tax constituted an overpayment, judgment shall be rendered therefor, with interest, and the judgment shall be collected as in other cases. The amount of taxes for which judgment is rendered shall be refunded by the State. The court may not order in its judgment the issuance of a refund to any taxpayer who has not filed a written request for a refund in accordance with this section.

(e) Venue. – If the alleged overpayment is more than two hundred dollars ($200.00), the taxpayer may bring the action either in the Superior Court of Wake County or in the superior court of the county in which the taxpayer resides; if the alleged overpayment is two hundred dollars ($200.00) or less, the taxpayer may bring the action in any State court of competent jurisdiction in Wake County.

(f) Limitation on Class Actions. – No class action for a refund of overpayment of tax may be maintained in any court unless each taxpayer in the class has filed a written demand for a refund in accordance with subsection (b) of this section.

(g) Appeal. – Either party may appeal to the appellate division from the judgment of the superior court under the rules and regulations prescribed by law for appeals, except that if the Secretary appeals, the Secretary is not required to give any undertaking or make any deposit to secure the cost of the appeal.

(h) Refunds Prohibited. – The Secretary may not refund any of the following:

(1) An overpayment set off under Chapter 105A, the Setoff Debt Collection Act, or under another setoff debt collection program authorized by law.

(2) An income tax overpayment the taxpayer has elected to apply to another purpose as provided in this Article.

(3) An individual income tax overpayment of less than one dollar ($1.00) or another tax overpayment of less than three dollars ($3.00), unless the taxpayer makes a written demand for the refund."

SECTION 3. Article 9 of Chapter 105 is amended by adding a new section to read:

"**§ 105-265.2. Statute of limitations for refunds.**

The period in which a refund must be demanded or discovered under this Article is determined as follows:

(1) General Rule. – No overpayment shall be refunded, whether upon discovery or receipt of written demand, if the discovery is not made or the demand is not received within three years after the date set by the statute for the filing of the return or within six months after the payment of the tax alleged to be an overpayment, whichever is later. An agreement by a taxpayer to extend the time in which the Department can assess the taxpayer for an underpayment automatically extends the time in which the taxpayer can demand a refund.

(2) Worthless Debts or Securities. – Section 6511(d)(1) of the Code applies to an overpayment of the tax levied in Part 2 or 3 of Article 4 of this Chapter to the extent the overpayment is attributable to either of the following:

a. The deductibility by the taxpayer under section 166 of the Code of a debt that becomes worthless, or under section 165(g) of the Code of a loss from a security that becomes worthless.

b. The effect of the deductibility of a debt or loss described in subpart a. of this subdivision on the application of a carryover to the taxpayer.

(3) Capital Loss and Net Operating Loss Carrybacks. – Section 6511(d)(2) of the Code applies to an overpayment of the tax levied in Part 2 or 3 of Article 4 of this Chapter to the extent the overpayment is attributable to a capital loss carryback under section 1212(c) of the Code or to a net operating loss carryback under section 172 of the Code.

(4) Federal Determination. – When a taxpayer files with the Secretary a return that reflects a federal determination and the return is filed within the required time, the period in which a refund must be demanded or discovered is one year after the return reflecting the federal determination is filed or three years after the original return was filed or due to be filed, whichever is later."

SECTION 4. Article 9 of Chapter 105 is amended by adding a new section to read:

"**§ 105-265.3. Interest on refunds.**

An overpayment of tax bears interest at the rate established in G.S. 105-241.1(i) from the date that interest begins to accrue until a refund is paid. A refund sent to a taxpayer is considered paid on a date determined by the Secretary that is no sooner than five days after a refund check is mailed.

A refund set off against a debt pursuant to Chapter 105A of the General Statutes is considered paid five days after the Department mails the taxpayer a notice of the setoff, unless G.S. 105A-5 or G.S. 105A-8 requires the agency that requested the setoff to return the refund to the taxpayer. In this circumstance, the refund that was set off is not considered paid until five days after the agency that requested the refund mails the taxpayer a check for the refund.

Interest on an overpayment of a tax, other than a tax levied under Article 4 or Article 8B of this Chapter, accrues from a date 90 days after the date the tax was originally paid by the taxpayer until the refund is paid. Interest on an overpayment of a tax levied under Article 4 or Article 8B of this Chapter accrues from a date 45 days after the latest of the following dates until the refund is paid:

(1) The date the final return was filed.

(2) The date the final return was due to be filed.

(3) The date of the overpayment.

The date of an overpayment of a tax levied under Article 4 or Article 8B of this Chapter is determined in accordance with section 6611(d), (f), (g), and (h) of the Code.

SECTION 5. G.S. 105-267 reads as rewritten:

"**§ 105-267. ~~Taxes to be paid;~~ Limitation on suits for recovery of taxes.**

No court of this State shall entertain a suit of any kind brought for the purpose of preventing the collection of any tax imposed in this Subchapter. Whenever a person has a valid defense to the enforcement of the collection of a tax, the person shall pay the tax to the proper ~~officer,~~ officer and demand a refund in accordance with G.S. 105-265.1. ~~and that payment~~ The payment of the tax shall be without prejudice to any defense of rights the person may have regarding the tax. ~~At any time within the applicable protest period, the taxpayer may demand a refund of the tax paid in writing from the Secretary and if the tax is not refunded within 90 days thereafter, may sue the Secretary in the courts of the State for the amount demanded. The protest period for a tax levied in Article 2A, 2C, or 2D of this Chapter is 30 days after payment. The protest period for all other taxes is three years after payment.~~

~~The suit may be brought in the Superior Court of Wake County, or in the county in which the taxpayer resides at any time within three years after the expiration of the 90-day period allowed for making the refund. If upon the trial it is determined that all or part of the tax was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the judgment shall be collected as in other cases. The amount of taxes for which judgment is rendered in such an action shall be refunded by the State. G.S. 105-241.2 provides an alternate procedure for a taxpayer to contest a tax and is not in conflict with or superseded by this section.~~"

SECTION 6. G.S. 105-113.113(a) reads as rewritten:

"(a) Special Account. – The Secretary shall credit the proceeds of the tax levied by this Article to a special nonreverting account, to be called the State Unauthorized Substances Tax Account, until the tax proceeds are unencumbered. The Secretary shall remit the unencumbered tax proceeds as provided in this section on a quarterly or more frequent basis. Tax proceeds are unencumbered when either of the following occurs:

(1) The tax has been fully paid and the taxpayer has no current right under ~~G.S. 105-267~~ Article 9 of this Chapter to seek a refund.

(2) The taxpayer has been notified of the final assessment of the tax under G.S. 105-241.1 and has neither fully paid nor timely contested the tax under ~~G.S. 105-241.1 through G.S. 105-241.3, G.S. 105-267~~ Article 9 of this Chapter."

SECTION 7. G.S. 105-239.1(c) reads as rewritten:

"(c) The provisions of G.S. 105-241.1, 105-241.2, 105-241.3, 105-241.4, ~~105-266.1 and 105-267~~ and 105-265.1 with respect to assessment procedure, demand for refund, review, and appeal ~~shall~~ apply to the liability of any transferee assessed under this section or of any property subject to the liability imposed by this section and to the assertion of a lien upon property in the hands of the transferee."

SECTION 8. G.S. 1-52(15) reads as rewritten:

"(15) For the recovery of taxes paid as provided in ~~G.S. 105-267 and~~ G.S. 105-381."

SECTION 9. G.S. 20-99(b)(3) reads as rewritten:

"(3) Shall be accompanied by a copy of this subsection, and thereupon the procedure shall be as follows:

If the garnishee has no defense to offer or no setoff against the taxpayer, he shall, within 10 days after service of said notice, answer the same by sending to the Commissioner of Motor Vehicles by registered mail a statement to that effect, and if the amount due or belonging to the taxpayer is then due or subject to his demand, it shall be remitted to the Commissioner with said statement, but if said amount is to mature in the future, the statement shall set forth that fact and the same shall be paid to the Commissioner upon maturity, and any payment by the garnishee hereunder shall be a complete extinguishment of any liability therefor on his part to the taxpayer. If the garnishee has any defense or setoff, he shall state the same in writing under oath, and, within 10 days after service of said notice, shall send two copies of said statement to the Commissioner by registered mail; if the Commissioner admits such defense or setoff, he shall so advise the garnishee in writing within 10 days after receipt of such statement and the attachment or garnishment shall thereupon be discharged to the amount required by such defense or setoff, and any amount attached or garnished hereunder which is not affected by such defense or setoff shall be remitted to the Commissioner as above provided in cases where the garnishee has no defense or setoff, and with like effect. If the Commissioner shall not admit the defense or

setoff, he shall set forth in writing his objections thereto and shall send a copy thereof to the garnishee within 10 days after receipt of the garnishee's statement, or within such further time as may be agreed on by the garnishee, and at the same time he shall file a copy of said notice, a copy of the garnishee's statement, and a copy of his objections thereto in the superior court of the county where the garnishee resides or does business where the issues made shall be tried as in civil actions.

If judgment is entered in favor of the Commissioner of Motor Vehicles by default or after hearing, the garnishee shall become liable for the taxes, interest and penalties due by the taxpayer to the extent of the amount over and above any defense or setoff of the garnishee belonging, owing, or to become due to the taxpayer, but payments shall not be required from amounts which are to become due to the taxpayer until the maturity thereof, nor shall more than ten percent (10%) of any taxpayer's salary or wages be required to be paid hereunder in any one month. The garnishee may satisfy said judgment upon paying said amount, and if he fails to do so, execution may issue as provided by law. From any judgment or order entered upon such hearing either the Commissioner of Motor Vehicles or the garnishee may appeal as provided by law. If, before or after judgment, adequate security is filed for the payment of said taxes, interest, penalties, and costs, the attachment or garnishment may be released or execution stayed pending appeal, but the final judgment shall be paid or enforced as above provided. The taxpayer's sole remedies to question his liability for said taxes, interest, and penalties shall be those provided in ~~G.S. 105-267, as now or hereafter amended or supplemented.~~ Article 9 of Chapter 105 of the General Statutes. If any third person claims any intangible attached or garnished hereunder and his lawful right thereto, or to any part thereof, is shown to the Commissioner, he shall discharge the attachment or garnishment to the extent necessary to protect such right, and if such right is asserted after the filing of said copies as aforesaid, it may be established by interpleader as now or hereafter provided by the General Statutes in cases of attachment and garnishment. In case such third party has no notice of proceedings hereunder, he shall have the right to file his petition under oath with the Commissioner at any time within 12 months after said intangible is paid to him and if the Commissioner finds that such party is lawfully entitled thereto or to any part thereof, he shall pay the same to such party as provided for refunds by G.S. 105-407 and if such payment is denied, said party may appeal from the determination of the Commissioner to the Superior Court of Wake County or to the superior court of the county wherein he resides or does business. The intangibles of a taxpayer shall be paid or collected hereunder only to

the extent necessary to satisfy said taxes, interest, penalties, and costs. Except as hereinafter set forth, the remedy provided in this section shall not be resorted to unless a warrant for collection or execution against the taxpayer has been returned unsatisfied: Provided, however, if the Commissioner is of opinion that the only effective remedy is that herein provided, it shall not be necessary that a warrant for collection or execution shall be first returned unsatisfied, and in no case shall it be a defense to the remedy herein provided that a warrant for collection or execution has not been first returned unsatisfied: Provided, however, that no salary or wage at the rate of less than two hundred dollars ($200.00) per month, whether paid weekly or monthly, shall be attached or garnished under the provisions of this section."

SECTION 10. This act becomes effective January 1, 2008, and applies to taxes paid on or after that date.

BILL DRAFT 2007-SVz-2A: Uniform Tax Refund Procedure

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	January 22, 2007
Introduced by:		**Summary by:**	Trina Griffin
Version:	Draft 2007-SVz-2A [v.6]		Committee Counsel

SUMMARY: This proposal does three things:

- ***Consolidates the tax refund process into a single, uniform procedure regardless of the nature of the refund request.***
- ***Changes the statute of limitations period for filing (1) a demand for refund, and (2) a civil action after the denial of a refund claim.***
- ***Limits class actions for tax refunds to only those taxpayers who have filed a written demand for a refund.***

CURRENT LAW: The procedure for obtaining a refund of tax paid by a taxpayer depends on the nature of the claim. If the taxpayer is challenging the constitutionality of a tax, then the taxpayer must follow the procedure set out in G.S. 105-267, known as the "payment under protest rule." If the taxpayer claims that the tax paid was incorrect or excessive, then G.S. 105-266.1 governs the refund procedure. Under both statutes, the taxpayer is required to apply to the Secretary in writing for a refund. Under G.S. 105-267, the refund request must be made within three years after payment.[1] Under G.S. 105-266.1, the refund request must be made within three years after the date for filing of the return or within 6 months after payment of the tax, whichever is later.[2] At this stage, the procedure varies as follows:

Payment under protest (G.S. 105-267). – Once the refund request has been made, the Secretary has 90 days to issue a decision and refund the tax in accordance with the decision. If the tax is not refunded within 90 days, the taxpayer may file a civil action at any time within three years after the expiration of the 90-day period allowed for making the refund. Thus, a taxpayer potentially has a maximum of 6 years and 90 days to bring a civil action. If upon trial it is determined that all or part of the tax was levied for an "illegal or unauthorized purpose," judgment shall be rendered for the taxpayer, and the amount of the judgment must be refunded by the State.

Refunds for overpayment (G.S. 105-266.1). – Once the refund request has been made, the Secretary reviews the request and notifies the taxpayer of the decision. If the refund is reduced or disallowed, the taxpayer may request a hearing. The Department will schedule a hearing within 90 days, unless the taxpayer and the Secretary agree to a later date. Within 90 days of the hearing, the Secretary must make a decision, notify the taxpayer, and adjust the tax in accordance with the decision. A taxpayer aggrieved by the Secretary's decision may, within 90 days after notification of the decision, either:

[1] The protest period for taxes paid on alcoholic beverages, tobacco products, and controlled substances is 30 days after payment.

[2] The statute of limitations period varies for overpayments associated with worthless debts or securities, capital losses and net operating losses, and returns reflecting a federal determination.

1. Petition for administrative review before the Tax Review Board under G.S. 105-241.2[3]; or
2. Bring a civil action against the Secretary for recovery of the alleged overpayment.[4]

BILL ANALYSIS:

Single, Uniform Procedure

The proposal repeals G.S. 105-266 and G.S. 105-266.1 and creates a new statutory section governing refund claims without making any distinction based on the type of claim. G.S. 105-267 is also substantially amended. Only the first two sentences are maintained, with minor changes, in order to preserve the prohibition on actions brought to enjoin the collection of a tax and the body of case law upholding the constitutionality of the requirement that a taxpayer pay the tax prior to challenging its legality in court.

Under this proposal, refund claims for overpayments and refund claims for "payments under protest" would be subject to the same procedural requirements. If a taxpayer claims to have overpaid a tax, whether the claim is that the tax is incorrect or that the statute imposing the tax is unconstitutional, the taxpayer must file a demand with the Secretary within the prescribed time period. The Secretary must grant or deny the demand within six months from the date the demand is filed and notify the taxpayer of the decision. If the Secretary fails to grant a refund within the six-month period, the demand for a refund is deemed denied. Within 30 days of notice of the denial, the taxpayer may request a hearing before the Secretary. An additional 30 days is provided if the demand is "deemed denied." The hearing must take place within 90 days of the filing of the request for a hearing. The Secretary must issue a decision within 90 days of the hearing. Instead of requesting a hearing, a taxpayer may bring a civil action in superior court within 90 days of the denial of a refund demand.

This proposal represents the first step in an attempt to simplify the current refund procedure, which is controlled by statutes that are unclear and that have been significantly muddied by recent North Carolina court decisions. The Committee has also spent a great deal of time this interim studying the tax appeals process, but to date, has not reached a consensus. While the refund process and the appeals process necessarily overlap, the issues are distinct. With regard to refunds, one issue is whether these claims should follow the same procedural path regardless of the nature of the claim. With regard to appeals, one of the issues is to what forum that path leads. The specifics of this proposal may evolve depending on the Committee's recommendation with regard to tax appeals, but one of the principles for which the Committee has expressed support is that the refund process should be consolidated into a single, uniform procedure; this proposal reflects that principle.

Statute of Limitations

Under federal law, a refund claim must be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever is later, or if no return was filed by the taxpayer, within two years from the time the tax was paid. The statute of limitation under federal law for filing a civil action is two years from the notice of disallowance of the refund.

In North Carolina, there are two different sets of statutes of limitation, as set out in the table below, because North Carolina has two different refund procedures. In order to establish a single, uniform refund procedure, the statutes of limitation should be the same. The draft proposal changes the statutes of limitation for protest claims to match the current statutes of limitation for overpayment claims.

[3] Either party may appeal a decision of the Tax Review Board to superior court, then to the North Carolina Court of Appeals, and then to the North Carolina Supreme Court.

[4] Either party may appeal to the appellate division from the judgment of the superior court.

	Overpayments (Current Law)	Payments Under Protest (Current Law)	All Refund Claims (Draft Proposal)
For demanding a refund	3 years after date for filing return, or 6 months after payment of tax, whichever is later	3 years after payment of tax	3 years after date for filing return, or 6 months after payment of tax, whichever is later
For bringing a civil action after denial of a refund claim	90 days after notification of Secretary's decision	3 years after expiration of 90-day period	90 days after denial of refund by Secretary.

When the Committee first considered this proposal, it endorsed as one of its guiding principles the notion that the refund process should protect the fiscal stability of the State. The protest statute in its current form and recent judicial interpretation appear to be moving away from the original intent of the statute, which was to provide meaningful notice to the State of anticipated refunds so that the State may budget accordingly. The shorter the statute of limitations period, the sooner the State is put on notice of a challenge. The longer the statute of limitations, the longer the State continues to levy a potentially unconstitutional tax. The original statute of limitations for filing a civil action was 30 days. Now, with the current period for demanding a refund, a taxpayer potentially has 6 years and 90 days to challenge a tax. This draft shortens the statute of limitations, which is consistent with the original intent of the statute and is designed to protect the fiscal stability of the State.

Class Actions

The proposal would also require that every member of a class action file a written demand for a refund prior to bringing suit.

This limitation is in response to recent court decisions that have significantly undercut the protest requirement in G.S. 105-267. In *Bailey II*, the Court said that the requirement of filing a written demand prior to filing suit was only required to the extent the State has notice of its potential fiscal liability. The *Dunn* Court went even further stating that as long as the State had notice that a tax was being challenged, the requirement was met and the burden was on the State to figure out its potential liability. Under *Dunn*, the protest requirement, which was originally intended to provide the State with notice, becomes meaningless because it is only after a court determines who should make up the class that the State can begin to determine its potential liability, and class certification may occur years after the payment of the tax.

This draft proposal clarifies the original intent of the protest statute which is that every taxpayer seeking a refund must first file a written demand, including members of a class action. Notably, class actions are prohibited in United States Tax Court and class action refund suits in other federal courts require that every member of the class file a written demand.

ISSUES FOR CONSIDERATION: The issue of remedying unconstitutional taxes is an extremely complex one. Among the states, there is a variety of different results with little to no consistent analysis. This draft proposal represents a first step toward providing clarity in the law, but at this stage, it does not represent input from interested parties, such as the Department of Revenue or the Tax Council of the Bar Association. Many issues may need further development such as the form and content of a demand for a refund, whether the time periods are appropriate, whether the monetary threshold for venue purposes should be updated, and most importantly, the effect of a class action. Should the Committee decide that every person seeking a refund must file a demand, including all members of a class action, then the statute should indicate whether the filing of a class action tolls the period to file a demand and for how

long. Should the Committee decide that not all persons seeking a refund of an unconstitutional tax must file a demand, then the statute should provide some guidance in that regard as well.

EFFECTIVE DATE: The act would become effective January 1, 2008, and apply to taxes paid on or after that date.

2007-SVz-2A-SMSV

LEGISLATIVE PROPOSAL #3

IRC UPDATE

LEGISLATIVE PROPOSAL #3

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2007 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS.

SHORT TITLE: IRC Update

SPONSORS: *

BRIEF OVERVIEW: This proposal would update the reference to the Internal Revenue Code used in defining and determining certain State tax provisions.

FISCA L IMPACT: *

EFFECTIVE DATE: This act would become effective when it becomes law.

A copy of the proposed legislation, bill analysis, and fiscal analysis begin on the next page.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-SVxz-1 [v.5] (12/06)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/12/2007 11:28:09 AM

Short Title: IRC Update.	(Public)
Sponsors: Unknown.	
Referred to:	

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-228.90(b)(1b) reads as rewritten:

"(b) Definitions. – The following definitions apply in this Article:

...

(1b) Code. – The Internal Revenue Code as enacted as of ~~January 1, 2006,~~ January 1, 2007, including any provisions enacted as of that date which become effective either before or after that date.

SECTION 2. Notwithstanding Section 1 of this bill, any amendments to the Internal Revenue Code enacted after January 1, 2006 that increase North Carolina taxable income for the 2006 taxable year become effective for taxable years beginning on or after January 1, 2007.

SECTION 3. This act is effective when it becomes law.

2007-SVxz-1: IRC Update

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	January 12, 2007
Introduced by:		**Summary by:**	Heather Fennell
Version:	Draft 2007-SVxz-1		Committee Counsel

SUMMARY: ***This proposal would update the reference to the Internal Revenue Code used in defining and determining certain State tax provisions.***

CURRENT LAW: North Carolina's tax law tracks many provisions of the federal Internal Revenue Code by reference to the Code.[1] The General Assembly determines each year whether to update its reference to the Internal Revenue Code.[2] Updating the Internal Revenue Code reference makes recent amendments to the Code applicable to the State to the extent that State law tracks federal law. The General Assembly's decision whether to conform to federal changes is based on the fiscal, practical, and policy implications of the federal changes and is normally enacted in the following year, rather than in the same year the federal changes are made.

BILL ANALYSIS:

IRC UPDATE

This bill would change the reference date to January 1, 2007, effective when the bill becomes law. Changing the reference date to January 1, 2007 would incorporate the changes made in the following acts: the Deficit Reduction Act of 2005, the Tax Increase Prevention and Reconciliation act of 2005, the Heroes Earned Retirement Opportunities Act, the Pension Protection Act of 2006, and the Tax Relief and Health Care Act of 2006.

Between January 1, 2006 and December 20, 2006 there were five major pieces of federal legislation that made changes to the Internal Revenue Code. This federal legislation includes the Deficit Reduction Act of 2005 (P.L. 109-71) signed into law February 9, 2006, the Tax Increase Prevention and Reconciliation act of 2005 (P.L. 109-222) signed into law May 18, 2006, the Heroes Earned Retirement Opportunities Act (P.L. 109-227) signed into law May 23, 2006, the Pension Protection Act of 2006 (P.L. 109-280) signed into law August 19, 2006 and the Tax Relief and Health Care Act of 2006 (P.L. 109-432) signed into law December 20, 2006.

[1] North Carolina first began referencing the Internal Revenue Code in 1967, the year it changed its taxation of corporate income to a percentage of federal taxable income.

[2] The North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Article V, Section 2(1) of the Constitution provides in pertinent part that the "power of taxation ... shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would ... be invalidated as an unconstitutional delegation of legislative power."

Deficit Reduction Act of 2005 (P.L. 109-171)

Although this act makes numerous tax changes at the federal level, these changes have little to no direct impact at the state level.

Tax Increase Prevention and Reconciliation Act of 2005 (P.L. 109-222)

• *Amortization treatment of musical compositions.* Under current law, taxpayers are allowed to recover, through annual depreciation deductions, the costs of certain property used in a trade or business or for the production of income. The costs associated with the creation or acquisition of musical compositions may be depreciated using the income forecast method. Under this method, the depreciation is determined by multiplying the adjusted basis for the property by the proportion the income generated by the property during the tax year to the total forecasted income for the property for ten years. A "look-back" method is used to recapture any underpayment created by forecasting. In the third and tenth year, actual income of the property is used to determine what the taxpayer's deduction should have been if the forecast method was not used. If the forecasted income is within 10 percent of the estimated income in these years, the "look-back" method does not need to be applied.

Under the act, expenses incurred for the creation or acquisition of musical compositions may be amortized over five years. Taxpayers can elect to amortize these expenses or use the previous forecast method. This provision applies to tax years beginning after December 31, 2005 and before January 1, 2011.

• *Amortization treatment of G & G expenditures.* The geological and geophysical (G &G) costs incurred for the purpose of accumulating data to serve as the basis for the decision about acquisition or retention of mineral rights by taxpayers in the business of exploring for minerals (including gas and oil) were previously considered capital expenditures and allocated to the property (or properties) purchased as a result of this data. If no property was purchased, these costs were taken as a loss in the year the project was abandoned. Last year, the Energy Tax Incentive Act of 2005 allowed these expenses to be amortized over two years.

The act allows for these costs to be amortized over five years for large integrated oil companies. Large integrated oil companies are defined as companies that have an average daily worldwide production of crude oil of at least 500,000 barrels for the taxable year, gross receipts in excess of $1 billion in the last taxable year ending during calendar year 2005, and an ownership interest in a crude oil refiner of 15 percent or more. This provision is effective for tax years beginning after August 8, 2005.

• *Extension of taxation of passive income of minors.* Special rules apply to the unearned income of a child who is under age 14. The special tax, colloquially called the "kiddie tax," is applied if: 1) the child has not reached the age of 14 by the close of the taxable year; 2) the child's unearned income was more than $1,700; 3) the child is required to file a return for the year. The tax applies regardless of whether the child may be claimed as a dependent on the parent's return. For children under age 14, unearned income is taxed at the parent's rate if the parent's rate is higher than the child's rate. The remainder of a child's taxable income is taxed at the child's rates, regardless of whether the tax applies to the child.

The act expands the rule to include all minors under the age 18 in the "kiddie tax." There is an exception for distributions from certain qualified disability trusts. The minor child tax does not

apply to a child that is married and files a joint tax return. This provision applies to taxable years beginning after December 31, 2005.

- *Increased expensing for small businesses.* Prior to the *American Jobs Creation Act of 2004*, small businesses were eligible to expense up to $25,000 of the cost of qualifying property placed in service for the taxable year. Qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. The $25,000 amount was reduced dollar-for-dollar by the amount by which the cost of the qualifying property exceeded $200,000. The deduction was increased to $100,000, with costs exceeding $400,000 reducing the deduction by the *American Jobs Creation Act of 2004.* This provision was set to expire for tax years beginning after December 31, 2006.

This act extends the enhanced small business expensing thresholds until tax years beginning after 2007 and before 2010.

- *Increased income limit for conversion of traditional IRAs to Roth IRAs.* There are two general types of individual retirement arrangements (IRAs): traditional IRAs and Roth IRAs. The total amount an individual may contribute is limited to the lesser of a dollar amount ($4,000 for 2006), or the amount of the individual's taxable income for the year. Contributions to a traditional IRA are generally deductible. Distributions from a traditional IRA are included in gross income to the extent the distributions are not attributable to a return of nondeductible contributions. Contributions to a Roth IRA are not deductible. Distributions from a Roth IRA are excludable from gross income. A taxpayer with an adjusted gross income of $100,000 or less may convert all or a portion of a traditional IRA to a Roth IRA. Married taxpayers filing separate returns may not convert a traditional IRA into a Roth IRA.

This act eliminates the income limits on conversions of traditional IRAs to Roth IRAs. The amount converted is treated as taxable income in the year it is converted; however, taxpayers who convert in 2010 and do not take distributions from the converted plan until after 2012, have the option of either recognizing all of the income in 2011 or including the income ratably over the tax years 2011 and 2012. This provision is effective for tax years beginning after December 31, 2009.

Heroes Earned Retirement Opportunities Act (P.L. 109-227)

The sole purpose of this act is to allow members of the Armed Forces serving in a combat zone to make contributions to retirement plans. Contributions to individual retirement plans are limited to the lesser of $4,000 or the individual's taxable income. Combat pay is not considered taxable income; therefore, many members of the Armed Forces are currently unable to make retirement contributions. This provision will treat combat pay as taxable income for the purposes of making contributions to an individual retirement account. This provision is retroactive to tax years beginning after December 31, 2003. This act will lower Federal and state taxable income and can result in amended returns for earlier years.

Pension Protection Act of 2006 (P.L. 109-280)

Contributions and Benefits

- *Increase in employer deduction limitations for contribution to defined benefit plans.* An employer's contributions to a qualified retirement plan are generally deductible, but the amount that qualifies for the deduction is limited. Under the level funding method, the limitation on the

amount of deductible contributions is the amount necessary to provide the remaining unfunded cost of the participant's past and current service credits distributed as a level amount of the remaining future service of each participant. Under the normal cost method, the limitation on the amount of deductible contributions is the amount equal to the normal cost of the plan, plus, if past service or other supplementary pension or annuity credits are provided by the plan, an amount necessary to amortize the unfunded costs attributable to such credits in equal annual payments over ten years. Regardless of the type of defined benefit plan, the maximum limitation for contribution deductions cannot be any less than the unfunded current liability.

The act increases the deduction limits for contributions to defined benefit plans with different limits placed upon single-employer plans, multiemployer plans, and combined plans.

Single-employer plans: For years beginning in 2006 and 2007, the maximum deduction limitation cannot be less than the unfunded current liability. However, when calculating unfunded current liability a single-employer plan subtracts the value of the plan's assets from 150 percent of the current liability of the plan. In years beginning after December 31, 2007 the annual deduction limitation is the greater of 1) the minimum contribution or 2) the excess of the sum of: (i) the funding target for the plan year, (ii) the target normal cost for the plan year, the "cushion amount" for the plan year; over the value of the assets held in the plan. For plans that are not "at risk," the cushion amount is removed from the computation in (ii). The "cushion amount" is generally the sum of 50 percent of the funding target for the plan year and the amount by which the funding target would increase for the year if the plan took into account expected future increases in compensation or, if the plan does not base benefits for past service on compensation, expected increases in benefits in succeeding plan years.

Multiemployer plans: For years beginning in 2006 and 2007, the maximum amount of the deduction limitation for contributions to multiemployer plans cannot be less than 140 percent of the current liability of the plan minus the plan's assets. For years beginning after December 31, 2007, the formula for the deduction is the same, but benefits that are nonforfeitable under the plan after termination of the plan should not be taken into account in computing the current liability of the plan.

Combined plans: The deduction limit for combined plans only applies to contributions that exceed six percent of the compensation otherwise paid or accrued to the beneficiaries under the plan year.

- *Increased IRA contributions for individuals affected by employer's bankruptcy.* Both traditional and Roth IRAs are subject to annual contribution limits. For 2006 the annual limit is the lesser of $4,000 or the individual's taxable income. Individuals who have reached the age of 50 are allowed to make annual "catch-up" contributions. The annual limit on "catch-up contributions is $1,000.

The act provides employees affected by an employer's bankruptcy the option to make additional contributions to an IRA. For the years 2007 – 2009, increased contributions up to an additional $3,000 per year over the yearly contribution limit are allowed for individuals affected by an employer's bankruptcy. All of the following requirements must be met:

1) the employee must have participated in the employer's 401(k) plan on the date six months preceding the employer filing for bankruptcy,

2) the employer matched at least 50 percent of the employee's contribution with employer stock,
3) the employer is a debtor in bankruptcy in a preceding tax year,
4) the employer or any other person must have been subject to an indictment or conviction in a preceding tax year resulting from business transactions related to the bankruptcy case.

Health and Medical Benefits

- *Health insurance premiums for retired public safety officers.* Distributions from a qualified retirement plan are generally included in taxable income the year of the distribution except to the extent attributable to after-tax contributions.

Retired public safety officers may exclude from taxable income up to $3,000 of otherwise taxable distributions from a government pension if used to pay for health insurance premiums. The individual must have separated from service either due to disability or by reaching normal retirement age. The term "public safety officer" is defined using the *Omnibus Crime Control and Safe Street Act of 1986* definition rather than the definition of public safety officer used in other provisions of the PPA. [3] This provision is effective for tax years beginning after December 31, 2006.

Plan Distributions and Rollovers

- *Modification of hardship and unforeseen financial emergency rules.* Currently, early distributions from 401(k) plans, tax sheltered annuities, 457 plans or nonqualified deferred compensation plans are allowed for hardship and unforeseen financial emergencies of the individual plan participant, or the individual's spouse or dependent.

The act directs the Secretary of Treasury to modify regulations for determining whether a participant has had a hardship or unforeseen financial emergencies for purposes of receiving an early distribution from a qualified retirement plan. The new regulations must provide that a hardship or unforeseen financial emergency of any beneficiary of a plan participant, regardless of the beneficiary's relationship to the plan participant, qualifies for an early distribution. This provision is considered effective after August 17, 2006.

- *Treatment of certain distributions to public safety employees.* Unless an exception to the penalty applies, distributions from a qualified retirement plan prior to age 59 ½, death or disability of a plan participant, are subject to a 10% early withdrawal penalty.

Under this act, the early withdrawal penalty will not apply to distributions from a government plan to a qualified public safety employee who separates from service after the age of 50. A qualified public safety employee is "any employee of a State or political subdivision of a State who provides police protection, fire-fighting services, or emergency medical services for any area within the jurisdiction of the state or political subdivision." This provision is considered effective after August 17, 2006.

[3] Under the Omnibus Crime Control Act a "public safety officer" includes an individuals who 1) are involved in crime control or reduction, or enforcement of criminal laws, including but not limited to police, corrections, probation, parole and judicial officers; 2) professional firefighters; 3) officially recognized or designated public employee members of a rescue squad or ambulance crew; 4) officially recognized or designated members of a legally organized volunteer fire department; and 5) officially recognized or designated chaplains of volunteer fire departments, fire departments, and police departments.

• *Treatment of distributions to individuals called to active duty in excess of 179 Days.* Unless an exception to the penalty applies, distributions from a qualified retirement plan prior to age 59 ½, death or disability of a plan participant, are subject to a 10% early withdrawal penalty.

Under this act, the early withdrawal penalty will not apply to distributions to a qualified reservist if the reservist or national guardsman is ordered or called to duty for a period in *excess* of 179 days or for an indefinite period.[4] To qualify for the exception to the penalty, the distribution must be made during the period from when the reservist was called to duty and the close of active duty. The individual may repay the amount withdrawn up to two years after the end of active duty. Limitations on IRA contributions are lifted for this two year period of repayment, but no deductions can be taken for contributions made for repayment purposes. This provision applies to distributions made after September 11, 2001.

• *Direct rollovers from eligible retirement plans to Roth IRAs.* Previously, distributions from tax-qualified retirement plans, tax-sheltered annuities and section 457 plans could be not be directly rolled into a Roth IRA. These distributions could only be rolled into a Roth IRA by first rolling the distributions into a traditional IRA and then into a Roth IRA provided the individual met the additional limitations on rolling over a traditional IRA into a Roth IRA.

The act provides that starting in January 2008, distributions from tax-qualified retirement plans, tax-sheltered annuities and section 457 plans can be rolled directly into a Roth IRA. For tax years prior to January 1, 2010, taxpayers with adjusted gross income less than $100,000 and either single or married filing jointly are allowed to rollover a traditional IRA to a Roth IRA. For later tax years, the income limit is eliminated (see *Tax Increase Prevention and Reconciliation Act of 2005*). This provision applies to distributions after December 31, 2007.

• *Rollovers by nonspouse beneficiaries.* Generally, distributions from tax-qualified retirement plans, tax-sheltered annuities and section 457 plans are taxed in the year distributed. Certain eligible distributions can be rolled over to eligible retirement plans, tax free, within 60 days of the distribution. A surviving spouse beneficiary of a plan participant can roll over distributions from the decedent's plan as if the surviving spouse were the original plan participant.

This act provides that nonspouse beneficiaries can now rollover the distributions of a decedent's eligible retirement plan tax-free into an IRA via a trustee-to-trustee transfers. However, the new IRA is treated as an inherited account (no further rollovers allowed), and required minimum distribution rules apply. This provision is effective for distributions after December 31, 2006.

Charitable Contributions

• *Tax-free IRA distributions to charities.* Generally, to make a charitable donation from an IRA, a distribution must be taken and the applicable rules regarding taxable income apply. The distribution is included in taxable income to the extent the distributions are not attributable to a return of nondeductible contributions. The standard charitable deduction rules then apply to the donation.

This act provides that individuals 70 ½ or older can now distribute up to $100,000 per taxable year from their IRAs to charitable institutions without recognizing the income. The distribution

[4] "Short tour opportunities" defined by military guidelines are 179 days *or less*.

must be made directly to the charitable organization from the trustee. This distribution counts towards the required minimum distribution. The provision is effective for distributions made after December 31, 2005 and before January 1, 2008.

• *Charitable contributions of clothing and household items.* The charitable deduction of noncash property is generally the property's fair market value. For contributed items used in a manner unrelated to the donee's exempt purpose, the deduction is generally the donor's basis in the item. For donations of clothing and household items with a value of less than the original basis, most taxpayers deduct the fair market value of the item.

The act provides that contributions of clothing or household goods are limited to items that are in "good" used conditions or better unless the deduction for a single item exceeds $500 and the taxpayer includes a qualified appraisal. This provision applies to contributions made after August 17, 2006.

• *Charitable Contributions of Taxidermy Property.* The charitable deduction of noncash property is generally the property's fair market value. For contributed items used in a manner unrelated to the donee's exempt purpose, the deduction is generally the donor's basis in the item.

The act provides that the charitable deduction allowed for contributions of taxidermy property is the lesser of either the donor's basis in the property, or the fair market value of the property. In determining the donor's basis in the property, only direct costs paid or incurred by the donor for preparing, stuffing, or mounting the property are included.

• *Real property contributions for conservation.* The deduction for capital gain appreciated real property is generally limited to 30 percent of the donor's adjusted gross income if the donor uses the fair market value of the donated property. If the donor's basis is used as the value of the property, and the property is donated to a "maximum deduction" organization, the deduction is limited to 50 percent of the donor's adjusted gross income.[5] Deductions for donations to non-maximum donation organizations are limited to 20 percent of the donor's adjusted gross income. Contributions that exceed the deduction limit can be carried forward for five years.

The act changes the deduction for donations of conservation easements. An individual may deduct the value of the easement, based on fair market value, up to 50 percent of adjusted gross income, with a 15-year carryforward for any excess. A "qualified farmer or rancher" may deduct the value of the gift up to 100 percent of adjusted gross income with a 15-year carryforward. A "qualified farmer or rancher" is an individual whose gross income from the trade or business of farming is greater than 50 percent of the taxpayer's gross income for the tax year. The land donated by a farmer or rancher also must "be available" for agricultural use, but it need not be used for that purpose. This provision applies to contributions made in tax years beginning after December 31, 2006.

• *Charitable contributions of façade easements.* A façade easement is a real property contribution for conservation that can be used to preserve the architectural, historic and cultural features of the façade of a building. Homes listed in either the National Register of Historic Places or located in a historic district and certified by the National Park Service as being of historical significance to the district qualify for this treatment.

[5] Maximum deduction organizations include public charities, private operating foundations, private non-operating foundations that distribute contributions within two and one-half months of the year's end, and private non-operating foundations that maintain a common fund.

The act allows for deductions for charitable contributions of façade easements of private residences only if the residence is listed individually in the National Register of Historic Places. For properties that are located in a historic district and certified by the National Park Service as being of historical significance to the district, the charitable deduction is allowed only if the restrictions relate to the entire exterior of the building, including the space above the building, the sides, the rear and the front of the building. The deduction for all properties is reduced to take account any rehabilitation credit previously claimed. The deduction for the façade easement is reduced by the percentage the rehabilitation credit represents of the fair market value of the home. This provision applies to contributions made after August 17, 2006.

• *Charitable deduction for contribution of food inventories.* A taxpayer's deduction for charitable contributions of inventory is generally limited to the lesser of the taxpayer's basis in the inventory (usually cost) or the fair market value of the inventory. For certain contributions of inventory, a C corporation may claim an enhanced deduction equal to the lesser of 1) basis plus one-half on the item's appreciation or 2) two times basis. To be eligible for the enhanced deduction, the contributed property must generally be inventory of the corporation, contributed to a charitable organization described in section 501(c)(3) of the Code, and the donee must 1) use the property consistent with the donee's exempt purpose only for the care of the ill, the needy, or infants, 2) not transfer the property in exchange for money, other property, or services, and 3) provide the taxpayer with a written statement attesting to the proper use of the property.

This act allows the enhanced deduction to any taxpayer engaged in a trade or business that makes a donation of food inventory. For taxpayers other than C corporations, the total deduction for contributions of food inventory may not exceed 10% of the taxpayer's income from all business entities from which a contribution of food inventory is made. The enhanced deduction is available only for food that qualifies as "apparently wholesome food," – food intended for human consumption that meets all quality and labeling standards imposed by federal, state, and local laws even though the food may not be readily marketable for any number of reasons. The act extends for two additional years the enhanced deduction for the charitable deduction for contribution of food inventories. This provision is now set to expire for contributions made after December 31, 2007.

• *Charitable deduction for contribution of book inventories.* A taxpayer's deduction for charitable contributions of inventory is generally limited to the lesser of the taxpayer's basis in the inventory (usually cost) or the fair market value of the inventory. For certain contributions of inventory, a C corporation may claim an enhanced deduction equal to the lesser of 1) basis plus one-half on the item's appreciation or 2) two times basis. To be eligible for the enhanced deduction, the contributed property must generally be inventory of the corporation, contributed to a charitable organization described in section 501(c)(3) of the Code, and the donee must 1) use the property consistent with the donee's exempt purpose only for the care of the ill, the needy, or infants, 2) not transfer the property in exchange for money, other property, or services, and 3) provide the taxpayer with a written statement attesting to the proper use of the property.

This act extends the enhanced deduction for C corporations to qualified book contributions. A "qualified book contribution" is a charitable contribution of books to a public school that provides elementary education or secondary education and that is an educational organization that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils in attendance at the place where its education activities are regularly carried on. The act extends for two additional years the enhanced deduction for the charitable deduction for contribution of book inventories. This provision is now set to expire for contributions made after December 31, 2007

Tax Relief and Health Care Act of 2006 (P.L. 109-432)

Extension of prior provisions:

This act extends for two years, until the tax year ending December 31, 2007, the following provisions:

- *Above the line deduction for higher education expenses.* Under prior law, individuals were allowed an above-the-line deduction for qualified tuition and related expenses for higher education paid by the individual during the taxable year. The maximum deduction is $4,000 for an individual whose adjusted gross income for the taxable year does not exceed $65,000 ($130,000 in the case of a joint return), or $2,000 for other individuals whose adjusted gross income does not exceed $80,000 ($160,000 in the case of a joint return). This deduction was available for tax years beginning prior to December 31, 2005.

  This provision is extended for two years, until the tax year ending December 31, 2007.

- *Deduction of state and local general sales taxes.* The American Jobs Creation Act (ACJA) of 2004 allowed taxpayers to deduct state and local sales taxes in lieu of deducting state and local income taxes, real property taxes, and personal property taxes. This provision became effective with the 2004 taxable year and was set to expire for tax years beginning in 2006 and thereafter. This provision extends the deduction for two years, through December 31, 2007.

  The General Assembly did not conform to this change under the ACJA. In order to allow this deduction for North Carolina income tax purposes, affirmative action must be taken to conform to the initial change as well as the extension of the provision as provided in this act. The current bill takes no action on this matter.

- *Above the line deduction for qualified expenses of elementary and secondary school teachers.* Under prior law, an eligible educator was allowed an above-the-line deduction of up to $250 for amounts paid by the teacher for books or supplies used in the class room. An eligible educator is a kindergarten through grade 12 teacher, instructor, counselor, principal, or aide in a school for at least 900 hours during the school year. This deduction was available for tax years beginning prior to December 31, 2005.

  This provision is extended for two years, until the tax year ending December 31, 2007.

- *Fifteen-year straight-line cost recovery for qualified leasehold improvements and qualified restaurant property.* Prior law provided for 15-year straight-line depreciation for qualified leasehold improvements to nonresidential real property placed into service after the date of enactment (October 22, 2004) and prior to January 1, 2006. A qualified leasehold improvement is an improvement made to the interior of a building by either the lessor or lessee and placed in service more than three years after the building is placed in service. Under prior law, a qualified leasehold improvement was depreciated using straight-line depreciation over a 39-year period – the same period as for depreciation of nonresidential property in general.

  A similar depreciation schedule is put into place for qualified restaurant property placed into service after the date of enactment (October 22, 2004) and prior to January 1, 2006. In order to qualify as "qualified restaurant property", the property must be a building improvement placed in

service more than three years after the building is placed in service and the restaurant must use more than half of the square footage of the building. This deduction was available for tax years beginning prior to December 31, 2005.

This provision is extended for two years, until the tax year ending December 31, 2007.

• *Enhanced deduction for the charitable donation of computer technology and equipment.* Prior law allowed an enhanced deduction for contributions of computer technology or equipment to schools or public libraries that would use the computer equipment for educational purposes. This deduction was available for tax years beginning prior to December 31, 2005.

This provision is extended for two years, until the tax year ending December 31, 2007.

This act extends for one year, until the tax years ending December 31, 2009, the following provision:

• *Deduction for energy efficient commercial buildings.* Prior law allowed a deduction for energy efficient commercial buildings. Energy efficient expenditures are certified as being installed as part of a plan designed to reduce the total annual energy and power costs with respect to the interior lighting systems, heating, cooling, and ventilation, and hot water systems of the building by 50 percent or more in comparison to a reference building. The deduction is limited to $1.80 per square foot of property for which such expenditures are made. A partial allowance of the deduction is allowed for buildings that do not meet the requirement of a 50 percent energy savings but are certified by a qualified profession as meeting or exceeding the applicable system specific savings targets established by the Secretary of the Treasury. This deduction is available for property placed in service after December 31, 2005 and prior to January 1, 2008.

This provision extends the deduction to property placed in service prior to January 1, 2009.

New provisions:

• *Change in contribution limitations for Health Savings Accounts.* Under current law individuals with a high deductible health plan may establish health savings accounts ("HSA") for the payment of current and future medical costs. Contributions to HSAs made by or on behalf of an individual are deductible by the individual. The contributions are limited to the lesser of (1) the annual deductible of the health plan or (2) $2,850 for individual coverage and $5,650 for family coverage.

The act modifies the contribution limitation for HSAs. Contributions are now limited to $2,850 for individual coverage and 55,650 for family coverage. This provision is effective for taxable years beginning after December 31, 2006.

• *Deduction allowable with respect to income attributable to domestic production activities in Puerto Rico.* Present law provides a deduction from taxable income that is equal to a portion of the taxpayer's qualified production activities income in the United States. For the taxable year beginning in 2006 the deduction is three percent of income. For the taxable year beginning in 2007 the deduction is six percent of income. Currently, Puerto Rico is not in the definition of the United States.

The act includes Puerto Rico in the definition of the United States for the purposes of determining domestic production activities, but only if all of the taxpayer's gross receipts from

sources within Puerto Rico are currently taxable for U.S. Federal Income tax purposes. This provision is effective for the first two taxable years beginning after December 31, 2005, and before January 1, 2008.

• *Deduction for premiums for mortgage insurance.* Present law provides for a deduction for qualified residence interest. The maximum amount of home equity indebtedness is $100,000. The maximum amount or acquisition indebtedness is $1 million. The act provides that premiums paid for mortgage insurance on a qualified residence of the taxpayer are treated as interest that is qualified residence interest and thus deductible. The amount allowable as a deduction under the provision is phased out ratably by 10 percent for each $1,000 by which the taxpayer's adjusted gross income exceeds $100,000 ($500 and $50,000 respectively, in the case of a married individual filing a separate return). The deduction is not allowed if the taxpayer's adjusted gross income exceeds $110,000 ($55,000 in the case of a married individual filing a separate return).

This provision does not apply with respect to any mortgage insurance contract issued before January 1, 2007. The provision terminates for any amount paid or accrued after December 21, 2007, or property allocable to any period after that date.

H0050e3-SMTD

INTERNAL REVENUE CODE UPDATE
ESTIMATED GENERAL FUND REVENUE IMPACT ($MILL)

Provision	Recurring?	2006-07	2007-08	2008-09	2009-10	2010-11
Tax Increase Prevention and Reconciliation Act						
Extension of taxation of passive income minors	Yes	1.7	1.7	1.8	1.8	1.9
Increased expensing for small businesses	No	0.0	-35.8	-27.9	-8.5	11.4
Increased income limit for conversion of traditional IRA's to Roth IRA's	Yes	0.0	0.0	-1.3	-2.5	-21.9
Pension Protection Act 2006						
IRA inflation indexing	Yes	0.0	0.0	-0.4	-0.8	-0.9
Health Insurance premiums for retired public safety officers	Yes	0.0	-2.0	-2.2	-2.5	-2.8
Tax free IRA distributions to charities	No	0.0	-1.8	-0.8	-.2	0.0
Charitable deductions for contribution of food inventories	No	-0.6	-0.9	-0.7	0.0	0.0
Tax Relief and Health Care Act of 2006						
Deduction for higher education tuition, etc.	No	0.0	-13.9	-14.4	0.0	0.0
Deductions for qualified expenses of K-12 teachers	No	0.0	-2.3	-1.3	0.0	0.0
Depreciation for qualified leasehold improvements and qualified restaurant property	No	-1.0	-1.3	-1.5	-1.5	-1.4
Deduction for the donation of computer technology and equipment	No	-0.4	-0.2	0.0	0.0	0.0
Deduction for energy efficient commercial buildings	No	0.0	0.0	0.0	0.0	0.0
Change in contribution limitations for Health Savings Accounts	Yes	-0.5	-0.4	-0.4	-0.4	-0.4
Total Impact		**-$0.8**	**-$56.9**	**-$49.1**	**-$14.4**	**-$14.1**
Recurring		**1.2**	**-0.7**	**-2.5**	**-4.4**	**-24.1**
One-Time		**-$2.0**	**-$56.2**	**-$46.6**	**-$10.0**	**$10.0**

LEGISLATIVE PROPOSAL #4

TAX CREDIT FOR REAL PROPERTY DONATIONS

LEGISLATIVE PROPOSAL #4

A RECOMMENDATION OF THE REVENUE AWS STUDY COMMITTEE
TO THE 2007 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO MODIFY THE CREDIT FOR CERTAIN REAL PROPERTY DONATIONS.

SHORT TITLE: Conservation Tax Credit Modifications.

SPONSORS: *

BRIEF OVERVIEW: This bill would equalize the cap for the conservation tax credit for corporations and pass-through entities at $500,000. The bill would also require any taxpayer claiming the credit to support the claim's represented value of the real property donation by using either certain appraisal reports or the county's appraisal value as adjusted by the sales assessment ratio. Finally, the bill narrows the conservation purposes which qualify the land for a credit.

FISCAL IMPACT: *.

EFFECTIVE DATE: This bill would become effective for taxable years beginning on or after January 1, 2007.

A copy of the proposed legislation, bill analysis, and fiscal analysis begin on the next page.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-MCxz-17 [v.4] (1/8)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/12/2007 4:47:38 PM

Short Title: Conservation Tax Credit Modifications. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE CREDIT FOR CERTAIN REAL PROPERTY DONATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.34 reads as rewritten:

"**§ 105-130.34. Credit for certain real property donations.**

(a) Any corporation that makes a qualified donation of an interest in real property located in North Carolina during the taxable year that is useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, ~~or other similar land conservation purposes~~ (iv) forestland or farmland conservation, (v) watershed protection, (vi) conservation of natural areas as that term is defined in G.S. 113A-164.3(3), (vii) conservation of natural or scenic river areas as those terms are used in G.S. 113A-34, (viii) conservation of predominantly natural parkland, or (ix) historic landscape conservation is allowed a credit against the tax imposed by this Part equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in real property must be donated in perpetuity to and accepted by the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions pursuant to G.S. 105-130.9. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance are not eligible for this credit. The credit allowed under this section may not exceed five hundred thousand dollars ($500,000). To support the credit allowed by this section, the taxpayer must file with ~~its~~ the income tax ~~return,~~return for the taxable year in which the credit is ~~claimed, a certification by the Department of Environment and Natural~~

~~Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection.~~claimed the following:

(1) A certification by the Department of Environment and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection.

(2) A self-contained appraisal report or summary appraisal report as defined in Standards Rule 2-2 in the latest edition of the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Foundation for the property. For fee simple absolute donations of real property, a taxpayer may submit documentation of the county's appraised value of the donated property, as adjusted by the sales assessment ratio, in lieu of an appraisal report.

(b) The credit allowed by this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer.

(c) Any unused portion of this credit may be carried forward for the next succeeding five years.

(d) That portion of a qualifying donation that is the basis for a credit allowed under this section is not eligible for deduction as a charitable contribution under G.S. 105-130.9."

SECTION 2. G.S. 105-151.12 reads as rewritten:

"**§ 105-151.12. Credit for certain real property donations.**

(a) ~~A person who~~An individual or pass-through entity that makes a qualified donation of an interest in real property located in North Carolina during the taxable year that is useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation,~~ or (iv) other similar land conservation purposes~~(iv) forestland or farmland conservation, (v) watershed protection, (vi) conservation of natural areas as that term is defined in G.S. 113A-164.3(3), (vii) conservation of natural or scenic river areas as those terms are used in G.S. 113A-34, (viii) conservation of predominantly natural parkland, or (ix) historic landscape conservation is allowed a credit against the tax imposed by this Part equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in property must be donated in perpetuity to and accepted by the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions under the Code. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance are not eligible for this credit. ~~The credit allowed under this section may not exceed two hundred fifty thousand dollars ($250,000).~~ To support the credit allowed by this section, the taxpayer must file with the income tax return for the taxable year in which the credit is claimed ~~a certification by the Department of Environment and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection.~~the following:

(1) A certification by the Department of Environment and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection. The certification for a qualified donation made by a pass-through entity must be filed by the pass-through entity.

(2) A self-contained or summary appraisal report as defined in Standards Rule 2-2 in the latest edition of the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Foundation for the property. For fee simple absolute donations of real property, a taxpayer may submit documentation of the county's appraised value of the donated property, as adjusted by the sales assessment ratio, in lieu of an appraisal report.

(a1) Individuals. – The aggregate amount of credit allowed to an individual in a taxable year under this section for one or more qualified donations, whether made directly or indirectly as owner of a pass-through entity, may not exceed two hundred fifty thousand dollars ($250,000). In the case of property owned by a married couple, if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint return. If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this section on a separate return.

(a2) Pass-Through Entities. – The aggregate amount of credit allowed to a pass-through entity in a taxable year under this section for one or more qualified donations, whether made directly or indirectly as owner of another pass-through entity, may not exceed five hundred thousand dollars ($500,000). Each individual who is an owner of a pass-through entity is allowed as a credit an amount equal to the owner's allocated share of the credit to which the pass-through entity is eligible under this subsection, not to exceed two hundred fifty thousand dollars ($250,000). Each corporation that is an owner of a pass-through entity is allowed as a credit an amount equal to the owner's allocated share of the credit to which the pass-through entity is eligible under this subsection, not to exceed five hundred thousand dollars ($500,000).

(b) The credit allowed by this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer.

Any unused portion of this credit may be carried forward for the next succeeding five years.

(c) Repealed by Session Laws 1998-212, s. 29A.13(b).

~~(d) In the case of property owned by a married couple, if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint return. If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this section on a separate return.~~

(e) In the case of marshland for which a claim has been filed pursuant to G.S. 113-205, the offer of donation must be made before December 31, 2003 to qualify for the credit allowed by this section.

~~(f) Notwithstanding G.S. 105-269.15, the maximum dollar limit that applies in determining the amount of the credit applicable to a partnership that qualifies for the credit applies separately to each partner.~~"

SECTION 3. This act becomes effective for taxable years beginning on or after January 1, 2007.

DRAFT 2007-MCxz-17:
Conservation Tax Credit Modifications

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	January 12, 2007
Introduced by:		**Summary by:**	Dan Ettefagh
Version:			Committee Counsel

SUMMARY: ***This legislative proposal would equalize the cap for the conservation tax credit for corporations and pass-through entities at $500,000. The bill would also require any taxpayer claiming the credit to support the claim's represented value of the real property donation by using either certain appraisal reports or the county's appraisal value as adjusted by the sales assessment ratio. Finally, the bill narrows the conservation purposes which qualify the land for a credit.***

CURRENT LAW: Under current law, a taxpayer receives an income tax credit for certain donations of real property located in North Carolina. The amount of the credit is 25% of the fair market value of the donated property interest, capped at $250,000 for individuals and $500,000 for corporations. To be eligible for the credit, the land must be useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, or (iv) other similar land conservation purposes, and the land must be donated in perpetuity to and accepted by the State, a local government, or a body organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions.

In support of the claim of the credit, a taxpayer is required to file with the income tax return a certification by DENR that the property is suitable for the statutorily listed conservation purposes. DENR does not review the documentation in an effort to verify the taxpayer's representation as to the fair market value of the donated property interest.

BILL ANALYSIS: Prior to January 1, 2007, the $250,000 cap for individuals claiming a conservation tax credit was not applied to pass-through entities as a whole. Rather, the pass-through entity received tax credits of up to $250,000 for each member making a qualifying donation. After January 1, 2007, pass-through entities were eligible only for a credit of $250,000 while corporations were eligible for a credit of $500,000. This legislative proposal raises the conservation tax credit dollar limitation for pass-through entities to $500,000 in order to bring the credit to the same level as that which is available to corporate taxpayers.

This bill also addresses concerns regarding the accuracy of the stated fair market value of donated property interests. Current law does not require any specific documentation, other than a certification by DENR of a proper conservation purpose, to establish the fair market value of the donation. The Department has reported problems associated with taxpayer use of restricted appraisal reports to establish the fair market value of the donation. Restricted appraisal reports are reports done specifically for one person and contain little or no information relied upon by the appraiser to formulate the property's value. The bill addresses this issue by requiring a taxpayer claiming the credit to submit as support for the credit either a self-contained or a summary appraisal report, which are two types of reports defined by Standards rule 2-2 of the Uniform Standards of Professional Appraisal Practice and required to have certain information included supporting the valuation determination. A taxpayer may elect, for fee simple donations of property only, to use the county's appraised value of the property as adjusted by the sales assessment ratio.

Under current law, the qualifying conservation purposes include the catch-all phrase, "other similar land conservation purposes." Differences in the statutory construction of this phrase developed between DENR and Revenue. The bill addresses this discrepancy by eliminating this phrase and substituting six, new, specific conservation purposes: forestland or farmland conservation, watershed protection, conservation of natural areas as that term is defined in G.S. 113A-164.3(3), conservation of natural or scenic river areas as those terms are used in G.S. 113A-34, conservation of predominantly natural parkland, or historic landscape conservation.

EFFECTIVE DATE: This bill would become effective for taxable years beginning on or after January 1, 2007.

BACKGROUND: The conservation tax credit was enacted in 1983 with a dollar limitation for all taxpayers of $5,000. That cap was raised in 1989 (to $25,000 for all taxpayers), 1997 (to $100,000 for individuals and $250,000 for corporations), and in 1999 (to $250,000 for individuals and $500,000 for corporations).

In 2001, the Revenue Laws Study Committee proposed that North Carolina begin applying dollar amount limitations of most tax credits to pass-through entities as a whole as well as to each individual partner. Doing so brought North Carolina into conformity with how federal law allowed pass-through entities to take tax credits. While the original proposal applied to the conservation tax credit, the bill that was ultimately enacted excluded the conservation tax credit and preserved the historic treatment of pass-through entities taking the tax credit by applying the cap only to the individual members of the pass-through entity and not to the entity as a whole. Accordingly, the conservation tax credit available to pass-through entities was the statutory dollar amount limitation multiplied by the number of members within the pass-through entity making a qualifying real property interest donation. This exception, originally set to expire in 2005, was twice extended, thus preserving this treatment of pass-through entities for purposes of the conservation tax credit to January 1, 2007. After January 1, 2007, pass-through entities were limited, as were all individual taxpayers, to a cap of $250,000.

0000e1-SMMC

LEGISLATIVE PROPOSAL #5

STREAMLINED SALES TAX CHANGES

LEGISLATIVE PROPOSAL #5

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2007 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO AMEND THE SALES TAX DEFINITIIONS TO COMPLY WITH THE STREAMLINED SALES TAX AGREEMENT AND TO MAKE OTHER SALES TAX CHANGES.

SHORT TITLE: Streamlined Sales Tax Changes

SPONSORS: *

BRIEF OVERVIEW: This proposal would make various changes in the sales tax laws, as recommended by the Department of Revenue:

- Defines "bundled transactions" and modifies the definition of "Sales price" to keep North Carolina in compliance with the national Streamlined Sales Tax Agreement.
- Recognizes for-hire boats as commercial fishing operations eligible for the tax exemption for items sold for use in commercial fishing.
- Makes conforming and technical changes.

FISCAL IMPACT: *

EFFECTIVE DATE: This act would become effective October 1, 2007

A copy of the proposed legislation, bill analysis, and fiscal analysis begin on the next page.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U D

BILL DRAFT 2007-RB-2 [v.1] (12/11)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
12/11/2006 4:02:59 PM

Short Title: Streamlined Sales Tax Changes. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE SALES TAX DEFINITIONS TO COMPLY WITH THE STREAMLINED SALES TAX AGREEMENT AND TO MAKE OTHER SALES TAX CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.3 reads as rewritten:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

(1) Ancillary service. – A service associated with or incidental to the provision of a telecommunications service. The term includes detailed communications billing, directory assistance, vertical service, and voice mail service. A vertical service is a service, such as call forwarding, caller ID, three-way calling, and conference bridging, that allows a customer to identify a caller or manage multiple calls and call connections.

(1b) Bundled transaction. – A retail sale of two or more distinct and identifiable products, at least one of which is taxable and one of which is exempt, for one non-itemized price. Products are not sold for one non-itemized price if an invoice or another sales document made available to the purchaser separately identifies the price of each product. A bundled transaction does not include the retail sale of any of the following:

a. A product and any packaging item that accompanies the product and is exempt under G.S. 105-164.13(23).

b. A sale of two or more products whose combined price varies, or is negotiable, depending on the products the purchaser selects.

c. A sale of a product accompanied by a transfer of another product with no additional consideration.

d. A product and the delivery or installation of the product.

e. A product and any service necessary to complete the sale.

~~(1a)~~(1d) Business. – Includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, profit, benefit or advantage, either direct or indirect. The term "business" shall not be construed in this Article to include occasional and isolated sales or transactions by a person who does not hold himself out as engaged in business.

~~(1b)~~(1f) Cable service. – The one-way transmission to subscribers of video programming or other programming service and any subscriber interaction required to select or use the service.

...

(37) Sales price. – The total amount or consideration for which personal property or services are sold, leased, or rented. The consideration may be in the form of cash, credit, property, or services. The sales price must be valued in money, regardless of whether it is received in money.

a. The term includes all of the following:

1. The retailer's cost of the property sold.
2. The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, and any other expense of the retailer.
3. Charges by the retailer for any services necessary to complete the sale.
4. Delivery charges.
5. Installation charges.
6. ~~The value of exempt personal property given to the consumer when taxable and exempt personal property are bundled together and sold by the retailer as a single product or piece of merchandise.~~
7. Credit for trade-in.
8. Discounts that are reimbursable by a third party and can be determined at the time of sale through any of the following:
   a. Presentation by the consumer of a coupon or other documentation.
   b. Identification of the consumer as a member of a group eligible for a discount.
   c. The invoice the retailer gives the consumer.

b. The term does not include any of the following:

1. ~~Discounts, including cash, term, or coupons, that are not reimbursed~~ Discounts that are not reimbursable by a third party, are allowed by the retailer, and are taken by a consumer on a sale.
2. Interest, financing, and carrying charges from credit extended on the sale, if the amount is separately stated on the invoice, bill of sale, or a similar document given to the consumer.
3. Any taxes imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the consumer.

...

(45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement as amended ~~in November 2005.~~as of December 12, 2006.

SECTION 2. G.S. 105-164.4D, as enacted by Section 5 of S.L. 2006-151, reads as rewritten:

"**§ 105-164.4D. Bundled ~~services.~~transactions.**

~~When a taxable service is bundled with a service that is not taxable, the tax applies to the gross receipts from the taxable service in the bundle as follows:~~

~~(1) If the service provider offers all the services in the bundle on an unbundled basis, tax is due on the unbundled price of the taxable service, less the discount resulting from the bundling. The discount for a service as the result of bundling is the proportionate price decrease of the service, determined on the basis of the total unbundled price of all the services in the bundle compared to the bundled price of the services.~~

~~(2) If the service provider does not offer one or more of the services in the bundle on an unbundled basis, tax is due on the taxable service based on a reasonable allocation of revenue to that service. If the service provider maintains an account for revenue from a taxable service, the service provider's allocation of revenue to that service for the purpose of determining the tax due on the service must reflect its accounting allocation of revenue to that service.~~

(a) Tax Application. – Tax applies to the sales price of a bundled transaction unless one of the following applies:

(1) 50% Test. – All of the products in the bundle are tangible personal property, the bundle includes one or more of the exempt products listed in this subdivision, and the price of the taxable products in the bundle does not exceed fifty percent (50%) of the price of the bundle:

a. Food exempt under G.S. 105-164.13B.

b. A drug exempt under G.S. 105-164.13(13).

c. Medical devices, equipment, or supplies exempt under G.S. 105-164.13(12).

(2) Allocation. – The bundle includes a service and the retailer determines an allocated price for each product in the bundle based on a reasonable allocation of revenue that is supported by the retailer's business records kept in the ordinary course of business. In this circumstance, tax applies to the allocated price of each taxable product in the bundle.

(3) 10% Test. – The price of the taxable products in the bundle does not exceed the lesser of the following and no other subdivision in this subsection applies:

a. Ten percent (10%) of the price of the bundle.

b. Ten thousand dollars ($10,000).

(b) Determining Threshold. – A retailer of a bundled transaction subject to this section may use either the retailer's cost price or the retailer's sales price to determine if the transaction meets the 50% test or the 10% test set out in subdivisions (a)(1) and (a)(3) of this section. A retailer may not use a combination of cost price and sales price to make this determination. If a bundled transaction subject to subdivision (a)(3) of this section includes a service contract, the retailer must use the full term of the contract in determining whether the transaction meets the threshold set in the subdivision."

SECTION 3. G.S. 105-164.12B reads as rewritten:

"**§ 105-164.12B. Tangible personal property ~~bundled~~ sold below cost with conditional service contract.**

(a) ~~Bundled Transaction~~ Conditional Service Contract Defined. – A ~~bundled transaction is a transaction~~ conditional service contract is a contract in which all of the following conditions are met:

(1) A seller transfers an item of tangible personal property to a consumer on the condition that the consumer enter into an agreement to purchase services on an ongoing basis for a minimum period of at least six months.

(2) The agreement requires the consumer to pay a cancellation fee to the ~~service provider~~ seller if the consumer cancels the contract for services within the minimum period.

(3) For the item transferred, the ~~seller:~~

~~a. Does not charge the consumer; or~~

~~b. Charges~~ seller charges the consumer a price that, after any ~~discount or rebate~~ price reduction the seller gives the consumer, is below the purchase price the seller paid for the item. The seller's purchase price is presumed to be no greater than the price the seller paid, as shown on the seller's purchase invoice, for the same item within 12 months before the seller entered into the conditional service contract.

(b) ~~Bundled Transaction Is a Sale; Sales Price.~~ Tax. – If a seller transfers an item of tangible personal property as part of a ~~bundled transaction,~~ conditional service contract, a sale has ~~occurred, and the~~ occurred. The sales price of the item is presumed to be the retail price at which the item would sell ~~if no agreement for services were entered into. Part of this price may be paid by the consumer at the time of the transfer;~~

~~the remainder of the price is considered paid as part of the price to be paid for the services contracted for.~~ in the absence of the conditional service contract. Sales tax is due ~~on any part of the price paid by the consumer~~ at the time of the ~~transfer.~~transfer on the following:

(1) Any part of the presumed sales price the consumer pays at that time, if the service in the contract is taxable at the combined rate.

(2) The presumed sales price, if the service in the contract is not taxable at the combined general rate.

~~(c) No Additional Sales Tax if Services Taxed. If the services for which the consumer was required to contract are subject to services taxes at a combined rate equal to or greater than the combined State and local general rate of sales and use tax, then no additional sales tax is due on the transfer. However, if the consumer cancels the contract for services before the expiration of the minimum period, sales tax applies to the cancellation fee paid by the consumer.~~

~~(d) Additional Sales Tax if Services Not Taxed. If the services for which the consumer was required to contract are not subject to services taxes at a combined rate equal to or greater than the combined State and local general rate of sales and use tax, then sales tax is due at the time of the transfer on the remainder of the sales price not paid at that time.~~

~~(e) Services Taxes Defined. For the purpose of this section, the term "services taxes" means any combination of State franchise tax on gross receipts, State sales tax, or local sales tax levied on the sale of or gross receipts from the services.~~

~~(f) Determination of Purchase Price. For the purpose of this section, the purchase price a seller paid for an item is presumed to be no greater than the price the seller paid for the same model within 12 months before the bundled transaction, as shown on the seller's invoices.~~"

SECTION 4. G.S. 105-164.13(9) reads as rewritten:

"**§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property and services are specifically exempted from the tax imposed by this Article:

Agricultural Group.

....

(9) ~~Sales of boats,~~ Boats, fuel oil, lubricating oils, machinery, equipment, nets, rigging, paints, parts, accessories, and supplies sold to ~~persons~~ any of the following:

a The holder of a standard commercial fishing license issued under G.S. 113-168.2 for principal use ~~by them principally~~ in commercial fishing ~~operations within the meaning of G.S. 113-168, except when the property is for use by persons principally to take fish for recreation or personal use or consumption.~~ operations.

b. The holder of a shellfish license issued under G.S. 113-169.2 for principal use in commercial shellfishing operations.

c. The operator of a for hire boat, as defined in G.S. 113-174, for principal use in the commercial use of the boat. ~~As used in this subdivision, "fish" is defined as in G.S. 113-129(7).~~"

SECTION 5. G.S. 105-164.42L reads as rewritten:

"**§ 105-164.42L. Databases on taxing jurisdictions.**

The Secretary may develop databases that provide information on the boundaries of taxing jurisdictions and the tax rates applicable to those taxing jurisdictions. A ~~seller that~~ person who relies on the information provided in these databases is not liable for underpayments of tax attributable to erroneous information provided by the Secretary in those databases."

SECTION 6. G.S. 105-467(a) reads as rewritten:

"**§ 105-467. Scope of sales tax.**

(a) Sales Tax. – The sales tax that may be imposed under this Article is limited to a tax at the rate of one percent (1%) of the transactions listed in this subsection. The sales tax authorized by this Article does not apply to sales that are taxable by the State under G.S. 105-164.4 but are not specifically included in this subsection.

(1) The sales price of tangible personal property subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(1) and (a)(4b).

(2) The gross receipts derived from the lease or rental of tangible personal property when the lease or rental of the property is subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(2).

(3) The gross receipts derived from the rental of any room or other accommodations subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(3).

(4) The gross receipts derived from services rendered by laundries, dry cleaners, and other businesses subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(4).

(5) The sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but is exempt from the State sales and use tax pursuant to G.S. 105-164.13B.

(5a) The sales price of a bundled transaction that includes food subject to tax under subdivision (5) of this subsection, if the price of the food exceeds ten percent (10%) of the price of the bundle. A retailer must determine the price of food in a bundled transaction in accordance with G.S. 105-164.4D.

(6) The sales price of prepaid telephone calling service taxed as tangible personal property under G.S. 105-164.4(a)(4d).

(7) The gross receipts derived from providing satellite digital audio radio service subject to the general rate of tax under G.S. 105-164.4(a)(6a).

BILL DRAFT 2007-RBxz-2: Streamlined Sales Tax Changes

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	December 12, 2006
Introduced by:		**Summary by:**	
Version:	Draft		

SUMMARY: Draft 2007-RBxz-2 makes various changes in the sales tax laws, as recommended by the Department of Revenue. The changes become effective October 1, 2007. The bill:

- Defines "bundled transactions" and modifies the definition of "sales price" to keep North Carolina in compliance with the national Streamlined Sales Tax Agreement.
- Recognizes for-hire boats as commercial fishing operations eligible for the sales tax exemption for items sold for use in commercial fishing.
- Makes conforming and technical changes.

BILL ANALYSIS:

North Carolina needs to make two definitional changes by January 1, 2008, to comply with the latest amendments to the Streamlined Sales Tax Agreement. One change is to add a definition of "bundled transaction" and specify how these transactions are to be taxed. The other change is to modify the definition of "sales price" to clarify how third-party discounts, such as a manufacturer's coupon, affect the sales price of an item.

Bundled Transactions

A "bundled transaction" is the sale of an exempt product and a taxable product for one price. Examples include a gift basket that contains fruit and candy and a service package consisting of internet service and phone service. Fruit is exempt from State sales tax while candy is taxable. Internet service is exempt from sales tax while phone service is taxable.

The bill provides that a bundled transaction is taxable as follows:

1. A bundle of tangible products is taxable on the sales price of the bundle unless it meets either the 50% test or the 10% test.
    a. Under the 50% test, at least 50% of the price of the products in the bundle is attributable to food and medical items that are exempt from State tax. If the bundle meets this test, it is not taxable under State sales tax and is not taxable under local sales tax unless more than 10% of the bundle's price is attributable to food. In this circumstance, the bundle containing food is taxable under the local sales tax at the rate of 2%, which is the rate that applies to food that is not part of a bundle.
    b. Under the 10% test, no more than 10% of the price of the products in the bundle is attributable to taxable items. This test sets a *de minimus* threshold. If the bundles meets this test, it is not taxable under State or local sales tax.
2. A bundle of products that includes services is subject to the 10% test and can be subject to tax based on the allocated price of the taxable services in the bundle. To be taxed based on part of the sales price, the retailer's accounting records must allocate revenue to the services in the bundle and provide a basis for determining the proportion of the bundle's price that is

attributable to each service in the bundle. If the records do not provide for this, the sales price of the bundle is taxable, assuming the taxable services exceed the *de minimus* threshold.

Under current law, the sales price of a bundle of tangible products is taxable. Thus, if any item in the bundle is taxable, the entire bundle is taxable. With respect to services, current law does not contain the 10% test but does allow for the application of tax to part of the sales price, based on the allocation of revenue to the taxable services in the bundle.

Sections 1, 2, 3, and 6 of the bill make the bundled transaction changes. New G.S. 105-164.3(1b), in Section 1 of the bill, sets out the new definition of a bundled transaction and makes a conforming change to the definition of sales price in G.S. 105-164.3(37) by deleting the provisions in paragraph 6 of that definition that address bundled transactions. The revisions to G.S. 105-164.4D, in Section 2 of the bill, specify how bundled transactions are to be taxed. Sections 6 and 7 of the bill amend the local sales tax statutes and the 1% Mecklenburg local option sales tax law, respectively, to impose tax on bundles that contain food and are exempt from State tax but subject to local sales tax.

Section 3 makes conforming changes to the existing law on below-cost sales of items transferred as part of a contract for services to avoid conflicting uses of the same term. Current law, in G.S. 105-164.12B, describes the below-cost sale and contract as a bundled transaction. The transaction described in G.S. 105-164.12B is not a bundled transaction under the new definition of that term. The draft therefore revises G.S. 105-164.12B to describe the transaction in that section as a conditional service contract and eliminates provisions that are no longer needed due to the taxation of telecommunications services at the combined general State and local rate.

Sales Price

The second definitional change needed to conform to the Streamlined Sales Tax Agreement is a change in the definition of "sales price." Section 1 of the draft amends the definition in G.S. 105-164.3(37) to add new paragraph 8 that specifies when a manufacturer's discount or other discount is considered part of the sales price. Current law excludes some discounts from the definition of sales price but does not address the subject as fully as the proposed change. A price discount is part of the sales price if the retailer receives reimbursement from a third-party in the amount of the discount. For example, if a customer has a $1.00 manufacturer's coupon for paper towels that cost $4.00, sales tax is due on the sales price of $4.00 rather than $3.00 because the full amount ($4.00) is paid for the paper towels when the amount paid by the customer and the manufacturer are combined. The amendment does not change the current law on this subject.

Other Changes

The draft makes the following clarifying changes:

1. It updates the reference to the Streamlined Sales Tax Agreement to include the latest amendments to that Agreement. (G.S. 105-164.3(45a) in Section 1)
2. It revises the sales tax exemption for items sold for use in commercial fishing to insert references to holders of a commercial fishing license, a commercial shellfish license, and the operator of a for-hire boat. The reference to the operator of a for-hire boat is an addition to the statute, but reflects the administrative practice of including this group in the commercial fishing group. (Section 4)
3. It clarifies that anyone who relies on the taxing jurisdiction database developed by the Department to determine the rate of sales tax applicable in a jurisdiction is not liable for any tax underpayments attributable to reliance on that database. This is the result under current law

because the database is a written statement of the Department under G.S. 105-264. (Section 5)

4. It revises the definition of "gross sales" in G.S. 105-164.3(12) to eliminate inconsistencies between this definition and the definition of "sales price." Under current law, the definition of gross sales repeats part of the definition of sales price. This repetition is unnecessary and creates confusion. (Section 1)

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2007

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: January 23, 2007

TO: Revenue Laws Study Committee

FROM: Brenna Erford
Fiscal Research Division

RE: Draft 2007-RBxz-2, Streamlined Sales Tax Changes

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
REVENUES:	See Assumptions & Methodology				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: October 1, 2007

BILL SUMMARY: In order to comply with the latest amendments to the Streamlined Sales Tax Agreement, North Carolina must make two definitional changes by January 1, 2008. One change is to add a definition of "bundled transaction" and specify how these transactions are to be taxed. The other change is to modify the definition of "sales price" to clarify how third-party discounts, such as a manufacturer's coupon, affect the sales price of an item. This draft bill incorporates those changes and makes several other changes in the sales tax laws, as recommended by the Department of Revenue. The bill:

- Defines "bundled transactions" and modifies the definition of "sales price" to keep North Carolina in compliance with the national Streamlined Sales Tax Agreement (SSTA).

- Changes the definition of "sales price" to conform with SSTA.
- Recognizes for-hire boats as commercial fishing operations eligible for the sales tax exemption for items sold for use in commercial fishing.
- Makes conforming and technical changes.

ASSUMPTIONS AND METHODOLOGY: This draft bill contains several provisions that may result in a fiscal impact.

Bundled Transactions (Sections 1, 2, 3, and 6)

A "bundled transaction" is the sale of an exempt product and a taxable product for one price. A bundle of tangible products is taxable on the sales price of the bundle unless it meets either the 50% test or the 10% test.

Section 2, Bundled Transactions: 50% Test and 10% Test				
	State sales tax		Local sales tax	
Type of Test	*Percent of "bundle" price attributable to exempt food or medical goods*	*Exempt from State sales tax?*	*Percent of "bundle" price attributable to food items*	*Exempt from local sales tax?*
50% Test	50% or more	Yes	More than 10%	No. Bundled item is taxable at 2% local rate.
			Less than 10%	Yes
	50% or less	No	N/A	No
10% Test	*Percent of "bundle" price attributable to taxable items*	*Exempt from State sales tax?*	*Bundles that include services would be subject to the 10% rule and can be subject to tax based on the allocated price of the taxable services in the bundle.*[1]	
	10% or less	Yes		
	10% or more	No		

Under current law, the sales price of a bundle of tangible products is taxable. Thus, if any item in the bundle is taxable, the entire bundle is taxable. Since this change creates a threshold for exemption, this change may result in a small, negative fiscal impact. Discussions with the Department of Revenue suggest that any impact from this change will be insignificant.

Sales Price (Section 1)

The definition of "sales price" adopted by the SSTA Governing Board is very similar to that in current North Carolina tax law. A small positive fiscal impact is possible from cigarette retailers who reflect a distributor's "buy-down" discount on their invoices. If the discount is shown on the invoice, it is included in the sales price. However, if the discount is not shown separate from the sales price, it is part of the sales price. Due to this technicality, a small increase in revenues may result from the actions of retailers who reflect distributor discounts on their invoices, but it is likely that this practice will become less common over time as retailers realize its tax implications.

Other Changes (Sections 1, 4, and 5)

[1] To be taxed based on part of the sales price, the retailer's accounting records must allocate revenue to the services in the bundle and provide a basis for determining the proportion of the bundle's price that is attributable to each service in the bundle. If the records do not provide for this, the sales price of the bundle is taxable, assuming the taxable services exceed the de minimus threshold.

The remaining changes in this bill are technical and clarifying in nature, and are not expected to result in any significant fiscal impact.

SOURCES OF DATA: Department of Revenue

TECHNICAL CONSIDERATIONS: None

LEGISLATIVE PROPOSAL #6

GIFT TAX SIMPLIFICATION

LEGISLATIVE PROPOSAL #6

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2007 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO REFORM THE STATE GIFT TAX SO THAT IT IS BASED ON THE FEDERAL GIFT TAX, AS RECOMMENDED BY THE REVENUE LAWS STUDY COMMITTEE.

SHORT TITLE: Simplify Gift Tax

SPONSORS: *

BRIEF OVERVIEW: This bill would simplify the State gift tax by eliminating the tax on many gifts, by eliminating different tax rates based on the relationship between the donor and donee, and by more closely tying the State gift tax to the federal gift tax.

FISCAL IMPACT: No fiscal impact.

EFFECTIVE DATE: The act would become effective January 1, 2008, and applies to gifts made on or after that date.

A copy of the proposed legislation, bill analysis, and fiscal analysis begin on the next page.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U D

BILL DRAFT 2007-LYxz-6A [v.4] (9/20)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
12/11/2006 3:39:29 PM

Short Title: Simplify Gift Tax. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REFORM THE STATE GIFT TAX SO THAT IT IS BASED ON THE FEDERAL GIFT TAX, AS RECOMMENDED BY THE REVENUE LAWS STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6 of Chapter 105 of the General Statutes is repealed.

SECTION 2. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 1B.

"Gift Taxes.

"§ 105-32.20. Gift taxes: rates of tax.

(a) Definitions. – As used in this Article, 'taxable gift' has the same meaning as under section 2503 of the Code.

(b) Tax. – A gift tax is imposed on a gift when a federal gift tax is imposed on the gift under section 2501 of the Code and any of the following applies:

(1) The donor was a resident of this State at the time the gift was made.

(2) The donor was not a resident of this State at the time the gift was made and the gift consisted of either of the following:

a. Real property or tangible personal property that was located in this State at the time the gift was made.

b. Intangible personal property that had a tax situs in this State at the time the gift was made.

(c) Rate. – The rates of tax, which are based on the value of the taxable gift, are as follows:

Amount of Taxable Gift	Rate
Up to $10,000	12%
Over $10,000 up to $20,000	13%

Over $20,000 up to $40,000	15%
Over $40,000 up to $60,000	16%
Over $60,000 up to $80,000	17%
Over $80,000 up to $100,000	19%
Over $100,000 up to $150,000	20%
Over $150,000 up to $250,000	21%
Over $250,000 up to $500,000	23%
Over $500,000 up to $750,000	25%
Over $750,000 up to $1,000,000	26%
Over $1,000,000 up to $1,250,000	27%
Over $1,250,000 up to $1,500,000	29%
Over $1,500,000 up to $2,000,000	30%
Over $2,000,000	32%

(d) Value of Gift. – The value of a gift is determined in accordance with the Code. If any property composing part of the gift is located in a state other than North Carolina, the amount of tax payable depends on whether the donor was a resident of this State at the time of the gift. If the donor was a resident of this State at the time of the gift, the amount of tax due under this section is reduced by the lesser of the amount of the gift tax paid the other state or an amount computed by multiplying the amount otherwise due by a fraction, the numerator of which is the value of the taxable gift that was located or had a tax situs in another state at the time of the gift and the denominator of which is the value of the total taxable gift. If the donor was not a resident of this State at the time of the gift, the amount of tax due under this section is an amount computed by multiplying the amount otherwise due by a fraction, the numerator of which is the value of real or tangible personal property that was located in North Carolina at the time of the gift plus the value of any intangible property that had a tax situs in North Carolina at the time of the gift and the denominator of which is the value of the taxable gift.

"**§ 105-32.21. Lien for tax; collection of tax.**

The tax imposed by this Article is a lien upon all gifts that constitute the basis for the tax for a period of 10 years from the time they are made. If the tax is not paid by the donor when due, each donee is personally liable, to the extent of his or her respective gifts, for so much of the tax as has been assessed, or may be assessed, thereon. Any part of the property comprised in the gift that has been sold by the donee to a bona fide purchaser is divested of the lien imposed by this section and the lien, to the extent of the value of the gift, shall attach to all the property of the donee (including after-acquired property) except any part sold to a bona fide purchaser.

If the tax is not paid within 30 days after it has become due, the Department of Revenue may use any of the methods authorized in this Subchapter for the collection of other taxes to enforce the payment of taxes assessed under this Article.

In any proceeding by warrant or otherwise to enforce the collection of the tax, the donor is liable for the full amount of the tax due by reason of all the gifts constituting the basis for the tax, and each donee is liable only for so much of the tax as may be due on account of his or her respective gift.

"**§ 105-32.22. Death of donor within three years; time of assessment.**

If a donor dies within three years after filing a return, gift taxes may be assessed at any time within those three years, or on or before the date of final settlement of the donor's State estate taxes, whichever is later.

"**§ 105-32.23. When return required; due date of tax and return.**

(a) When Return Required. – A gift tax return must be filed [illegible] if a federal gift tax return is required. The return must be [illegible] and by the Secretary.

(b) Due Date. – The gift tax imposed by this Article is due when the gift tax return is due. The gift tax return is due on the date a federal gift tax return is due.

(c) Extension. – An extension of time to file a federal gift tax return is an automatic extension of the time to file a gift tax return under this Article. The Secretary may, in accordance with G.S. 105-263, extend the time for filing a gift tax return or paying the tax imposed under this Article.

(d) Administration. – Article 9 of this Chapter applies to this Article.

"**§ 105-32.24. Federal corrections.**

If the amount of a taxpayer's taxable gifts is corrected or otherwise redetermined by the federal government, the taxpayer must, within six months after being notified of the correction or final determination by the federal government, file a gift tax return with the Secretary of Revenue reflecting the corrected or determined taxable gifts. The Secretary of Revenue shall determine from all available evidence the taxpayer's correct tax liability for the taxable year. As used in this section, the term 'all available evidence' means evidence of any kind that becomes available to the Secretary from any source, whether or not the evidence was considered in the federal correction or determination.

The Secretary shall assess and collect any additional tax due from the taxpayer as provided in Article 9 of this Chapter. The Secretary shall refund any overpayment of tax as provided in Article 9 of this Chapter. A taxpayer who fails to comply with this section is subject to the penalties in G.S. 105-236 and forfeits the right to any refund due by reason of the determination."

SECTION 3. This act becomes effective January 1, 2008, and applies to gifts made on or after that date.

DRAFT 2007-LYxz-6A: Simplify Gift Tax

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	December 11, 2006
Introduced by:		**Summary by:**	Y. Canaan Huie
Version:	v.4 2007-LYxz-6A		Committee Counsel

SUMMARY: ***This bill would simplify the State gift tax by eliminating the tax on many gifts, by eliminating different tax rates based on the relationship between the donor and donee, and by more closely tying the State gift tax to the federal gift tax. This bill would become effective for gifts made on or after January 1, 2008.***

CURRENT LAW: Under the North Carolina gift tax gifts not exceeding a value of $12,000 from any particular donor to any particular donee are excluded from taxation[1]. In addition, several types of gifts, such as gifts to cover medical or educational expenses, gifts between spouses, or charitable contributions, are not subject to the gift tax. After applying these exclusions, gifts are taxed at varying graduated rates based on the relationship between the donor and the donee. Gifts that are made to lineal descendants, lineal ancestors, adopted children, or stepchildren are taxed at the lowest rates and are subject to a lifetime cumulative exemption of $100,000. Gifts that are made to siblings, descendants of siblings, or aunts or uncles by blood are taxed at higher rates and do not enjoy the benefit of the exemption. Gifts that are made to other donees are taxed at the highest rates and do not enjoy the benefit of the exemption. Thus, North Carolina's gift tax rate structure favors transfers to children and parents by giving those transfers the lowest rates and an exemption and prefers transfers to other close family members over transfers to more distant relatives or to persons who are not related. Other than a change in the annual exclusion amount from a flat rate of $10,000 to the amount of the annual exclusion amount set under the Code, the General Assembly has not enacted any major changes to the gift tax since before 1998.

North Carolina's gift tax is similar to the federal gift tax in some limited ways, but is extremely different in some other important ways. As with the North Carolina gift, the federal gift tax has an annual exclusion amount and excludes gifts to cover medical or educational expenses, gifts between spouses, and charitable contributions. However, the federal gift tax rate does not vary based on the relationship between the donor and donee. In addition, the federal gift tax is part of a somewhat unified gift-estate tax system at the federal level. As part of that system, the federal gift tax has a lifetime exemption amount of $1,000,000. This amount is much larger than the State exemption amount and is available regardless of the relationship between the donor and donee. In addition, there are sometimes differences in the valuation of a gift for State and federal tax purposes. This most commonly occurs with respect to the valuation of annuities. For State purposes, statutes mandate an interest rate of 6% be used in determining the value of the annuity; for federal purposes, the current prevailing interest rate is used.

BILL ANALYSIS: This bill would more closely conform North Carolina's gift tax to the federal gift tax. This bill would include the following key changes:

- A State gift tax would be imposed only if a federal gift tax were imposed. This is similar to the manner in which the State imposes an estate tax. By imposing a State gift tax only when

[1] The annual exclusion amount does not apply to gifts of a future interest.

a federal gift tax is due, the practical effect is greatly increase the lifetime exemption amount. A federal tax is only due once the taxpayer's lifetime taxable gifts have exceeded $1 million; by imposing a State gift tax only when a federal tax imposed, the State effectively incorporates the $1 million lifetime exclusion amount.

- The bill eliminates different treatment of gifts based on the relationship between the donor and donee. This bill would institute a single rate structure for all taxable gifts and would effectively incorporate a single lifetime exemption amount for all types of gifts.
- The bill would conform the valuation of gifts for State purposes to the valuation of gifts for federal purposes.
- The bill is designed to be revenue-neutral. Given that fewer taxpayers would owe State gift tax under this bill than under current law, the rates on the remaining taxable gift would rise under this bill. Gift tax rates under this bill would range from 12% to 32%. This will have the effect of shifting more of the burden of the gift tax to donors who make larger gifts.

EFFECTIVE DATE: This bill would become effective for gifts made on or after January 1, 2008.

2007-LYxz-6Av3-SMLY-LYxz-6A

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2007

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: January 18, 2007

TO: Revenue Laws Committee

FROM: Barry Boardman
Fiscal Research Division

RE: Draft 2007-LYxz-6A

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available ( )**

	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
REVENUES:	**Revenue neutral rate change. See "Assumptions and Methodology"**				
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

EFFECTIVE DATE: January 1, 2008

BILL SUMMARY: This bill would simplify the State gift tax by eliminating the tax on many gifts, by eliminating different tax rates based on the relationship between the donor and donee, and by closely tying the State gift tax to the federal gift tax. This bill would become effective for gifts made on or after January 1, 2008.

ASSUMPTIONS AND METHODOLOGY: To determine revenue neutral rates the fiscal relationship between North Carolina's gift tax and the gift tax levied by the federal government was determined. By closely tying the state gift tax with the federal gift tax, including federal exemptions and credits, the revenue neutral state tax rates would be approximately 67 percent of the federal rates.

In order to determine the revenue neutral rates, Internal Revenue Service and North Carolina Department of Revenue data on North Carolina taxpayers were compiled. This included both state and federal gift tax collections for the tax years 2002, 2003, 2004, and 2005. Revenue neutral adjustment to the federal tax rate table was calculated using this data. The gift tax generates on average $18 million per year. The primary assumption in making the estimate is that taxpayers in the state would not change their gift giving behavior with changes in the state law.

SOURCES OF DATA: Internal Revenue Service, North Carolina Department of Revenue

TECHNICAL CONSIDERATIONS: None

LEGISLATIVE PROPOSAL #7

ENHANCE COLLECTION PROCEDURES

LEGISLATIVE PROPOSAL #7

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2007 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO PROVIDE THAT A WARRANT DIRECTING THAT REAL PROPERTY OF A TAXPAYER BE LEVIED UPON AND SOLD FOR THE PAYMENT OF DELINQUENT TAXES MAY BE ISSUED TO A REVENUE OFFICER AS WELL AS TO A SHERIFF.

SHORT TITLE: Enhance Collection Procedures

SPONSORS: *

BRIEF OVERVIEW: The bill would provide that a warrant directing that real property of a taxpayer be levied upon and sold for the payment of delinquent taxes may be issued to a revenue officer as well as to a sheriff.

FISCAL IMPACT: *

EFFECTIVE DATE: The bill would become effective when it becomes law.

A copy of the proposed legislation, bill analysis, and fiscal analysis begin on the next page.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-RBz-6 [v.2] (01/23)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/23/2007 5:25:43 AM

Short Title: Enhance Collection Procedures. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A WARRANT DIRECTING THAT REAL PROPERTY OF A TAXPAYER BE LEVIED UPON AND SOLD FOR THE PAYMENT OF DELINQUENT TAXES MAY BE ISSUED TO A REVENUE OFFICER AS WELL AS TO A SHERIFF.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-242(a) reads as rewritten:

"(a) Warrants for Collection of Taxes. – If any tax levied by the State and payable to the Secretary has not been paid within 30 days after the taxpayer was given a notice of final assessment of the tax under G.S. 105-241.1(d1), the Secretary may take either of the following actions to collect the tax:

(1) The Secretary may issue a warrant or an order under the Secretary's hand and official seal, directed to the sheriff of any county of the State, commanding him to levy upon and sell the real and personal property of the taxpayer found within the county for the payment of the tax, including penalties and interest, and the cost of executing the warrant and to return to the Secretary the money collected, within a time to be specified in the warrant, not less than 60 days from the date of the warrant; the sheriff upon receipt of the warrant shall proceed in all respects with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for services in executing the warrant, to be collected in the same manner.

(2) The Secretary may issue a warrant or order under the Secretary's hand and seal to any revenue officer or other employee of the Department of Revenue charged with the duty to collect taxes, commanding the officer or employee to levy upon and sell the taxpayer's real and

personal property, including that described in G.S. 105-366(d), found within the State for the payment of the tax, including penalties and interest. Except as otherwise provided in this subdivision, the levy upon the sale of ~~personal~~ property shall be governed by the laws regulating levy and sale under execution. The person to whom the warrant is directed shall proceed to levy upon and sell the ~~personal~~ property subject to levy in the same manner and with the same powers and authority normally exercised by sheriffs in levying upon and selling ~~personal~~ property under execution, except that the personal property may be sold in any county, in the discretion of the Secretary. In addition to the notice of sale required by the laws governing sale of property levied upon under execution, the Secretary may advertise the sale in any reasonable manner and for any reasonable period of time to produce an adequate bid for the property. Levy and sale fees, plus actual advertising costs, shall be added to and collected in the same manner as taxes. The Secretary is not required to file a report of sale with the clerk of superior court, as required by the laws governing sale of property levied upon under execution, if the sale is otherwise publicly reported."

SECTION 2. This act is effective when it becomes law.

BILL DRAFT 2007-RBz-6: Enhance Collection Procedures

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	January 23, 2007
Introduced by:		**Summary by:**	
Version:	Draft		

SUMMARY: Draft 2007-RBz-6 provides that a warrant directing that real property of a taxpayer be levied upon and sold for the payment of delinquent taxes may be issued to a revenue officer as well as to a sheriff. The proposal would become effective when it becomes law.

CURRENT LAW: Once a taxpayer receives a notice of final assessment, the taxpayer has 30 days to pay the tax due. If the tax is not paid within this period, the Department may begin collection proceedings. One collection remedy available to the Department is the levy upon and sale of real and personal property of the taxpayer. The Department may levy upon and sell real property of the taxpayer only by issuing a warrant directed to the sheriff of a county where the property is located. The Department may levy upon and sell personal property of the taxpayer by issuing a warrant to either the sheriff of a county or a revenue officer of the Department.

Although the Department may issue a warrant on personal property through either a sheriff or a revenue officer, there is very little difference in the manner in which the personal property is actually levied upon or sold. A warrant issued to a sheriff is applicable only for property found in the county the sheriff represents. Also, if a warrant is issued to a sheriff, then the fees payable to a sheriff for the execution of the warrant must be subtracted from the monies collected. A revenue officer has the same power and authority normally exercised by a sheriff in levying upon and selling personal property under execution, except that the property may be sold in any county. Also, if the sale is otherwise publicly reported, the Secretary is not required to file a report of sale with the clerk of superior court, as otherwise required by the laws governing sale of property levied upon under execution.

BILL ANALYSIS: This proposal would strengthen the Department's collection ability by allowing its revenue officers to levy upon and sell real property as well as personal property. The Collection Division has encountered a number of cases where the value of the debtor's personal property is low, but the debtor holds valuable real property. The current law requires that warrants for the sale of real property must be issued to the sheriff of the county where the real property is situated.

The levy upon and sale of the real property would be governed by the laws governing execution sales in Article 29B of Chapter 1 of the General Statutes. The sale of real property would take place at the courthouse in the county where the property is situated. Notice of the sale must be personally served on the debtor at least 10 days before the sale. If the debtor cannot be found, then the notice must be sent by registered mail to the debtor's last known address. A public notice of the sale must also be posted at least 20 days prior to the sale in the area designated by the clerk of superior court for the posting of notices and a notice must be published once a week for at least two successive weeks in a newspaper.

LEGISLATIVE PROPOSAL #8

GROSS PREMIUMS TAX

LEGISLATIVE PROPOSAL #8

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2007 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO ADJUST THE ADDITIONAL TAX RATE ON PROPERTY COVERAGE CONTRACTS TO BE REVENUE NEUTRAL BASED ON AN EXPANSION OF THE TAX BASE ENACTED IN S.L. 2006-196, TO INCREASE THE DISTRIBUTION OF THE TAX PROCEEDS TO THE VOLUNTEER FIRE DEPARTMENT FUND, TO AMEND THE VOLUNTEER FIRE DEPARTMENT GRANT PROGRAM TO ALLOW MORE DEPARTMENTS TO QUALIFY FOR GRANTS, AND TO MODIFY THE DISTRIBUTION OF TAX PROCEEDS TO THE LOCAL FIREMEN'S RELIEF FUNDS.

SHORT TITLE: Additional Tax on Property Coverage Contract

SPONSORS: *

BRIEF OVERVIEW: The bill makes the following changes:

- It reduces the additional tax rate applicable to gross premiums on insurance contracts for property coverage from .85% to .74%. Last session the General Assembly broadened the base for this tax and directed the Revenue Laws Study Committee to determine the revenue neutral tax rate.
- It increases the percentage of the tax proceeds derived from the additional fire & lightening tax rate allocated to the Volunteer Fire Department Fund from 20% to 30%. This change reduces the amount of the tax proceeds allocated to the General Fund.
- It increases the cap on the grants from the Volunteer Fire Department Fund and it changes the qualifications for grants from the Volunteer Fire Department Grant Program to enable more volunteer fire departments to qualify for grants.
- It modifies the distribution of money to the local firemen's relief grant funds so that the distribution more closely resembles the current distribution.

FISCAL IMPACT: *

EFFECTIVE DATE: Section 1 of this act is effective for taxable years beginning on or after January 1, 2008. The remainder of this act becomes effective January 1, 2008.

A copy of the proposed legislation, bill analysis, and fiscal analysis begin on the next page

LEGISLATIVE PROPOSAL #9

TECHNICAL AND ADMINISTRATIVE CHANGES

LEGISLATIVE PROPOSAL #9

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2007 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE REVENUE LAWS AND RELATED STATUTES.

SHORT TITLE: Revenue Laws & Motor Fuels Tax Technical Changes

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SPONSORS: *

BRIEF OVERVIEW: This bill makes several technical, clarifying, and administrative changes to the revenue laws and related statutes.

FISCAL IMPACT: *

EFFECTIVE DATE: Except as otherwise noted in the bill, the proposal would become effective when it becomes law.

A copy of the proposed legislation, bill analysis, and fiscal analysis begin on the next page.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-TDxz-4 [v.24] (01/08)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/22/2007 11:05:39 AM

Short Title: Revenue Laws & Motor Fuels Tax Tech. Changes. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE REVENUE LAWS, MOTOR FUELS TAX LAWS, AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53B-4(2) reads as rewritten:

"(2) Authorization under G.S. ~~105-251, 105-251.1, 105-255~~ or 105-258."

SECTION 2. G.S. 105-40(7a) reads as rewritten:

"(7a) All exhibitions, performances, and entertainments promoted and managed by 'a nonprofit arts organization,' ~~organization' that is exempt from income tax under G.S. 105-130.11(a)(3).~~ This exemption does not apply to athletic events. A 'non-profit arts organization' means:

a. An organization that is exempt from income tax under G.S. 105-130.11(a)(3).

b. An organization whose primary purpose is to offer choral, art, theatrical performances."

SECTION 3. G.S. 105-40(10) reads as rewritten:

"(10) Arts festivals held by a person that is exempt from income tax under Article 4 of this Chapter and that meets the following conditions:

a. The person holds no more than two arts festivals during a calendar year.

b. Each of the person's arts festivals last no more than seven consecutive days.

c. The arts festivals are held outdoors on public property and involve a variety of exhibitions, entertainments, and activities."

SECTION 4. G.S.105-40(11) reads as rewritten:

"(11) Community festivals held by a person who is exempt from income tax under Article 4 of this Chapter and that meets all of the following conditions:

a. The person holds no more than one community festival during a calendar year.

b. The community festival lasts no more than seven ~~consecutive~~ days.

c. The community festival involves a variety of exhibitions, entertainments, and activities, the majority of which are held outdoors and are open to the public."

SECTION 5. G.S.105-113.82(a) reads as rewritten:

"(a) Amount, Method. – The Secretary shall distribute annually the following percentages of the net amount of excise taxes collected on the sale of malt beverages and wine during the preceding 12-month period ending March 31, ~~less the amount of the net proceeds credited to the Department of Commerce under G.S. 105-113.81A.~~ 31 to the counties and cities in which the retail sale of these beverages is authorized in the entire county or city:

(1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty-three and three-fourths percent (23¾%);

(2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), sixty-two percent (62%); and

(3) Of the tax on fortified wine levied under G.S. 105-113.80(b), twenty-two percent (22%).

For purposes of this subsection, 'net amount' means gross collections less refunds and amounts credited to the Department of Commerce under G.S. 105-113.81A. If malt beverages, unfortified wine, or fortified wine may be licensed to be sold at retail in both a county and a city located in the county, both the county and city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. If one of these beverages may be licensed to be sold at retail in a city located in a county in which the sale of the beverage is otherwise prohibited, only the city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. The amounts distributed under subdivisions (1), (2), and (3) shall be computed separately."

SECTION 6. G.S.105-129.16E(b) reads as rewritten:

"(b) Allocation. – If the taxpayer is an individual who is a nonresident or a part-year resident, the taxpayer must reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. If the taxpayer is not an individual and is required to apportion its multistate business income to this State, the taxpayer must reduce the amount of the credit by multiplying it by the apportionment fraction used to apportion its ~~business apportionable~~ income to this State."

SECTION 7. G.S. 105-129.87(b) reads as rewritten:

"(b) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier designation of the county where the new

jobs are created during the taxable year. If the taxpayer creates new jobs at more than one eligible establishment in a county during the taxable year, the threshold applies to the aggregate number of new jobs created at all eligible establishments within the county during that year. If the taxpayer creates new jobs at eligible establishments in different counties during the taxable year, the threshold applies separately to the aggregate number of new jobs created at eligible establishments in each county. If the taxpayer creates new jobs in an urban progress zone or an agrarian growth zone, the applicable threshold is the one for a development tier one area. New jobs created in an urban progress zone or an agrarian growth zone are not aggregated with jobs created at any other eligible establishments regardless of county.

Area Development Tier	Threshold
Tier One	5
Tier Two	10
Tier Three	15"

SECTION 8. G.S. 105-129.88(c) reads as rewritten:

"(c) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier where the eligible business property is placed in service during the taxable year. If the taxpayer places business property in service in an urban progress zone or an agrarian growth zone, the applicable threshold is the one for a development tier one area. Business property placed in service in an urban progress zone or an agrarian growth zone are not aggregated with business property placed in service at any other eligible establishments regardless of county. If the taxpayer places eligible business property in service at more than one establishment in a county during the taxable year, the threshold applies to the aggregate amount of eligible business property placed in service during the taxable year at all establishments in the county. If the taxpayer places eligible business property in service at establishments in different counties, the threshold applies separately to the aggregate amount of eligible business property placed in service in each county. If the taxpayer places eligible ~~machinery and equipment~~business property in service at an establishment over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Development Tier	Threshold
Tier One	$ -0-
Tier Two	1,000,000
Tier Three	2,000,000"

SECTION 9. G.S.105-129.88(e) reads as rewritten:

"(e) Transferred Property. – If, in one of the four years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is moved to a county in a higher-numbered development tier or ~~to~~ out of an urban progress zone or an agrarian growth zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the business property had been placed in service initially in the area to which it was moved. If, in one of the four years in which the installment of a credit accrues, the business property with respect to which a credit was claimed is moved to a county in a lower-numbered development tier or an

urban progress zone or an agrarian growth zone, the remaining installments of the credit shall be calculated as if the business property had been placed in service initially in the area to which it was moved."

SECTION 10. G.S. 105-130.48(e) reads as rewritten:

"(e) Documentation of Credit. – ~~To~~ Upon request, to support the credit allowed by this section, the taxpayer must file with its income tax return, for the taxable year in which the credit is claimed, a certification by the Department of Environment and Natural Resources stating the number of bushels of oyster shells donated by the taxpayer."

SECTION 11. G.S. 105-151.30(d) reads as rewritten:

"(d) Documentation of Credit. – ~~To~~ Upon request, to support the credit allowed by this section, the taxpayer must file with its income tax return, for the taxable year in which the credit is claimed, a certification by the Department of Environment and Natural Resources stating the number of bushels of oyster shells donated by the taxpayer."

SECTION 12. G.S. 105-164.13(52) reads as rewritten:

"(52) Items subject to sales and use tax under G.S. 105-164.4, other than ~~electricity and electricity~~, telecommunications service, and ancillary service as defined in G.S. 105-164.4, if all of the following conditions are met:

(a) The items are purchased by a State agency for its own use and in accordance with G.S. 105-164.29A.

(b) The items are purchased pursuant to a valid purchase order issued by the State agency that contains the exemption number of the agency and a description of the property purchased, or the items purchased are paid for with a State-issued check, electronic deposit, credit card, procurement card, or credit account of the State agency.

(c) For all purchases other than by an agency-issued purchase order, the agency must provide to or have on file with the retailer the agency's exemption number."

SECTION 13. G.S. 105-164.16(b1) reads as rewritten:

"(b1) Monthly. – A taxpayer who is consistently liable for ~~more than~~ at least one hundred dollars ($100.00) but less than ten thousand dollars ($10,000) a month in State and local sales and use taxes must file a return and pay the taxes due on a monthly basis. A monthly return is due by the 20th day of the month following the calendar month covered by the return."

SECTION 14. G.S. 105-164.16(d) reads as rewritten:

"(d) Use Tax on Out-of-State Purchases. – Use tax payable by an individual who purchases tangible personal ~~property~~property, excluding purchases of boats and aircraft, outside the State for a nonbusiness purpose is due on an annual basis. For an individual who is not required to file an individual income tax return under Part 2 of Article 4 of this Chapter, the annual reporting period ends on the last day of the calendar year and a use tax return is due by the following April 15. For an individual who is

required to file an individual income tax return, the annual reporting period ends on the last day of the individual's income tax year, and the use tax must be paid on the income tax return as provided in G.S. 105-269.14."

SECTION 15. G.S.105-164.16(d), as amended by Section 9 of S.L. 2006-33, reads as rewritten:

"(d) Use Tax on Out-of-State Purchases. – Notwithstanding subsection (b), an individual who purchases tangible personal ~~property~~ property, excluding purchases of boats and aircraft, outside the State for a nonbusiness purpose shall file a use tax return on an annual basis. The annual reporting period ends on the last day of the calendar year. The return is due by the due date, including any approved extensions, for filing the individual's income tax return."

SECTION 16. G.S. 105-187.51B(a), as amended by Section 24.9(a) of S.L. 2006-66 reads as rewritten:

"(a) Tax. – A privilege tax is imposed on the following:

(1) A major recycling facility that purchases any of the following tangible personal property for use in connection with the facility:

a. Cranes, structural steel crane support systems, and foundations related to the cranes and support systems.

b. Port and dock facilities.

c. Rail equipment.

d. Material handling equipment.

e. Mill machinery parts and accessories."

SECTION 17. G.S. 105-187.52 reads as rewritten:

"§ 105-187.52. Administration.

(a) Administration. – The privilege taxes imposed by this Article are in addition to the State use tax. Except as otherwise provided in this Article, the collection and administration of these taxes is the same as the State use tax imposed by Article 5 of this Chapter.

(b) Credit. – A credit is allowed against the tax imposed by this Article for the amount of a sales or use tax, privilege or excise tax, or substantially equivalent tax paid to another state. The credit allowed by this subsection does not apply to tax paid to another state that does not grant a similar credit for the privilege tax paid in North Carolina.

(c) Exemption. State agencies are exempted from the privilege taxes imposed by this article."

SECTION 18. G.S. 105-258(a) reads as rewritten:

"(a) Secretary May Examine Data and Summon Persons. The Secretary of Revenue, for the purpose of ascertaining the correctness of any return, making a return where none has been made, or determining the liability of any person for ~~any tax imposed by this Subchapter,~~ a tax, or collecting any such tax, shall have the power to examine, personally, or by an agent designated by him, any books, papers, records, or other data which may be relevant or material to such inquiry, and the Secretary may summon the person liable for the tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, care or control of

books of account containing entries relevant or material to the income and expenditures of the person liable for the tax or required to perform the act, or any other person having knowledge in the premises, to appear before the Secretary, or his agent, at a time and place named in the summons, and to produce such books, papers, records or other data, and to give such testimony under oath as may be relevant or material to such inquiry, and the Secretary or his agent may administer oaths to such person or persons. If any person so summoned refuses to obey such summons or to give testimony when summoned, the Secretary may apply to the Superior Court of Wake County for an order requiring such person or persons to comply with the summons of the Secretary, and the failure to comply with such court order shall be punished as for contempt."

SECTION 19. G.S. 105-268.1 reads as rewritten:

"**§ 105-268.1. Agreements to coordinate the administration and collection of taxes; sharing of information for statistical reports and revenue estimates.**

(a) The Secretary of Revenue is hereby authorized, with the approval of the Governor and Council of State, to enter into agreements with the United States government or any department or agency thereof, or with a state or any political subdivision thereof, for the purpose of coordinating the administration and collection of taxes imposed by this State and administered and collected by said Secretary with taxes imposed by the United States or by any other state or political subdivision thereof.

(b) The Secretary of Revenue is hereby authorized, with the approval of the Governor and Council of State, to share information with the United States government or any department or agency thereof, or with a state or any political subdivision thereof, for the purpose of obtaining data for statistical reports and revenue estimates."

SECTION 20.1. G.S. 105-449.52 reads as rewritten:

"**§ 105-449.52. Civil penalties applicable to motor carriers.**

(a) Penalty. – A motor carrier who does any of the following is subject to a civil penalty:

(1) Operates in this State or causes to be operated in this State a motor vehicle that either fails to carry the registration card required by this Article or fails to display an identification marker in accordance with this Article. The amount of the penalty is one hundred dollars ($100.00).

(2) Is unable to account for identification markers the Secretary issues the motor carrier, as required by G.S. 105-449.47. The amount of the penalty is one hundred dollars ($100.00) for each identification marker the carrier is unable to account for.

(3) Displays an identification marker on a motor vehicle operated by a motor carrier that was not issued to the carrier by the Secretary under G.S. 105-449.47. The amount of the penalty is one thousand dollars ($1,000) for each identification marker unlawfully obtained. Both the licensed motor carrier to whom the Secretary issued the identification marker and the motor carrier displaying the unlawfully obtained identification marker are jointly and severally liable for the penalty under this subdivision.

~~A~~

(a1) Payment. – A penalty imposed under this section is payable to the ~~Department of Revenue, the Department of Crime Control and Public Safety, or the Division of Motor Vehicles.~~ agency that assessed the penalty. When a motor vehicle is found to be operating without a registration card or an identification marker or with an identification marker the Secretary did not issue for the vehicle, the motor vehicle may not be driven for a purpose other than to park the motor vehicle until the penalty imposed under this section is paid unless the officer that imposes the penalty determines that operation of the motor vehicle will not jeopardize collection of the penalty.

(b) Hearing. – The procedure set out in G.S. 105-449.119 for protesting a penalty imposed under Article 36C, Part 6, of this Chapter applies to a penalty imposed under this section."

SECTION 20.2. G.S. 105-449.115(f) reads as rewritten:

"(f) Sanctions Against Transporter. – The following acts are grounds for a civil ~~penalty payable to the Department of Crime Control and Public Safety or the Department of Revenue:~~penalty:

(1) Transporting motor fuel in a railroad tank car or transport truck without a shipping document or with a false or an incomplete shipping document.

(2) Delivering motor fuel to a destination state other than that shown on the shipping document.

The penalty ~~imposed under this subsection~~ is payable to the agency that assessed the penalty and is payable by the person in whose name the conveyance is registered, if the conveyance is a transport truck, and is payable by the person responsible for the movement of motor fuel in the conveyance, if the conveyance is a railroad tank car. The amount of the penalty is five thousand dollars ($5,000). A penalty imposed under this subsection is in addition to any motor fuel tax assessed."

SECTION 20.3. G.S. 105-449.115A(c) reads as rewritten:

"(c) Sanctions. – Transporting motor fuel in a tank wagon without an invoice, bill of sale, or shipping document containing the information required by this section is grounds for a civil ~~penalty payable to the Department of Crime Control and Public Safety or the Department of Revenue.~~penalty. The penalty ~~imposed under this subsection~~ is payable to the agency that assessed the penalty and is payable by the person in whose name the tank wagon is registered. The amount of the penalty is one thousand dollars ($1,000). A penalty imposed under this subsection is in addition to any motor fuel tax assessed."

SECTION 20.4. G.S. 105-449.117(b) reads as rewritten:

"(b) Civil Penalty. – The civil penalty is payable to the ~~Department of Transportation, Division of Motor Vehicles, or the Department of Revenue~~ agency that assessed the penalty and is payable by the person in whose name the highway vehicle is registered. The amount of the penalty depends on the amount of fuel in the supply tank of the highway vehicle. The penalty is the greater of one thousand dollars ($1,000) or five times the amount of motor fuel tax payable on the fuel in the supply tank. A penalty imposed under this section is in addition to any motor fuel tax assessed."

SECTION 20.5. G.S. 105-449.118 reads as rewritten:

"§ 105-449.118. Civil penalty for buying or selling non-tax-paid motor fuel.

A person who dispenses non-tax-paid motor fuel into the supply tank of a highway vehicle or who allows non-tax-paid motor fuel to be dispensed into the supply tank of a highway vehicle is subject to a civil penalty of two hundred fifty dollars ($250.00) per occurrence.

The penalty is payable to the ~~Department of Transportation, Division of Motor Vehicles, or the Department of Revenue.~~ agency that assessed the penalty. Failure to pay a penalty imposed under this section is grounds under G.S. 20-88.01(b) to withhold or revoke the registration plate of the motor vehicle into which the motor fuel was dispensed."

SECTION 20.6. G.S. 105-449.118A reads as rewritten:

"§ 105-449.118A. Civil penalty for refusing to allow the taking of a motor fuel sample.

A person who refuses to allow the taking of a motor fuel sample is subject to a civil penalty of one thousand dollars ($1,000). The penalty is payable to the ~~Department of Transportation, Division of Motor Vehicles, or the Department of Revenue.~~ agency that assessed the penalty. If the refusal is for a sample to be taken from a vehicle, the penalty is payable by the person in whose name the vehicle is registered. If the refusal is for a sample to be taken from any other storage tank or container, the penalty is payable by the owner of the container."

SECTION 21. G.S. 105-449.72(a)(3) reads as rewritten:

"(a) Initial Bond. – An applicant for a license as a refiner, a terminal operator, a supplier, an importer, a blender, a permissive supplier, or a distributor must file with the Secretary a bond or an irrevocable letter of credit. A bond or an irrevocable letter of credit must be conditioned upon compliance with the requirements of this Article, be payable to the State, and be in the form required by the Secretary. The amount of the bond or irrevocable letter of credit is determined as follows:

(1) For an applicant for a license as any of the following, the amount is two million dollars ($2,000,000):
   a. A refiner.
   b. A terminal operator.
   c. A supplier that is a position holder or a person that receives motor fuel pursuant to a two-party exchange.
   d. A bonded importer.
   e. A permissive supplier.

(2) For an applicant for a license as any of the following, the amount is two times the applicant's average expected monthly tax liability under this Article, as determined by the Secretary. The amount may not be less than two thousand dollars ($2,000) and may not be more than five hundred thousand dollars ($500,000):
   a. ~~A supplier that is a fuel alcohol provider or a biodiesel provider but is neither a position holder nor a person that receives motor fuel pursuant to a two-party exchange.~~

b. An occasional importer.
c. A tank wagon importer.
d. A distributor.
e. Repealed by Session Laws 1997-60, s. 5, effective October 5, 1997.

(3) For an applicant for a license ~~as a blender,~~ as any of the following, a bond is required only if the applicant's average expected annual tax liability under this Article, as determined by the Secretary, is at least two thousand dollars ($2,000). When a bond is required, the bond amount is the same as under subdivision (2) of this subsection.
a. A blender.
b. A supplier that is a fuel alcohol provider or a biodiesel provider but is neither a position holder nor a person that receives motor fuel pursuant to a two-party exchange."

SECTION 22. G.S. 105-449.115(g) reads as rewritten:

"(g) Penalty Defense. – Compliance with the conditions set out in this subsection is a defense to a civil penalty imposed under subsection (f) of this section as a result of the delivery of fuel to a state other than the destination state printed on the shipping document for the fuel. The Secretary must waive a penalty imposed against a person under that subsection if the person establishes a defense under this subsection. The conditions for the defense are:

(1) The person notified the Secretary of the diversion ~~within seven days after the diversion occurred~~ and received a confirmation number for the ~~diversion.~~diversion before the imposition of the penalty.

(2) Tax was timely paid on the diverted ~~fuel.~~fuel, unless the person is a motor fuel transporter."

SECTION 23. G.S. 115D-31.3(j) reads as rewritten:

"(j) Use of funds in low-wealth counties. – Funds retained by colleges or distributed to colleges pursuant to this section may be used to supplement local funding for maintenance of plant if the college does not receive maintenance of plant funds pursuant to G.S. 115D-31.2, and if the county in which the main campus of the community college is located:

(1) Is designated as a Tier 1 or Tier 2 county in accordance with G.S. 115D-31.4; ~~G.S. 105-129.3;~~

(2) Had an unemployment rate of at least two percent (2%) above the State average or greater than seven percent (7%), whichever is higher, in the prior calendar year; and

(3) Is a county whose wealth, as calculated under the formula for distributing supplemental funding for schools in low-wealth counties, is eighty percent (80%) or less of the State average.

Funds may be used for this purpose only after all local funds appropriated for maintenance of plant have been expended."

SECTION 24. Article 3 of Chapter 115D is amended by adding a new section to read:

"§ 115D-31.4. Development tier designation.

(a) Tiers Defined. – A development tier one area is a county whose annual ranking is one of the 40 highest in the State. A development tier two area is a county whose annual ranking is one of the next 40 highest in the State. A development tier three area is a county that is not in a lower-numbered development tier.

(b) Development Factor. – Each year, on or before November 30, the Secretary of Commerce shall assign to each county in the State a development factor that is the sum of the following:

(1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the most recent 12 months for which data are available.

(2) The county's rank in a ranking of counties by median household income from highest to lowest, for the most recent 12 months for which data are available.

(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest, for the most recent 36 months for which data are available.

(4) The county's rank in a ranking of counties by adjusted assessed property value per capita as published by the Department of Public Instruction, from highest to lowest, for the most recent taxable year.

(c) Annual Ranking. – After computing the development factor as provided in this section and making the adjustments required in this section, the Secretary of Commerce shall rank all the counties within the State according to their development factor from highest to lowest. The Secretary shall then identify all the areas of the State by development tier and publish this information. A development tier designation is effective only for the calendar year following the designation.

(d) Data. – In measuring rates of unemployment and median household income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population and population growth, the Secretary shall use the most recent estimates of population certified by the State Budget Officer. For the purposes of this section, population statistics do not include people incarcerated in federal or State prisons.

(e) Adjustment for Certain Small Counties. – Regardless of the actual development factor, any county that has a population of less than 12,000 shall automatically be ranked one of the 40 highest counties, any county that has a population of less than 50,000 shall automatically be ranked one of the 80 highest counties, and any county that has a population of less than 50,000 and more than nineteen percent (19%) of its population below the federal poverty level according to the most recent federal decennial census shall automatically be ranked one of the 40 highest counties.

(f) Adjustment for Development Tier One Areas. – Regardless of the actual development factor, a county designated as a development tier one area shall automatically be ranked one of the 40 highest counties until it has been a development tier one area for at least two consecutive years.

(g) Exception for Two-County Industrial Park. – An eligible two-county industrial park has the lower development tier designation of the designations of the two counties in which it is located if it meets all of the following conditions:

(1) It is located in two contiguous counties, one of which has a lower development tier designation than the other.

(2) At least one-third of the park is located in the county with the lower tier designation.

(3) It is owned by the two counties or a joint agency of the counties, is under contractual control of designated agencies working on behalf of both counties, or is subject to a development agreement between both counties and third-party owners.

(4) The county with the lower tier designation contributed at least the lesser of one-half of the cost of developing the park or a proportion of the cost of developing the park equal to the proportion of land in the park located in the county with the lower tier designation.

(h) Exception for Certain Multijurisdictional Industrial Parks. – An eligible industrial park created by interlocal agreement under G.S. 158-7.4 has the 1st tier development tier designation of the designations of the counties in which it is located if all of the following conditions are satisfied:

(1) The industrial park is located, at one or more sites, in three or more contiguous counties.

(2) At least one of the counties in which the industrial park is located is a development tier one area.

(3) The industrial park is owned by three or more units of local government or a nonprofit corporation owned or controlled by three or more units of local government.

(4) In each county in which the industrial park is located, the park has at least 250 developable acres. For the purposes of this subdivision, 'developable acres' includes acreage that is owned directly by the industrial park or its owners or that is the subject of a development agreement between the industrial park or its owners and a third-party owner.

(5) The total population of all of the counties in which the industrial park is located is less than 200,000.

(6) In each county in which the industrial park is located, at least sixteen and eight-tenths percent (16.8%) of the population was Medicaid eligible for the 2003-2004 fiscal year based on 2003 population estimates."

SECTION 25. G.S. 119-17 is repealed.

SECTION 26.1. Subsection (a) of Section 12 of Part V. of Chapter 908 of the 1983 Session Laws reads as rewritten:

"(a) Any tax levied under this Part is due and payable to the county in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied."

SECTION 26.2. Section 39 of Part IX of Chapter 908 of the 1983 Session Laws reads as rewritten:

"Every owner of a business subject to the tax levied by this Part shall, on and after the first day of the calendar month set by the governing body in the resolution levying the tax, collect the occupancy tax provided by this Part. This tax shall be collected as part of the charge for the furnishing of any taxable accommodations. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the owner of the business as trustee for and on account of the city. The occupancy tax levied under this Part shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the owner of the business. The city tax collector shall design, print, and furnish to all appropriate businesses in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. Every person liable for the tax imposed pursuant to this Part shall, on or before the ~~15th~~

20th day of each month, prepare and submit a return on the prescribed form stating the total gross receipts derived during the preceding month from rentals upon which the tax is levied. The tax shall be due and payable to the tax collector on a monthly basis.

Any person who fails or refuses to file the return required by this Part shall pay a penalty of ten dollars ($10.00) for each day's omission. In addition, any person who refuses to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax shall pay a penalty of five percent (5%) of the tax due. An additional penalty of five percent (5%) shall be imposed for each additional month or fraction thereof in which the occupancy tax is not paid.

Any person who willfully attempts in any manner to evade the occupancy tax or who willfully fails to pay the tax or make and file the required return, shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both."

SECTION 26.3. Subsection (a) of Section 26 of Part VII of Chapter 908 of the 1983 Session Laws reads as rewritten:

"(a) Any tax levied under this Part is due and payable to the county in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied."

SECTION 26.4. Subsection (a) of Section 4 of Chapter 988 of the 1983 Session Laws reads as rewritten:

"(a) Any tax levied under this act is due and payable to the county in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied."

SECTION 26.5. Subsection (a) of Section 3 of Chapter 1055 of the 1983 Session Laws reads as rewritten:

"(a) Any tax levied under this act is due and payable to the county in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied."

SECTION 26.6. Section 10 of Part IV of Chapter 570 of the 1985 Session Laws reads as rewritten:

"Every owner of a business subject to the tax levied by this Part shall, on and after the first day of the calendar month set by the governing body in the resolution levying the tax, collect the occupancy tax provided by this Part. This tax shall be collected as part of the charge for the furnishing of any taxable accommodations. The tax shall be

stated and charged separately from the sales records, and shall be paid by the purchaser to the owner of the business as trustee for and on account of the city. The occupancy tax levied under this Part shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the owner of the business. The city tax collector shall design, print, and furnish to all appropriate businesses in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. Every person liable for the tax imposed pursuant to this Part shall, on or before the ~~15th~~ 20th day of each month, prepare and submit a return on the prescribed form stating the total gross receipts derived during the preceding month from rentals upon which the tax is levied. The tax shall be due and payable to the tax collector on a monthly basis.

Any person who fails or refuses to file the return required by this Part shall pay a penalty of ten dollars ($10.00) for each day's omission. In addition, any person who refuses to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax shall pay a penalty of five percent (5%) of the tax due. An additional penalty of five percent (5%) shall be imposed for each additional month or fraction thereof in which the occupancy tax is not paid."

SECTION 26.7. Subsection (a) of Section 4 of Chapter 857 of the 1985 Session Laws reads as rewritten:

"(a) Any tax levied under this act is due and payable to the county in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by Onslow County. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied."

SECTION 26.8. Subsection (c) of Section 1 of Chapter 892 of the 1985 Session Laws as amended by Chapter 154 of the 1991 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 26.9. Subsection (c) of Section 1 of Chapter 923 of the 1985 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals and sales upon which the tax is levied.

A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law. "

SECTION 26.10. Subsection (a) of Section 4 of Chapter 929 of the 1985 Session Laws as amended by S.L.1985-929 reads as rewritten:

"(a) Any tax levied under this act is due and payable to the levying jurisdiction in monthly installments on or before the ~~25th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~25th~~ 20th day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A return filed under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 26.11. Subsection (c) of Section 1 of Chapter 969 of the 1985 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 26.12. Subsection (c) of Section 1 of Chapter 140 of the 1987 Session Laws reads as rewritten:

"(c) Administration. The county shall administer the tax levied under this act. The tax shall be due and payable to the county in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax is collected. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and submit a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals subject to the tax. A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 26.13. Subsection (c) of Section 1 of Chapter 141 of the 1987 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 26.14. Subsection (c) of Section 1 of Chapter 143 of the 1987 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 26.15. Subsection (c) of Section 1 of Chapter 170 of the 1987 Session Laws reads as rewritten:

"(c) Administration. The town shall administer a tax levied under this section. A tax levied under this section is due and payable to the town finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the town finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 26.16. Subsection (c) of Section 5 of Chapter 172 of the 1987 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 26.17. Subsection (a) of Section 3 of Chapter 188 of the 1987 Session Laws reads as rewritten:

"(a) Any tax levied under this act is due and payable to the county in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied."

SECTION 26.18. Subsection (c) of Section 1 of Title I. of Chaper 460 of the 1987 Session Laws reads as rewritten:

"(c) Administration. The Town shall administer a tax levied under this section. A tax levied under this section is due and payable to the Town revenue collector in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the Town. The return shall state the total gross receipts derived in the preceding month from rentals and sales upon which the tax is levied."

SECTION 26.19. Subsection (c) of Section 1 of Chapter 472 of the 1987 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 26.20. Subsection (c) of Section 1 of Chapter 484 of the 1987 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 26.21. Subsection (c) of Section 1 of Chapter 538 of the 1987 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 26.22. Subsection (c) of Section 1 of Chapter 561 of the 1987 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 26.23. Subsection (c) Section 1 of Chapter 618 of the 1987 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 26.24. Subsection (a) of Section 4 of Chapter 647 of the 1987 Session Laws reads as rewritten:

"(a) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied."

SECTION 26.25. Subsection (c) of Section 1 of Chapter 950 of the 1987 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 26.26. Subsection (c) of Section 1 of Chapter 979 of the 1987 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in

monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 26.27. Subsection (c) of Section 1 of Chapter 173 of the 1989 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 26.28. Subsection (c) of Section 1 of Chapter 422 of the 1989 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 26.29. Subsection (e) of Section 8 of Chapter 821 of the 1989 Session Laws reads as rewritten:

"(e) Administration. Mecklenburg County and the City of Charlotte shall determine by agreement which of them will administer and collect each of the taxes levied pursuant to this Part. In the event an agreement cannot be reached, then any tax levied pursuant to this Part shall be administered and collected by Mecklenburg County. The local administrative authority may promulgate additional rules and regulations necessary for the implementation of this Part.

The taxes levied pursuant to this Part are due and payable to the local administrative authority as agent for the taxing entity in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every taxable establishment liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return to the local administrative authority. The local administrative authority shall design, print, and furnish to all taxable establishments the necessary forms for filing returns and instructions to ensure the full collection of the tax.

A return filed with the local administrative authority under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 26.30. Subsection (c) of Section 1 of Chapter 163 of the 1991 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~fifteenth~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~fifteenth~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 26.31. Subsection (c) of Section 1 of Chapter 230 of the 1991 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~fifteenth~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~fifteenth~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 26.32. Subsection (c) of Section 1 of Chapter 392 of the 1991 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied."

SECTION 26.33. Subsection (c) of Section 5 of Chapter 577 of the 1991 Session Laws reads as rewritten:

"(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 26.34. Section 9 of Chapter 594 of the 1991 Session Laws as amended by Section 5 of Chapter 458 of the 1995 Session Laws reads as rewritten:

" Sec. 9. Administration. – The county shall administer and collect the taxes levied pursuant to this act. Wake County may contract with the City of Raleigh to perform these functions.

The taxes levied pursuant to this act are due and payable to the county in monthly installments on or before the ~~fifteenth~~ 20th day of the month following the month in which the tax accrues. Every taxable establishment liable for the tax shall, on or before the ~~fifteenth~~ 20th day of each month, prepare and render a return to the county. The county shall design, print, and furnish on request to all taxable establishments the necessary forms for filing returns and instructions to ensure the full collection of the tax.

Returns filed with the county pursuant to this act are not public records and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1."

SECTION 26.35. Subsection (c) of Section 1 of Chapter 453 of the 1993 Session Laws reads as rewritten:

"(c) Administration.

The city shall administer a tax levied under this section. A tax levied under this section is due and payable to the city finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the city finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 26.36. Subsection (c) of Section 1 of Chapter 549 of the 1993 Session Laws reads as rewritten:

"(c) Administration.

The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~fifteenth~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~fifteenth~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 26.37. Subsection (c) of Section 1 of Part 1 of Chapter 642 of the 1993 Session Laws reads as rewritten:

"(c) **Administration.** The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~fifteenth~~ 20th day of the month following the

month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~fifteenth~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 26.38. Subsection (c) of Section 1 of Chapter 648 of the 1993 Session Laws reads as rewritten:

"(c) Administration. The city shall administer a tax levied under this section. A tax levied under this section is due and payable to the city finance officer in monthly installments on or before the ~~fifteenth~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~fifteenth~~ 20th day of each month, prepare and render a return on a form prescribed by the city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the city finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 26.39. Subsection (c) of Section 1 of Chapter 695 of the 1993 Session Laws reads as rewritten:

"(c) Administration.

The town shall administer a tax levied under this section. A tax levied under this section is due and payable to the town in monthly installments on or before the ~~fifteenth~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~fifteenth~~ 20th day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the town under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law."

SECTION 26.40. Subsection (c) of Section 1 of Chapter 530 of the 1995 Session Laws reads as rewritten:

"(c) **Administration.** The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the ~~15th~~ 20th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1."

SECTION 27.1. Section 9 of S.L. 2005-294 is repealed.

SECTION 27.2. S.L. 2005-294 is amended by adding a new section 9.1 to read:

" G.S. 105-330.10, as enacted by Section 8 of this act, reads as rewritten:

"**§ 105-330.10. Disposition of interest.**

~~Sixty percent (60%) of the~~ The first month's interest collected on unpaid ~~taxes~~ registration fees pursuant to G.S. 105-330.4 shall be transferred on a monthly basis to the ~~Combined Motor Vehicle and Registration Account created within the Treasurer's Office.~~North Carolina Highway Fund for technology improvements within the Division of Motor Vehicles. ~~The funds in this account shall be used to develop and implement an integrated computer system within the Division of Motor Vehicles that would allow for the combined assessment, billing, and collection of property taxes on motor vehicles and the issuance of registration plates. The Treasurer shall report to the Revenue Laws Study Committee semi-annually with the first report due by April 30, 2006. The report shall contain a detailed description of the amount of moneys transferred to the Account and distributed from the Account.~~"

SECTION 28. The introductory language of Section 6 of S.L. 2006-128 reads as rewritten:

"**SECTION 6.** G.S.153A-155(g) reads as rewritten:"

SECTION 29. Section 33 of S.L. 2006-162 reads as rewritten:

"**SECTION 33.** ~~Section 4~~Sections 4(a) and 4(b) of this act ~~is~~ are effective for taxable years beginning on or after January 1, 2006. Section 13 of this act becomes effective July 1, 2007, and applies to motor fuel transported on or after that date. Sections 14, 15, and 17 of this act become effective January 1, 2007, and apply to motor fuel purchased on or after that date. An exempt card or code will not be valid for sales of motor fuel at the terminal rack on or after January 1, 2007. Section 26 of this act is effective when it becomes law and applies to the estates of decedents dying on or after January 1, 2005. Section 32 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law."

SECTION 30. Section 16 becomes effective January 1, 2010. Section 17 becomes effective July 1, 2007. Section 22 of this act becomes effective October 1, 2007. Section 23 of this act applies to penalties assessed on or after the effective date of this act and to refund requests that have not been finally determined as of the effective date of this act. Section 30 is effective July 1, 2010, or when the Division of Motor Vehicles and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first. The remainder of this act becomes effective when it becomes law.

DRAFT 2007-TDxz-4:
Revenue Laws Technical Changes

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	January 11, 2007
Introduced by:		**Summary by:**	Heather Fennell
Version:	Draft 2007-TDxz-4		Committee Counsel

SUMMARY: This bill makes several technical, clarifying, and administrative changes to the revenue laws and related statutes.

Sections 1, 7, 9, 23, 24, 27, 28, and 29 are technical changes. Sections 2, 3, 4, 5, 7, 8, 13, 16, and 17 are clarifying changes. Sections 10, 11, 12, 14, 15, 18, 19, 20, 21, 22, 25, and 26 are administrative changes.

BILL ANALYSIS: This bill makes the following technical, clarifying, and administrative changes:

Section	Explanation
1	Deletes an obsolete reference.
2	Clarifies the term "arts organization" in the area of exemptions from the amusement tax.
3	Clarifies the term "arts festivals" in the area of exemptions from the amusement tax.
4	Clarifies the term "community festivals" in the area of exemptions from the amusement tax.
5	Clarifies the amount of excise taxes to be distributed to counties and cities in which the retail sale of alcoholic beverages are authorized to be sold.
6	Clarifies that for the purposes of granting credits for the creation of new jobs, urban progress and agrarian growth zones should be treated separately from other eligible establishments.
7	Substitutes the appropriate reference "apportionable," for the prior reference "business."
8	Clarifies that for the purposes of granting credits for business property placed in service, urban progress and agrarian growth zones should be treated separately from other eligible establishments. Substitutes the appropriate reference "business property," for the prior reference " machinery and equipment."
9	Substitutes the appropriate reference "out of," for the prior reference "to."
10	Alters the documentation process to reflect the current Department of Revenue practice.
11	Alters the documentation process to reflect the current Department of Revenue practice.
12	Adds ancillary services to items for which the sales tax exemption for State agencies does not apply, in order to reflect the amendments to the changes in taxing telecommunications.
13	Clarifies the dollar amount for filing requirements.

14	Clarifies the payment of tax on purchases of boats and airplanes would not be made on the use tax line of the income tax return.
15	Clarifies the payment of tax on purchases of boats and airplanes would not be made on the use tax line of the income tax return.
16	Clarifies the corresponding property for research and development firms eligible for the 1% privilege tax.
17	Clarifies the exemption for State agencies applies to the privilege tax.
18	Provides that the Secretary of Revenue's authority to summon records also applies to the motor fuel tax statutes. The section makes this change by using the defined term 'tax'. G.S. 105-228.90 defines 'tax' includes all of the State levied taxes. This section would be effective when it becomes law.
19	Clarifies the Department of Revenue's ability to share information with other state agencies and tax officials in other states for the purpose of obtaining data for statistical reports and revenue estimates.
20	Makes a technical change to the statute to require that a civil penalty is payable to the agency that assessed the penalty. In addition to the Department of Revenue, G.S. 105-269.3 provides that the State Highway Patrol, law enforcement officers, and other appropriate personnel in the Department of Crime Control and Public Safety may enforce the motor fuel tax laws. The reorganization of the Division of Motor Vehicles in 2003 moved the State Highway Patrol from DMV to the Department of Crime Control and Public Safety. This substantive change in 2003 necessitated technical, conforming changes to the tax statutes. The wording proposed by this section would eliminate the need for similar conforming changes in the future. This section would be effective when it becomes law.
21	Provides that a fuel alcohol provider and a biodiesel provider need only post a bond to receive a license as a supplier[1] if its annual motor fuel tax liability is at least $2,000. Under current law, to be licensed as a supplier, a fuel alcohol provider or a biodiesel provider must post a bond in an amount that is two times the applicant's average expected monthly tax liability. The amount may not be less than $2,000 and may not be more than $5,000. Under this section, if a fuel alcohol provider or biodiesel provider must post a bond, then the amount would be the same as the current law bond requirement. This section would be effective October 1, 2007.
22	Modifies the defense to imposition of a penalty for failure to obtain a diversion number for motor fuel delivered to a state other than the destination state printed on the shipping document. Under current law, the defense is that the person notified the Secretary of the diversion within 7 days after the diversion occurred and timely paid the tax on the diverted fuel.[2] This section removes the 7-day time period by providing that the notification must have occurred prior to the imposition of the penalty. It also removes the requirement that the tax be timely paid if the person assessed with the penalty is the motor fuel transporter because it is not the motor fuel transporter's responsibility to pay the tax.
23	Makes a conforming change to the reference for definitions under the Article.
24	Makes a conforming change by adding definitions needed in the article.

[1] A supplier is defined as any of the following: a position holder or a person who receives motor fuel pursuant to a two-party exchange, a fuel alcohol provider, a biodiesel provider, or a refiner. (G.S. 105-449.60)

[2] The General Assembly established this defense in 2005. (S.L. 2005-435.)

25	Repeals an unnecessary statute. Article 3 of Chapter 119 directs the Commissioner of Agriculture to inspect alternative fuel, motor fuel, and kerosene to protect the public. This statute says that various fuels are subject to inspection. It does not appear to be a necessary statute because the provisions of Article 3 govern what fuel is inspected and what standards the fuel must meet. The terms 'alternative fuel', 'motor fuel', and 'kerosene' are defined terms in Article 3. This section would be effective when it becomes law.
26	Conforms the date an occupancy tax return is due with the date that the occupancy taxes are due.
27	Conforms the language in a session law to language amended by a subsequent session law.
28	Corrects a statutory reference.
29	Conforms the effective date for confidentiality provisions to administrative practices.
30	Section 16 is effective January 1, 2010. Section 17 is effective July 1, 2007. Section 22 of this act becomes effective October 1, 2007. Section 23 of this act applies to penalties assessed on or after the effective date of this act and to refund requests that have not been finally determined as of the effective date of this act. Section 30 is effective July 1, 2010, or when the Division of Motor Vehicles and the Department of Revenue certify that the integrated computer system for registration renewal and property tax collection for motor vehicles is in operation, whichever occurs first. The remainder of this act is effective when it becomes law.

0000e1-SMTD

APPENDIX A

AUTHORIZING LEGISLATION
ARTICLE 12L OF CHAPTER 120
OF THE
GENERAL STATUTES

ARTICLE 12L

Revenue Laws Study Committee

§ 120-70.105. Creation and membership of the Revenue Laws Study Committee.

(a) Membership. -- The Revenue Laws Study Committee is established. The Committee consists of 16 members as follows:

(1) Eight members appointed by the President Pro Tempore of the Senate; the persons appointed may be members of the Senate or public members.

(2) Eight members appointed by the Speaker of the House of Representatives; the persons appointed may be members of the House of Representatives or public members.

(b) Terms. -- Terms on the Committee are for two years and begin on January 15 of each odd-numbered year, except the terms of the initial members, which begin on appointment. Legislative members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until a successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. (1997-483, s. 14.1; 1998-98, s. 39.)

§ 120-70.106. Purpose and powers of Committee.

(a) The Revenue Laws Study Committee may:

(1) Study the revenue laws of North Carolina and the administration of those laws.

(2) Review the State's revenue laws to determine which laws need clarification, technical amendment, repeal, or other change to make the laws concise, intelligible, easy to administer, and equitable.

(3) Call upon the Department of Revenue to cooperate with it in the study of the revenue laws.

(4) Report to the General Assembly at the beginning of each regular session concerning its determinations of needed changes in the State's revenue laws.

These powers, which are enumerated by way of illustration, shall be liberally construed to provide for the maximum review by the Committee of all revenue law matters in this State.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee. When a recommendation of the Committee, if enacted, would result in an increase or decrease in State revenues, the report of the Committee must include an estimate of the amount of the increase or decrease. (1997-483, s. 14.1.)

§ 120-70.107. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Revenue Laws Study Committee. The Committee shall meet upon the joint call of the cochairs.

(b) A quorum of the Committee is nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) The Committee shall be funded by the Legislative Services Commission from appropriations made to the General Assembly for that purpose. Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1 and G.S. 138-5. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee. (1997-483, s. 14.1.)

REVENUE LAWS STUDY COMMITTEE AGENDA

Sen. John Kerr Rep. Paul Luebke

Tuesday, September 5, 2006
Room 544, Legislative Office Building
9:30 a.m.

I. Welcoming Remarks

II. Overview of 2006 Tax Law Changes and Fate of the Revenue Laws Study Committee's Recommendations to the 2006 General Assembly

Brenna Erford, Fiscal Research

III. Motor Vehicle Property Tax Collection

- **Overview of 2005 and 2006 Legislation**
  Martha Walston, Fiscal Research
- **Findings & Recommendations for Determining Valuation of Motor Vehicles for Property Tax Purposes**
  David Baker, Director, Property Tax Division, Department of Revenue
- **Findings & Recommendations for Implementing an Integrated Computer System**
  Stephanie King, Director of Accounting Operations, Department of Transportation
- **Comments**
  - Pete Rodda, Tax Assessor, Forsyth County; North Carolina Tax Assessors Association
  - Paul Meyer, Assistant General Counsel, NCACC
  - John Policastro, NC Automobile Dealers Association

IV. Corporate Income Tax: Combined Returns

- **Overview of Issue**
  Cindy Avrette, Research Division
- **Implementation of Current Law**
  - Secretary Norris Tolson, Department of Revenue
  - Greg Radford, Director, Corporate Income Tax Division, Department of Revenue
- **Comments from Interested Parties**

V. Adjournment

REVENUE LAWS STUDY COMMITTEE TENATIVE AGENDA

Sen. John Kerr Rep. Paul Luebke

Tuesday, October 3, 2006
Room 544, Legislative Office Building
9:30 a.m.

I. Approval of the Minutes from the September 5, 2006, Meeting

II. Gift Tax – Overview of the Tax and Alternatives for Simplification

Canaan Huie, Bill Drafting Division

III. Hearings and Appeal Process for Disputed Tax Matters

- **Overview of the Current Process**
  Sabra Faires, Tax Counsel for the Senate
- **Refunds of Tax 'Paid under Protest' and Other Tax Refunds**
  Trina Griffin, Research Division
- **Interested Parties**
  - Jody Joyner, Tax Council, North Carolina Bar Association
  - Jim Ahler, Executive Director, NC Association of Certified Public Accountants
  - Joe Crosby, Council on State Taxation
  - Royce Powell
- **Department of Revenue**
  Linda Millsaps, Assistant Secretary for Tax Administration

IV. Gross Premiums Tax on Insurance Companies – Simplification of Fire Tax Rate

- **Review of 2006 Legislation**
  - Cindy Avrette, Research Division
  - Rodney Bizzell, Fiscal Research Division
- **Comments and Concerns**
  - Jim Long, Commissioner of Insurance
  - Joe Stewart, Executive Director, Insurance Federation of North Carolina

V. Adjournment

REVENUE LAWS STUDY COMMITTEE TENATIVE AGENDA

Sen. John Kerr Rep. Paul Luebke

Thursday, November 16, 2006
Room 544, Legislative Office Building
9:30 a.m.

I. **Approval of the Minutes from the October 3, 2006, Meeting**

II. **Gross Premiums Tax on Insurance Companies – Simplification of Fire Tax Rate**
- **Review of 2006 Legislation**
  - Cindy Avrette, Research Division
  - Rodney Bizzell, Fiscal Research Division
- **Comments and Concerns**
  - Wayne Goodwin, Assistant Commissioner of Insurance
  - Joe Stewart, Executive Director, Insurance Federation of North Carolina

III. **Refunds of Tax "Paid Under Protest": Follow-up and Overview of *Dunn v. State* Case**
Trina Griffin, Research Division

IV. **Property Tax Valuation of Conservation Land**
- **Method of Valuation**
  - Stan Duncan, Tax Assessor, Henderson County
  - Pete Rodda, Tax Assessor, Forsyth County
- **Comments from Interested Parties**
  - Edgar Miller, Director of Government Relations, Conservation Trust for North Carolina
  - Will McDow, Forest Policy Analyst, Environmental Defense

V. **Income Tax Credit for Certain Real Property Donations**
- **History and Review of Tax Credit**
  Dan Ettefagh, Bill Drafting Division
- **Comments from Interested Parties**
  - Richard Rogers, Assistant Secretary for Natural Resources, Department of Environment and Natural Resources
  - Reid Wilson, Executive Director, Conservation Trust for North Carolina
  - Linda Millsaps, Assistant Secretary of Tax Administration, Department of Revenue

VI. **Corporate Income Tax: Process for Estimating Fiscal Impact of Combined Reporting**
Karl Knapp, Director, Tax Research Division, Department of Revenue

VII. **Adjournment**

REVENUE LAWS STUDY COMMITTEE AGENDA

Sen. John Kerr Rep. Paul Luebke

Tuesday, December 12, 2006
Room 544, Legislative Office Building
9:30 a.m.

I. Approval of the Minutes from the November 16, 2006, Meeting

II. Gift Tax Simplification

Canaan Huie, Legislative Drafting Division
Barry Boardman, Fiscal Research Division

III. IRC Update

Heather Fennell, Research Division
David Crotts and Barry Boardman, Fiscal Research Division

IV. Tax Refund Procedure

Trina Griffin, Research Division

V. Administrative Appeal Process

- Trina Griffin, Research Division
- Linda Millsaps, Assistant Secretary of Tax Administration, Department of Revenue

VI. Mandatory Combined Returns

Cindy Avrette, Research Division

VII. Streamlined Sales Tax: Bundled Transactions

Cindy Avrette, Research Division

VIII. Motor Fuels Tax Changes

Cindy Avrette, Research Division

IX. Adjournment

REVENUE LAWS STUDY COMMITTEE AGENDA

Sen. John Kerr Rep. Paul Luebke

Tuesday, January 16, 2007
Room 544, Legislative Office Building
9:30 a.m.

I. **Approval of the Minutes from the December 12, 2006, Meeting**

II. **Motor Vehicle Property Tax Changes**
David Baker, Director of the Property Tax Division, Department of Revenue,

III. **Enhance Collection Procedures**
Charlie Helms, Director of the Collections Division, Department of Revenue

IV. **Review of Disputed Tax Matters**
Trina Griffin, Research Division

V. **Combined Returns**
Cindy Avrette, Research Division

VI. **Tax Credit for Real Property Donations**
Dan Ettefagh, Bill Drafting Division

VII. **IRC Update**
Heather Fennell, Research Division
Barry Boardman, Fiscal Research

VIII. **Motor Fuels Tax Changes**
Cindy Avrette, Research Division

IX. **Technical and Administrative Changes**
Heather Fennell, Research Division

X. **Adjournment**

REVENUE LAWS STUDY COMMITTEE AGENDA

Sen. John Kerr Rep. Paul Luebke

Tuesday, January 23, 2007
Room 544, Legislative Office Building
9:30 a.m.

APPENDIX C

DISPOSITION OF COMMITTEE'S RECOMMENDATIONS TO THE 2006 SESSION OF THE 2005 GENERAL ASSEMBLY

SHORT TITLE	SENATE SPONSORS	HOUSE SPONSORS	BILL #	FINAL STATUS*
Additional Personal Income Tax Filing Option	Webster		SB 1552	Enacted SL 2006-66, Sec. 24.11 (Budget Bill)
Amend Taxation of Logging Machinery		Wainwright, Church, McComas, Underhill	HB 1938	Enacted SL 2006-19
Delinquent Property Tax/Inventory/Study	Hartsell		SB 1451	Enacted* SL 2006-106
Electricity Franchise Tax Distribution	Hoyle		SB 343	Not enacted
Expansion of Royalty Reporting Option		Luebke	HB 2048	Enacted SL 2006-66, Sec. 24A.3 (Budget Bill)
Franchise Tax Base Calculation	Hartsell		SB 1283	Enacted SL 2006-95
Franchise Tax Loophole Closing		Luebke	HB 1962	Enacted SL 2006-66, Sec. 24A.2 (Budget Bill)
IRC Update		Wainwright, Luebke, Carney, Wilkins	HB 1892	Enacted SL 2006-18
Property Tax Changes		Brubaker	HB 2097	Enacted SL 2006-30
Revenue Laws Tech. & Motor Fuel Tax Changes		Luebke	HB 1963	Enacted SL 2006-162
S Corp Income Tax Adjustments		Wilkins	HB 1898	Enacted SL 2006-17
Simplify Fire Tax Rate/Other Tax Changes		Wainwright, Luebke, Church, Hill	HB 1891	Enacted* SL 2006-196
SSTA Sales Tax Defn/Sales Tax Payments		Hill	HB 1915	Enacted SL 2006-33
Video Service Competition Act		Carney, Luebke, McComas Wainwright	HB 2047	Enacted SL 2006-151

* Bills were modified prior to enactment.

COMBINED REPORTING PREVENTS TAX AVOIDANCE AND IS FAIRER TO SMALL BUSINESSES

- North Carolina's current system, called "separate entity reporting," encourages tax avoidance and manipulation of the tax system

- Separate entity reporting is particularly unfair to small North Carolina businesses because they can't manipulate their tax liability like large multistate corporations

- In separate entity states, the corporate tax burden is unfairly shifted from large corporations to small corporations and creates severe equity implications

- Tax planning in separate entity states "not only robs the [state] treasury, but is also unfair to local businesses that compete with those companies"

  Peter Fisher, *Revitalizing Iowa's Corporate Income Tax,* 40 State Tax Notes 601, 609 (May 22, 2006)

- 64% of C corporations in North Carolina will be completely unaffected by combined reporting unless it results in a corporate tax rate cut

- Adopting unitary combined reporting has been called "the single most important state corporate tax reform"

  McIntyre & Nguyen, *State Corporate Income Taxes 2001-2003,* 35 State Tax Notes 685, 692 (Mar. 7, 2005)

- "By moving to combined reporting . . . a comprehensive solution to end tax avoidance strategies can be achieved"

  Cameron & Mejia, *North Carolina's Corporate Tax: Rate Cuts or Reform,* 32 State Tax Notes 45, 47 (Apr. 5, 2004) (emphasis added)

THE SEPARATE ENTITY METHOD COSTS NORTH CAROLINA MILLIONS OF DOLLARS IN LOST TAX REVENUE A YEAR

- "The failure to use combined reporting is an open door to tax avoidance"

  Charles McLure, Senior Fellow, Hoover Institution; Deputy Assistant of the Treasury, Reagan Administration

- Documented tax avoidance strategies sold to 3 large NC corporations alone cost the State over $11.5 million annually

- In the last 5 years, corporations have paid over $220 million through combined reporting in North Carolina

- States that have adopted combined reporting have been able to reduce corporate tax rates

  See, e.g., 2003-2004 Vt. Acts & Resolves 152, § 3 reducing Vermont's corporate tax

- Recent estimates in other states project that corporate tax revenues increase between 17% and 24% by adopting combined reporting

  Michael Mazerov, *Combined Reporting: The Key to a Robust and Fair State Corporate Income Tax in Pennsylvania*, Presentation to the Pennsylvania House Finance Committee, August 25, 2005

moves to amend the ~~report~~ bill by rewriting lines 43 on page 3 through line 23 on page 4 to read

"(c) Tax Application. – Tax applies to the sales price of a bundled transaction."

Wm Hill

J Kerr

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U D

BILL DRAFT 2007-RBz-7 [v.3] (01/23)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/23/2007 7:28:51 AM

Short Title: Additional Tax on Property Coverage Contract. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ADJUST THE ADDITIONAL TAX RATE ON PROPERTY COVERAGE CONTRACTS TO BE REVENUE NEUTRAL BASED ON AN EXPANSION OF THE TAX BASE ENACTED IN S.L. 2006-196, TO INCREASE THE DISTRIBUTION OF THE TAX PROCEEDS TO THE VOLUNTEER FIRE DEPARTMENT FUND, TO AMEND THE VOLUNTEER FIRE DEPARTMENT GRANT PROGRAM TO ALLOW MORE DEPARTMENTS TO QUALIFY FOR GRANTS, AND TO MODIFY THE DISTRIBUTION OF TAX PROCEEDS TO THE LOCAL FIREMEN'S RELIEF FUNDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-228.5(d)(3), as amended by Section 3 of S.L. 2006-196, reads as rewritten:

"(3) **(Effective for taxable years beginning on or after January 1, 2008)** Additional Rate on Property Coverage Contracts. – An additional tax at the rate of ~~eighty-five hundredths percent (.85%)~~ seventy-four hundredths percent (.74%) applies to gross premiums on insurance contracts for property coverage. The tax is imposed on ten percent (10%) of the gross premiums from insurance contracts for automobile physical damage coverage and on one hundred percent (100%) of the gross premiums from all other contracts for property coverage. ~~Twenty percent (20%)~~ Thirty percent (30%) of the net proceeds of this additional tax must be credited to the Volunteer Fire Department Fund established in Article 87 of Chapter 58 of the General Statutes. Twenty-five percent (25%) of the net proceeds must be credited to the Department of Insurance for disbursement pursuant to G.S. 58-84-25. The remaining net proceeds must be credited to the General Fund.

The following definitions apply in this subdivision:

a. Automobile physical damage. – The following lines of business identified by the NAIC: private passenger automobile physical damage and commercial automobile physical damage.

b. Property coverage. – The following lines of business identified by the NAIC: fire, farm owners multiple peril, homeowners multiple peril, nonliability portion of commercial multiple peril, ocean marine, inland marine, earthquake, private passenger automobile physical damage, commercial automobile physical damage, aircraft, and boiler and machinery. The term also includes insurance contracts for wind damage.

c. NAIC. – National Association of Insurance Commissioners."

SECTION 2. G.S. 58-84-25, as amended by Section 7 of S.L. 2006-196, reads as rewritten:

§ 58-84-25. (Effective January 1, 2008) Disbursement of funds by Insurance Commissioner.

(a) Distribution. -- The Insurance Commissioner shall deduct the sum of three percent (3%) from the tax proceeds credited to the Department pursuant to G.S. 105-228.5(d)(3) and pay the same over to the treasurer of the State Firemen's Association for general purposes. The Insurance Commissioner shall deduct the sum of two percent (2%) from the tax proceeds and retain the same in the budget of the Department of Insurance for the purpose of administering the disbursement of funds by the board of trustees in accordance with the provisions of G.S. 58-84-35. The Insurance Commissioner shall, pursuant to G.S. 58-84-50, credit the amount forfeited by nonmember fire districts to the North Carolina State Firemen's Association. The Insurance Commissioner shall pay the remaining tax proceeds to the treasurer of each fire district as provided in subsection (b) of this section.

(b) Local Fire Districts. -- ~~on a per capita basis, using the most recent annual population estimates certified by the State Budget Officer.~~ The Insurance Commissioner must distribute to the fire districts the amount each district received under this section in the previous year. If the amount distributable in a year is less than the amount distributed in the previous year, then the amount each fire district receives is reduced proportionally. If the amount distributable in a year is greater than the amount distributed in the previous year, then the excess proceeds must be distributed to the counties in proportion to the premiums collected on insurance contracts for property coverage in each county compared to the total premiums collected on insurance contracts for property coverage in this State. The county must distribute any funds it receives under this section to the fire districts in its county. The amount each fire district receives is its proportionate share based upon the property tax values in its district compared to the property tax values in all the fire district of that county.

These funds shall be held by the treasurer as a separate and distinct fund. The fire district shall immediately pay the funds to the treasurer of the local board of trustees upon the treasurer's election and qualification, for the use of the board of trustees of the firemen's local relief fund in each fire district, which board shall be composed of five

members, residents of the fire district as hereinafter provided for, to be used by it for the purposes provided in G.S. 58-84-35."

SECTION 3. G.S. 58-87-1, as amended by Section 8 of S.L. 2006-196, reads as rewritten:

"**§ 58-87-1. (Effective January 1, 2008) Volunteer Fire Department Fund.**

(a) Fund. – The Volunteer Fire Department Fund is created as an interest-bearing, nonreverting fund in the Department to provide matching grants to volunteer fire departments to purchase equipment and make capital improvements. The Commissioner shall administer the Fund. Up to two percent (2%) of the Fund may be used for additional staff and resources to administer the Fund in each fiscal year.

(a1) Grant Program. – An eligible fire department may apply to the Commissioner for a grant under this section. In awarding grants under this section, the Commissioner must, to the extent possible, select applicants from all parts of the State based upon need. The Commissioner must award the grants on May 15 of each year subject to the following limitations:

(1) The size of a grant may not exceed ~~twenty thousand dollars ($20,000);~~thirty thousand dollars ($30,000).

(2) The applicant shall match the grant on a dollar-for-dollar ~~basis;~~basis.

(3) The grant may be used only for equipment purchases, payment of highway use taxes on those purchases, or capital expenditures necessary to provide fire protection ~~services; and~~services.

(4) An applicant may receive no more than one grant per fiscal year.

(b) Eligible Fire Department. – A fire department is eligible for a grant under this section if it meets all of the conditions of this subsection. No fire department may be declared ineligible for a grant solely because it is classified as a municipal fire department.

(1) It serves a response area of ~~6,000~~12,000 or less in population. In making the population determination, the Department must use the most recent annual population estimates certified by the State Budget Officer.

(2) It consists entirely of volunteer members, with the exception that the unit may have paid members to fill the equivalent of ~~three~~ six full-time paid positions.

(3) It has been certified by the Department of Insurance.

(c) Report. – The Commissioner must submit a written report to the General Assembly within 60 days after the grants have been made. This report must contain the amount of the grant and the name of the recipient."

SECTION 4. Section 1 of this act is effective for taxable years beginning on or after January 1, 2008. The remainder of this act becomes effective January 1, 2008.

BILL DRAFT 2007-RBz-7: Additional Tax Rate on Property Coverage

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	January 23, 2007
Introduced by:		**Summary by:**	
Version:	Draft		

SUMMARY: Draft 2007-RBz-7 makes the following changes:

- *It reduces the additional tax rate applicable to gross premiums on insurance contracts for property coverage from .85% to .74%. Last session the General Assembly broadened the base for this tax and directed the Revenue Laws Study Committee to determine the revenue neutral tax rate.*
- *It increases the percentage of the tax proceeds derived from the additional fire & lightening tax rate allocated to the Volunteer Fire Department Fund from 20% to 30%. This change reduces the amount of the tax proceeds allocated to the General Fund.*
- *It increases the cap on the grants from the Volunteer Fire Department Fund and it changes the qualifications for grants from the Volunteer Fire Department Grant Program to enable more volunteer fire departments to qualify for grants.*
- *It modifies the distribution of money to the local firemen's relief grant funds so that the distribution more closely resembles the current distribution.*

CURRENT LAW: North Carolina imposes a 1.9% tax rate on the gross premiums of most insurance policies.[1] In addition to the general rate, there is a 1.33% rate applied to the gross premiums on insurance policies that provide fire and lightning coverage. The taxable percentage of the different types of policies varies. Twenty-five percent of the net proceeds of this additional tax are credited to the Volunteer Fire Department Fund,[2] and the remainder is credited to the General Fund. There is also a 0.5% rate applied to gross premiums on insurance policies that provide fire and lightning coverage within fire districts. The statute authorizing the 0.5% rate does not provide any exceptions from this tax. The net proceeds of this tax are credited to the Department of Insurance.[3]

Last session, in S.L. 2006-196, the General Assembly changed the law, effective January 1, 2008, upon the recommendation of the Revenue Laws Study Committee. The Committee recommended a change in the law because the Department of Revenue informed the Committee that the taxable percentages applied under the previous law were neither statutory nor imposed by administrative rule. S.L. 2006-196 set the percentages for the current taxable year and it established a new method of taxing insurance

[1] Workers' compensation policies are taxed at 2.5%. HMO policies are currently taxed at a rate of 1%; however, effective January 1, 2007, these policies will be taxed at the general rate of 1.9%.

[2] Funds in the Volunteer Fire Department Fund provide matching grants to volunteer fire departments to purchase equipment and make capital improvements. In 2005, the Department received 567 applications for grants requesting matching funds of $6,577,455. The available monies in the Fund totaled only $4,369,976. The Department approved 500 applications totaling $4,365,489.

[3] Three percent (3%) of the tax proceeds are credited to the State Firemen's Association for general purposes. Two percent (2%) of the proceeds are used by the Department of Insurance for the purpose of administering the disbursement. The remaining funds are allocated among the fire districts in proportion to the amount of business done in the district and used by the local district for firemen's local relief purposes. *See Article 84 of Chapter 58 of the General Statutes.*

policies that provide property coverage, effective for taxable years beginning on or after January 1, 2008. Effective 2008, the act broadens the base and lowers the rate applicable to insurance contracts that provide property coverage. The 2006 act set the revenue-neutral tax rate at 0.85%, and it directed the Revenue Laws Study Committee to continue studying this issue to ensure a revenue neutral tax rate.

Under current law, there is a local tax applied to contracts of insurance applicable to fire and lightning coverage within fire districts. A portion of the revenue from this tax is distributed to these fire districts. The 2006 act broadens the base. It does not limit the application of the tax to fire districts. It also does not require the accounting by insurance companies of the amount of premiums written in fire districts. The 2006 legislation established a new method of distribution based upon a per capita allocation among fire districts, effective January 1, 2008, and directed the Revenue Laws Study Committee to study the distribution to the local fire districts.

BILL ANALYSIS: This proposal reflects the continued study of this area. The proposal makes the following changes to the law:

- It reduces the additional tax rate on property coverage contracts to ensure a revenue neutral tax rate. It clarifies that the tax rate includes wind-only premiums.
- It changes the distribution formula for the funds distributed to local fire districts. The 2006 legislation provided that the funds would be distributed on a per capita basis. Further study revealed that this distribution formula would be significantly different than the current distribution formula. This proposal changes the distribution formula so that the amounts distributed under it more closely follow the current distribution patterns.
- It increases the percentage of the tax proceeds allocated to the Volunteer Fire Department Fund from 20% to 30%. This change reduces the amount allocated to the General Fund from 55% to 45%.
- It increases the cap on the grants from the Volunteer Fire Department Fund and it changes the qualifications for grants from the Fund so that more volunteer fire departments may qualify for grants:
    - It increases the cap on the grants from $20,000 to $30,000.
    - It provides that a volunteer fire department may qualify for a grant if it serves a response area of no more than 12,000 people (current law is 6,000).
    - It provides that a volunteer fire department may qualify for a grant if it has no more than six full-time paid positions (current law is three).

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2007

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: January 23, 2007

TO: Revenue Laws Study Committee

FROM: Rodney Bizzell
Fiscal Research Division

RE: 2007-RBz-7 v.3 Additional Coverage on Property Coverage Contracts

FISCAL IMPACT ($ millions)

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
REVENUES:					
General Fund	**($1.49)**	**($3.07)**	**($3.28)**	**($3.52)**	**($3.76)**
Vol. Fire Dept. Fund*	**$1.49**	**$3.07**	**$3.28**	**$3.52**	**$3.76**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, Department of Insurance

EFFECTIVE DATE: January 1, 2008

BACKGROUND:
During the 2005-06 Session, the General Assembly enacted HB 1891, which simplified the additional tax on gross premiums for fire and lightning coverage. The bill combined the existing statewide and local taxes on this coverage and clarified the types and percentages of premiums subject to the tax. The bill also established percentages for distribution of the proceeds under the combined tax that were proportional to the distributions under the separate state and local taxes. The bill also established a tax rate for the statewide tax distribution and a new method for

distributing the Firemen's Relief Fund portion of the tax. The existing method of distribution required insurance companies to document premiums written by fire district and a simpler method was created under HB1891 to eliminate the need to track premiums by district.

BILL SUMMARY:
This bill establishes a revenue neutral rate of 0.74% for the combined statewide tax established under HB1891. The bill also reduces the percentage of collections going to the General Fund to allow additional funding for the Volunteer Fire Department Fund. The distribution established under HB 1891 for the tax is: General Fund - 55%; Firemen's Relief Fund - 25%; and Volunteer Fire Department Fund - 20%. This bill would reduce the General Fund allocation by 10% and increase the Volunteer Fire Department Fund allocation by 10%. This bill also establishes the distribution method for the portion of the tax that is distributed for the Firemen's Relief Fund. The new distribution method provides for each department to receive the same amount it received in the previous fiscal year as a base distribution. The incremental change in the total allocation for the relief fund would be distributed to each county based on premium volume and distributed to departments within each county based on property values. Finally, the bill changes the criteria the Department of Insurance uses in providing grants to volunteer fire departments by increasing the maximum size of the grants to $30,000; increasing the maximum population of eligible districts to 12,000; and increasing the maximum number of allowed paid firefighters on staff from three to six.

ASSUMPTIONS AND METHODOLOGY:
The revenue neutral rate in the bill is derived by dividing annual collections by the taxable premiums. Information on calendar year premiums for 2005 was available from the Department of Insurance. The NC Department of Revenue provided tax collections for the period of April 2005 through March 2006, the time period for which collections most closely correspond to 2005 premiums. The rate resulting from this calculation is 0.74%.

To determine the amount of revenue loss to the General Fund related to the change in percentage allocations, fire and lightning tax collections were projected for the next five fiscal years based on the relationship between gross premiums collections and North Carolina personal income, for which projections are available from Moody's Economy.com. Both the current and proposed allocation percentages are applied to the projected fiscal year collections. The differences between the current and proposed allocations represent the annual loss and gain for the General Fund and Volunteer Fire Department Fund, respectively. Because the effective date is January 1, 2008, the impact for FY 2007-08 is partial. The new allocations would apply to installments made in April and June, which represent approximately 52% of fiscal year collections. Therefore, the General Fund revenue loss for FY 2007-08 was calculated by applying the new percentage allocation to 52% of the fiscal year revenue and applying the current allocation to the remaining portion.

Current Allocation Fire and Lightning Tax (Included in HB 1891) ($ millions)					
	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
General Fund 55%	15.79	16.87	18.07	19.35	20.70
Volunteer Fire Fund 20%	5.74	6.13	6.57	7.04	7.53
Firemen's Relief Fund 25%	7.18	7.67	8.21	8.80	9.41
Total	28.71	30.67	32.85	35.19	37.64

Proposed Allocation - Fire and Lightning Tax ($ millions)					
	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
General Fund 45%	14.29	13.80	14.78	15.83	16.94
Volunteer Fire Fund 30%	7.23	9.20	9.85	10.56	11.29
Firemen's Relief Fund 25%	7.17	7.67	8.21	8.80	9.41
Total	28.71	30.67	32.85	35.19	37.64

SOURCES OF DATA: NC Department of Revenue; NC Department of Insurance; Moody's Economy.com

TECHNICAL CONSIDERATIONS: None

REVENUE LAWS STUDY COMMITTEE



REPORT TO THE 2007 GENERAL ASSEMBLY OF NORTH CAROLINA 2007 SESSION

DeAnne Mangum (Finance CA)

From: Mary Bell [mary.bell@fpanet.org]

Sent: Tuesday, August 01, 2006 1:02 PM

To: Rep. Paul Luebke; Rep. Winkie Wilkins; Rep. William Wainwright; Rep. Danny McComas; Rep. Dewey Hill; Rep. Walter Church; Rep. Becky Carney; Rep. Harold "Bru" Brubaker; Sen. Hugh Webster; Sen. David Hoyle; Sen. Fletcher Hartsell, Jr.; wdalton@ndmlaw.com; Sen. Walter Dalton; clodfleterd@mvalaw.com; Sen. Daniel Clodfelter; Sen. John Kerr

Cc: DeAnne Mangum (Finance CA); Martha Walston (Fiscal Research); Cindy Avrette (Research)

Subject: 529 College Savings Plan Parity

FPA
FINANCIAL PLANNING ASSOCIATION
The Heart of Financial Planning™

Suite 201
1600 K Street
Washington, D.C. 20006
Voice: 202.449.6340
800.322.4237
Fax: 202.449.6350

E-mail: fpa@fpanet.org
Web site: www.fpanet.org

Sent via Electronic Mail

August 1, 2006

North Carolina Revenue Laws Study Committee
Legislative Building
16 West Jones Street
Raleigh, NC 27601

Re: 529 College Savings Plan Parity

Dear Committee Members of the Revenue Laws Study Committee,

The Pennsylvania legislature, as you may know, recently approved legislation offering a state income tax deduction for contributions made to any state's 529 college savings plan. [1]

Maine and Kansas have also passed similar measures that will take effect in 2007. The Financial Planning Association® (FPA®) commends this effort and fully supports Section 529 College Savings Plan parity. Furthermore, we strongly encourage your support for similar legislation that provides a state income tax deduction for contributions to any state's 529 college savings plan as well as the elimination of state taxes on the withdrawals from out-of-state accounts as long as they are used for qualified educational purposes.

Uniform application of 529 deductions, or reciprocity, is critical in today's world for family's plans to save for their children's college educations. Not all states offer the same investment options, expenses, or other benefits. Because each plan varies considerably on a state-by-state basis, it is important for financial planners and other advisers to be able to recommend a plan that best suits their clients' needs.

[2]

The Financial Planning Association represents more than 28,500 individual members who provide professional advice to individuals and their families on a variety of topics including education planning. Today, college planning is an essential part of most personal financial plans.

FPA urges you to support enactment of legislation consistent with Pennsylvania's recent action. Section 529 plan parity comes at a crucial time when college expenses are higher

[3]

than ever before. The College Board estimates that the average annual total cost of attending a 4-year public and a 4-year private college or university in 2005-2006 has increased 6.6% (to $12,127) and 5.7% (to $29,026). College planning is the second highest expenditure incurred by most families (following the purchase of their home). Parity makes it easier for families to save for future educational expenses. It also encourages saving at a time when our nation's savings rate is at an all time low.

FPA and its members are pleased to respond to your questions in connection with these comments or even testify on the importance of issuing Section 529 College Savings Plan parity. Please do not hesitate to contact Mary Bell, Assistant Director of Government Relations, at 202.449.6344 or mary.bell@fpanet.org.

Sincerely,

Daniel B. Moisand

Daniel B. Moisand, CFP®
President

CC: North Carolina General Assembly Leadership

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1 Pennsylvania [Act 67 of the laws of 2006], signed by Governor Edward Rendell on July 6, 2006, allows Pennsylvania residents to save for future education expenses up to a contribution amount of $12,000 per beneficiary, per year. The new law, which begins with the 2006 tax year, supplements the Federal tax benefits that are currently allowed. The bill also eliminates the so-called "back-end" disparity that does not allow state tax exemptions for distributions on out-of-state plans.

2 The Financial Planning Association is a 501(c)6 non-profit professional association representing financial planners and affiliated firms, with over 100 chapters throughout the country. FPA is incorporated in Washington, D.C., with its primary administrative office in Denver. FPA connects those who need, support and deliver financial planning. We believe that everyone is entitled to objective advice from a competent, ethical financial planner to make smart financial decisions. FPA members demonstrate and support a professional commitment to education and a client-centered financial planning process.

3 The College Board, Trends in College Pricing, at 5 (2005).

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[1]

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the so-called "back-end" disparity that does not allow state tax exemptions for distributions on out-of-state plans.

[2]

The Financial Planning Association is a 501(c)6 non-profit professional association representing financial planners and affiliated firms, with over 100 chapters throughout the country. FPA is incorporated in Washington, D.C., with its primary administrative office in Denver. FPA connects those who need, support and deliver financial planning. We believe that everyone is entitled to objective advice from a competent, ethical financial planner to make smart financial decisions. FPA members demonstrate and support a professional commitment to education and a client-centered financial planning process.

[3]

The College Board, Trends in College Pricing, at 5 (2005).

DeAnne Mangum (Finance CA)

From: Mike Pate [mpate@mpcllp.com]
Posted At: Thursday, August 31, 2006 9:34 AM
Conversation: Study Topics
Posted To: RevenueLaws

Subject: Study Topics

Chairs and Members, Revenue Laws Study Committee,

Two topics I think the committee should address that can potentially affect many taxpayers and are of interest to both the Bar and CPA Associations are:

1. the simplification of the tax refund procedures similar to proposed committee substitute Senate Bill 668 dated April 2005, and 2. the conformity of the gift tax laws to the federal gift tax laws.

Thank you for your consideration of these topics. I look forward to seeing all of you next Tuesday.

Mike

J. Mike Pate III, CPA
Tax Partner
McMillan Pate & Company, LLP
Phone: 919-836-9200
Fax: 919-836-9288

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MEMORANDUM

To: Revenue Laws Study Committee

From: Gene Laviner, Securities Division

Date: September 22, 2006

Subject: **Qualified Business Registration 2006 Annual Report**

Enclosed for your review is the Qualified Business Registration 2006 Annual Report pursuant to §105-163.013(g). The report has been created in an Excel spreadsheet format. Since the spreadsheet is too long to print on one letter size sheet, the report had to be put on multiple legal size pages. The information is divided into four (4) parts. The format is as follows:

Report to the Revenue Laws Study Committee
Attachment A – Business Name and Place of Business
Attachment B – Number of Jobs Created, Average Wages Paid, & Minority Status
Attachment C – Brief Description of Business Activity

If you have any questions, I may be contacted at 919-733-1546.

REPORT TO THE REVENUE LAWS STUDY COMMITTEE

Qualified Business Registration 2006 Annual Report

(As of October 2006*)

Number of Registrations	**154**
Number of Minority Owned Businesses	**7**
Number of Jobs Created	**623**
Total Average Wages Paid	**$63,045.60**

*These figures reflect the time period from October 2005 to October 2006, and includes Qualified Business Ventures that have been revoked by operation of law but may still choose to reinstate their QBV status pursuant to G.S.§ 105-163.013(b)

Business Name	Type	Authorized Representative	Place of Business
A Bunch of Us Productions, LLC	QBV	Terry J. Lineham, Manager	517 Charlotte Ave.
Academy Venture Fund, LLC (FKA Longleaf Venture Fund, LLC)	Grantee	Mr. John Ciannamea, Manager	633 Davis Drive
Academy Ventures, LLC (FKA Longleaf Ventures, LLC)	Grantee	Mr. John Ciannamea, Manager	633 Davis Drive
AccuSport International, Inc.	QBV	Mr. David B. Rankin, President	4310 Enterprise Drive
Advanced Digital Systems, Inc.	QBV	Ms. Carolee E. Nail, VP Opperations	P.O. Box 12076
Advanced Liquid Logic Inc.	Grantee	Mr. Richard M. West, President & CEO	615 Davis Drive, Suite 80(
Affinergy, Inc.	Grantee (formly QBV)	Mr. Jonathan Gindes, President	21 Davis Drive
Aldagen, Inc. (fka StemCo Biomedical, Inc.)	QBV	Mr. Ed Field, Chief Operating Officer	2810 Meridian Parkway
Arbor Pharmaceutical, Inc.	QBV	Mr. Jarrett Disbrow, President & CEO	3741 Falls River Ave.
Arbovax, Inc.	QBV	Mr. Malcolm Thomas, President &CEO	6024 Drumquin Drive
Asklepios Biopharmaceutical, Inc.	Grantee	Ms. Sheila A. Mikhail, CEO	870 Airport Road
AudioFusion, Inc.	QBV	Mr. Mark Hendrickson, President	2183 Gaston Street
Aurora Enrichment Fund, L.L.C.	Grantee	Mr. B. Jefferson Clark/Manager	2525 Meridian Parkway
Aurora Ventures IV, L.L.C.	Grantee	Mr. B. Jefferson Clark/Manager	2525 Meridian Parkway
Aurora Ventures V, L.P.	Grantee	Mr. B. Jefferson Clark/Manager	2525 Meridian Parkway
AvidXchange	QBV	Mr. David Miller, President	4421 Stuart Andrew Blvd.
Bald Eagle Technologies of NC, LLC	QBV	Mr. Mark V. Linville, Manager	680 West Fourth Street
Bendiner Technologies, LLC	QBV	Mr. Matt Dyer, CEO	60 Blue Road
Beroe, Inc.	QBV	Mr. Donald R. Reynolds, Secretary	4101 Lake Boone Trail
BioMarck Pharmaceuticals, Ltd.	QBV	Mr. Indu Parikh, President	2619 St. Mary's Street
Bioptigen, Inc.	QBV	Mr. Eric L. Buckland, President, CEO	112 Mariners Point Lane
BioResource International, Inc.	QBV	Dr. Giles C. Shih, President	840 Main Campus Drive
BioSigna, Inc.	OBV	Mr. Thomas D. Livingston	1822 East NC Highway 54
Bloodhound Software, Inc.	QBV	Mr. Gary Twigg, President	2520 Meridian Pkwy, Suite
Blue Ridge Analytics, Inc.	QBV	Mr. Michael Detwiler, CEO	120 Club Oaks Ct.
Blue Ridge BioFuels, LLC	QBV	Mr. Briam Winslett	17 Lee Avenue
Bright View Technologies, Inc. (fka Bright View Holdings, LLC)	QBV	Mr. David Reed, Vice President	2300 Englert Drive
BUILDERadius, Inc.	QBV	Mr. William S. Ward, President	9 Pack Square SW
BuildLinks, Inc.	QBV	Mr. Mark Hahn, CFO	1500 Perimeter Drive
Buzz Off Insect Shield, LLC	QBV	Mr. Richard A. Lane, President	814 W. Market Street
C° Change Surgical LLC	QBV	Mr. Patrick Kammer, President/CEO	101 N. Chestnut Street
Capitol Broadband, LLC	QBV	Mr. Glen D. Lang, Manager	5625 Dillard Drive
CGS Bonded Warehouse, Inc.	QBV	Mr. John C. Hine, Secretary	208 South William Street
Charlotte Angel Partners, LLC	Grantee	Mr. W. Brent Kulman, Fund Executive	5615 Laurium Road

Chorus Systems, Inc.	QBV	Mr. Sirus Chitaz, CEO	PO Box 12798
Civatech Oncology, Inc.	QBV	Mr. Robert D.Black, President	301 Village Crossing Drive
CleanTechnics International, Inc.	QBV	Mr. Ritchie C. Russell, CEO	406 Cascade Court
Confidant, Inc. (fka Palaistra System)	QBV	Mr. David B. Jackson, Treasurer & CEO	2530 Meridian Parkway
Cold Chill, LLC	QBV	Mr. Bert C. Hesse, Manager	1318 Central Avenue
Columbia Life Systems, Inc.	QBV	Mr. John C. Taube, President	301 Village Crossing Drive
Companioncabinet Software, LLC	QBV	Mr. Chris Mele, Manager	8701 Mallard Creek Rd.
Critical Point Group, Inc.	QBV	Mr. Richard A Von Gnechten	2201 Coronation Blvd
Cropsolution, Inc.	QBV	Mr. Scott Uknes, President/Secretary	598 Airport Blvd., Ste. 900
Dara BioSciences, Inc.	QBV	Mr. Richard A. Franco, President	4505 Falls of Neuse Road
D & F Designs, LLC	QBV	Mr. Mike Davis, President	1371 E. Garrison Blvd.
DJ Air Group, Inc.	QBV	Mr. James S. Gibbs, III, President	6520 Bryan Blvd.
Digistream Technologies, LLC	QBV	Mr. Charles W. Pearson, Jr., Member/Manager	2480 Wellington Drive
Digital Optics Corporation	Grantee	Ms. Debbie Wilkins, Asst. Secretary	9815 David Taylor Drive
Electronic Document Logistics, Inc.	QBV	**Mr. Richard D. Bowlin, President & CEO**	4909 Green Road
Elizabeth City Glass Company, Inc.	QBV	**Mr. Shawn Joseph Lemmond, CEO/President**	706 West Colonial Ave.
Encelle, Inc.	QBV	Mr. James D. Woodward, President	3000 Highwoods Blvd.
Endacea, Inc. (fka Link Technology, Inc.)	Grantee	Mr. Donald H. Wilson, III, Pres./CEO	2 Davis Drive
Entegrion, Inc. (formerly Hemocellular Therapeutics, Inc.)	QBV	**Mr. Richard W. Reichow, EVP/CFO**	79 TW Alexander Drive, S
EXPLORE! Creative Learning Centers, Inc./fka Family Education Academy, Inc.	QBV	Mr. Laurence Goldberg, CEO	3708 Benson Drive
Eyeborgs, LLC	QBV	Mr. Charles J. Peller, VP & CFO	110 Livingston Court
Expression Analysis, Inc.	QBV	Mr. Steve McPhail, CEO	2605 Meridian Parkway
Fearmakers Productions, LLC	QBV	Mr. Eric Holloway, Manager	P.O. Box 725
Field2Base, Inc.	QBV	Mr. Robert McKenzie, Treasurer	101 J Morris Commons La
Fighting Words Productions LLC	QBV	Mr. Robert E. Zaytoun, Registered Agent	414 West Jones Street
FloLogic, Inc.	QBV	Mr. Charles R. De Smet	7413-130 Six Forks Road
F-Origin, Inc.	QBV	Mr. Merrill M. Mason, Secretary	1004 Pinehurst Drive
For Patients, Inc.	QBV	Ms. Carol Walborn, President/CEO	1289 Fordham Blvd.
Found Films, LLC	QBV	Mr. Anthony Haney, President/Director	12 Caledonia Rd.
Foundery Pictures 1, LLC	QBV	Mr. John P. Jackman, President	7846 Beech Forest Rd.
Gentris Corporation	QBV	Mr. Michael Murphy, President	133 Southcenter Ct.
Get Interactive, Inc.	QBV	Mr. Frederick W. Harrison, Jr., Pres/CEO	6365 Raven Forest Trail
Harbinger/Aurora Venture Fund, L.L.C.	Grantee	B. Jefferson Clark, Manager	2525 Meridian Parkway
Hatteras BioCapital Fund, L.P.	Grantee	Mr. Clay B. Thorp, General Partner	1822 E. Hwy 54
Hatteras Venture Affiliates III, L.P.	Grantee	Mr. John C. Crumpler, Manager	1822 Hwy 54
Hope Stout, LLC	QBV	Mr. Bert C. Hesse, Manager	1318 Central Avenue
Horticultural Asset Management, Inc.	QBV	Mr.C. Thomas Hendrickson, President	16 West Martin Street, Su

Hunt Club Animal Bedding, LLC	QBV	Mr. Wayne Hutchins, CFO	1915 North Church Street
Inception Micro Angel Fund LLC	Grantee	Mr. Timothy R. Janke, Organizer	4149 Chatham Hill Drive
Intell-Mark Technologies	QBV	Mr. Gregory H. Briley	5171 Glenwood Avenue
InfoStrength, Inc.	QBV	Ms. Margaret E. Geiger, President/CEO	3737 Glenwood Avenue
3-C Institute For Social Development, Inc.	Grantee	Ms. Melissa E. DeRoiser, President	1903 N. Harrison Avenue
Intercede, Inc.	QBV	Mr. James M. Shannonhouse, President	212 South Tryon Street,
International Garment Technologies, L.L.C.	QBV	Mr. Richard A. Lane, President	814 W. Market Street
International IT Services, Ltd.	QBV	Mr. Kimthanh Do Le, Sect./Treasurer	9205 Baileywick Road
Intersouth Affiliates V, L.P.	Grantee	Mr. Mitchell Mumma, Member Manager	406 Blackwell Street
Intersouth Partners V, L.P.	Grantee	Mr. Mitchell Mumma, Member Manager	406 Blackwell Street
Intersouth Partners VI, L.P.	Grantee	Mr. Mitchell Mumma, Member Manager	406 Blackwell Street
Intersouth Partners VII, L.P.	Grantee	Mr. Mitchell Mumma, Member Manager	406 Blackwell Street
Intervolve, Inc.	QBV	Mr. Chris Newton, President/CEO	3801 Lake Boone Trail
KBI BioPharma, Inc.	QBV	Mr. Timothy Albury, CFO	1101 Hamlin Road
Klein Decisions LLC	QBV	Mr. Robert L. Padgette, Managing Director	801 Jones Franklin Road
Krenitsky Pharmaceuticals, Inc.	QBV	Mr. Wayne R. Eberhardt, Vice President	Four University Place
LaamScience, Inc.	QBV	Mr. Thomas H. Roberg, President	2108 Prescott Place
Learning Management Systems, Inc.	QBV	Mr. John Carl Zeigler, President, CEO	101 Hawthorne Avenue
Linwood, Inc.	QBV	Mr. James H. Kepley, Jr., President	3979 Old Linwood Road
Liquidia Technologies, Inc.	QBV	Mr. Bruce Boucher, President	627 Davis Drive
Listingbook, LLC	QBV	Mr. Randll R. Kaplin, Chairman	123 S. Elm Street
Live Cargo, Inc.	QBV	Mr. Doug Young, CEO	6520 Bryan Blvd.
Mardil, Inc.	QBV	Mr. Gopal Muppirala	100 Glenspring Way
Maximum Advantage Building Solutions, LLC (Exceeded $5 M)	QBV	Mr. Russell Aney, Manager	967 NC Hwy 211 East
Mediplay, Inc.	QBV	Mr. Robert James R. LeLiever	1520-3 Brookside Drive
MD Scientific, LLC	QBV	Mr. Shade Mecum, President/ CEO	1214 Wareham Court
Meal Portal, Inc.	QBV	Mr. Stacy R. Parker, Secretary	6310 Chapel Hill Road
MediWave Star Techology Inc.	QBV	Mr. Thomas R. Sloan, Treasurer	705 Sunset Drive
Microphase Coatings Inc.	QBV	Mr. William Simendinger, President	170 Donmoor Ct.
Moving Midway, LLC	QBV	Mr. Jon Jesse Spain	411 Kinsey Street
MyBode, Inc.	QBV	Mr. Jeffrey M. Johnston, President	315 Market Street
MyStoreCredit, Inc.	QBV	Mr. Brian Lawe, Treasurer	101 Longwood Drive
NanoLume, Inc.	QBV	Dr. James Daniel Johansen, President	135 Mantis Drive
Neos Discovery, Inc.	Licensee	Mr. Winnell H. Newman, President	100 Oakmist Drive
Neuisys, LLC	QBV	Ms. Kim B. Russell, CEO	1500 Pinecroft Road
OroBridge, Inc.	QBV	Mr. Raif O. Onvural, President, CEO	3600 Glenwood Ave.
Oryel, Inc.	QBV	Mr. Scott Secor, President	100 St. Albans Dr.

Overture Networks, Inc.	QBV	Mr. Jeff Reedy, President	507 Airport Blvd
P4S, LLC	QBV	Mr. David Dunn, Jr., President	6235 Turtle Hall Drive
Paladin Laboratories, LLC	QBV	Dr. James B. Powell, Manager	1573 York Place
Parion Sciences, Inc.	QBV	Mr. Nicholas SM Johnston, Vice President	2525 Meridian Parkway
Patriot Software Systems, Inc.	QBV	Mr. Merrill M. Mason, Secretary	1004 Pinehurst Drive
Paula Lee Haller Productions LLC	QBV	Ms. Paula Lee Haller, Manager	PO Box 1042
Piedmont Angel Network LLC	Grantee	Ms. Lou Anne Flanders-Stec, Fund Executive	2007 Yanceyville Street
Piedmont Angel Network TWO LLC	Grantee	Mr. W.B. Rodman Davis, Manager	701 Green Valley Road
Piedmont Pharmaceuticals LLC	QBV	Mr. Joe Dowd, CFO	204 Muirs Chapel Road
Pogo Health LLC	QBV	Ms. Alicia Paladin, President	710 Morehead Avenue
Polyglot Systems, Inc.	QBV	Mr. Chung-Suk Charles Lee, Pres.	2000 Aerial Center Parkwa
Primo Water Corporation (fka Primier Corporation)	QBV	Mr. Douglas A. Fullerton, CFO	101 N. Cherry St.
Qualyst, Inc. (fka ADMETech, Inc.)	Grantee	Mr. Scott E. Neuville, President & CEO	5410 Trinity Road
Quill Medical, Inc.	QBV (formerly Grantee)	Mr. Matthew A. Megaro, President/CEO	2505 Meridian Parkway
RadarFind Corporation	QBV	Mr. B. Bobby Bahram, President	Two Davis Drive, P. O. Bo
Regado Biosciences, Inc.	QBV	Mr. Douglas Gooding, CEO	PO Box 14688
Respirics, Inc.	QBV	Mr. Gilbert S. Mott, Jr., President	6008 Triangle Drive
Roy G Biv Networks, Inc.	QBV	Mr. Timothy B. Horan, President	2006 St. Mary's Street
rPath, Inc.	QBV	Mr. David B. Welker, II, Sect./Treasurer	1121 Situs Court
Run Lightning 1956, LLC	QBV	Mr. Thomas B. Hubbard III, CFO	915 Old Orchard Rd.
Sicel Technologies, Inc.	Grantee	Ms. Jennifer Pierce, Secretary	3800 Gateway Centre Bou
Southern Capitol Technology Fund II, LP	Grantee	Mr. Benjamin T. Brooks, III	9 Glenwood Avenue
Southeast Techinventures, Inc.	QBV	Ms. Karen LeVert	1725 Carpenter-Fletcher F
Starta Development, Inc.	QBV	Mr. Dave Demski, Secretary	2610 Wycliff Drive
SunDog Productions, LLC	QBV	Mr. Caryn Mamrack, Manager	530 Dillsboro Road
Synergem Emergency Services, L.L.C.	QBV	Mr. Myron S. Herron, Jr., President	1306 West Wendover Ave
Synermed Select Partners, Inc.	QBV	Mr. Ernest A. Knesel, Jr., President	1100 Revolution Mill Drive
Syntherica Corporation (fka Sylvanus Pharma, Inc.)	Grantee	Mr. D. Joe Smith, CEO	4727 University Drive
Table Rock Springwater Co.	QBV	Mr. Walter G. Church, Jr., President	305 Third Street SW
Textile Film Initiative L.L.C.	QBV	Mr. Doug Adams, Manager	2424 N. Davidson Drive
The Elevator Channel, Inc.	QBV	Mr. C. Rudy Alexander, Pres./CEO	1930 Camden Road
The List Productions, LLC	QBV	Mr. Robert Whitlow, President of Torch Media, Inc.	301 South McDowell Stree
Trificient Technologies of Mount Airy, LLC	QBV	Mr. Michael Foust, Vice-President	252 N. Main Street
Tri-State Investment Group IV, LLC	Grantee	Mr. James H. Newton, Administrator	405 Tramore Drive
Triad Specialty Products LLC	QBV	Mr. Mike Coffee, Manager/President	204 Muirs Chapel Road
U.S. Environmental Protection Service, LLC	QBV	Mr. Albert J. Allen, Manager	3300 Battleground Ave.

VTFLEX, INC.	QBV	Mr. Samir Hakooz, President	105 Lion's Gate Drive
ViTech Enterprises, Inc.	QBV	Mr. Michael W. Taylor, President	891 Neodak Road
Wilmington Pharmaceuticals, LLC	QBV	Mr. Eugene T. Haley, CEO	1213 Culbreth Drive
Yap, Inc.	QBV	Mr. Igor Jablokov, CEO	2111 Queens Road, West
ZellComp, Inc.	QBV	Ms. Meg G. Richards, Secretary	3020 Pickett Rd.
Zenph Studios, Inc.	QBV	Mr. John Q. Walker, II, President	9660 Falls of Neuse Road
ZyCare, Inc. (FKA Healthware Corporation	QBV	Ms. Sandra E. Cummings, President	3804 Sweeten Creek Roac

Address 2	City	State	Zip
	Carolina Beach	NC	28428
Suite 500	Durham	NC	27713
Suite 500	Durham	NC	27713
Suite C	Winston-Salem	NC	27106
2 Davis Drive	RTP	NC	27709
P O Box 14025	RTP	NC	27709
PO Box 14650	RTP	NC	27709
Suite 148	Durham	NC	27713
	Raleigh	NC	27614
	Raleigh	NC	27614
	Chapel Hill	NC	27514
	Winston-Salem	NC	27103
Suite 220	Durham	NC	27713
Suite 220	Durham	NC	27713
Suite 220	Durham	NC	27713
Suite 200	Charlotte	NC	28217
Suite 102	Winston-Salem	NC	27101
	Pinehurst	NC	28374
Suite 300	Raleigh	NC	27607
	Raleigh	NC	27609
	Hickory	NC	28601
Suite 3510	Raleigh	NC	27606
Suite 350-C	Durham	NC	27713
PO Box 14785	Durham	NC	27709
	Winston-Salem	NC	27104
	Asheville	NC	28804
Suite B	Durham	NC	27713
Suite 300	Asheville	NC	28801
Suite 150	Morrisville	NC	27560
	Greensboro	NC	27401
Suite 301	Winston-Salem	NC	27101
Suite 105	Cary	NC	27511
P O Box 916	Goldsboro	NC	27533
	Charlotte	NC	28226

	RTP	NC	27709
PO Box 2347	Chapel Hill	NC	27515
PO Box 77621	Greensboro	NC	27265
Suite 300	Durham	NC	27713
Studio A-2	Charlotte	NC	28205
PO Box 2347	Chapel Hill	NC	27515
	Charlotte	NC	28203
Suite 210	Charlotte	NC	28227
PO Box 14069	RTP	NC	27709
Suite 125	Raleigh	NC	27609
Suite B	Gastonia	NC	28054
Suite 204	Greensboro	NC	27409
	Gastonia	NC	28054
	Charlotte	NC	28262
Suite 133	Raleigh	NC	27616
	Elizabeth City	NC	27909
Suite 111	Raleigh	NC	27604
PO Box 12076	RTP	NC	27709
4401 Research Commons	RTP	NC	27709
	Raleigh	NC	27609
	Clemmons	NC	27012
	Durham	NC	27713
	Wilmington	NC	28402
Suite 115	Morrisville	NC	27560
	Raleigh	NC	27603
	Raleigh	NC	27615
n/a	Chapel Hill	NC	27514
Suite E-3	Chapel Hill	NC	27514
	Asheville	NC	28803
	Lewisville	NC	27023
Ste. 400	Morrisville	NC	27560
	Winston-Salem	NC	27105
Suite 220	Durham	NC	27713
Suite 250	Durham	NC	27713
Suite 250	Durham	NC	27713
Suite A-2	Charlotte	NC	28205
P O Box 40487	Raleigh	NC	27629

	Greensboro	NC	27405
	Winston-Salem	NC	27104
Suite 320	Raleigh	NC	27612
Suite 100	Raleigh	NC	27612
Suite 101	Cary	NC	27513
Suite 1550	Charlotte	NC	28281
	Greensboro	NC	27401
Suite 203	Raleigh	NC	27615
Suite 200	Durham	NC	27701
Suite 200	Durham	NC	27701
Suite 200	Durham	NC	27701
Suite 200	Durham	NC	27701
Suite 100	Raleigh	NC	27607
PO Box 15579	Durham	NC	27704
Suite 200	Raleigh	NC	27606
4611 University Drive	Durham	NC	27707
	Raleigh	NC	27615
	Swannanoa	NC	28778
P O Box 1912	Lexington	NC	27293
Ste 500	RTP	NC	27560
	Greensboro	NC	27401
Ste 102	Greensboro	NC	27409
	Morrisville	NC	27560
PO Box 699	Candor	NC	27229
	Raleigh	NC	27604
	Charlotte	NC	28207
Suite 280	Raleigh	NC	27607
	Greensboro	NC	27408
	Garner	NC	27529
	Raleigh	NC	27603
Suite 350-C	Durham	NC	27701
	Chapel Hill	NC	27514
	Pittsboro	NC	27312
	Cary	NC	27513
Suite 212	Greensboro	NC	27407
Suite 107	Raleigh	NC	27612
Suite 104	Raleigh	NC	27609

Building 111	RTP	NC	27560
	Wilmington	NC	28409
	Burlington	NC	27215
Suite 260	Durham	NC	27713
	Chapel Hill	NC	27514
	Wrightsville Beacl	NC	28480
Suite 119	Greensboro	NC	27405
Suite 100	Greensboro	NC	27408
Suite 200	Greensboro	NC	27410
	Durham	NC	27707
Suite 101	Morrisville	NC	27560
Suite 700	Winston-Salem	NC	27101
Suite 108	Raleigh	NC	27607
Suite 150	RTP	NC	27713
)x 13169	RTP	NC	27709
	RTP	NC	27709
Suite 101	Raleigh	NC	27617
	Raleigh	NC	27608
Suite 290	Raleigh	NC	27606
	Chapel Hill	NC	27517
Suite 308	Morrisville	NC	27560
	Raleigh	NC	27603
Suite 308	Durham	NC	27713
Suite 019	Raleigh	NC	27607
	Sylva	NC	28779
Suite 201	Greensboro	NC	27410
Suite 1	Greensboro	NC	27405
Suite 700	Durham	NC	27707
	Hildebran	NC	28637
Suite 103	Charlotte	NC	28205
Suite 2050	Charlotte	NC	28203
Suite 410	Charlotte	NC	28204
Suite 250	Mount Airy	NC	27030
	Chapel Hill	NC	27516
Suite 200	Greensboro	NC	27410
Suite 305	Greensboro	NC	27410

	Cary	NC	27511
	Apex	NC	27523
Suite 230	Wilmington	NC	28405
	Charlotte	NC	28207
Suite 327	Durham	NC	27705
Suite 138-145	Raleigh	NC	27615
d	Chapel Hill	NC	27514

Business Name	Number of Jobs Created	Average Wages Paid	Minority Business
A Bunch of Us Productions, LLC	0	$0.00	no
Academy Venture Fund, LLC (FKA Longleaf Venture Fund, LLC)	n/a	n/a	no
Academy Ventures, LLC (FKA Longleaf Ventures, LLC)	n/a	n/a	no
AccuSport International, Inc.	0	$0.00	no
Advanced Digital Systems, Inc.	0	$0.00	no
Advanced Liquid Logic Inc.	6	$81,500.00	no
Affinergy, Inc.	4	$51, 500.00	no
Aldagen, Inc. (fka StemCo Biomedical, Inc.)	0	$0.00	no
Arbor Pharmaceutical, Inc.	0	$0.00	no
Arbovax, Inc.	n/a	n/a	no
Asklepios Biopharmaceutical, Inc.	8	$40,000.00	no
AudioFusion, Inc.	n/a	n/a	no
Aurora Enrichment Fund, L.L.C.	n/a	n/a	no
Aurora Ventures IV, L.L.C.	n/a	n/a	no
Aurora Ventures V, L.P.	n/a	n/a	no
AvidXchange	0	$0.00	no
Bald Eagle Technologies of NC, LLC	10	$34,329.00	no
Bendiner Technologies, LLC	n/a	n/a	no
Beroe, Inc.	n/a	n/a	no
BioMarck Pharmaceuticals, Ltd.	1	$150,000.00	no
Bioptigen, Inc.	4	$58,500.00	no
BioResource International, Inc.	0	$0.00	no
BioSigna, Inc.	1	$175,000.00	no
Bloodhound Software, Inc.	4	$94,500.00	no
Blue Ridge Analytics, Inc.	7	$45,967.00	no
Blue Ridge BioFuels, LLC	0	$0.00	no
Bright View Technologies, Inc. (fka Bright View Holdings, LLC)	9	$69,440.00	no
BUILDERadius, Inc.	24	$35,000.00	no
BuildLinks, Inc.	12	$84,000.00	no
Buzz Off Insect Shield, LLC	0	$0.00	no
C° Change Surgical LLC	5	$85,000.00	no
Capitol Broadband, LLC	40	$44,585.00	no
CGS Bonded Warehouse, Inc.	10	$18,760.39	no
Charlotte Angel Partners, LLC	n/a	n/a	no

Chorus Systems, Inc.	0	$0.00	no
Civatech Oncology, Inc.	n/a	n/a	no
CleanTechnics International, Inc.	1	$60,000.00	no
Confidant, Inc. (fka Palaistra System)	1	$80,000.00	no
Cold Chill, LLC	55	$6,459.00	no
Columbia Life Systems, Inc.	n/a	n/a	no
Companioncabinet Software, LLC	n/a	n/a	no
Critical Point Group, Inc.	n/a	n/a	no
Cropsolution, Inc.	1	$32,000.00	no
Dara BioSciences, Inc.	8	$56,566.09	no
D & F Designs, LLC	0	$0.00	no
DJ Air Group, Inc.	2	$46,875.00	no
Digistream Technologies, LLC	4	$60,000.00	no
Digital Optics Corporation	n/a	n/a	no
Electronic Document Logistics, Inc.	3	$18,666.00	no
Elizabeth City Glass Company, Inc.	6	$24,000.00	no
Encelle, Inc.	0	$0.00	no
Endacea, Inc. (fka Link Technology, Inc.)	n/a	n/a	no
Entegrion, Inc. (formerly Hemocellular Therapeutics, Inc.)	3	$125,000.00	no
EXPLORE! Creative Learning Centers, Inc./fka Family Education Academy, Inc.	7	$30,000.00	no
Eyeborgs, LLC	n/a	n/a	no
Expression Analysis, Inc.	2	$41,000.00	no
Fearmakers Productions, LLC	n/a	$0.00	no
Field2Base, Inc.	14	$80,394.00	no
Fighting Words Productions LLC	0	$0.00	no
FloLogic, Inc.	3	$110,000.00	no
F-Origin, Inc.	0	n/a	no
For Patients, Inc.	6	$9,826.00	Yes
Found Films, LLC	40	$54,682.40	Yes
Foundery Pictures 1, LLC	0	n/a	no
Gentris Corporation	8	$21,124.00	no
Get Interactive, Inc.	na	n/a	no
Harbinger/Aurora Venture Fund, L.L.C.	n/a	n/a	no
Hatteras BioCapital Fund, L.P.	n/a	n/a	no
Hatteras Venture Affiliates III, L.P.	n/a	n/a	no
Hope Stout, LLC	0	$0.00	no
Horticultural Asset Management, Inc.	3	$39,140.00	no