2005-2008
Interims

REVENUE LAWS STUDY COMMITTEE

MINUTES

Revenue Laws Study Committee
Membership List
2007

President Pro Tem Appointments

Senator John Kerr, III, Cochair
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Senator Pete Brunstetter
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Senator Dan Clodfelter
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Senator Walter Dalton
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Senator Fletcher Hartsell
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Senator David Hoyle
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Gastonia, NC 28053
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Mr. Leonard Jones
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Morehead, City, NC 28577

Mr. Micah Pate
615 Oberlin Road
Raleigh, NC 27605

Speaker of the House Appointments

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Representative Pryor Gibson
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Representative Dewey Hill
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Representative Danny McComas
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(910) 343-8372

Representative Bill McGee
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Clemmons, NC 27012
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Representative William L. Wainwright
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REVENUE LAWS STUDY COMMITTEE

Rep. Paul Luebke Sen. John Kerr

Monday, December 12, 2005
Room 544, Legislative Office Building
1:00 p.m.

I. **Welcome and Introductions**

II. **2005 Finance Law Changes**
Cindy Avrette, Research Division

III. **Taxation of Communication Services**

- **Past and Current North Carolina Tax Treatment**
  Cindy Avrette, Research Division
- **Convergence of the Industries**
  Brenna Erford, Fiscal Research Division

IV. **Expansion of the Sales Tax Base – Maintenance Agreements**
Linda Millsaps, Fiscal Research Division

V. **Adjournment**
Next Meeting: Wednesday, January 11, 1:00 pm

REVENUE LAWS STUDY COMMITTEE
Monday, December 12, 2005 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Revenue Laws Study Committee met at 1:00 PM on December 12, 2005, in Room 544 of the Legislative Office Building. Eleven members of the committee were present. Senator Kerr and Representative Luebke presided.

2005 Finance Law Changes

Cindy Avrette, a staff attorney with the Research Division, was recognized to briefly explain the 2005 Finance Law Changes. A copy of the explanation is attached.

Taxation of Communication Services.

Cindy Avrette was recognized for a power point presentation of "Past and Current North Carolina Tax Treatment". A copy of the presentation is attached. Brenna Erford, a research assistant with the Fiscal Research Division, was recognized for a power point presentation of "Convergence of the Industries". A copy of the presentation is attached.

Expansion of the Sales Tax Base – Maintenance Agreements.

Linda Millsaps, a fiscal analyst with the Fiscal Research Division, was recognized for a power point presentation of "Expansion of the Sales Tax Base – Maintenance Agreements". A copy of the presentation is attached.

The meeting adjourned at 3:10 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

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.)

§ 120-70.108. Property Tax Subcommittee.

(a) The Revenue Laws Study Committee shall establish a Property Tax Subcommittee consisting of six members. The Senate cochair of the Committee shall designate three members appointed by the President Pro Tempore of the Senate to serve on the Subcommittee and shall name one of those members a cochair of the Subcommittee. The House cochair of the Committee shall designate three members appointed by the Speaker of the House of Representatives to serve on the Subcommittee and shall name one of those members a cochair of the Subcommittee. The Subcommittee shall meet upon the call of the Subcommittee cochairs.

(b) The Property Tax Subcommittee shall study, examine, and, if necessary, recommend changes to the property tax system. The Subcommittee shall include in its study an examination of all classes of property, including exemptions and exclusions of property from the property tax base. The Subcommittee shall also study the present-use value system, including the following:

(1) Examine the implementation and application of the current present-use value statutes.

(2) Evaluate other tax credits, including adjustments to and credits for ad valorem taxes, to encourage agricultural, forestry, horticultural, and conservation use of land.

(3) Evaluate the treatment of undeveloped land in ad valorem tax.

(4) Evaluate the possibility of amending the present-use value system and developing other tax incentives to encourage conservation and environmental protection of land. The study shall include the feasibility of allowing lands managed for conservation and the preservation of water quality, wildlife habitats, and other conservation purposes to be taxed at their present-use value.

(5) Evaluate the possibility of adding more specific land and resource management criteria to the sound management programs required for all lands enrolled in the present-use value system.

(6) Review other issues related to the taxation of agricultural land, horticultural land, and forestland, including reducing the acreage requirement for land to qualify as forestland.

(c) The Subcommittee shall report any recommendations to the Revenue Laws Study Committee. (2002-184, s. 8.)

See Library shelves

2005

FINANCE LAW CHANGES

PREPARED BY FINANCE TEAM LEGAL STAFF:
Cindy Avrette
Trina Griffin
Canaan Huie
Martha Walston

2005 Finance Law Changes

Cindy Avrette
Research Division, NCGA
December 12, 2005

Budget Reform Statement

- 2005-06
- Over Collections $681,500,000
  - 4.7% surplus
  - 65.2% NR
- GF Revenue Adjustments $656,974,000

- 2006-07
- Unappropriated Balance $112,853,042
- GF Revenue Adjustments $955,041,000

GF Revenue Adjustments

- What happened?
- What does it mean?
- What lies ahead?

What happened?

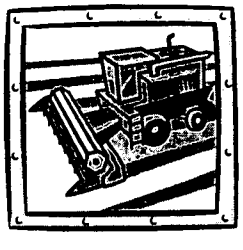
- Sales Tax Changes
- Tobacco Tax Changes
- Income Tax Changes
- Estate Tax Changes
- Credits and Incentives
- Property Tax Changes

What does it mean for sales tax?

- State sales tax rate remains at 4.5% until July 1, 2007
- State sales tax rate on satellite TV, telecommunications, and alcohol is 7% as of October 1, 2005
- State and local sales tax on candy is 7% as of October 1, 2005
- State and local sales tax on satellite radio will be 7% on January 1, 2006
- State sales tax on cable TV will begin January 1, 2006

What does it mean for sales tax?

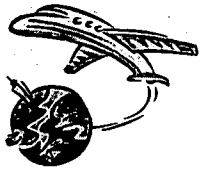
- Items used for agricultural and manufacturing purposes exempt, January 1, 2006
- Potting soil used by a farmer in the production of crops exempt, January 1, 2006



Streamlined Sales Tax Changes

- Agreement fully effective
  - 13 'full member' states
  - 6 'associate member states
- Streamlined Sales Tax Governing Board, Inc.
- Certification of Third Party Service Providers
- Executive Director
- Central Registration System – October 1st
- Over 230 Firms Registered to Date
  - Most waiting for CSP
  - $20,000 in tax revenue
- Dot.com firms alone expected to generate $1.5 million annually

What does it mean for sales tax?



- Sales tax refund for fuel used in passenger planes, January 1, 2005
- Sales tax refund for aviation fuel sold to a motorsports racing team or motorsports sanctioning body for travel to events, January 1, 2005

What does it mean for taxes on tobacco products?

- Tax rate on cigarettes is 30¢ (was 5 ¢)
- Tax rate on cigarettes will increase to 35 ¢, effective July 1, 2006
- Tax rate on OTP 3% (was 2%)
- Refund for unsalable cigars
- Allocable share
- Allow NPM to assign escrow balances to State

What does it mean for income tax?

- Exemption for money received for hurricane assistance
- 8.25% upper income tax bracket will exist for 2006 and 2007
- Use tax line will exist on return until 2010
- Credit for investing in renewable energy property
- Conformed to IRC changes
  - No tonnage tax
  - No deduction for domestic production activities
  - No deduction for state and local sales taxes
- HMOs will begin paying tax at 1.9%, 1/1/07

What does it mean for estate taxes?

- Estate tax = Amount of the federal state death tax credit, as it existed in 2001
  - No sunset; continues in effect until federal estate tax repealed
- NC continues to conform to the federal exclusion amounts
  - 100% exemption for property passing to spouse and $1.5 million credit for other estates (increasing to $3.5 million by 2009)

What does it mean for tax incentives?

- Bill Lee tax credits and JDIG will be available through January 1, 2008
- Extends credits for some projects until 2010
- JDIG – Health insurance exemption
- Alters tier designations
  - High rate of unemployment
  - Small population
  - Sites within certain industrial parks
- Film incentives

What does it mean for property taxes?

- Pay property taxes on vehicles at same time vehicle registration fees are paid! (2009)
- Increase interest rate on unpaid property taxes on vehicles (2006)
- Equitable statewide valuations

What does it mean for bonded indebtedness?

- GARVEE Bonds
- Tax Increment Financing Bonds
- Debt Affordability Study

What lies ahead?

- Economic Development Oversight
- Revenue Laws Study

Economic Development Oversight

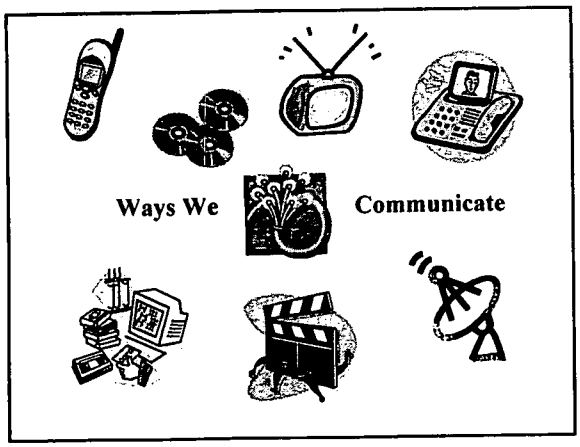
- Statutory Committee
  - Comprehensive knowledge of Commerce, NC Partnership for Economic Development, and othe State, regional, and local entities
  - Analyze proposals of recommended by the Economic Development Board
- Replace Bill Lee Act and Revamp JDIG in 2007

Revenue Laws Study Committee

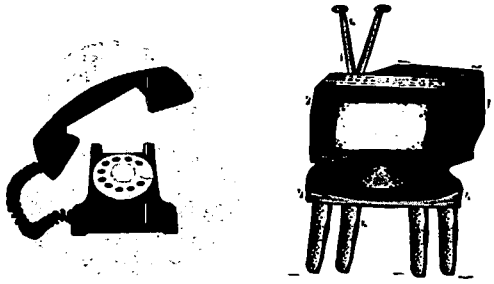
- Equity of taxation of providers of cable service, satellite service, telecommunication services, etc. – *'communication services'*
- Application of sales and use tax to maintenance agreements – stated intent to begin taxing July 1, 2006
- Bill Lee Act incentives

What to look for...

- 2005 Finance Law Changes Publication
  - ncleg.net/LegLibrary
- Revenue Laws Website
  - http://www.ncleg.net/committees/revenuelawsstudy
- Revenue Laws E-mail Address
  - Revenuelaws@ncleg.net

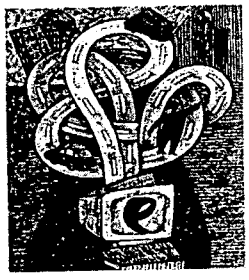


Communication Industries



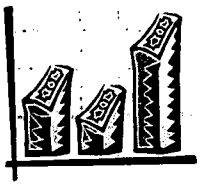
Communication Service Industries

- Telecommunication
- Television
  - Cable
  - Satellite
- Internet and wireless technology



Purpose of Taxation

- To provide revenue to meet the State's budgetary needs



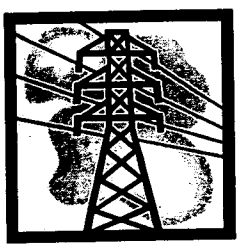
- NOT to give one industry a competitive advantage over another

Telecommunications

- Prior to 1985
  - 6% gross receipts franchise tax
- 1987 - 2002
  - 3.22% gross receipts franchise tax on land lines
  - Complicated local sourcing of franchise receipts
  - Varying sales tax rates
  - Advent of prepaid calling cards and cell phones
- Major revisions in 2001
  - One State tax at one rate applies to all – 6.5%
  - Separate county and city taxes prohibited
  - Local revenue stream maintained by earmarking a percentage of State sales tax revenue
- Rate increased to 7% in 2005

Cable Television

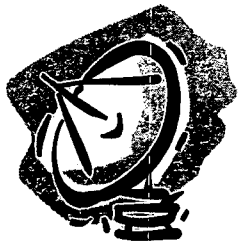
- Local taxes
  - Subject to local regulation since 1973 b/c cable lines use local rights-of-way
  - Subject to local franchise tax of up to 5%
  - Local franchise tax bases may differ from city to city and county to county b/c they are the result of negotiated contracts



Cable Television

- Sales tax
  - Cable boxes rented to customers subject to State and local sales tax
  - Prior to 2006
    - Equipment and transmission lines taxed at 1% as part of broadcasting equipment
    - Cable services not subject to sales tax
  - Effective January 1, 2006, cable services subject to State sales tax

Satellite Television



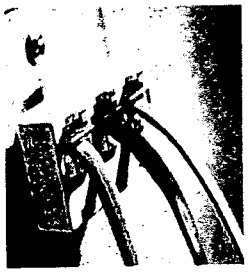
- No local franchise tax b/c no local right-of-way issues
- Federal law prohibits local tax
- SL 2001-424 imposed State sales tax on satellite services at the rate of 5%, which is the maximum local franchise tax rate allowed on cable companies

SL 2005-276
Taxation of Cable & Satellite

- Satellite – State sales tax rate on satellite increased to 7% to comply with SSTA
- Cable – Imposed 7% State sales tax on cable services with a credit for local franchise tax paid
- ISSUE REMAINS – Is this equal taxation?

SL 2005-276
Telecommunications & Cable

- Sales tax on pre-written software – was 1% for telephone companies
- Sales tax on transmission lines – was 1% for cable
- Equipment exempt from sales tax

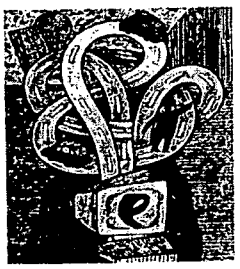


Developments in Cable & Telecommunications

- Telecommunication companies capable of offering video services
- Cable companies capable of offering phone services

Convergence of Industries: Issues

- Tax all data transmissions equally
- Current law taxes by industry, not by service
- Establish role of local regulation
- Federal limitations
- Nature of tax and distribution of revenue between State and locals



Service Contracts and Warranties

Prepared by
Linda Struyk Millsaps
Fiscal Research

For
Revenue Laws Study Committee
December 12, 2005

Outline

- Background
- Current Tax Treatment in NC
- Treatment in Other States
  - Overall
  - Computer Software
  - Computer Hardware
  - Automobiles
  - Machinery
  - Surrounding States
- Next Steps/Decision Nodes

Background

- During the 2005 Session the Senate Budget (SB 622) included a provision to extend the sales tax to service contracts and warranties. At that time the term "maintanence agreement" was used.

•The language in the bill refers to maintenance agreements for services performed on tangible personal property at a future time.

•Later the legislation was altered to direct Revenue Laws to study the issue, with legislative intent to levy a tax on this category July 1, 2006.

Current Tax Treatment in NC

- Generally Service Contracts and Warranties are Exempt from Tax. However, there are exceptions:
  - If the service agreement is mandatory, it is considered part of the sale of tangible personal property and is taxed.
  - If the agreement is optional, the service is not taxed, but the goods used to fulfill the contract are subject to tax.

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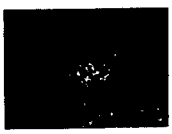
Treatment in Other States



- Overall 45 States levy a sales tax, 5 do not.
- Of the 45 sales tax states:
  - 21 apply the sales tax to warranty agreements.
  - 18 of those exclude the purchase of parts by the service provider from tax.
  - 27 tax software maintenance contracts.
  - 25+ tax computer hardware maintenance agreements.
  - 8 tax annual "help line" fees applied to customers.

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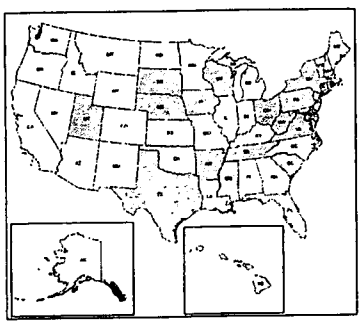
Treatment in Other States



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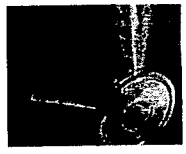
Computer Software Maintenance Agreements

- Two Types:
  - Maintain proper functioning.
  - Software updates to improve performance or usefulness.
- Maintenance agreements are often taxed but only if mandatory (like NC).
  - Other distinctions are linked to the taxability of the software, if the service was performed in the state, and if the contract was linked to the initial software sale.



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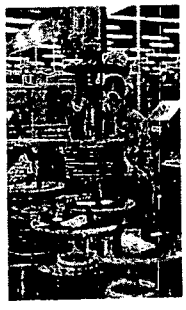
Computer Software Maintenance Agreements



- More states apply their sales tax to software maintenance contracts if they include updates.
  - Rationale: Likely includes some type of property transfer component.
  - Some states exempt the sale if the transfers/updates are via download or internet (not discs or tapes).

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Hardware Maintenance Agreements

- These contracts typically provide for inspection and maintenance of the hardware, and are generally billed annually.
- Often linked to the state's tax treatment of repair and maintenance of tangible personal property.
- In some states it depends on when the contract was purchased (SC).
- All of our surrounding states tax hardware maintenance agreements.

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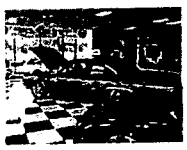
Automobiles

•Currently autos are not subject to the sales tax (7.0%), but are subject to the highway use tax (3.0%). Associated contracts are not taxed.



- Auto service contracts, extended warranty contracts, and roadside assistance plans are sold both by the dealer and independent organizations.
- NC automobile dealers association estimates that the average contract costs $1,400.

December 12, 2005

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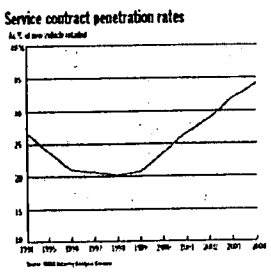
Automobiles



- Over times service contracts have become a significant profit center for auto dealers.
- Some dealers and manufacturers hold their own paper, while many others use third parties or resell.

December 12, 2005

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Machinery Maintenance Agreements

- A purchaser of **production machinery** maintenance contracts typically pay an annual fee for inspection, regular maintenance, and emergency service.
  - Most states do not impose a sales tax on these contracts.
  - Often because the machinery being serviced is exempt.
- **Non-production machinery** contracts are more likely to be taxable, as the machine is more likely to be taxable.
- In **both cases**, contracts are generally for labor, parts, or parts and labor.
- All linked to tax treatment of repair, less dependence on service contract statutes.

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Surrounding States

- Virginia:
  - Extended warranties (generally) are taxed.
  - Tax applied to all cases examined in CCH survey.
  - Recent Revenue Ruling: "When the contract provides in whole or in part for the provision of tangible personal property in order to maintain or repair another item of tangible personal property, the tax applies under the regulation".
  - Several Rulings specifically state that automobile extended warranties are taxable.

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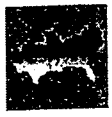
Surrounding States

- South Carolina:
  - Charges for sales or renewals of warranty, maintenance, or similar service contracts (whether optional or mandatory) for tangible personal property are subject to the sales and use tax (SC Revenue Ruling #05-12)
  - Charges for motor vehicle extended service contracts and motor vehicle extended warranty contracts are exempt (SC Code 12-36-2120(53)).
  - Software and Hardware agreements are subject to tax if sold in conjunction with the product.

December 12, 2005 14

Surrounding States



- Tennessee:
  - Taxes Software and Hardware maintenance contracts.
  - Taxes Production and Non-production maintenance contracts.
  - Taxes maintenance contracts with third party providers, initial warranty contracts, and extended warranty contracts.
  - Parts and materials used to fulfill the contract are exempt.

December 12, 2005 15

Policy Decisions/Next Steps

- Should we tax service contracts and warranties?
- Should the tax apply only when tangible personal property is transferred, or be linked only to a specific product no matter when it is sold?
- Should certain types of service contracts and warranties be included/excluded?
- Should the sale of tangible personal property used to fulfill a taxable service contract be exempt?
- Additional data will be needed to determine the revenue impact of various proposals.

December 12, 2005

16

Communications

Convergence, Technology, and National Outlook

NCGA Revenue Laws Study Committee
December 12, 2005

Overview

- Part I: Communications
  - Convergence
  - New Technologies & Internet-based Services
- Part II: Federal Legislation
  - Proposed changes to Telecommunications Act of 1996
- Part III: Conclusion
  - Implications for state & local government revenues

Part I, Communications:

- What does "communications" include?
  - Voice services (telecommunications)
  - Video services (television)
  - Data services (Internet)

Convergence

- ***Technological convergence***
  - Modern presence of an array of different types of technology to perform very similar tasks
- ***Industry convergence***
  - Consolidation of all communications (voice, data, and video) onto a single network infrastructure

Industry Convergence

- Easier to combine services by "packaging" communications into all-digital format
- Providers of single communications service now able to offer broader array of services delivered via Internet-based technology

Broadband Services

- Two major types used by majority of residential & business consumers
  - DSL (Direct Service Line)
  - Cable Internet Access (Cable modem)
- Typically, both provide an average Internet connection speed many times faster than dial-up

Broadband Services

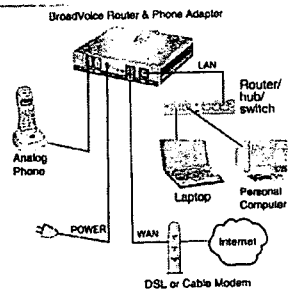
- In general ...
  - Both telephone and cable providers have necessary infrastructure to offer broadband services
- However ...
  - Technological differences in the physical infrastructure used by cable & telephone providers can affect their capacity to deliver packaged broadband services

Communication Services Are Going Digital

- Dominant forms of service delivery for voice & video services are now Internet-based
- The following services are either digital version of existing services, or new services delivered via Internet-based technology

VoIP (Voice over Internet Protocol)

- Routing of voice conversations over the Internet or any other internet protocol-based network
- Cost is generally lower than POTS (Plain Old Telephone Service)

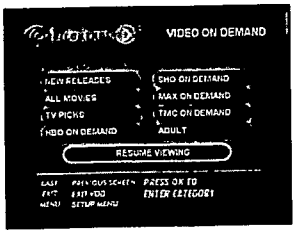


VoIP has become significant

- Growing in popularity
  - Time Warner reported 1 million VoIP customers as of December 8, 2005
  - Skype (based in Netherlands) has 10 million U.S. subscribers and 40 million worldwide
- North Carolina General Assembly recently installed VoIP system

Video: Video on Demand (VOD)

- Allows users to select and watch video content over a network as part of an interactive television system.
- Either "streaming" or "download"



Video: IPTV (Internet Protocol TV)

- System where a digital television service is delivered to subscribing consumers using internet protocol over a broadband connection.
  - Often provided with Video on Demand
  - May also include web service & VoIP
- Supplied by broadband operators

Video: The "next generation" of IPTV

- Apple has partnered with NBC Universal to offer downloadable TV shows via iTunes (including "Lost" and "Desperate Housewives") at $1.99 each
- Shows can be watched on a computer or on an iPod
- Other networks offer or plan to offer downloadable content a la carte

Video: Alternative Service Providers

- 20.8% of households receiving subscription television now get it from alternate sources
  - Direct Broadcast Satellite companies hold 20.2% of the alternative subscription TV market
- In 42 markets nationwide, 30% of consumers are reached via alternative distribution methods, primarily satellite

Triple Play *(Internet, Telephone, & Television)*

- Marketing term for provision of all three services via the same service provider
- Focus on business model, not common standards or method of delivery
- Offered by both telecommunications & cable providers
- Relies on assumption of increased opportunity costs for customers

Triple Play
(Internet, Telephone, & Television)

- Telephone companies:
  - Delivered via combination of fiber optic and digital subscriber line (DSL)
  - Verizon rolled out Triple Play in Keller, TX, in September, and Herndon, VA, in early December
- Cable companies
  - Delivered via switched-IP technology over hybrid fiber coax (HFC) architecture

Triple Play
(Internet, Telephone, & Television)

- Rapid growth in sales of this packaged service
- Time Warner (Reuters, December 8): 75% of new digital phone subscribers also choose triple play service
  - Added 240,000 new subscribers in Q3
  - Approximately 180,000 new triple play subscribers in Q3

Coming Soon: "Quadruple Play"

- Same as Triple Play, but utilizes ***wireless*** technology to deliver Internet, telephone, and television services
- Advances in technology are making Quadruple Play an option for competitors looking to gain competitive advantage over other Triple Play providers

What are people paying for cable and broadband service?

- The average monthly cable bill in the United States this year (Kagan):
  - $39.63 for basic service
  - Up to $63.88 for digital cable (VOD)
  - $80.33 for additional high-speed Internet package
- In areas where there is a wire-based competitor, prices for cable TV service are 15 percent lower (GAO, 2005)

And The Winner Is ...?

- Despite the influx of new technologies & services in communications, no clear industry "winner" has emerged

Part II, Federal Legislation

- Several draft and introduced bills that would significantly change the Telecommunications Act of 1996
  - S. 1504, Broadband Investment & Consumer Choice Act (Ensign/McCain)
  - H. 3146, Video Choice Act of 2005 (Blackburn/Wynn)
  - Draft legislation from House Energy & Commerce Committee

Broadband Investment & Consumer Choice Act

S. 1504 (Ensign/McCain)

- Would immediately allow telecoms to ***enter*** video services market without obtaining local or state franchises
- Cable would no longer be required to meet franchise obligations of "multiple localities"
  - Up to 5% franchise fee to municipalities from new entrants (same as current pay-TV providers), but applied differently

Broadband Investment & Consumer Choice Act

S. 1504 (Ensign/McCain)

- Would not require "build out" of services within a particular community
- Requires new entrants to comply with same rules on copyright, privacy, & public access as cable providers
- Radio & TV broadcast industries unaffected
- Bill would preempt state law governing cellular phone providers
- Does not address Universal Service Fund

Video Choice Act of 2005

H. 3146 (Blackburn/Wynn)

- Defines "competitive video service provider" (CVSP) as any provider of video programming, interactive on-demand service or other programming service that has a right, permission or authority to use PROW independent of a cable franchise.
- Removes franchise requirement for CVSPs

Video Choice Act of 2005

H. 3146 (Blackburn/Wynn)

- CVSP may be required to pay a fee (up to 5% limit) to local franchising authority based on gross revenue in that area
- Prohibits economic redlining, but removes build-out requirement
- Removes local enforcement authority
  - S. 1349 (Senate version) exempts existing cable franchise agreements from the act for the term of the franchise agreement; H. 3146 does not

Draft legislation from House Energy & Commerce Committee

- Not yet introduced
- Major issues addressed in Nov. 9 hearing: "Net neutrality" and franchising
  - "Net neutrality" means that subscribers to broadband services are not limited in what legal content they may access over their internet connection
  - Limitations on net neutrality could affect consumer choice regarding broadband service

Draft legislation from House Energy & Commerce Committee

- Franchising
  - Allows local franchise authorities to charge up to 5% fee on gross revenues annually
  - Gross revenue defined to include cash, credits, property, & in-kind; does not include bad debt and refunds, rebates, or discounts to subscribers of any kind
- Sets forth nationwide franchise concept that would supplant existing franchise structure
  - Broadband internet & video providers would have to file with FCC, not local governments

Part III, Conclusions

- Price wars between new entrants (telecoms) and cable could erode sales tax base for telephone/video/broadband internet service in the short run
- Unregulated VoIP providers like Skype will most likely continue to cut into both POTS and regulated VoIP provider sales, but to an unknown extent

Conclusions

- Local governments will likely lose some, if not all, control over video franchising process due to federal legislation in 2006
  - May retain ability to assess franchise fees, but not necessarily at current levels
- Language of current North Carolina communications tax law does not address or include new services & modes of delivery

Conclusions

- Continuing convergence and competition will lead to erosion of communications tax revenues under current law

Questions?

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

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

December 14, 2005

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: **Wednesday**

DATE: **January 11, 2006**

TIME: **1:00 pm**

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

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

Posted: 12/14/05

cc: Committee Record X
Interested Parties X

REVENUE LAWS STUDY COMMITTEE
Wednesday January 11, 2006 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Revenue Laws Study Committee met at 1:00 PM on January 11, 2006, in Room 544 of the Legislative Office Building. Ten members of the committee were present. Representative Luebke and Senator Kerr presided.

Representative Hill moved to approve the minutes of the December 12, 2005 meeting and the motion carried.

Review of Current State Tax Treatment

Cindy Avrette, a staff attorney with the Research Division, was recognized to summarize the current State taxation of communication services.

Comments from Interested Parties.

Bruce Yancey, Director of State and Local Taxes, BellSouth, was recognized. A copy of his presentation is attached.

Alan Ciamporcero, President, Southeastern Region Public Affairs, Policy & Communications, Verizon, was recognized. A copy of his presentation is attached.

Robert Wells, Executive Director, The Alliance of North Carolina Independent Telephone Companies, was recognized. A copy of his presentation is attached.

Randy Fraser, Vice President Government Affairs – NC, Time Warner Cable, was recognized. A copy of his presentation is attached.

Tom Adams, President of the NC Cable Telecommunications Association and President, Raleigh Division, Time Warner Cable was recognized. A copy of his presentation is attached.

David Miner, Echo-Star representative, was recognized. A copy of his presentation is attached.

Dr. Lee Mandell, Director of Information Technology and Research, NC League of Municipalities, was recognized. A copy of his presentation is attached.

Paul Meyer, Assistant General Counsel, NC Association of County Commissioners, was recognized. A copy of his presentation is attached.

The meeting adjourned at 2:50 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 11, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Goodman	Alley Associates
Mia Bailey	Electricities of NC
John Boudish	AstraZeneca
Kira Perpluq	Capstrat
A. White	Capstrat
G. Sessoms	Commerce
Mark Prak	Brooks Pierce
Ed Turlington	Brooks Pierce
Jennie New	Kennedy Covington
Marau Trathen	Brooks Pierce
Thomas Adams	Time Warner Cable

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — January 11, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Martin Bocock	Sprint
Dana Simpson	Smith Anderson
Kathy Harris	Progress Energy
[illegible]	TUC
[illegible]	Bowen & Assoc.
Lee Mandell	NCLM
Michael Williams	City of Raleigh
Doris J. Boals	City of Charlotte
Gary Harris	NCPMA
[illegible]	Sprint Nextel
[illegible]	Kaylor Law Firm

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee
Name of Committee

January 11, 2006
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Debra Dewr	BellSouth
Paul Matthews	Progress Energy
Bruce Yancey	BellSouth
[illegible]	BellSouth
Mary Klang	League of Women Voters NC
W. Timothy Holmes	Dept. of Revenue
Karl Knapp	NCDOR
Amelia Bryan	NCDOR
Bob Wells	N.C. TC/CO Alliance
Don Hantenck	BellSouth
Dwight Allen	NC Telephone Coops

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — January 11, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Patricia A. Yancey	NCAGSC / LLPP
Zeno Edwards Jr	[illegible]

House Pages

Name Of Committee: Revenue Laws Study Date: 1-11-06

1. Name: _____

   County: _____

   Sponsor: _____

2. Name: _____

   County: _____

   Sponsor: _____

3. Name: _____

   County: _____

   Sponsor: _____

4. Name: _____

   County: _____

   Sponsor: _____

5. Name: _____

   County: _____

   Sponsor: _____

House Sgt-At-Arms

1. Name: Martha Gadison
2. Name: Toussaint Avent
3. Name: Dusty Rhodes
4. Name: Frank Prevo
5. Name: _____

SENATE

REVENUE LAWS STUDY COMMITTEE

Sen. John Kerr Rep. Paul Luebke

Wednesday, January 11, 2006
Room 544, Legislative Office Building
1:00 p.m.

I. **Approval of the Minutes from the December 12, 2005, Meeting**

II. **Taxation of Communication Services**

- **Review of Current State Tax Treatment**
  Cindy Avrette, Legal Analyst, Research Division
- **Comments from Interested Parties**
  - *Bruce Yancey, Director of State and Local Taxes, BellSouth*
  - *Alan Ciamporcero, President, Southeast Region Public Affairs, Policy, & Communications, Verizon*
  - *Robert Wells, Executive Director, The Alliance of North Carolina Independent Telephone Companies*
  - *Randy Fraser, Vice President Government Affairs – NC, Time Warner Cable*
  - *Tom Adams, President of the NC Cable Telecommunications Association and President, Raleigh Division, Time Warner Cable*
  - *Ross Lieberman, Director of Government Relations, Echo-Star*
  - *Lee Mandell, Director of Information Technology and Research, NC League of Municipalities*
  - *Paul Meyer, Assistant General Counsel, NC Association of County Commissioners*

III. **Adjournment**

Next Meeting: February 8, 2006 at 1:00 pm

REVENUE LAWS STUDY COMMITTEE
Monday, December 12, 2005 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Revenue Laws Study Committee met at 1:00 PM on December 12, 2005, in Room 544 of the Legislative Office Building. Eleven members of the committee were present. Senator Kerr and Representative Luebke presided.

2005 Finance Law Changes

Cindy Avrette, a staff attorney with the Research Division, was recognized to briefly explain the 2005 Finance Law Changes. A copy of the explanation is attached.

Taxation of Communication Services.

Cindy Avrette was recognized for a power point presentation of "Past and Current North Carolina Tax Treatment". A copy of the presentation is attached. Brenna Erford, a research assistant with the Fiscal Research Division, was recognized for a power point presentation of "Convergence of the Industries". A copy of the presentation is attached.

Expansion of the Sales Tax Base – Maintenance Agreements.

Linda Millsaps, a fiscal analyst with the Fiscal Research Division, was recognized for a power point presentation of "Expansion of the Sales Tax Base – Maintenance Agreements". A copy of the presentation is attached.

The meeting adjourned at 3:10 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

Overview of December 12th Meeting
RE: Communication Services

- Communication services
  - Voice – telephone
  - Video – cable and satellite
  - Data – Internet

- 'Old days'
  - Communication services used to be provided with distinct and separate technology.
  - Taxation of these services based upon the company that provided the service rather than the service itself.
  - NC
    - 7% State sales tax on the gross receipts derived from telecommunication services with a portion of the revenue allocated to local governments.
    - Local franchise tax of up to 5% on cable companies and a 7% State sales tax with a credit for any local franchise tax paid. Cable companies subject to local regulation.
    - 7% State sales tax on direct-to-home satellite service. Federal law prohibits local tax.

- Today
  - Experiencing both a technological and industry convergence
    - Consolidation of all communications onto a single network infrastructure ... Internet
    - Both telephone and cable providers have the necessary infrastructure to offer these services via Internet
    - Providers of single communications service in the past now able to package and offer a broader array of services
  - Purpose of the tax system is to provide revenue to meet the State's budgetary needs, not to give one industry a competitive advantage over another
  - However, while the industry has experienced a convergence, the tax system has not.
  - NC has made efforts to neutralize the tax differences:
    - 2001 – Tax satellite at 5%
    - 2005-276 – Tax satellite and cable at 7% with credit
    - 2005-276 – Equalize the sales tax treatment of equipment used by telecommunications companies and cable companies

- Goal of this Committee is equity of taxation between providers of cable service, satellite service, digital audio service, video programming service, and data service
  - Current law taxes by industry, not by service
  - Recognize the nature of tax and distribution of revenue between State and local governments
  - Establish the goal and role of local regulation
  - Recognize federal limitations
    - Several draft and introduced bills that would significantly change the Telecommunications Act of 1996
    - Telecoms enter video services without obtaining local or state franchises?
    - Existing local franchises?
    - Nationwide franchising?
    - "Build out" of services within a particular community? Economic redlining?
    - Public access?
    - Access to public rights-of-ways?
    - Wireless providers?
  - Continuing convergence and competition will lead to erosion of communications tax revenues under current law.

Revenue Laws Committee, January 11, 2006

Testimony of Bruce D. Yancey, Director – State & Local Taxes, BellSouth Corporation

Mr. Chairman and Honorable Members of the Committee:

I am Bruce Yancey, Director of State and Local Taxes for BellSouth. BellSouth employs more than 6,000 people in North Carolina and is privileged to serve over 2 million customers in the State.

First of all, I would like to thank the honorable committee members for the leadership they have provided in achieving great strides towards fair, equitable tax policy on communications services. In the Southeast, North Carolina was one of the first states to adopt simplification and uniform taxation with the Telecommunications Simplification Act of 2001 which was sponsored by Representatives Hackney, Luebke and Wainwright and by Senators Kerr and Hoyle. With the passage of that Act all telecommunications services were taxed the same whether it was local exchange services or long distance services.

The Telecommunications Simplification Act of 2001 was landmark legislation taxing telecommunications more like any other general business. It is now time to expand this tax policy to recognize the convergence of our industry.

Since 2001, BellSouth has evolved to more of a broadband company rather than a telecommunications company. Broadband is one of the fastest growing sectors of our company. Due to competition from wireless, competitive local companies and Cable TV (VoIP), the demand for older technology is shrinking. The investment needed to continue our push into the broadband market will be fueled by enhanced utilization of the network. An exciting

area BellSouth is currently testing is the entrance into the Cable TV market. The Cable TV market has proven to be challenging economically. The level of investment needed with no guarantee of adequate return since we are the third entrant into a competitive market behind well established competitors as cable television and satellite television. Another challenge we are examining is the technology and the interaction of the technology with our extensive network. Everywhere you go, you do not have to look far to see some component of our network whether it is telephone lines or central offices. The larger the system, the more challenges there are in enhancing the system. However, that is what we do best. Lastly, there is the local franchise challenge. All of which are barriers of entry into the market.

Today, I come before you to discuss tax policy. Alan Ciamporcero from Verizon is our next speaker and he has much more experience in negotiating local franchises. For that reason, I will limit my comments to taxes.

I suspect our Cable competition will come before you and state they are OK with keeping the franchise structure as it is. This is very much understandable as they know the local franchises are a barrier of entry. What other valid business reason would Cable have to <u>want</u> to file thousands of tax returns with local jurisdictions other than to protect their market? We are all good citizens in this room and I doubt there is anyone of us that would like to file more tax returns and undergo more audits.

I also suspect local governments will also want to continue on with the current tax policy of filing local cable franchise tax returns. However, leaving the current franchise barriers in place will curtail investments in their communities, reduce the likelihood of competition, and keeps local cable rates high. We have an opportunity to keep local governments whole and still increase investments and retain jobs in this state.

This can all be accomplished by expanding the simplification effort undertaken in 2001 by:

1. Creating a single statewide cable franchise.
2. Take the last step in simplification.
    a. Eliminate franchise fees and credits altogether;
    b. Continue imposing sales tax on voice and Cable TV services at 7%; and
    c. Distribute a share of the Cable TV sales tax revenue to local governments.

The Revenue Laws Committee doesn't have to look far to find the most efficient tax policy. You only have to expand your existing sales tax/franchise fee funding statutes provided for in telecommunications to include Cable TV services. As such, the following goals will be accomplished:

1. Local governments will be kept whole.
2. Taxes will be collected in the most efficient manner.
3. You will create an incentive to spur investments and employment opportunities in the state.
4. You will promote competition in the cable industry to give the consumers of the state more choices and lower rates.

Mr. Chairman and honorable members of the committee, thank you for the opportunity to speak before you and I welcome any questions you may have.

Testimony of Alan F. Ciamporcero, President, Verizon S.E. Region

Before the Revenue Laws Committee, January 11, 2006

Mr. Chairman and Honorable Members of the Committee:

I am Alan Ciamporcero, regional president for Verizon. My territory includes the Southeast, but particularly North and South Carolina and Florida where we have wireline networks. We serve approximately 300,000 wireline customer in North Carolina, primarily in the Durham/RTP area and in far Western North Carolina.

The traditional telephone business is changing rapidly. The wired telephone on your desk or kitchen wall now performs only part of your communications functions. You only need to watch young people to appreciate this. They are always communicating, and doing it in new ways--instant messaging, cell phones, VOIP, blackberry, cable television, DVDs, and I-Pods, among others.

To meet these changing consumer demands, we are transforming our business. We are evolving from a phone company to a data company by vastly expanding the capacity of our network. For the large investments in the new high-speed technologies to make business sense, however, we need to be able to offer the full suite of services, everything from plain old phone service to video entertainment.

Cable companies can do this now with ease – there are no regulatory barriers to them adding telephone and data services to their basic video business. In fact, federal and state law make it very easy for anyone to get into the phone business – just file a simple form and get a certificate.

Entry into the video business by a phone company, on the contrary, is very difficult. Even though it already has a franchise to provide communications services, a telephone company must get another franchise from the local government to provide video service.

And this franchise is not easy to get. We've learned hard lessons in Florida and other states over the past year. Franchises are often more than 100 pages of legalese, specifying everything from insurance, to bond requirements, to liquidated damages in the event we can't build out an entire municipality. Further, local governments use this process as a way to indirectly tax companies – by requiring in-kind benefits and direct monetary grants.

For example, one city that I'm intimately familiar with said that we could offer consumers video only if we gave the city more than $10 million in benefits upfront – everything from free channels to money to buy equipment to program those channels. Because of these unreasonable demands, the consumers are not yet receiving the benefits of investment and competition. Similarly, other cities want us to donate data networks, hook together traffic lights, and provide free video entertainment to city buildings – all before getting in the business.

But the biggest problem with the local cable franchise process is the time it takes to get these negotiations finished and get a new product to market. Cities typically retain Washington lawyers to help extract the most from the applicant – and these consultants don't move quickly. In the end, it takes about 12 to 18 months to get a local franchise. That's 12 to 18 months each for the hundreds of local franchising authorities in each state. For a national company like Verizon, that means about 10,000 franchises – after about a year of effort, we don't yet have fifty.

So far, Texas is the only state to rationalize this difficult process. There, the legislature took advantage of a provision of federal law that permits the state – instead of localities -- to grant video franchises. The process is simple. A company files a registration statement with the state indicating where it intends to provide video service and provides an affidavit that it will comply with all laws – for example, FCC registration, applicable fed and state regulations, and municipal regulations regarding use and occupation of right of way. If everything is in order, the company is free to begin offering service after seventeen days.

The Texas law has been great for investment and great for consumers. Several new companies have entered the video business and some incumbent providers have also taken advantage of it. One municipality, West Lake, even decided to move to the state franchise rather than continue with its local Verizon franchise. Verizon substantially increased its building program in Texas as a result of the new law, filing to provide video service in 21 additional markets.

And citizens have been the winners. Price competition and better quality service are spreading quickly throughout Texas. We recommend that same solution to you. It is simple and easy to do, it substantially increased investment in the state, and it should even prove efficient and beneficial for local governments, getting them out of a regulatory role for which they are not well suited.

Mr. Chairman, Members of the Committee

I am Bob Wells, Executive director of the Alliance of N.C. Independent Telephone Companies.

The independent Telephone companies are the native born and bred telephone companies in North Carolina. Most are a hundred years old – also as old as the telephone itself. They are located in the smaller towns and rural areas in seventeen counties. Some of you on the committee represent them. There are Mebtel (used to be Mebane Telephone Co., North State Telephone co. in High Point, Thomasville and surrounding counties. Lexcon, (Lexington Telephone Co.) Concord Telephone Co., Randolph Telephone Co., Ellerbe Telephone Co., and citizens Telephone Co. in Brevard. They are mostly family owned. There used to be more of them. They are now down to seven. They are strong, reliable, state of the art providers of telecommunication services to their customers, and rarely are there ever complaints about their service.

I am here today to speak on their behalf.
I really have only two points to make today.
One is that we support the simplified and equally applied tax approach the state has adopted over the last several years as it applies to our business. We want you to continue to apply those principles as you move forward in adopting any new tax policies. Everyone in the business should pay the same tax. Do what you can to provide the proverbial level playing field.

Two. We support the concept of statewide franchising that the gentleman from Verizon spoke of earlier. It will simplify and speed up telephone companies getting into the business of providing video services. It will bring competition to the cable industry and lower prices for the consumer.

I want to give you a first hand example of what it can mean. In Lexington N.C., Lexcom Telephone (one of the members of my association) went into the cable business in competition with Time Warner. Today cable rates in Lexington are $10.00 cheaper than in any other city in the Triad and maybe in North Carolina.

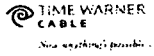
If phone companies can get into this business without having to plow their way through all the city and county bureaucracies in the state. It will greatly benefit your constituents, the citizens of this state.

Thank you for this opportunity to speak this afternoon.

Treating Like Services Alike:

Cable Tax and Regulatory Policy

North Carolina Cable Telecommunications Association



Randy Fraser

Vice President, Government Affairs-North Carolina, Time Warner Cable

Cable Investment and Innovation

- $100 billion investment by cable industry nationwide
- Cable is leader in North Carolina:
  - Video service: 1.8 million subscribers
  - High-speed data (broadband): >600,000 broadband customers
  - Voice-over-Internet phone service: >150,000 customers

Competitive Environment

- Minimum of 3 existing multichannel providers in nearly all markets – cable, DirecTV and DishNetwork
- Satellite 27% market share
- DirecTV and DishNetwork are 2nd and 4th largest video providers
- 10% receive free, over-the-air television

Recent Tax Increases

- New 7% state tax on gross receipts (credit given for local franchise taxes paid)
- 7% tax on purchase of "cable" (old tax was 1%)

Taxation of Cable Video Service

- 7% state tax
- 5% local franchise tax on gross receipts (credit given against new 7% state tax)
- 12% tax on rental of converters & remotes (7% state sales tax plus up to 5% local franchise tax)
- 7% tax on purchase of cable
- Corporate income and franchise taxes
- Local property taxes

Statement of Randall O. Fraser
Revenue Laws Study Committee
January 11, 2006

Good afternoon. My name is Randy Fraser. I am currently the Vice President for Government Affairs for Time Warner Cable in North Carolina and have served two terms as the President of the North Carolina Cable Telecommunications Association. I've worked in the cable industry for 32 years, and I've had the pleasure of working with many of you over the past years. It is a privilege to speak with you again today on behalf of Time Warner Cable.

You have asked for our views on tax and regulatory policy affecting our industry. Our position is simple: Like services should be treated alike. Whether it is called "tax equity," "regulatory parity," or "leveling the playing field" the fundamental goal is the same. The State should not pick winners and losers among competitors.

You have, in recent years, successfully achieved sales tax parity for North Carolina citizens receiving television services from cable and satellite companies. You reinforced that parity last year when you brought the State's sales tax into compliance with the Streamlined Sales Tax Initiative. You may well have a similar opportunity in the coming session to ensure regulatory parity if you consider legislation to help define the rules for the telephone companies' entry into the cable television business.

My colleague Tom Adams will speak more about these issues on behalf of the cable association. But first, I thought it would be helpful to give you a brief snapshot of the origins of cable television, the competitive environment in which cable currently operates, and the current tax structure applicable to cable service.

Cable Investment and Innovation

Cable television is a testament to free enterprise. It traces its roots to Community Antenna Television (or "CATV") systems that were built in rural areas where reception of television broadcast signals was spotty or totally unavailable because of mountains or other obstructions in the terrain.

Consumer demand for television service in these areas led to the birth of cable television. Private individuals and entities, using risk capital, without any guaranteed rate of return, constructed facilities beginning in the 1960s to serve these rural consumers. Soon, the demand for cable television grew beyond rural areas to cities and towns throughout the nation.

Over the past ten years, cable service has been transformed by advances in technology. Just ten years ago, cable was a one-way analog video service. Today, cable provides an interactive broadband platform that offers a variety of voice, video, and data services.

The cable industry has spent approximately $100 billion nationwide -- yes, $100 billion -- to upgrade its facilities so that it can offer these services. We didn't come to the government seeking hand-outs or subsidies for this upgrade, and we didn't ask for special regulatory favors to support this effort. We did it because that's how the free enterprise system works—you make an investment with the hope of earning a return.

With the additional capacity and digital capability provided by this investment, cable operators now offer tiers of digital programming, along with video-on-demand and digital video recording capability. Cable also increased the quality and diversity of its programming and pioneered commercial high-speed Internet service as well as Voice-Over-Internet Protocol (or "Digital Phone") telephone service.

The result of this investment has been that cable has driven much of the technical innovation in video and digital services that consumers enjoy today. Cable is the leader in broadband deployment; it is leading in facilities-based digital phone deployment; and it will, in the years to come, continue to bring new and innovative services and products to its customers.

To give you a snapshot of the extent of this service in North Carolina, cable has over 1.8 million video subscribers in this State. It also has over 600,000 broadband customers, and more than 150,000 Digital Phone customers. And we don't just serve high population metropolitan areas, we also serve rural communities in the state—communities like Pikeville (population 714) and Fremont (population 1,400) in Wayne County and Boiling Springs (population 3,800) in Cleveland County.

Competitive Environment

While cable has been a leader in bringing technical innovation and new communications services to its customers, it does face stiff competition for all its products.

Today, cable faces vigorous competition from two satellite companies—DishNetwork and DirecTV—as well as free, over-the-air broadcasting companies. The satellite companies, who also include local broadcast signals in their service packages, now enjoy a share of the video market that is approximately 27%. Nationwide, DirecTV and DishNetwork are the 2nd and 4th largest providers of video services in terms of total subscribers. The practical effect of this is that in every location that my company, Time Warner, provides service, it faces at least two competitors that typically take more than 1 out of every 4 customers.

Of course this is in addition to competition from other sources of video programming like over-the-air television—which has about 10% of the market—other competitors like Internet video, the sale and rental of DVDs and videotapes, and movies.

Also, new competition in the multichannel video industry is increasingly coming from the telephone companies. All the major telephone companies like BellSouth and Verizon have announced that they intend to provide video services and have, in fact, begun offering services in other states.

I would also point out that other competitors are emerging on an almost daily basis. Recent competitive announcements include Apple's statement that it is providing video downloads of television programming to its iPods; and Google has stated that it is launching an Internet-based service ("Google Video Store") to allow consumers to pay to download shows and movies. As these new services take root and duplicate standard video services, the legislature may well need to consider how these new services should be treated, from a tax and regulatory perspective, consistent with the treatment of other similar services.

But the bottom line is undeniable—today cable faces vigorous and increasing competition in the market for video subscribers.

Recent Tax Increases

Cable pays its fair share of taxes. And this share just went up in the last legislative session.

As this next slide shows, by virtue of tax increases in the last legislative session, cable operators are now subject to a 7% gross receipts tax imposed by the State. This tax was imposed on cable service in the last legislative session and was effective

January 1, 2006. However, to preserve overall tax equity between cable and satellite subscribers, the legislature allowed cable operators to take a credit against this new tax in an amount equal to local franchise taxes paid. As Tom Adams will talk about in more detail, local governments are authorized by the State to impose a franchise tax on cable operators in an amount up to 5% of gross receipts. This money goes directly to the bottom line of local government operations and is used for general welfare purposes. The vast majority of local governments do impose this tax at the maximum rate of 5%. In any event, the effect of this credit is that, regardless of what rate of tax is imposed by local governments, cable customers pay a total rate of 7% in combined tax to state and local government.

In addition to the new state gross receipts tax, in the last legislative session the tax on the purchase of the "cable" we put in the ground and on poles was raised from 1% to 7%. This is obviously a significant tax increase on essential cable facilities.

Current Taxation of Cable Video Service

This next slide summarizes the current taxes paid by cable operators in North Carolina.

* As mentioned, cable is subject to the new 7% state gross receipts tax as well as a local franchise tax—typically in the amount of 5%—with a credit given against the state tax for local taxes paid.
* In addition to these gross receipts taxes, cable pays up to a 12% tax on rental of cable boxes or converters and remote control devices. This includes the 7% state tax plus an up to 5% local franchise tax.

* Cable operators also pay a 7% tax on its purchase of fiber and other cable used in its network.
* Of course, cable operators are also subject to general state business taxes like corporate income and franchise taxes.
* Cable operators also pay property tax at the local level.

Speaking just for my company, Time Warner, we pay more than $63 million a year in state and local taxes. With the new 7% state gross receipts tax, obviously this number will go up in 2006.

* * * *

I hope this brief overview has helped to put cable in its appropriate context. As the cable industry has been built entirely through the use of private, risk capital, I hope you can appreciate how important it is to preserve a level-playing field where competitors can fairly compete without the government picking winners and losers based on technology or other factors.

Again, I appreciate the opportunity to speak to you today.

Let me now turn the podium over to my colleague, Tom Adams.

Tom Adams

President, Time Warner Cable-Raleigh Division

President, North Carolina Cable Telecommunications Association

Current: Cable vs. Satellite Tax

Tax on Cable Subscribers	Tax on Satellite Subscribers
7% state tax (w/ up to 5% credit for local tax paid)	7% state tax
5% local franchise tax	0% local tax
Total: 7%	**Total: 7%**

Satellite's Proposal

Tax on Cable Subscribers	Tax on Satellite Subscribers
7% state tax (w/ no credit for local tax paid)	7% state tax
5% local franchise tax	0% local tax
Total: 12%	**Total: 7%**

Tax and Regulatory Policy

- Tax and regulate like services alike
- Don't discriminate against television viewers who subscribe to cable
- Don't bend or relax the rules for any particular competitor!

Treating Like Services Alike:

Cable Tax and Regulatory Policy

North Carolina Cable Telecommunications Association

Statement of Tom Adams
Revenue Laws Study Committee
January 11, 2005

My name is Tom Adams. I am President of the Raleigh Division of Time Warner Cable. I'm also currently the President of the North Carolina Cable Telecommunications Association and, in that capacity, I am speaking today.

As my colleague, Randy Fraser, explained, our goal with respect to tax and regulatory treatment is simple. Treat like services alike. We don't mind competition—in fact our industry has benefited in a number of respects from competition—but we strongly believe that in a competitive environment there must be a level playing field.

I'd like to spend the time that I have today by digging a little deeper into the issue of treating like services alike and explain what it means in terms of two critical issues currently facing the cable industry.

The first is the treatment of cable and satellite service taxes. The second is the issue of increased competition—in particular competition from the telephone companies.

Satellite Tax Issue

As to the tax issue, I want to applaud your work over the years to equalize the sales tax treatment between satellite and cable. You have had the challenging task of closing tax loopholes, plus the issue of bringing North Carolina's sales tax system into compliance with the Streamlined Sales Tax Initiative. You took the time to study the issues, hear from all parties, and make sure that cable and satellite service providers, and their customers, were treated fairly.

As you are aware, cable companies have historically paid up to five percent of their gross receipts in franchise taxes to local governments, in addition to the other state and local taxes identified by Randy.

By contrast, you may be surprised to know that, until 2001, satellite providers paid no gross receipts tax to the State or to local governments. The reason that the satellite companies have not been subject to local tax is that Federal law prohibits it. However, Congress did not prevent states from imposing taxes on satellite. To the contrary, Congress envisioned that states could, and would, impose taxes on satellite service at the state level. So, in North Carolina, prior to 2001, satellite enjoyed a classic tax loophole.

In 2001, acting upon the recommendation of the Governor's Tax Loophole Closing Commission, North Carolina closed this loophole by approving a five percent state sales tax on satellite providers. With the enactment of this tax, the overall tax burden on cable and satellite subscribers was equalized. Subscribers of both services were subject to a five percent gross receipts tax—cable at the local level and satellite at the state level.

Last year, in response to the Streamlined Sales Tax Initiative—which requires the equalization of gross receipts taxes—the General Assembly adopted a seven percent state gross receipts tax applicable to both satellite and cable companies. To preserve tax equity, the legislature allowed cable companies to take a credit against this state tax for the franchise taxes paid to local governments. As is shown on the slide before you, the credit has the effect of equalizing the overall tax burden on cable and satellite

subscribers. Under this provision, cable subscribers pay an overall tax of seven percent and satellite subscribers pay the same. Like services are treated alike.

Regrettably, the satellite companies have gone to federal court to try and overturn the General Assembly's fair-minded decision to treat satellite and cable customers alike. They claim the General Assembly's tax treatment of cable and satellite violates the Constitution because it treats the state and local taxes on gross receipts equally. The satellite companies actually lost this very same argument in the state courts last year when they challenged the old law. They have now brought this same challenge against the new tax, this time in federal court. We certainly believe that the federal court will come to the same conclusion that the state court did—that the tax is an entirely rational and permissible measure well within the legislature's prerogative.

In their arguments for change, you will probably hear from the satellite companies about state sales tax and local franchise taxes serving different purposes. Satellite companies will argue that the tax paid by cable companies is actually a "fee" for use of the rights-of-way. This simply is not so. It's a tax, pure and simple.

In fact, the statutes authorizing this tax call it just that—a "tax." If the General Assembly had intended for it to be a "fee," it would have called it that.

And the tax has, in substance, all the characteristics of a tax. Unlike a "fee" which is used to recover specific costs, the proceeds of the five percent franchise tax are used by local governments for general welfare purposes. If the tax was just a "fee" for use of the rights-of-way—then North Carolina counties would not be permitted to impose the five percent levy because counties do not own rights-of-way in North Carolina.

Finally, it is telling that other companies using rights-of-way do not pay a five percent tax to the local governments. Telephone, electric, and gas companies all use rights-of-way, yet they are not subject to a five percent franchise tax. If the tax was merely a "fee" for use of the rights-of-way, these other companies would also pay the fee.

All these arguments aside, all you really need to do is look at the effect of the taxes in question on the consumers of the services. The slide in front of you shows what the satellite companies are proposing—what you have already rejected twice. If you were to accept the satellite companies' argument that the local franchise tax should not be treated as a tax, the effect would be to put an additional five percent tax on the 1.8 million North Carolina households that elect to receive their television by cable rather than satellite. Cable customers would then be taxed at the rate of 12 percent—paying five percent at the local level and seven percent at the state level. Yet satellite customers would pay only the seven percent state sales tax. That is unfair by any measure. Cable subscribers should not be penalized for choosing to receive their television service by cable.

At the end of the day, what the satellite companies really want is their loophole back. I can't say I blame them. But I do want to applaud you for the decisions you have already made to adopt a tax-neutral policy for competition between cable and satellite providers, and I would urge you to reject any further efforts by the satellite industry to tilt this level playing field in their direction.

Video Franchise Issue

The second issue that I want to address today, is the issue of telephone companies entering the video marketplace and the potential impact this will have on consumers and on state tax and regulatory issues.

In other states across the country, telephone companies are seeking authority to enter the video service market, but under a different set of rules. We anticipate the same attempts will occur in North Carolina. As we have indicated previously, we welcome competition, as long as everyone is playing by the same rules.

In North Carolina, some telephone companies are already providing video under local franchise agreements, the same rules that apply to cable companies. There are at least five telephone companies that currently offer video services under local franchises and have been doing so for quite some time. In other states, Verizon has been actively obtaining cable franchises from local governments in states like Virginia. BellSouth currently has at least 20 cable franchises in other states serving some 1.4 million subscribers in areas like Atlanta and Miami.

Nonetheless, some of the phone companies have said that they want to bend the rules in their favor. They advocate a change in the local franchise process to give them a competitive advantage. Many of you are aware that during the final hours of last year's legislative session, attempts were made to add a provision to the technical corrections bill that would have exempted telephone companies—but not cable companies—from the local franchise process completely. We are grateful for the successful efforts of leadership in the General Assembly, including many of you in this room, to block this effort.

The cable industry is not opposed to a re-examination of the manner in which franchises are awarded. Again, we only ask that you regulate like services alike. That's why we will strenuously oppose any effort to carve out special regulatory treatment for telephone companies that would free them from regulatory requirements to which the cable industry is subject.

There are few points here that I want to bring to your particular attention.

First, the debate over how telephone and cable companies should be regulated is not occurring in a vacuum. It is occurring in many states across the nation. It is also being debated in Congress, and at the Federal Communications Commission. There are several bills pending in Congress that would overhaul the manner in which video franchises are awarded, and the FCC itself has opened a rulemaking proceeding to consider adopting new rules to more tightly regulate the local franchise process. Any regulation by North Carolina must, of course, be consistent with these federal laws and rules as they presently exist and as they may change in the near future.

Second, one of the principles that is particularly important under federal law is that local governments should be permitted to ensure that their citizens are not left behind as new services are made available. This is referred to as "build-out." Cable operators have traditionally been required to build out their networks. Sound public policy should not require one competitor—in this instance, cable—to construct facilities throughout a community and then allow another competitor—the phone companies—to pick and choose where they want to build and which customers they want to serve. Such "cream-skimming" would artificially increase the cost of cable service and, by regulatory fiat, effectively subsidize the telephone companies' networks.

More fundamentally, the public policy of this State has been that all citizens should have access to the latest technologies and services. Such technologies are an engine of economic growth in North Carolina, and are an essential part of community development and opportunity in today's economy. It is the policy of the State to promote broadband deployment in rural and underdeveloped areas. This is what the "digital divide" is all about. And as we all know, it is something that is still prevalent in our rural areas. Ensuring that the phone companies build-out like cable companies have done—and not be permitted to serve only affluent customers or only customers in densely populated areas—will be consistent with this policy and will help ensure high-speed broadband facilities are widely available.

In summary, as shown on the slide in front of you, the basic policy position of the cable association on these important tax and regulatory issues is straightforward:

* Tax and regulate like services alike;
* Don't discriminate against television viewers who subscribe to cable; and
* Don't bend or change the rules for any particular competitor.

* * * * *

As always, we appreciate, very much, the opportunity to work with you on these and other issues impacting our industry.

Again, thank you for the opportunity to speak with you today.

Mr. Lieberman unable to attend.
David Miner read Mr. Lieberman's testimony

Testimony of Ross Lieberman,
Governmental Relations,
EchoStar Communications Corporation,
Before the North Carolina Revenue Laws Study Committee

January 11, 2006

Chairman Kerr, Chairman Luebke, and other distinguished members of this committee, I appreciate the opportunity to address you today on behalf of EchoStar Communications Corporation, one of the two principal providers of satellite television services in North Carolina — and in the interest of the over 900,000 North Carolina television customers that are collectively served by the satellite television industry.

The way consumers receive voice, video, and data is changing. As technologies converge and companies expand their traditional service offerings, the approach to taxing these services must also change. For that reason, EchoStar is concerned that inconsistencies between the manner in which cable television and satellite are taxed create bad, and inequitable, public policy. Currently, the cable industry receives a sales tax credit against the franchise fees they pay to the localities where they do business. There is no reason to compensate cable companies for paying franchise fees. Cable companies pay franchise fees to local governments in exchange for valuable privileges—privileges that satellite television providers like EchoStar do not receive. For example, under the franchise agreements they enter into with local governments, cable companies receive the right to serve the "franchised" cable area, as well as the right to use streets, highways, and other public rights-of-way to lay down their cable networks. In their filings with the federal government, the major cable companies value these privileges in the *billions* of dollars.

Thus, giving cable companies a state tax break worth over $60 million does nothing more than bestow a financial windfall to one kind of company in the television services industry based on of their costs of doing business. We find this grossly inequitable. Satellite providers do not pay local franchise fees, because our service is not dependent upon the use of local rights of way. Instead, in order to obtain comparable operating rights, satellite companies pay substantial amounts to the federal government for use of the airways and satellite orbital positions. As a result, the tax credit for cable creates a competitive disadvantage for satellite providers—in contravention of federal law that encourages competition between cable and satellite, and at the expense of the citizens of North Carolina.

In short, a tax credit for cable means the public suffers, because cable companies do not bear their fair share of state sales taxes. Most directly harmed are the more than 900,000 North Carolina consumers of satellite television service who are forced to pay a tax for their television service that their neighbors who subscribe to cable are not required to pay. Cable customers also suffer by giving cable companies in North Carolina a state-supplied tax cushion protecting them from competition, cable will be able to charge rates above what would be set in a truly competitive market. And the effects do not end there.

Because the substantially higher sales tax on satellite television companies acts like a tariff, it is a barrier lasting into the future for North Carolina residents who wish to purchase television service provided by innovative technologies such as satellite.

The cable industry disagrees with our assessment. They would have you believe that their tax credit creates "a level playing field" and achieve "tax parity" between competitive providers of pay television service. The reality is clear though: the cable sales tax credit is a form of market discrimination that places a tax burden on satellite providers, which would result in higher costs for North Carolina's satellite TV consumers who have made the switch from cable.

My company understands that this issue is complex. We understand that it is politically difficult. We also know though that the status quo cannot stand. A special tax break for one specific component of our industry is little more than an unfair subsidy to a multi-billion dollar industry that harms North Carolina consumers. I appreciate the opportunity to present our perspective, and hope you will not hesitate to address any issues to our representative, David Miner who will speak to the committee about the consideration of a broad television communications tax in place of the sales tax.

NCLM Local Cable and Video Programming Franchising Goals

NC municipalities welcome fair competition in the provision of video programming in their communities from all competitive providers as long as all providers operate under the same set of currently established franchising rules, procedures and standards. NC municipalities do not see that requirement as *unreasonable*.

It is the policy of the NC League of Municipalities to support the authority of our members to grant franchises to all companies providing video programming (cable service) to their municipalities and have all providers of video programming services to cities and towns pay the same level of franchise fees. Specific goals include:

1. Ensure and maintain authority for municipalities to grant franchises to all companies to provide cable-type video programming services in a municipality (local governments use franchises to manage streets and sidewalks, provide for public safety, enhance competition, and to collect compensation for private use of public land).
2. Ensure and maintain local regulation of rates, charges, customer service rules, and other terms or conditions for entry regarding the provision of video programming services in a municipality within the restrictions of current law.
3. Ensure and maintain local franchise fees for video programming services from all companies providing the service.
4. Preserve adequate cable and video programming franchise fees by not excluding advertising and other non-subscriber revenues from franchise fees.
5. Ensure and maintain requirements for all franchised companies to provide video programming services throughout a municipality (build out to all citizens regardless of race, age, income or location within a reasonable timeframe).
6. Ensure and maintain the appropriate number of public, educational, and local government (PEG) channels, institutional networks, and the use by municipalities of cable systems for local emergency alerts.
7. Ensure and maintain funding or in-kind support (facilities/equipment) from all video programming companies for PEG channels shown on the video programming system.
8. Ensure and maintain municipal control of video programming companies' use of rights of way within the restrictions of current law.
9. Ensure and maintain all other local regulation of cable or video programming companies within the restrictions of current law.

Our thanks to Dave Harris, Regional Cable Administrator Piedmont Triad Council of Governments, for his contributions to this listing.

Revenue Laws Study Commission - Telecom Taxation Comments
January 11, 2006
North Carolina Association of County Commissioners – Paul Meyer, Asst. General Counsel

A. NCACC supports legislative position of NCLM, although counties not identical to cities
B. Primary county concerns: Maintenance of revenue; Potential loss of important regulatory purposes of local cable franchise agreements
C. Revenue
    a. But for satellite radio, counties do not receive any portion of the state sales tax on telecom/cable services – unlike cities, no revenue sharing with state.
    b. However, counties are authorized to negotiate cable franchise agreements with "cable television system" (wired video services) providers (authority 153A-137), including local cable franchise tax, up to 5% gross revenues (per federal law).
    c. Not all counties have cable franchise agreements; county cable franchise tax rates range from 1-5% of gross revenues
    d. Change last year allows "cable service providers" a credit for local cable franchise taxes paid, against 7% state sales tax.
    e. NCACC supports the authority of counties to negotiate and grant local cable franchises to all "cable service" providers, including telecoms entering into video service market.
    f. No pressing public policy purpose is served if cable TV and telecom providers were to operate under differing tax models for the same service.
    g. If county cable franchise agreements were eliminated (and the tax with it), counties would lose approx $15 million. Cities would continue to receive revenue sharing with state on 7% sales tax related to voice and data.
D. Primary regulatory purposes of local cable franchise agreements
    a. **Build out requirements** to ensure access to services for all citizens, irrespective of income, location, or race – i.e. no cherry picking of the most profitable areas.
        i. This is particularly important in the unincorporated portions of a county, where population densities can be minimal – video service providers are less apt to run wires to serve these customers due to lack of profitability.
    b. Require ongoing **availability of government access channels**, in order help citizens understand, follow and participate in the local government decision making process.
        i. Empirical studies have found that people are getting their news more from video than written sources
    c. **Local regulation of rates, fees, and charges** to ensure consumer protections, and meet local needs as to service quality and quantity.

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

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

January 23, 2008

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:	**Wednesday**
DATE:	**February 6, 2008**
TIME:	**9:30 am**
LOCATION:	**Room 544, Legislative Office Building**

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

REVENUE LAWS STUDY COMMITTEE

Sen. John Kerr Rep. Paul Luebke

Wednesday, February 8, 2006
Room 544, Legislative Office Building
1:00 p.m.

I. **Approval of the Minutes from the January 11, 2005, Meeting**

II. **Synopsis of the Institute of Emerging Issues Forum on 'Financing the Future'**

Sabra Faires, Senate Tax Counsel and member of IEI workgroup on 'Bridging the Gap'

III. **Streamlined Sales Tax Update**

Andy Sabol, Director of the Sales & Use Tax Division, Department of Revenue

IV. **Additional Personal Income Tax Filing Option: Draft Proposal, Summary, and Fiscal Memorandum**

Martha Walston, Fiscal Research Division
Linda Millsaps, Fiscal Research Division

V. **IRC Update: Draft Proposal, Summary**
Canaan Huie, Bill Drafting Division
Linda Millsaps, Fiscal Research Division

VI. **Property Tax Changes: Draft Proposal, Summary, and Fiscal Memorandum**

Martha Walston, Fiscal Research Division
Rodney Bizzell, Fiscal Research Division

VII. **Revenue Laws Technical Changes: Draft Proposal and Summary**

Trina Griffin, Research Division

VIII. **2005 Biennial Tax Expenditure Report**

Karl Knapp, Director of the Tax Research Division, Department of Revenue

IX. **Adjournment**

Next Meeting: March 1, 2006, in Room 544 LOB at 1:00 pm

REVENUE LAWS STUDY COMMITTEE
Wednesday January 11, 2006 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Revenue Laws Study Committee met at 1:00 PM on January 11, 2006, in Room 544 of the Legislative Office Building. Ten members of the committee were present. Representative Luebke and Senator Kerr presided.

Representative Hill moved to approve the minutes of the December 12, 2005 meeting and the motion carried.

Review of Current State Tax Treatment

Cindy Avrette, a staff attorney with the Research Division, was recognized to summarize the current State taxation of communication services.

Comments from Interested Parties.

Bruce Yancey, Director of State and Local Taxes, BellSouth, was recognized. A copy of his presentation is attached.

Alan Ciamporcero, President, Southeastern Region Public Affairs, Policy & Communications, Verizon, was recognized. A copy of his presentation is attached.

Robert Wells, Executive Director, The Alliance of North Carolina Independent Telephone Companies, was recognized. A copy of his presentation is attached.

Randy Fraser, Vice President Government Affairs – NC, Time Warner Cable, was recognized. A copy of his presentation is attached.

Tom Adams, President of the NC Cable Telecommunications Association and President, Raleigh Division, Time Warner Cable was recognized. A copy of his presentation is attached.

David Miner, Echo-Star representative, was recognized. A copy of his presentation is attached.

Dr. Lee Mandell, Director of Information Technology and Research, NC League of Municipalities, was recognized. A copy of his presentation is attached.

Paul Meyer, Assistant General Counsel, NC Association of County Commissioners, was recognized. A copy of his presentation is attached.

The meeting adjourned at 2:50 PM.

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

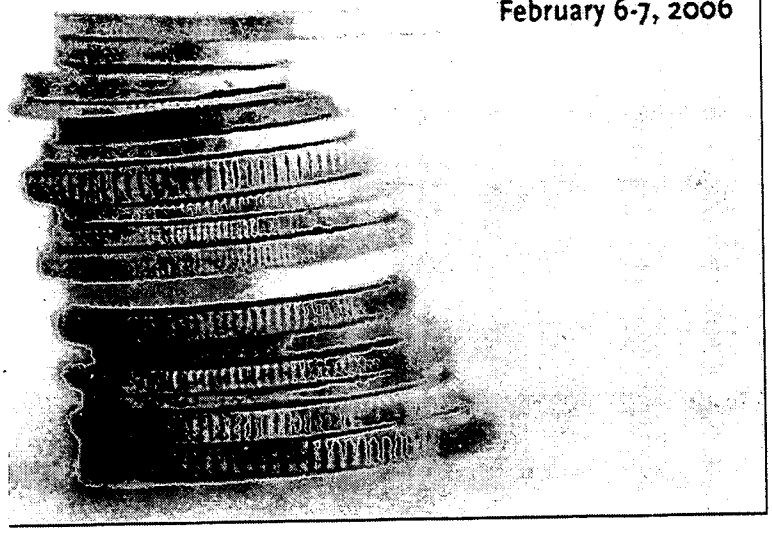
Representative Paul Luebke, Co-Chair
Revenue Laws Study Committee

DeAnne Mangum, Committee Clerk

FINANCING THE FUTURE

21st Annual Emerging Issues Forum

February 6-7, 2006



AGENDA
FINANCING THE FUTURE
February 6 & 7, 2006
McKimmon Center -- NCSU
Raleigh, NC

Registration for the Emerging Issues Forum begins at 7:00 a.m. on February 6 and 7.

Monday
Feb. 6

8:00 am
Welcome
JAMES B. HUNT, JR.
Former Governor, North Carolina

JAMES OBLINGER
Chancellor, North Carolina State University

LUKE BIERMAN
Director, Institute for Emerging Issues

8:20 am
Short Film: "Financing Our Future"

8:30 am
Financing the Future: A World View
PAUL H. O'NEILL
Former Secretary of the U.S. Treasury

9:15 am
Paying for What North Carolina Needs in 2030
Brought to you by Wachovia Corporation
G. KENNEDY THOMPSON
Chairman, President and CEO, Wachovia Corporation

9:45 am
Break

10:00 am
Success Out West?
BILL RICHARDSON
Governor of New Mexico

10:40 am

Panel: Options for the Future
TOM ROSS - moderator
Executive Director, Z. Smith Reynolds Foundation

JOHN CONNAUGHTON
TIAA-CREF Professor of Economics, University of North Carolina, Charlotte

MIKE WALDEN
William Neal Reynolds Distinguished Professor and Extension Economist, NC State University

MICHAEL HANNAH
Director, Multistate Tax Services, PricewaterhouseCoopers, LLP

BILL FOX
Director, Center for Business and Economic Research University, University of

Tennessee

11:40 am	Financing Opportunity WILLIAM BYNUM CEO and President, Enterprise Corporation of the Delta
12:10 pm	Lunch PAUL KRUGMAN Op-Ed Columnist, *The New York Times* Professor of Economics, Princeton University
1:45 pm	What Would Steve Forbes Do? STEVE FORBES President and CEO, Forbes Inc.
2:25 pm	Short Film: Show Me the Money
2:40 pm	Working Group Sessions Sufficiency Efficiency Equity
3:50 pm	Getting Down to Business HENRI MEIER Chairman, Board of Directors, HBM Partners AG and HBM BioVentures AG KIP THOMPSON Vice President of Global Facilities, Dell Corporation
4:35 pm	Across the States: Tales from the Trenches RODNEY ELLIS Texas State Senator NORMA ANDERSON Former Colorado State Senator
5:15 pm	Closing
Tuesday Feb. 7	
8:00 am	Welcome
8:15 am	Russia's Economic Revolution YEGOR TIMUROVICH GAIDAR Former Prime Minister, Russia Director, The Institute for Economy in Transition
8:55 am	Singapore's Story: Big Ideas In Action VIVIAN BALAKRISHNAN Minister for Community Development, Youth and Sports; Second Minister for Trade and Industry, Singapore
9:30 am	Paying for Education: Case in Point *Brought to you by Duke Energy* JUNE ATKINSON North Carolina State Superintendent of Public Instruction MARTIN LANCASTER

President, North Carolina Community College System

KAREN PONDER
President, North Carolina Partnership for Children

SHAYNA SIMPSON HALL
Executive Director, North Carolina Individual Development Account and Asset Building Collaborative

BRAD WILSON
Chair, UNC Board of Governors
Senior Vice President, Blue Cross and Blue Shield of North Carolina

10:30 am Break

10:45 am Bringing it Home
JERRY E. ABRAMSON
Mayor, City of Louisville, Kentucky

11:20 am Financing North Carolina: A Roundtable Discussion
Brought to you by Blue Cross and Blue Shield of North Carolina
JAMES B. HUNT, JR. (Moderator)
Governor of North Carolina: 1977-1985, 1993-2001

DAN GERLACH
Senior Policy Advisor, Fiscal Affairs, Office of the Governor

BEVERLY EARLE
Representative, State of North Carolina

BARRY W. EVELAND
Interim President & CEO, North Carolina Citizens for Business and Industry

A. EVERETTE CLARK
Mayor, City of Marion, North Carolina

KITTY BARNES
President, North Carolina Association of County Commissioners

12:35 pm Lunch
MARK WARNER
Former Governor, Commonwealth of Virginia

2:05 pm Closing: Next Steps for North Carolina
JAMES B. HUNT, JR.
Former Governor, North Carolina

** Please note: The 2006 Emerging Issues Forum agenda is subject to change and will be updated frequently. Please check this website often.

Financing the Future: Options for Consideration

Summary of Working Group Deliberations

Over the past 20 years state and local governments have seen their share of overall government spending in the United States grow from 38 percent to over 50 percent. At the same time, state and local governments have seen their share of revenue remain constant. On top of everything else, the costs to both state and local governments for public education and healthcare are set to rise rapidly. This means that state and local governments depend increasingly on the federal government—an unreliable financial partner—and on filling budget gaps with ad hoc, band-aid type solutions.

These tensions, combined with economic weakness, left the states in crisis during the recession of 2000-2001. Although the states in general, and North Carolina in particular, are now emerging from that crisis, fundamental tensions remain. The future liabilities of state and local governments are rapidly increasing while revenue growth remains slow. Ensuring sustainable revenues will be an emerging issue for state and local governments in the years to come.

To that end, the Institute for Emerging Issues has begun a multiyear program of work that will lay the groundwork for change in the state's system of tax and finance. This program is grounded in research that yields ideas for improvement. These ideas are subject to a model public policy process in which new combinations of leaders debate and refine them, and champion necessary action.

Specifically, the Institute convened three working groups to develop initial ideas to guide the program of work. The groups included members from business, government and higher education, as well as advocates from across the political spectrum. The groups were tasked with searching for innovative solutions for the whole revenue picture at both the state and the local level.

The groups developed a wide range of options, to be presented at the 2006 Emerging Issues Forum, "Financing the Future." At the Forum, stakeholders from across the state and experts from around the world will have an opportunity to debate and refine them.

From there, the Institute will move these ideas into action by working in a variety of ways. Regional forums and roundtables will be convened to inform and mobilize business and government leaders across the state. The Institute will work with faculty and other partners to perform the studies and research necessary to make the document an effective tool for public policy debate. The Institute will partner with leaders to implement reform. These options constitute a living document, evolving though interaction with partners, stakeholders and experts.

In creating these options, few ideas met with unanimous consent from the group. However, most group members recognized that all ideas had potential if considered as part of an entire package. As such, all the options noted below merit further investigation.

Three themes remained constant during the working group process: restructuring the state's revenue system in a way that promotes growth with equity; ensuring sufficient revenues to meet the future needs of counties, cities and the state; and developing a transparent budget and management process for both state and local governments.

Four goals were established for this set of options: 1) to increase the stability of revenues; 2) to enhance the equity of the tax system; 3) to promote economic growth and competitiveness; and 4) to encourage innovative thinking by governments at all levels.

State Revenue

Making changes to a tax system in a revenue-neutral way requires that the system as a whole be considered. Revenue changes in one area necessitate offsetting revenue changes in another. Therefore this document seeks to do two things. First, it outlines the specific options the group considered for improving the revenue system. Second, it offers two broad formulas for approaching the tax structure.

The Personal Income Tax

The largest single source of state revenue is the personal income tax. Currently, North Carolina has a bottom rate of 6 percent and a top rate of 8.25 percent.

Possible Concerns

- The high marginal rate may be driving away high net worth individuals, small business owners and corporate headquarters from the state.
- Reliance on the federal tax code exposes North Carolina's revenue collection to changes in national tax policy.
- For most working group members, the income tax is the primary vehicle for ensuring equity in the tax system as a whole.

Possible Options

- Expand the tax base to increase revenue and allow for adjustments elsewhere.
    - Expand the tax base by moving to Federal Adjusted Gross Income minus a personal exemption. This would result in a large expansion of income tax revenue and could further increase progressivity.
    - Selectively eliminate deductions in the income tax code.
- Lower the top marginal rates to encourage businesses and individuals to set up residence in North Carolina.

- Expand the personal exemption to eliminate lower income households from the tax rolls.
- Institute some form of a negative income tax that would give increased support to lower income families.

Possible Constraints

- Using Federal Adjusted Gross Income will mean taxing social security in some cases and the elimination of the mortgage interest deduction. This is politically challenging.
- A lowered top rate and an increased personal exemption may place a greater burden on the middle class.

The Sales Tax

The sales tax is the second largest source of revenue for the state. Currently the state imposes a 4.5 percent sales tax on non-food tangible goods, while counties impose an additional 2.5 percent (3 percent in Mecklenburg County).

Possible Concerns

- In recent years, sales tax revenue has grown more slowly than income tax revenue. There are two major factors at play.
    - Out-of-state sales and Internet sales are increasing in volume.
    - An increasing portion of economic activity is in the service sector, which is largely exempt.
- At least for a snapshot in time, the sales tax is regressive. Some in the group felt that regressivity is reduced when one considered lifetime income and spending patterns.

Possible Options

- Continue efforts to conform to the Streamline Sales and Use Tax Agreement. This interstate compact aims to increase tax payments by out-of-state vendors.
- Continue to eliminate special exemptions from the sales and use tax.
- Pay out-of-state vendors to collect sales tax on the state's behalf.
- Expand the sales tax base to include more services. Expansion to services has the potential to dramatically increase sales tax revenue. Several paths include:
    - Expand the tax to include admissions to events and to services that are a substitute for tangible goods (lawn care services vs. lawnmowers).
    - Expand the tax to services in general with specific exemptions such as medical care.
    - Expand the tax to all services and currently exempt goods with no exemptions.
- Lower the sales tax rate.

Possible Constraints

- There may be administrative difficulties in extending the sales tax to all personal services.
- There will be significant political problems, leading to taxes only on the politically weak (barbers).

The Corporate Income Tax

The corporate income tax represents about 5 percent of state revenue collection. A portion of the corporate income tax is dedicated to school construction and school capital needs, and many counties have pledged this revenue stream to support ongoing school projects and debt service for new schools.

Possible Concerns

- The corporate income tax code contains numerous targeted credits, exemptions and other loopholes. Currently the official rate is 6.9 percent, but the effective rate may be only approximately 3.5 percent.
- Some corporations use shell subsidiaries and other affiliates to avoid income tax liability.
- In general, small businesses are at a disadvantage in the current system.
- Some in the group felt that the cost to corporations and the state of administering this tax might exceed total tax revenues.
- The corporate income tax is highly volatile.

Possible Options

- Review all targeted exemptions and credits within the corporate income tax code for effectiveness and efficiency (including a review of exemptions and credits that claim a specific economic impact).
- Lower the corporate income tax rate to 3 percent – 4 percent.
- Replace the corporate tax with an expanded and modernized franchise tax. The franchise tax may be less variable than the corporate income tax.
- Study the merits of mandatory combined reporting of corporate income.
- Completely eliminate the corporate income tax.
- Ensure that funding from the corporate income tax now dedicated to school capital needs would continue at its current level with state funds.

Holistic Paths

All members agreed that the state revenue system is best examined as a whole. Two paths seemed to emerge during group discussions. However, the range of possible paths is not limited to those listed below.

Reduce Inefficiencies While Retaining Progressivity

The personal and corporate income tax codes contain many exemptions and marginal personal income tax rates may be driving away a significant number of high net worth individuals.

However, the income tax is useful in promoting progressivity in the tax structure. At the same time, the sales tax exempts services that compete directly with tangible goods. The expansion of the sales tax base would probably make it less regressive as a whole. One holistic path might be to:

Consider

- Reducing the top marginal personal income tax rates.
- Reducing the corporate income tax rate, but protect school capital funding.
- Eliminating all exemptions, credits, and loopholes in the corporate income tax code.
- Reducing the number of itemized deductions in the personal income tax code.
- Increasing the personal exemption to eliminate lower income families from the tax rolls.
- Expanding the franchise tax to all business.

Study

- The extent to which a reduction in the highest marginal rates may be self-financing.
- The impact of moving to combined reporting of corporate income.

The extent to which a reduction in the top marginal rate is self-financing will determine the relationship between reducing the deductions and increasing the personal exemption. If combined reporting is found to be advantageous to the state, it could be included in an attempt to increase the efficiency of the corporate income tax.

Shift Towards Consumption Taxation

Some members of the group felt that consumption taxes promote economic growth by reducing the double taxation on investment and encouraging savings. One path towards taxing consumption would be to:

Consider

- Expanding the sales tax to include all services.
- Exempting all business-to-business sales from the sales tax.
- Reducing or eliminating the corporate income tax.
- Creating a refundable credit or (negative income tax) within the personal income tax code to provide support to lower income families.

Study

- The revenue returns from a destination based value added tax (VAT).
- The feasibility of a consumption tax administered through the income tax system.
- Replace the corporate income tax with a commercial activity tax, as is now the case in Ohio.

Local Government Structure & Revenue

To support and manage North Carolina's economic and demographic change, local governments in the state must have greater flexibility in both revenue authority and service provision.

While all local governments are experiencing increased pressure in the new millennium, the source of the pressure varies widely. Some localities will see their population double in the next 20 years while others will see it decline. Some localities will grow much older while some will see a new boom in school age children.

To meet these challenges, local governments need the autonomy and flexibility to respond individually, while at the same time continuing to receive state level support and oversight. The local government structure and tax reform strategies discussed below should be considered in the light of a comprehensive understanding of the way revenues and responsibilities are shared between state and local authorities. This relationship has not been reviewed in a comprehensive way by the working groups. Subsequent consideration of the options below should be conducted in the light of such a review.

Local Government Structure

Local governments in North Carolina have the responsibility of providing many services to their residents. However, in many localities, service responsibilities and available resources have become misaligned as greater state and federal mandates are being pushed down without attendant revenue authority.

State and local leaders should assess state-local relations and identify gaps inherent in the current allocation of state and local responsibilities and revenues. This effort could entail several options, including the following:

- Consider redesigning the state and local government structure, including such elements as the allocation of service responsibilities between the state and its localities (e.g., education, health care and transportation).
- Reallocate the sharing of state and local revenue sources as needed to support the overall delivery of services.
- Provide local governments with greater autonomy and capacity to promote regional or statewide economic competition and growth.
- Promote viable regionalization ventures (e.g., sewage and water systems), perhaps through grants and other fiscal incentives.
- Encourage with incentives local governments to regionalize or consolidate services (e.g., joint county initiatives).
- Reassess the modified Dillon's rule and consider offering local governments expanded home rule powers.
- Consider offering appropriate oversight (e.g., expand scope of local government commission) as a condition prerequisite to expanded local government powers.

Local Government Taxes

Counties and cities in North Carolina are largely dependent on the property tax and local sales tax to support an increasing array of services. Economic conditions result in local governments having widely differing revenue-raising powers. Each locality generally must request the right to use a new revenue method from the General Assembly individually. Even user fees to support direct service costs are often dictated by statutory limitations. This process is inequitable and has resulted in an unbalanced distribution of revenue raising options.

Consistent with inextricably linked efforts to reform the state tax structure and modify state-local structures, the state should consider incremental refinements to the local government tax structure in order to even the playing field among local governments and eliminate unfair and unnecessary barriers to the effective financing of local governments.

However, the group was split over whether this should be done by increasing the revenue options available or decreasing the revenue options available. Some felt that revenue was best raised centrally by the state to support statewide services such as Medicaid and public education. These members felt that the burden on the localities could best be eased by one of the following:

- Expanding the sales tax base and ensuring all goods and services subject to the state's sales tax be included in the local sales tax base.
- Having the state take over responsibility for Medicaid and an increasing share of education.

Others in the group felt strongly that local government leaders are in the best position to decide what revenues sources are best suited for their jurisdiction, and a level playing field might be achieved by offering a standardized menu of revenue options from which local governments could choose, subject to local voter approval. The following revenue options are now in place for one or more local governments and could be made available to all:

- Local option occupancy tax.
- Local option admissions tax.
- Local option vehicle tag tax.
- Local option impact tax.
- Local option prepared food and beverage tax.
- Local option land transfer tax.

State & Local Government Efficiency

Reforming the state and local revenue systems, without restructuring the way in which governments deliver services and instituting rigorous processes for ensuring the responsible management of public resources, may not attain our objectives. North Carolina has more counties and cities

with AAA bond ratings than in any other state. All counties have adopted the council/manager form of government, thereby promoting professional local management while ensuring citizen participation and representation. While North Carolina has long enjoyed a reputation for good government and public stewardship, the global economy demands continual improvement. Ideas proposed within the group included:

Improved state budgeting process

The state could establish a long-term planning and policy formulation process to guide incremental policy changes. It could seek a public-private partnership for designing and maintaining a rigorous, dynamic forecasting model for state and local government. The state should design a new budget process that is more transparent and seamlessly linked with its long-term planning process (North Carolina could serve as a model in the area, as no state at present has state-of-the-art budgeting and planning practices). It also should consider designing the new budget process to increase budgetary flexibility, encourage agency savings and incorporate performance-based budgeting characteristics.

Improve state contingency planning

Consistent with a more comprehensive and rigorous planning process, the state should improve its ability to prepare for financial contingencies. To that end, the state should prepare accurate forecasts of long-term capital needs, incorporate the annual portion of the capital budget in the operating budget and fully report long-term financing obligations, including the present value of projected receipts and costs. The state also should consider measures for strengthening its capacity to manage debt (e.g., debt limits). Most importantly, the state should consider new policies for funding and maintaining reserves on a continual basis, establishing a minimum fund balance for unforeseen emergencies, as is the case for all local governments. For example, the state could consider specific increases to the state rainy day fund and measures for preventing the under-funding of such reserves.

Revamp infrastructure funding

The state should establish a statewide capital improvement and management plan. State and local governments need new ways to ensure the reliable and cost-effective financing of long-term capital improvements and other required investments. Consistent with sound capital planning principles, state and local governments should have the best available financing tools to maximize investments in sound capital projects that will accelerate economic growth or reduce public costs. The state should increase local access to appropriate funding sources for infrastructure needs and reduce unnecessary funding barriers for local governments with demonstrated capital needs. The state also should explore incentives for spurring the private financing of public improvements.

State government accountability

The state could establish rigorous and durable systems for enhancing the efficiency and accountability of state agencies. It should consider creating an independent review process (e.g., Texas and Florida) to reassess spending priorities and conduct zero-based

(sunset) reviews of discrete programs. The state could accelerate efforts to pursue feasi ble privatization opportunities (e.g., ABC system) and consider incentives for encouraging state entrepreneurship. It should develop a coherent accounting framework for aligning costs with revenues (e.g., entitlement and business services).

Setting the Framework: Financing the Future

John E. Silvia
Chief Economist, Wachovia Corporation

Dr. Silvia and the Economics Group at Wachovia Corporation provide a detailed summary of issues facing North Carolina's economy and the state's ability to raise revenue. The state's population has been increasing faster than the national average and can be expected to do so into the foreseeable future. In addition, our state is becoming more diverse as the traditional White and Black populations are giving way to a larger proportion of Asians and Hispanics.

Economically, the trend has been toward services and specialized manufacturing. Traditional agricultural and manufacturing industries have declined dramatically, giving way to service sector industries such as finance, health, education and tourism.

Comparing North Carolina's economic growth to its nearest neighbors shows that the economy is growing at a healthy pace. Gross state product is second in growth only to Virginia, and personal income is second in growth only to Georgia. However, the good fortune is not shared evenly across the state. In particular, the metropolitan centers of Charlotte and Raleigh-Durham have per-capita incomes significantly higher than the national average, while much of the state falls well below the national average.

In terms of spending needs, there has been a shift toward higher education and medical services as an increasing proportion of the population goes on to college and as the cost of healthcare rises. However, the traditional costs of roads and primary and secondary education have not subsided. These factors combined have accelerated the growth in the state's spending needs over the last decades.

Lastly, we must consider how to distribute the responsibilities of government between the various levels. In general, local revenue and spending decisions should be kept local. However, that must be balanced against the desire to provide assistance to localities that cannot afford to support their own services. In either case it is vital that the state maintain accountability over which projects are funded and how projects are funded.

To read the full version of this paper, please go to:
www.ncsu.edu/iei/projects/financing.html

State Tax Reform: Evidence, Logic, and Lessons from the Trenches

Benjamin Russo
Professor of Economics, University of North Carolina, Charlotte

Dr. Russo presents evidence that tax reform is crucial for the state of North Carolina. Recent trends in sales tax revenue indicate that North Carolina's tax system may be insufficient to meet the demands of the 21st century economy. Over the last 40 years, the national sales tax base has fallen from roughly 63 percent of the economy to just 44 percent of the economy. North Carolina has followed a similar pattern. In addition, North Carolina has found it increasingly difficult to levy taxes on corporations. In an open market, governments have to compete for corporate facilities. That competition drives down tax rates.

Given these factors, Dr. Russo concludes that tax reform is inevitable. However, the question remains whether that reform is going to be comprehensive or partial. The advantage of comprehensive reform is that it brings all stakeholders to the table. The effect is sweeping and all citizens are likely to be interested and involved. This prevents the process from being overtaken by special interest groups that may be concerned with only parts of the tax code. This unifying effect explains in part the success of federal tax reform in 1986.

Yet the possibility also exists for special interests to unite against a tax. This was the case in 1987 when Florida attempted to expand the sales tax to services. In this case the service industries proved a powerful lobbying agent and prevented tax reform from happening.

By contrast, partial reform has the advantage of reaping much of the rewards while allowing the legislature to pick off the lowest hanging fruit first. In particular, while it may be difficult to tax media and medical services it might be easier to tax other services and still gain much of the benefits of a broader based tax.

However, whichever direction the state decides to choose, tax reform is a critical issue going into the next century.

To read the full version of this paper, please go to:
www.ncsu.edu/iei/projects/financing.html

Change in State and Local Taxes in North Carolina

Roby B. Sawyers
GlaxoSmithKline Faculty Fellow, Institute for Emerging Issues and Professor of Accounting, North Carolina State University

Dr. Sawyers outlines the evolution of taxes in North Carolina from the 1930's through the present. North Carolina underwent significant reform in the 1930's. The state introduced a personal income tax, a corporate income tax and a motor fuels tax, while reserving the property tax strictly for local use. At the same time, the state took over much of the responsibility for the schools, roads and prisons.

Since that time, the structure of North Carolina's tax system has changed very little. However, the importance of each revenue source has changed dramatically. In 1942, North Carolina received nearly 90 percent of its own source revenue from taxes, while the other 10 percent came from a variety of fees, charges and miscellaneous revenues. By 2002, taxes accounted for only about 66 percent of the state's own-source general revenue.

At the same time, the income tax has increased dramatically in terms of relative importance. The individual income tax increased from 10 percent of total local and state combined revenues in 1957 to 32 percent in 2002. In contrast, revenue from the corporate income tax fell from 9 percent to roughly 3 percent, and sales tax revenue slipped from 41 percent to 35 percent.

The burden associated with different taxes has changed over time. The tax burden from most taxes has remained relatively constant. However, the burden from the income tax has steadily risen, along with the burden from fees and charges. As a result, the total tax burden has also risen.

These changes are important to recognize as they may impact the distribution of the tax burden and the equity of the overall tax system in North Carolina. While the individual income tax is progressive, fees and charges are typically regressive resulting in a greater burden on low-income taxpayers in the state. In addition, a state's tax burden can be an important factor in business location decisions. Increases in the overall burden and the tax burden may adversely impact the ability of the state to compete with other states for new businesses.

To read the full version of this paper, please go to:
www.ncsu.edu/iei/projects/financing.html

Financing Government: Revenue Variability and the Role of Rainy Day Funds

Gary A. Wagner
Associate Professor of Economics, School of Government, University of North Carolina, Chapel Hill

Dr. Wagner describes the patterns of revenue growth faced by state governments in general and specifically North Carolina. Unsteady revenue streams create the need for rainy day funds to support the operation of government during economic downturns. The fiscal benefits for states with properly structured rainy day funds are sizable when compared to states without rainy day funds or improperly structured funds.

For example, states with properly structured rainy day funds saved more, faced significantly lower long-term borrowing costs, and experienced fewer expenditure reductions and tax increases during the 1990-1991 recession. In addition, government expenditures are approximately 20 percent less volatile over the business cycle in states with properly structured rainy day funds.

Although the use of a properly structured rainy day fund may ease the fiscal crunch of recessions, there is an opportunity cost associated with the practice of saving. If the state does not save, then the funds that would have been saved may be used to provide additional services, retire debt or reduce tax burdens. The relevant trade-off in the decision to save comes in weighing the "cost" of saving (fewer services) against the "benefit" of being better prepared for downturns (fewer spending cuts/tax increases).

Changes in economic activity create difficult problems for state governments since the demand for public sector services tends to be countercyclical, while revenue growth is procyclical. While it is challenging to reduce the variability in revenue streams that results from swings in the business cycle, there are a number of potential strategies that have been identified by previous research:

- Broadening tax bases will tend to have minimal effects on the long-term sustainability of a given revenue source but may result in smaller year-to-year swings.
- Since more progressive individual income tax systems produce more volatile revenue streams in the short-run, but more rapid revenue growth in the long-run, there appears to be a trade-off between long-run growth and short-term variability.
- Since it is not possible to completely eliminate business cycle swings from revenue streams, there is evidence that properly structured rainy day funds can significantly reduce the need for expenditure reductions and tax increases during downturns.

To read the full version of this paper, please go to:
www.ncsu.edu/iei/projects/financing.html

STREAMLINED SALES TAX UPDATE

February 2006

The Streamlined Sales Tax Project began in March 2000 as 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 representatives working on this Project is to achieve sufficient uniformity and simplification so as to encourage sellers without nexus in states to voluntarily collect sales or use tax in participating states. Currently, forty-three states and the District of Columbia have by legislative or executive action authorized participation in Project.

In November 2002, the Streamlined Sales and Use Tax Agreement was approved by the states. The Agreement contains the uniformity and simplification provisions developed by the Project. The Agreement has been amended several times over the last three years to adopt items that the Project participants continued to address. The Agreement itself was to become effective when at least ten (10) states representing twenty percent (20%) of the population of all states that impose a sales tax were determined to be in compliance with the provisions of the Agreement.

Over the last few years, states, including North Carolina, have enacted provisions to bring themselves into compliance with the Agreement. 2005 was a significant year in that in July 2005, eighteen states representing over twenty-eight percent (28%) of the population of states imposing sales tax were determined to be in substantial compliance with the Streamlined Agreement and became either full or associate member states. Full member states are states that were determined presently to be in substantial compliance with the provisions of the Streamlined Agreement. Associate member states are states that have taken action to amend their laws to come into compliance but have future effective dates. On October 1, 2005, the Streamlined Sales Tax Governing Board, Inc., consisting of representatives of the member states, came into existence. The Governing Board will oversee administration of the Agreement including matters such as interpretations of the Agreement, admittance of new members, and oversight of contracts and technology.

Since 2001, legislation has been enacted in each session to bring North Carolina laws into compliance with the provisions of the Streamlined Agreement and North Carolina was admitted as a full member state. There are currently thirteen full member states and six associate member states as Nevada was admitted as a member state as of January 1, 2006. As the states continue to address matters brought before them, there will be future amendments to the Agreement that will require amendments to our law. With most amendments states are being given at least two legislative sessions to address the issues and our Department has been working with General Assembly staff on changes to the Agreement made in April 2005 that will need to be enacted by January 1, 2008 in order for our State to remain in compliance. We look forward to continuing to work with members and staff and want to express our appreciation for all that has been accomplished to date.

The Governing Board is overseeing the implementation of several technology initiatives that will ease the burden of sellers for collection and remittance of sales and use tax. On October 1, 2005, a central registration system was activated on the Governing Board's website. This allows a multistate seller to complete a single electronic registration form and become registered to collect sales and use tax in all the member states. The member states download the registration information and incorporate the data into their own registration systems. To date, 479 sellers have registered through the central site with 27 of these being new sellers signifying that they will collect tax in North Carolina and with 67 being sellers already registered and collecting tax. Over $110,000 has been collected from the new sellers since activation of the system. In addition to these new sellers, we have estimated that we are collecting over $1.5 million annually from several sellers that came forward prior to the formation of the Governing Board who indicated that the reason for beginning to voluntarily collect tax was the progress that the states had made through the Streamlined Project efforts.

Another major initiative is the finalizing of contracts with third party service providers that will perform the administrative sales tax collection and remittance functions for sellers. Under this model, states have agreed to compensate the service providers for the services that they provide to sellers thus significantly easing the burden of collecting tax in states in which a seller is not located. The member states have been working for months on reviewing the tax computation software developed by the service providers and other functions necessary for the proper collection and remittance of tax. Four firms are currently being evaluated and it is hoped that the Governing Board will enter into contracts with at least two of the firms over the next few months. Once a service provider is available, it is anticipated the number of voluntary sellers will significantly increase.

All forty-three participating states and the District of Columbia, along with local government representatives, continue to work on remaining issues undertaken by the Streamlined Project through a State and Local Advisory Council. Private industry representatives have also formed an advisory body as recognized in the Streamlined Agreement. These bodies will be consulted and assigned projects by the Governing Board as new issues are brought forward, as deemed appropriate. Only the states that compose the Governing Board have the authority to vote on amendments to the Streamlined Agreement and entry of new members. It is anticipated that at least two more states, Vermont and Washington, will petition for membership in 2006 and that more states will choose to give serious consideration to making law changes necessary to become members now that the Agreement is effective and sellers are coming forward.

Members of our Department continue to represent the State and are delegates to the State and Local Advisory Council and the Governing Board. Our staff will continue to work with the appropriate parties to explain any new measures that come forth and to help formulate any legislation necessary to keep North Carolina in compliance. Federal legislation has once again been introduced in Congress that would require remote sellers to collect tax in those states that have adopted the uniformity and simplification provisions of the Streamlined Agreement. If this legislation is eventually enacted, our State should find itself in position to benefit accordingly.

Thank you for the opportunity to present this update. My staff and I will be glad to provide any additional information. 2005 was an important year in this process although there continues to be important work ahead. Once again, the support members of the General Assembly and their staff have given is appreciated and we look forward to future discussions.

Submitted by: Andy Sabol, Director
Sales and Use Tax Division
North Carolina Department of Revenue

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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BILL DRAFT 2005-LAz-20 [v.3] (1/31)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
2/6/2006 11:26:08 AM

Short Title: Additional Personal Income Tax Filing Option. (Public)

Sponsors: Unknown.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ALLOW AN ADDITIONAL JOINT FILING OPTION FOR INDIVIDUAL INCOME TAXES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-162(e) reads as rewritten:

"(e) Joint Returns. – A husband and wife ~~shall file a single income tax return jointly if (i) their~~whose federal taxable income is determined on a joint federal return ~~and (ii) both spouses are residents of this State or both spouses have~~shall file a single income tax return jointly if each spouse either is a resident of this State or has North Carolina taxable ~~income.~~income, and may file a single income tax return jointly if one spouse is not a resident and has no North Carolina taxable income. Except as otherwise provided in this Part, a wife and husband filing jointly are treated as one taxpayer for the purpose of determining the tax imposed by this Part. A husband and wife filing jointly are jointly and severally liable for the tax imposed by this Part reduced by the sum of all credits allowable including tax payments made by or on behalf of the husband and wife. However, if a spouse has been relieved of liability for federal tax attributable to a substantial understatement by the other spouse pursuant to section 6015 of the Code, that spouse is not liable for the corresponding tax imposed by this Part attributable to the same substantial understatement by the other spouse. A wife and husband filing jointly have expressly agreed that if the amount of the payments made by them with respect to the taxes for which they are liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses jointly or, if either is deceased, to the survivor alone."

SECTION 2. This act is effective for taxable years beginning on or after January 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

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: February 6, 2006

TO: Revenue Laws

FROM: Linda Struyk Millsaps
Fiscal Research Division

RE: Additional Personal Income Tax Filing Option

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:			Potential Minimal loss		
EXPENDITURES:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue.

EFFECTIVE DATE: For taxable years beginning on or after January 1, 2006.

BILL SUMMARY: Under North Carolina law, a married couple that files a joint federal return must file a joint state return if both are residents or have North Carolina income. However, if one spouse is a non-resident and has no North Carolina income, the other spouse must file a separate return with the State. The proposed legislation would allow such a couple the option of filing a joint North Carolina return. This is a recommendation of the North Carolina Department of Revenue.

ASSUMPTIONS AND METHODOLOGY: Currently no data is available about the number of returns this change would impact or the likely amount of revenue affected. However, the

Department believes the number of taxpayers involved would be small. Because this legislation gives the couple the option of choosing to file joint or separate returns, it would be reasonable to assume there are some circumstances were the taxpayer may benefit financially from a specific filing status, and would select that status. As such, there is a potential revenue loss.

SOURCES OF DATA: North Carolina Department of Revenue.

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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BILL DRAFT 2005-LYxz-284 [v.3] (1/20)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
2/6/2006 3:42:25 PM

Short Title: IRC Update. (Public)

Sponsors: .

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 AND TO MAKE OTHER CHANGES TO MORE CLOSELY CONFORM TO FEDERAL TAX LAW.

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, ~~2005,~~2006, including any provisions enacted as of that date which become effective either before or after that date."

SECTION 2. Notwithstanding Section 1 of this act, any amendments to the Internal Revenue Code enacted after January 1, 2005, that increase North Carolina taxable income for the 2005 taxable year become effective for taxable years beginning on or after January 1, 2006.

SECTION 3. G.S. 105-32.8 reads as rewritten:

"**§ 105-32.8. Federal determination that changes the amount of tax payable to the State.**

If the federal government corrects or otherwise determines the gross estate tax imposed under section 2001 of the Code or the amount of the maximum state death tax credit allowed an estate under section 2011 of the Code, the personal representative must, within ~~two years~~ six months after being notified of the correction or final determination by the federal government, file an estate tax return with the Secretary reflecting the correct amount of tax payable under this Article. If the federal government corrects or otherwise determines the amount of the maximum state generation-skipping transfer tax credit allowed under section 2604 of the Code, the person who made the

transfer must, within ~~two years~~six months after being notified of the correction or final determination by the federal government, file a tax return with the Secretary reflecting the correct amount of tax payable under this Article.

The Secretary must assess and collect any additional tax due as provided in Article 9 of this Chapter and must refund any overpayment of tax as provided in Article 9 of this Chapter. A person who fails to report a federal correction or determination in accordance with this section forfeits the right to any refund due by reason of the determination."

SECTION 4. G.S. 105-130.20 reads as rewritten:

"**§ 105-130.20. Federal corrections.**

If a taxpayer's federal taxable income is corrected or otherwise determined by the federal government, the taxpayer must, within ~~two years~~six months after being notified of the correction or final determination by the federal government, file an income tax return with the Secretary reflecting the corrected or determined taxable income. The Secretary shall determine from all available evidence the taxpayer's correct tax liability for the income 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 that fails to comply with this section is subject to the penalties in G.S. 105-236 and forfeits its rights to any refund due by reason of the determination."

SECTION 5. G.S. 105-159 reads as rewritten:

"**§ 105-159. Federal corrections.**

If a taxpayer's federal taxable income is corrected or otherwise determined by the federal government, the taxpayer must, within ~~two years~~ six months after being notified of the correction or final determination by the federal government, file an income tax return with the Secretary reflecting the corrected or determined taxable income. The Secretary 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 6. G.S. 105-197.1 reads as rewritten:

"**§ 105-197.1. Federal corrections.**

If the amount of a taxpayer's net gifts is corrected or otherwise determined by the federal government, the taxpayer must, within ~~two years~~ 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 net 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 7. G.S. 105-130.17 is amended by adding a new subsection to read:

"(g) Any corporation that files a federal return pursuant to section 6072(c) of the Code shall file its return on or before the fifteenth day of the sixth month following the close of its income year"

SECTION 8. G.S. 105-155(a) reads as rewritten:

"(a) Where and When to File. – An income tax return shall be filed as prescribed by the Secretary at the place prescribed by the Secretary. The income tax return of every taxpayer reporting on a calendar year basis other than a taxpayer filing a federal return pursuant section 6072(c) of the Code shall be filed on or before the fifteenth day of April in each year, and the income tax return of every taxpayer reporting on a fiscal year basis other than a taxpayer filing a federal return pursuant to section 6072(c) of the Code shall be filed on or before the fifteenth day of the fourth month following the close of the fiscal year. The income tax return of every taxpayer filing a federal return pursuant to section 6072 of the Code shall be filed on or before the fifteenth day of the sixth month following the close of the taxable year. An information return shall be filed at the times prescribed by the Secretary. A taxpayer may ask the Secretary for an extension of time to file a return under G.S. 105-263."

SECTION 9. G.S. 105-151.11(b) reads as rewritten:

"(b) Employment Related Expenses. – The amount of employment-related expenses for which a credit may be claimed may not exceed ~~two thousand four hundred dollars ($2,400)~~three thousand dollars ($3,000) if the taxpayer's household includes one qualifying individual, as defined in section 21(b)(1) of the Code, and may not exceed ~~four thousand eight hundred dollars ($4,800)~~ six thousand dollars ($6,000) if the taxpayer's household includes more than one qualifying individual. The amount of employment-related expenses for which a credit may be claimed is reduced by the amount of employer-provided dependent care assistance excluded from gross income."

SECTION 10. Sections 1, 2, and 10 of this act are effective when they become law. Sections 3 through 6 of this act become effective July 1, 2006, and apply to federal determinations made on or after that date. Sections 7 through 9 of this act are effective for taxable years beginning on or after January 1, 2006.

DRAFT 2005-LYxz-284: IRC Update

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	February 8, 2006
Introduced by:		**Summary by:**	Y. Canaan Huie Committee Counsel
Version:	Draft 2005-LYxz-284		

SUMMARY: This bill would update the reference to the Internal Revenue Code used in defining and determining certain State tax provisions. In addition the bill would shorten the time span in which a taxpayer would have to file an amended estate, income, or gift tax return when the federal government corrects or otherwise determines the amount on which the tax is based. The bill also conforms the filing date for income tax returns for a nonresident alien to the federal dates. Finally, the bill would conform the amounts for the credit for child care and certain employment-related expenses to the amounts allowed for the corresponding federal credit.

CURRENT LAW: Currently the reference date for the Internal Revenue Code is January 1, 2005.

When the federal government corrects or otherwise determines the amount on which an estate, income, or gift tax is based, the taxpayer must file a State return within 2 years that reflects that change.

Nonresidents aliens are currently required to file State income tax returns before their federal returns are due.

Currently, the credit for child care and certain employment-related expenses may not be based on expenses in excess of $2,400 if the household includes one qualifying individual or $4,800 if the household includes more than one qualifying individual.

BILL ANALYSIS:

IRC Update

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. This bill would change the reference date from January 1, 2005, to January 1, 2006, effective when the bill become law.

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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."

Between January 1, 2005, and January 1, 2006, there were four major pieces of federal legislation that made changes to the Internal Revenue Code. This federal legislation includes the Energy Tax Incentive Act of 2005 (P.L. 109-58) signed into law on August 8, 2005, the SAFE Transportation Equity Act of 2005 (P.L. 109-59) signed into law on August 10, 2005, the Katrina Emergency Tax Relief Act of 2005 (P.L. 109-73) signed into law on September 23, 2005, and the Gulf Opportunity Zone Act of 2005 (P.L. 109-135) signed into law on December 21, 2005.

Energy Tax Incentive Act of 2005 (P.L. 109-58) (hereinafter Energy Act)

Many of the changes made in this act involve tax credits for various activities. Because they are tax credits, these provisions do not have a direct impact at the State level. There are, however, several provisions that could have an impact at the State level, most of which involve the depreciation, amortization, or expensing of certain items.

- *Elimination of deduction for clean-fuel vehicles.* Under previous law, a taxpayer was allowed a deduction for the purchase of a qualified clean-fuel vehicle. A "qualified clean-fuel vehicle" is any motor vehicle that may be propelled by a clean-burning fuel such as natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, electricity, or any other fuel at least 85% of which is methanol, ethanol, or other alcohol or ether. The maximum amount of the deduction varied depending on the type of vehicle purchased. The deduction began to be phased out in 2004, and was set to be eliminated after the 2006 taxable year. This act moves up the phase-out so that the deduction is eliminated after the 2005 taxable year. In place of the deduction, this act creates a new federal credit for alternative fuel motor vehicles.

- *Tax deferral for gains on electric transmission assets.* Under current law, a taxpayer may elect to recognize qualified gain from a qualifying electric transmission transaction over an eight-year period. In order for a transaction to be a "qualifying electric transmission transaction" numerous conditions must be satisfied, one of which is that the transaction must be completed before January 1, 2007. This act extends that date by one year to January 1, 2008.

- *Deduction for nuclear decommissioning costs.* Utilities that own or operate a nuclear power plant are required by law to decommission the plant at the end of its useful life. A utility may elect to deduct contributions it makes to a nuclear decommissioning reserve fund established to help pay the costs associated with the eventual decommissioning. For previous tax years, contributions to such a reserve fund were limited to the lesser of the amount of nuclear decommission costs allocable to the fund that is included in the taxpayer's cost of services for ratemaking purposes for the taxable year and the ruling amount. The "ruling amount" is a schedule obtained from the IRS that specifies the annual payments that must be made into the fund to cover of the amount of the decommission costs allocable to the fund over its existence. This act eliminates the "lesser of" test for taxable years beginning on or after January 1, 2006, and instead limits the deduction to the ruling amount.

- *Energy efficient commercial buildings property deduction.* Despite the fact that large commercial buildings use approximately one-fourth of the electrical energy consumed in the nation, there is currently no federal tax incentive to encourage the use of energy-efficient property in the construction or renovation of commercial buildings. This act allows taxpayers to claim a deduction (as opposed to depreciation or amortization) with respect to costs associated with energy-efficient commercial building property placed into service

between January 1, 2006, and January 1, 2008. The maximum amount that may be deducted is $1.80 per square foot of the building, less any amount deducted under this provision with respect to the same building in previous tax years. In order to qualify for the deduction, the following conditions must be satisfied: 1) The costs must be associated with depreciable or amortizable property that is installed in a commercial building that meets certain standards for energy efficiency; 2) The property is installed as part of the interior lighting, heating, cooling, ventilation, or hot water systems or the building envelope; and 3) The property is installed as part of a plan to reduce the total annual energy costs of the building with respect to the interior lighting, heating, cooling, ventilation, and hot water systems by at least 50% as compared to a similar building that meets certain minimum standards for energy efficiency. The IRS is required to issue regulations relating to eligibility for a partial deduction and to the transfer of a deduction from a public entity (like the State) to the person responsible for designing the property.

- *Recapture of section 197 amortization.* Generally, property subject to amortization under section 197 of the Code is intangible property that is purchased and held by a taxpayer in the course of a business. Section 197 property includes goodwill, covenants not to compete, patents, copyrights, trademarks and certain licenses. The cost of section 197 property is recoverable over fifteen years using straight-line depreciation. Under general rules, gain on the sale of depreciable property must be recaptured as ordinary income to the extent of depreciation deductions previously claimed. Under general rules, the recapture amount is computed separately for each piece of property. This act provides that if multiple pieces of section 197 property are sold or disposed of in a single transaction or series of transactions, then the taxpayer must compute the recapture as if all of the property were a single asset. The effect of this change is to maximize the amount of income treated as recapture, and thus as ordinary income, and the lessen the amount treated as a capital gain, which is taxed at a lower rate.

- *Depreciation of electric transmission property.* Generally, under the modified accelerated cost recovery system (MACRS) assets used in the transmission and distribution of electricity for sale have a 20-year recovery period. This act allows the costs of certain electric transmission property placed into service after April 11, 2005, to be recovered over 15 years instead of 20.

- *Expensing liquid fuel refineries.* Under previous law, petroleum refining assets were depreciated over a 10-year recovery period using the double declining balance method. Petroleum refining assets are assets used for distillation, fractionation, and catalytic cracking of crude petroleum into gasoline and other petroleum products. This acts allows a taxpayer to make an election to expense 50% of the cost of qualified refinery property in the year in which the property is placed into service. "Qualified refinery property" includes any portion of a qualified refinery that satisfies the following conditions: 1) The original use of the property commences with the taxpayer; 2) The property is placed in service between August 8, 2005, and January 1, 2012; 3) The property satisfies certain production capacity requirements; 4) The property satisfies all applicable environmental laws in effect when it is placed into service; 5) No written binding contract for the construction of the property was in effect on or before June 14, 2005; and 6) The construction of the property is subject to a written binding contract entered into before January 1, 2008. A "qualified refinery" is one that is located in the United States and that is designed to serve the primary purpose of processing liquid fuel from crude oil or qualified fuels (including shale and tar sands and coal

seams). The expensing election is not available with respect to a refinery that is used primarily as a topping plant, asphalt plant, lube oil facility, crude or product terminal, or blending facility.

- *Depreciation of natural gas distribution lines.* Under previous law, natural gas distribution lines installed by a gas company were depreciated over a 20-year period. This act allows natural gas depreciation lines placed in service between April 11, 2005, and January 1, 2011, to be depreciated over a 15-year period.
- *Depreciation of natural gas gathering pipelines.* Prior to the enactment of this act, there was a disagreement among the courts as to what asset class natural gas gathering pipelines owned by a nonproducer belonged. The IRS maintained, and this position was supported by the Tax Court, that these pipelines belonged to an asset class subject to depreciation over 15 years. The Courts of Appeals in the Sixth, Eighth, and Tenth Circuits, however, held that these pipelines belonged to an asset class subject to depreciation over 7 years. There was agreement that natural gas gathering pipelines owned by a producer were part of the asset class subject to depreciation over 7 years. This act clarifies that all natural gas gathering pipelines, regardless of ownership, are subject to depreciation over 7 years. This provision applies to natural gas gathering pipelines placed in service after April 11, 2005.
- *Geological and geophysical costs amortized over two years.* Geological and geophysical costs are those incurred for the purpose of accumulating data that serves 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). Courts have held these costs to be capital in nature and allocable to the property acquired or retained. If no property was acquired or retained, the costs were treated as a capital loss. This act provides that these costs, when incurred in the United States for oil or gas exploration, shall be amortized ratably over a 24-month period beginning on the mid-point of the taxable year in which the costs were incurred. The act does not affect the treatment of costs incurred outside of the United States or with respect to exploration for minerals other than oil or gas.
- *84-month amortization of air pollution control facilities.* Current law allows taxpayers to amortize a certified pollution control facility used in connection with a plant that was in operation before January 1, 1976, over a 60-month period. For certified pollution control facilities placed in service after April 11, 2005, this act eliminates the requirement that the property be used in connection with a plant that was in operation before 1976 if the plant is an electric generation plant that is primarily coal fired. For property that satisfies this criteria, the amortization period is 84-months. The act does not lengthen the amortization period for property that was covered by previous law, it provides a favored, though not as generously favored, method of depreciation for another class of property.

Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005 (P.L. 109-59) (hereinafter SAFE Act)

Although this act makes numerous tax changes at the federal level, these changes have little to no direct impact at the State level

Katrina Emergency Tax Relief Act of 2005 (P.L. 109-73) (hereinafter Katrina Act)

2005 was a record-setting year on the meteorological front. Not only did the year see a record number of named storms (27) and a record number of hurricanes (14), the year also included the costliest Atlantic hurricane on record and one of the deadliest, Hurricane Katrina. Hurricane Katrina made

landfall along the Gulf Coast on August 29, 2005, as a Category 4 storm. Hurricane Katrina resulted in the deaths of more than 1,400 people and caused over $80 billion in property damage.

In the aftermath of Hurricane Katrina, Congress took action to assist taxpayers in the affected region. On September 21, 2005, Congress passed the Katrina Emergency Tax Relief Act of 2005, which was signed into law by President Bush on September 23, 2005. The act is collection of tax relief provisions for individuals and businesses. Below, the key provisions of this act that could have an impact on State revenues are summarized.

General Provisions. The act contains definitions of several key phrases that are used throughout the act. Under the act, "Hurricane Katrina disaster area" means an area with respect to which a major disaster has been declared by the President before September 14, 2005, with respect to Hurricane Katrina. The states of Alabama, Florida, Louisiana, and Mississippi comprise the Hurricane Katrina disaster area. The act also defines the term "core disaster area." The core disaster area is a subset of the Hurricane Katrina disaster area that has been determined by the President to warrant individual or individual and public assistance from the federal government. The core disaster area covers certain counties and parishes in Alabama, Louisiana, and Mississippi.

Retirement Funds. The act contains a number of special rules related to retirement funds for people who lived in the Hurricane Katrina disaster area or the core disaster area. Generally, these provisions allow for a more liberal use of retirement funds for emergency needs than would otherwise be allowed without subjecting the taxpayer to some sort of penalty or disincentive. These provisions include the following:

- *Tax favored withdrawals from retirement plans for relief relating to Hurricane Katrina.* Generally, a withdrawal from a qualified retirement plan, a tax-sheltered annuity, an IRA, or an eligible deferred compensation plan maintained by a state or local government is included in taxable income in the year in which it is made. In addition, a distribution that is received before death, disability, or the age of 59 ½ is generally subject to a 10% early withdrawal tax. Some distributions are known as eligible rollover distributions and are not included in taxable income or subject to the 10% penalty tax. These distributions must be rolled over into another qualified retirement account within 60 days.

  This act provides an exception to the 10% early withdrawal tax in the case of a qualified Hurricane Katrina distribution[3] from a qualified retirement plan, tax-sheltered annuity, or IRA. In addition, any amount required to be included in income as a result of a qualified Hurricane Katrina distribution is included in income in installments over the three-year period beginning with the year in which the distribution is made rather than entirely within the year that the distribution is made. Finally, any amount of a qualified Hurricane Katrina distribution that is recontributed to an eligible retirement account within the three-year period is treated as a roll-over distribution and is not included in income.

- *Recontribution of withdrawals for home purchases cancelled due to Hurricane Katrina.* There is an exception to the 10% early withdrawal tax discussed above in the case of a qualified first-time homebuyer distribution from an eligible retirement account. A qualified first-time homebuyer distribution is one that does not exceed $10,000 and that is used within 120 days of the distribution for the purchase or construction of a principal residence of a

[3] A "qualified Hurricane Katrina distribution" is a distribution made from an eligible retirement plan on or after August 25, 2005, and before January 1, 2007, to an individual whose primary place of abode on August 28, 2005, is located in the Hurricane Katrina disaster area and who has sustained an economic loss due to Hurricane Katrina. The total amount of qualified Hurricane Katrina distributions to a taxpayer from all accounts may not exceed $100,000.

first-time homebuyer. If the distribution is not used for the purchase of the home within 120 days or is not rolled over into an eligible retirement account within 60 days, the distribution is included in income and is subject to the 10% early withdrawal tax.

This act allows a taxpayer that received a qualified distribution from a retirement account to recontribute that amount to an eligible retirement account without penalty. For the purposes of this provision, a "qualified distribution" is a distribution that was received after February 28, 2005, and before August 29, 2005, and that was to be used to purchase or construct a principal residence in the Hurricane Katrina disaster area, but the residence is not purchased or constructed because of Hurricane Katrina. Any portion of a qualified distribution may be contributed to an eligible retirement account and treated as a roll-over if it is recontributed between August 25, 2005, and February 28, 2006. Because it is treated as a roll-over, that portion will not be included in income or subject to the 10% early withdrawal tax.

- *Loans from qualified plans for relief relating to Hurricane Katrina.* An individual is allowed to borrow from an qualified employer plan in which the individual participates provided the loan satisfies certain conditions. Generally, a loan from a qualified employer plan is treated as a taxable distribution of plan benefits. A loan is not treated as a tax distribution of benefits to the extent that the loan, when added to the outstanding balance of all other loans to the individual from all plans maintained by the employer, does not exceed the lesser of 1) $50,000 reduced by the excess of the highest outstanding balance of loans from such plans during the one-year period ending on the day before the date the loan is made over the outstanding balance of loans from the plan on the date the loan is made or 2) the greater of $10,000 or one half the individual's accrued benefit under the plan. For this exception to apply, the loan must have a repayment period of five years or less, must be amortized in level payments, and must have payments due at least quarterly.

  This act provides special rules in the case of a loan from a qualified plan to a qualified individual. For the purposes of this provision, a "qualified individual" is one whose principal place of abode on August 28, 2005, is located in the Hurricane Katrina disaster area and who has sustained an economic loss because of Hurricane Katrina. Under this provision, the loan limit discussed above is increased to the lesser of 1) $100,000 reduced by the excess of the highest outstanding balance of loans from such plans during the one-year period ending on the day before the date the loan is made over the outstanding balance of loans from the plan on the date the loan is made or 2) the greater of $10,000 or the individual's accrued benefit under the plan.

  In addition, this act provides that in the case of a qualified individual with an outstanding loan from a qualified plan on or after August 25, 2005, if the due date for any repayment with respect to the loan occurs during the period from August 25, 2005, to December 31, 2006, the due date is delayed for one year.

Charitable Giving Incentives. In the wake of Hurricane Katrina, people from around the nation rushed to the aid of people in the affected areas with unprecedented amounts of charitable giving. As part of this act, Congress further encouraged and rewarded charitable giving.

- *Temporary suspension of limitations on charitable contributions.* In general, the income tax deduction allowed for charitable contributions is subject to limitations based on the type of taxpayer, the property contributed, and the donee organization. Subject to certain limitations, discussed further below, the following general rules apply: 1) Contributions of cash are

deductible in the amount contributed; 2) Contributions of capital gain property[4] to a qualified charity are deductible at fair market value; 3) Contributions of other appreciated property are deductible at the donor's basis in the property; and 4) Contributions of depreciated property are deductible at the fair market value of the property.

Most contributions are subject to percentage limitations. For individuals, the amount deductible is limited to a percentage of the taxpayer's contribution base[5]. The percentage varies depending on the type of donee organization and the type of property contributed. Contributions by an individual of property other than appreciated capital gain property to a charitable organization described in section 170(b)(1)(A) of the Code (public charities, private foundations other than private non-operating foundations, and certain governmental units) are deductible up to 50% of the contribution base. Contributions of this type of property to nonoperating private foundations and certain other organizations are deductible up to 30% of the contribution base. Contributions of appreciated capital gain property to an organization described in section 170(b)(1)(A) of the Code are generally deductible up to 30% of the contribution base. A taxpayer may elect to bring all of these contributions of appreciated capital gain property under the 50% limitation by reducing the amount of the deduction by the amount of the appreciation of the property. Contributions of appreciated capital gains property to a private nonoperating foundation are deductible up to 20% of the contribution base. For corporations, charitable contributions are deductible up to 10% of the corporations taxable income computed without regard to net operating loss or capital loss carrybacks. For both individuals and corporations, excess charitable contributions may be carried forward for up to five years.

There is also an overall limitation on most itemized deductions for individuals. The total amount of otherwise allowable itemized deductions is reduced by three percent of the amount of the taxpayer adjusted gross income in excess of a certain threshold. However, the otherwise allowed deductions may not be reduced by more than 80%. This reduction is reduced to two percent for the 2006 and 2007 taxable years and to one percent for the 2008 and 2009 taxable years, is repealed for the 2010 taxable year, and is reinstated for the 2011 taxable year.

This act provides several exceptions to the limitations on charitable contribution deductions. For individuals, the deduction for qualified contributions is allowed up to the amount by which the taxpayer's contribution base exceeds the taxpayer's deductions for other charitable contributions. In most cases, this means that an individual may deduct charitable contributions up to 100% of the taxpayer's adjusted gross income computed without regard to any net operating loss carryback. For corporations, the deduction for a qualified contribution is allowed up to amount by which the corporation's taxable income exceeds the deduction for other charitable contributions. For the purposes of these provisions, a "qualified contribution" is a cash contribution that is made between August 28, 2005, and December 31, 2005, to an organization described in section 170(b)(1)(A) of the Code. The term does not include a contribution of noncash property or one that is for the establishment or maintenance of a segregated fund or account with respect to which the donor reasonably expects to have advisory privileges with respect to the fund or account because of his status as donor. In the

[4] "Capital gain property" means any capital asset or property used in the taxpayer's trade or business the sale which at its fair market value, at the time of contribution, would have resulted in a gain that would have been a long-term capital gain.
[5] The "contribution base" is the taxpayer's adjusted gross income computed without regard to any net operating loss carryback.

case of a corporation, the contribution must be for relief efforts related to Hurricane Katrina in order to be a qualified contribution.

In addition, for individuals the charitable deduction contribution, up to the amount of qualified contributions, is not treated as an itemized deduction and is not subject to the reduction for higher-income taxpayers.

- *Additional exemption for housing Hurricane Katrina displaced individuals.* In the aftermath of Hurricane Katrina, hundreds of thousands of residents of the affected areas were displaced. During this time of displacement, many individuals opened their homes to those who had been displaced. Generally, individuals are allowed personal exemptions in computing taxable income. Personal exemptions are allowed for the taxpayer, the taxpayer's spouse, and the taxpayer's dependents. Personal exemptions are phased out for higher-income taxpayers.

  This act allowed a taxpayer an additional $500 exemption for each Hurricane Katrina displaced individual of the taxpayer, up to a maximum additional exemption of $2,000. The additional exemption is not subject to the phase out for higher-income taxpayers. For the purposes of this provision, a "Hurricane Katrina displaced individual" is a person 1) whose principal place of abode on August 28, 2005, was in the Hurricane Katrina disaster area, 2) who was displaced from the abode, 3) who is provided housing free of charge in the taxpayer's principal place residence for a period of 60 consecutive days that ends in the taxable year in which the exemption is claimed, and 4) is not the spouse or dependent of the taxpayer. For a person whose principal place of abode on August 28, 2005, was outside of the core disaster area, the person's abode must have been damaged by Hurricane Katrina or the person must have been evacuated from the abode by reason of Hurricane Katrina.

- *Increase in standard mileage rate for charitable use of vehicles.* In determining the amount of the charitable contribution deduction when a taxpayer operates a vehicle in providing donated services to a charity, the taxpayer may either deduct actual operating expenditures or use the charitable standard mileage rate. The charitable standard mileage rate, 14 cents per mile, is significantly less than the business standard mileage rate[6]. The charitable rate is less than the business rate because it is meant to offset direct operating expenses, such as gas, only and not other expenses, such as a depreciation, insurance, or general maintenance.

  This act allows a taxpayer who uses a vehicle in providing donated service to charity for Hurricane Katrina relief only to compute the charitable mileage deduction at a rate equal to 70% of the business standard mileage rate, rounded to the next highest cent, on the date of the contribution. In the alternative, the taxpayer may continue to use actual operating expenditures to determine the amount of the deduction.

- *Mileage reimbursement to charitable volunteers excluded from gross income.* Volunteer drivers who are reimbursed for mileage expenses have taxable income to the extent that the reimbursement exceeds deductible expenses computed using either direct expenses or the charitable standard mileage rate. Under this act, reimbursement for mileage expenses by a charitable organization described in section 170(c) of the Code to a volunteer for the costs of using a passenger vehicle for Hurricane Katrina relief only are not included in income to the

[6] For expenses incurred between January 1, 2005, and September 1, 2005, the standard business mileage rate was 40.5 cents per mile. For expenses incurred between September 1, 2005, and January 1, 2006, the standard business mileage rate was 48.5 cents per mile.

extent that the reimbursement does not exceed the amount that would be allowed using the business standard mileage rate. A taxpayer may not claim a deduction or credit for amounts excluded under this provision.

- *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.

- *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.

Miscellaneous Provisions.

- *Exclusion for certain cancellations of indebtedness by reason of Hurricane Katrina.* Gross income includes income that is realized by a debtor for the discharge of indebtedness, subject to certain exceptions. This act provides that the gross income of a qualified individual does not include any amount which would otherwise by includible in gross income by reason of a

discharge of nonbusiness debt if the indebtedness is discharged by an applicable entity. The relief allowed under this provision does not apply to any indebtedness to the extent that real property outside of the Hurricane Katrina disaster area serves as security for the debts. For the purposes of this provision, a "qualified individual" is any natural person whose principal place of abode on August 25, 2005, was located 1) in the core disaster area or 2) in the Hurricane Katrina disaster area and the person suffered economic loss as a result of Hurricane Katrina. An "applicable entity" includes the following: a financial institution; a credit union; a corporation that is a direct or indirect subsidiary of a financial institution or credit union and as such is subject to regulation by federal or state agencies; the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the National Credit Union Administration, and certain other federal executive agencies; an executive, judicial, or legislative agency; and any other organization the for whom the lending of money is a significant trade or business.

- *Suspension of certain limitations on personal casualty losses.* A taxpayer may generally claim a deduction for any loss sustained during the taxable year for which he is not compensated by insurance or otherwise. For individuals, the loss must be incurred in a trade or business or consist of property loss attributable to casualty or theft. Losses are deductible only if they exceed $100 per casualty or theft and total casualty and theft losses exceed 10% of the taxpayer's adjusted gross income. This act removes the $100 and 10% limitations on casualty and theft losses to the extent those losses are in the Hurricane Katrina disaster area on or after August 25, 2005, and are attributable to Hurricane Katrina.

- *Required exercise of IRS administrative authority.* In general, the Secretary of the Treasury may grant reasonable extensions of time to taxpayers to perform certain acts. In addition, for certain military personnel, the time period for performing certain acts (such as filing returns, paying taxes, bringing suit) is automatically suspended. In the case of a Presidentially declared disaster or terroristic or military action, the Secretary has the authority to prescribe a period of up to one year in which the time period for the same actions is suspended. This act requires the Secretary to suspend those time periods at least until February 28, 2006, for taxpayers determined to have been affected by the Presidentially declared disaster relating to Hurricane Katrina. In addition, this act adds employment and excise taxes to the list of taxes for which the Secretary may extend filing and payment time periods.

- *Special rules for mortgage revenue bonds.* A qualified mortgage bond is a type of private activity bonds for which interest is excluded from gross income. Qualified mortgage bonds are issued to make mortgage loans to qualified mortgagors for the purchase, improvement, or rehabilitation of owner-occupied residences and to finance qualified home improvement loans. There are several limitations on qualified mortgage bonds, including income limitations for homebuyers, purchase price limitations, and a the requirement that the mortgagor be a "first-time homebuyer" – one that did not have any ownership interest in a primary residence for the previous three years. The first-time home buyer requirement does not apply to targeted area residences – one that is located in an area of chronic economic distress or a census tract in which at least 70% of the families have an income that is 80% or less of the statewide median income. A qualified home improvement loan may not exceed $15,000.

  This act eliminates the first-time homebuyer requirement with respect to qualified Hurricane Katrina recovery residences. A "qualified Hurricane Katrina recovery residence" is one that

is financed before January 1, 2008, and is either 1) located in the core disaster area or 2) the mortgagor of which owned a principal residence in the Hurricane Katrina disaster area that was rendered uninhabitable by Hurricane Katrina and the residence financed is in the same state as the previous residence.

The act also increases the maximum amount of a qualified home improvement loan to $150,000 for residences located in the Hurricane Katrina disaster area to the extent that the loan is for repair of damage caused by Hurricane Katrina.

- *Extension of replacement period for nonrecognition of gain.* A taxpayer generally realizes gain to the extent the sales price of property exceeds the taxpayer's basis in the property. The realized gain is subject to taxation unless it is deferred or not recognized under some special provision. Gain realized by a taxpayer from an involuntary conversion of property is deferred to the extent the taxpayer replaces the property within the applicable period. The applicable period begins when property is converted and ends two years after the close of the first taxable year in which the gain is realized.

  This act extends the applicable period from two years to five years for property that is located within the Hurricane Katrina disaster area that is compulsorily or involuntarily converted after August 25, 2005, by reason of Hurricane Katrina. Substantially all of the use of the replacement property must be in this area for this provision to apply.

- *Secretarial authority to make adjustments regarding taxpayer and dependency status for taxpayers affected by Hurricane Katrina.* This provision allows the Secretary of the Treasury to make adjustments to the tax laws to ensure that taxpayers do not lose eligibility for credits or deductions or experience a change in filing status due to temporary relocations caused by Hurricane Katrina. An example of such an adjustment would be allowing a parent to claim a personal exemption for a child even if the child did not satisfy the residency requirement as a result of a relocation due to Hurricane Katrina. Any adjustment must ensure that an individual is not taken into account by more than one taxpayer with respect to the same benefit.

Gulf Opportunity Zone Act of 2005 (P.L. 109-135) (GO Act)

The Gulf Opportunity Zone Act of 2005 expanded upon the relief offered in the Katrina Emergency Tax Relief Act of 2005. In some instances, this expansion meant extending the additional benefits allowed under the Katrina Act to taxpayers affected by Hurricanes Rita or Wilma. In other cases, the expansion created new tax benefits for taxpayers in one or more of the disaster areas. The act also made numerous technical corrections.

General Provisions. First, the GO Zone Act added several new definitions. First, the "Gulf Opportunity Zone" or "GO Zone" is a subset of the Hurricane Katrina disaster area that has been determined by the President to warrant individual or individual and public assistance from the federal government and is the same as the "core disaster area" under the Katrina Act. The "Hurricane Rita disaster area" means an area with respect to which the President has declared a major disaster before October 6, 2005, with respect to Hurricane Rita. The "Hurricane Wilma disaster area" means an area with respect to which the President has declared a major disaster before November 14, 2005, with respect to Hurricane Wilma. The "Rita GO Zone" and "Wilma GO Zone" are, respectively, the portions of the Hurricane Rita disaster area and Hurricane Wilma disaster area that have been determined by the President to warrant individual or individual and public assistance from the federal government.

Extensions of Hurricane Katrina benefits. The GO Zone Act extended some of the benefits of the Katrina Act to areas affected by Hurricanes Rita and Wilma. The following changes fall into this category.

- *Retirement plans.* The specific provisions discussed under the Katrina Act were repealed and replaced with more general provisions relating to all of the hurricanes. The provisions under this act were substantively identical to those discussed under the Katrina Act with some timing differences related to the different dates of the three storms.
- *Casualty losses.* The specific provisions discussed under the Katrina Act were repealed and replaced with more general provisions relating to all of the hurricanes. The provisions under this act were substantively identical to that discussed under the Katrina Act with some timing differences related to the different dates of the three storms.
- *Secretarial authority to make adjustments.* The specific provisions discussed under the Katrina Act were repealed and replaced with more general provisions relating to all of the hurricanes. The provisions under this act were substantively identical to those discussed under the Katrina Act with some timing differences related to the different dates of the three storms.
- *Mortgage revenue bonds.* The first-time homebuyer requirement is eliminated for residences in the Rita GO Zone or the Wilma GO Zone. In addition, the increased maximum amount of a qualified home improvement loan is applied to residences in the Rita GO Zone and the Wilma GO Zone.

Housing relief for Hurricane Katrina. As discussed above, the Katrina Act provided some relief to individuals who provided housing for Hurricane Katrina evacuees. In this act, Congress provided further tax relief relating to housing expenditures. Employer-provided housing is generally included in income as a form of compensation. An exception to this general rule exists when an employee is required to accept the lodging on business premises as a condition of employment. This act provides that a qualified employee's gross income does not include the value of any in-kind lodging furnished to the employee, the employee's spouse, or the employee's dependents by or on behalf of the qualified employer. The exclusion applies only to lodging furnished during the six-month period beginning January 1, 2006 and may not exceed $600 for any month in which lodging is furnished. For the purposes of this provision, a "qualified employee" is an individual who on August 28, 2005, had a principal residence in the GO Zone and who performs substantially all of his or her employment services in the GO Zone for a qualified employer. For the purposes of this provision, a "qualified employer" is an employer with a trade or business located in the GO Zone.

Depreciation and expensing.

- *Bonus depreciation for Gulf Opportunity Zone property.* In 2002 and 2003, Congress acted to allow for bonus depreciation (either 30% or 50% depending on when the property was purchased) for property that was purchased after September 10, 2001. In order to qualify for the bonus depreciation, the property had to have been placed into service before January 1, 2005. For certain transportation property, noncommercial aircraft, or property with a long production period, the property must have been placed into service before January 1, 2006.

  This act allows a taxpayer to claim an additional first-year depreciation allowance equal to 50% of the adjusted basis of qualified Gulf Opportunity Zone property acquired on or after August 25, 2005, and placed into service before January 1, 2008 (the sunset date is January 1, 2009, for nonresidential real property and residential rental property). "Qualified Gulf

Opportunity Zone property must satisfy all of the following conditions: 1) It must be depreciable modified accelerated cost recovery systems (MACRS) recovery property with a recovery period of 20 years or less, MACRS water utility property, qualified leasehold improvement property, off-the-shelf computer software, residential rental property, or nonresidential real property; 2) Substantially all use of the property must be in the active conduct of a trade or business of the taxpayer in the GO Zone; 3) The original use of the property in the GO Zone must commence with the taxpayer on or after August 25, 2005; 4) The property must be purchased on or after August 25, 2005; 5) No written binding contract for the purchase of the property may be in effect before August 25, 2005; and 6) The property must be placed in service before January 1, 2008 (January 1, 2009 for nonresidential real property and residential rental property). The term does not include property that is 1) mandatory alternative depreciation system (ADS) property; 2) tax-exempt bond-financed property; 3) qualified revitalization buildings or rehabilitation expenditures for which a deduction under section 1400I of the Code is claimed; or 4) property used in connection with a private or commercial golf course, a country club, a massage parlor, a hot tub facility, a suntan facility, a liquor store, or a gambling or animal racing property.

In addition, this act allows the Secretary to extend the placed-in-service date for noncommercial aircraft and property with longer production periods for up to one year. This extension is granted on a case-by-case basis and may only be granted if the delay in placing the property into service was caused by one of the three hurricanes and the property is placed in service in the GO Zone, the Rita GO Zone, or the Wilma GO Zone.

- *Increase in limits on section 179 deductions.* Certain taxpayers may elect to claim a section 179 expense deduction on the cost of qualifying property rather than depreciating the property over time. For the 2003 through 2007 tax years, the maximum amount of the deduction is limited to $100,000, indexed for inflation.[7] This limitation is increased by $35,000 for property that is placed in service in the New York Liberty Zone, an empowerment zone, or a renewal community. The amount of the section 179 deduction is reduced to the extent that the total amount of property placed into service exceeds an investment threshold, currently set at $400,000, indexed for inflation.[8] The section 179 deduction may not exceed a taxpayer's taxable income from the active conduct of a trade or business.

  This act increases the maximum section 179 deduction for qualified GO Zone property by the lesser of $100,000 or the amount of property placed into service in the GO Zone. In addition it increases the total investment limitation by the lesser of $600,000 or the amount of property placed into service in the GO Zone. The increased amounts apply to property acquired on or after August 25, 2005, and placed into service before January 1, 2008. "Qualified GO Zone property" must satisfy all of the following conditions: 1) It must be depreciable modified accelerated cost recovery systems (MACRS) recovery property with a recovery period of 20 years or less; 2) Substantially all use of the property must be in the active conduct of a trade or business of the taxpayer in the GO Zone; 3) The original use of the property in the GO Zone must commence with the taxpayer on or after August 25, 2005; 4) The property must be purchased on or after August 25, 2005; 5) No written binding contract for the purchase of the property may be in effect before August 25, 2005; and 6) The

[7] The adjusted dollar limitation is $105,000 for 2005 and $108,000 for 2006.
[8] The adjusted investment limitation is $420,000 for 2005 and $430,000 for 2006.

property must be placed in service before January 1, 2008. The term does not include property used in connection with a private or commercial golf course, a country club, a massage parlor, a hot tub facility, a suntan facility, a liquor store, or a gambling or animal racing property.

- *Deduction for demolition and clean-up costs.* Under general law, demolition costs are capitalized and added to the basis of the land on which the demolished building was located. The tax treatment of debris removal costs depends on the nature of the costs incurred. Debris removal costs that are in the nature of replacement must be capitalized and added to the basis of the property damaged. Other times, debris removal costs may be used to show a decrease in the fair market value of property which could be used to determine the amount of a casualty loss. This act allows a taxpayer to claim a current deduction for 50% of any qualified Gulf Opportunity Zone clean-up costs paid between August 25, 2005, and January 1, 2008. For the purposes of this provision, a "qualified Gulf Opportunity Zone clean-up cost" is an amount paid for the removal of debris, or the demolition of structures, on real property located in the GO Zone if the real property is either held by the taxpayer for use in a trade or business or is inventory in the hands of the taxpayer.
- *Environmental remediation costs.* Under previous law, a taxpayer may elect to deduct, rather than capitalize, certain environmental remediation expenditures incurred in connection with property used in a trade or business for the production of income. This provision expired for expenditures incurred after December 31, 2005. This act extends the expiration date for that provision until December 31, 2007 for qualified environmental remediation expenditures incurred in connection with a qualified site in the GO Zone. In addition, expenditures incurred on or after August 25, 2005, with respect to petroleum products in the GO Zone are included in the deduction.

Federal Determinations.

This bill would reduce the period of time in which a taxpayer must report a federal change from two years to six months. When the federal government corrects or otherwise determines the amount of an estate, gift, or income that is subject to tax, the taxpayer must file a State return that reflects that change. This is so because the State estate, gift, and income taxes are, to varying degrees, based on amounts determined with respect to federal law. The Multistate Tax Commission has adopted a model uniform statute for reporting federal changes. That model uniform statute requires a taxpayer to report those changes within six months. The model statute is intended to bring uniformity to this area among the states. Currently there is a great deal of variety with some states requiring changes to be reported in as little as 90 days to as much as two years. This provision becomes effective July 1, 2006, and applies to federal determinations made on or after that date.

Filing period for nonresident aliens.

Section 6072(c) of the Code requires a nonresident alien to file an income tax return on or before the fifteenth day of the sixth month following the close of the taxable year (June 15th for taxpayer whose taxable year is the calendar year). Under current State law, nonresident alien corporate taxpayers must file a State return by the fifteenth day of the third month following the close of the taxable year (March 15th for a calendar year taxpayer) and nonresident alien individual taxpayers must file a State return by the fifteenth day of the fourth month following the close of the taxable year (April 15th for a calendar year taxpayer). Thus, under current State law a nonresident alien is required to file a State income tax return before the federal tax return is due. This provision would conform the State filing deadlines to

the federal filing deadlines for nonresident aliens and would ease compliance burdens on those taxpayers. These provisions become effective for taxable years beginning on or after January 1, 2006.

Credit for child-care and certain employment-related expenses.

Current State law allows a credit to a taxpayer who is eligible for the federal credit for child-care and employment-related expenses. The amount of the credit is based on a percentage of those expenses up to a certain amount. For the State credit, the amount of expenses that may be taken into consideration when computing the credit are capped at $2,400 when there is one qualifying individual in the household and $4,800 when there is more than one qualifying individual in the household. Until 2003, these limits were the same as those at the federal. In 2003, the federal limits increased to $3,000 and $6,000 respectively. This provision would conform the State limits to the federal limits. This provision also clarifies that the amount of expenses used in calculating the credit may not include any amount excluded from gross income. This provision becomes effective for taxable years beginning on or after January 1, 2006.

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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BILL DRAFT 2005-LAz-18 [v.7] (1/24)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
2/7/2006 2:06:02 PM

Short Title: Property Tax Changes. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFYING CHANGES TO THE PROPERTY TAX LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-304(a1) reads as rewritten:

"(a1) Electronic Listing. – The board of county commissioners may, by resolution, provide for electronic listing of ~~business~~ personal property in accordance with procedures prescribed by the board. If the board of county commissioners allows electronic listing of ~~business~~ personal property, the assessor must publish this information, including the timetable and procedures for electronic listing, in the notice required by G.S. 105-296(c)."

SECTION 2. G.S. 105-307 reads as rewritten:

"**§ 105-307. Length of listing period; extension; preliminary work.**

(a) Listing Period. – Unless extended as provided in this section, the period during which property is to be listed for taxation each year begins on the first business day of January and ends on January 31.

(b) General Extensions. – The board of county commissioners may, by resolution, extend the time during which property is to be listed for taxation as provided in this subsection. Any action by the board of county commissioners extending the listing period must be recorded in the minutes of the board, and notice of the extensions must be published as required by G.S. 105-296(c). The entire period for listing, including any extension of time granted, is considered the regular listing period for the particular year within the meaning of this Subchapter.

(1) In nonrevaluation years, the listing period may be extended for up to 30 additional days.

(2) In years of octennial appraisal of real property, the listing period may be extended for up to 60 additional days.

(3) If the county has provided for electronic listing of ~~business~~ personal property under G.S. 105-304, the period for electronic listing of business personal property may be extended up to June 1.

(c) Individual Extensions. – The board of county commissioners shall grant individual extensions of time for the listing of real and personal property upon written request and for good cause shown. The request must be filed with the assessor no later than the ending date of the regular listing period. The board may delegate the authority to grant extensions to the assessor. Extensions granted under this subsection shall not extend beyond April 15. If the county has provided for electronic listing of ~~business~~ personal property under G.S. 105-304, the period for electronic listing of business personal property is as provided in subsection (b) of this section.

(d) Preliminary Work. – The assessor may conduct preparatory work before the listing period begins, but may not make a final appraisal of property before the day as of which the value of the property is to be determined under G.S. 105-285."

SECTION 3. G.S. 105-330.10 reads as rewritten:

"§ 105-330.10. (Effective until July 1, 2009) Disposition of interest.

Sixty percent (60%) of the first month's interest collected on unpaid taxes 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. The North Carolina Association of County Commissioners shall direct the Treasurer to distribute the funds in the Account to the Division of Motor Vehicles for the purpose of developing and implementing 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 semiannually 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 4. G.S. 105-277.4 is amended by adding a new subdivision to read:

"(a1) Late Application. – Upon a showing of good cause by the applicant for failure to make a timely application as required by subsection (a) of this section, an application may be approved by the board of equalization and review or, if that board is not in session, by the board of county commissioners. An untimely application approved under this subsection applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed. Decisions of the county board may be appealed to the Property Tax Commission."

SECTION 5. G.S. 105-321(d) is repealed.

SECTION 6. G.S. 105-378 is amended adding a new subsection to read:

"(d) Enforcement and Collection Delayed Pending Appeal. -- When the board of county commissioners or municipal governing body delivers a tax receipt to a tax collector for any assessment that has been appealed to the Property Tax Commission, the tax collector may not seek collection of taxes or enforcement of a tax lien resulting from the assessment until the appeal has been finally adjudicated. The tax collector, however, may send an initial bill or notice to the taxpayer."

SECTION 7. G.S. 105-373(a) reads as rewritten:

"(a) Annual Settlement of Tax Collector. –

(1) Preliminary Report. – After July 1 and before he is charged with taxes for the current fiscal year, the tax collector shall make a sworn report to the governing body of the taxing unit showing:

a. A list of the persons owning real property whose taxes for the preceding fiscal year remain unpaid and the principal amount owed by each person; and

b. A list of the persons not owning real property whose personal property taxes for the preceding fiscal year remain unpaid and the principal amount owed by each person. (To this list the tax collector shall append his statement under oath that he has made diligent efforts to collect the taxes due from the persons listed out of their personal property and by other means available to him for collection, and he shall report such other information concerning these taxpayers as may be of interest to or required by the governing body, including a report of his efforts to make collection outside the taxing unit under the provisions of G.S. 105-364.) The governing body of the taxing unit may publish this list in any newspaper in the taxing unit. The cost of publishing this list shall be paid by the taxing unit.

(2) Insolvents. – Upon receiving the report required by subdivision (a)(1), above the governing body of the taxing unit shall enter upon its minutes the names of persons owing taxes (but who listed no real property) whom it finds to be insolvent, and it shall by resolution designate the list entered in its minutes as the insolvent list to be credited to the tax collector in his settlement.

(3) Settlement for Current Taxes. – After July 1 and before he is charged with taxes for the current fiscal year, the tax collector shall make full settlement with the governing body of the taxing unit for all taxes in his hands for collection for the preceding fiscal year.

a. In the settlement the tax collector shall be charged with:

1. The total amount of all taxes in his hands for collection for the year, including amounts originally charged to him and all amounts subsequently charged on account of discoveries;

2. All penalties, interest, and costs collected by him in connection with taxes for the current year; and

3. All other sums collected by him.

b. The tax collector shall be credited with:

1. All sums representing taxes for the year deposited by him to the credit of the taxing unit or receipted for by a proper official of the unit;

2. Releases duly allowed by the governing body;

3. The principal amount of taxes constituting liens on real property;
4. The principal amount of taxes included in the insolvent list determined in accordance with subdivision (a)(2), above;
5. Discounts allowed by law; ~~and~~
6. Commissions (if any) lawfully payable to the tax collector as ~~compensation.~~compensation; and
7. The principal amount of taxes for any assessment appealed to the Property Tax Commission when the appeal has not been finally adjudicated.

The tax collector shall be liable on his bond for both honesty and faithful performance of duty; for any deficiencies; and, in addition, for all criminal penalties provided by law.

The settlement, together with the action of the governing body with respect thereto, shall be entered in full upon the minutes of the governing body.

(4) Disposition of Tax Receipts after Settlement. – Uncollected taxes allowed as credits in the settlement prescribed in subdivision (a)(3), above, whether represented by tax liens held by the taxing unit or included in the list of insolvents, shall, for purposes of collection, be recharged to the tax collector or charged to some other person designated by the governing body of the taxing unit under statutory authority. The person charged with uncollected taxes shall:

a. Give bond satisfactory to the governing body;
b. Receive the tax receipts and tax records representing the uncollected taxes;
c. Have and exercise all powers and duties conferred or imposed by law upon tax collectors; and
d. Receive compensation as determined by the governing body."

SECTION 8. This act is effective when it becomes law.

BILL ANALYSIS OF LEGISLATIVE PROPOSAL #: Property Tax Changes

BILL ANALYSIS

Committee:	Revenue Laws	**Sponsor:**	
Date:	February 8, 2006	**Analysis by:**	Martha Walston Committee Counsel
Version:	2005-LAz-18		

SUMMARY: This bill is a recommendation of the Department of Revenue and would make the following clarifying changes to the property tax laws:

- *Provides for the electronic filing of both business and individual personal property.*
- *Amends S.L. 2005-294 (AN ACT TO CREATE A COMBINED MOTOR VEHICLE REGISTRATION RENEWAL AND PROPERTY TAX COLLECTION SYSTEM) to clarify that the first month's interest on past due bills would be transferred to a special account. This change reflects the intent of the bill sponsors and supporters.*
- *Authorizes a county board of equalization and review to approve a late application for present-use value appraisal of property if the applicant demonstrates good cause for the delay.*
- *Authorizes a tax collector to receive tax receipts for assessments that have been appealed to the Property Tax Commission and to send the taxpayer an initial tax bill or notice; however, the tax collector may not collect on the tax or enforce a tax lien until the appeal has been finally adjudicated.*

BILL ANALYSIS:

Sections 1 and 2 of the bill provides for the electronic filing of any personal property. Current law allows the board of county commissioners, by resolution, to provide for the electronic listing of business personal property. This language excludes the electronic filing of unlisted automobiles, jet skis, mobile homes, and boats by personal taxpayers. The Department states that there is no reason to limit electronic filing to business personal property.

Current law allows the period for electronic listing of business personal property to be extended to June 1. Section 2 of the bill clarifies that this extension is provided only to business personal property.

Section 3 of the bill makes a clarifying change to legislation that was enacted during the 2005 Session. This change would clarify the intent of the bill's sponsors and supporters. Last Session, the General Assembly ratified House Bill 1779, which creates a combined system for registration and taxation of motor vehicles to become effective July 1, 2009, or upon the earlier creation of a combined registration renewal and tax collection computer system within the Division of Motor Vehicles. Under the new combined system, consumers will receive one statement per registered vehicle, containing both registration fees and the property taxes and vehicle fees due. Payment of the property taxes are a prerequisite to issuance of or renewal for

the registration. Property taxes on the vehicle become due on the date a new registration is applied for or at the end of the grace period following the expiration of a vehicle's current registration. Taxes and registration fees may be collected by the DMV or a DMV agent.

To pay for the new system, the act increased the first month's interest on delinquent registered motor vehicle taxes from 2% to 5%, effective January 1, 2006, and required that 60% of the interest collected on unpaid taxes be transferred on a monthly basis to the Combined Motor Vehicle and Registration Account in the Treasurer's Office. Funds in this Account may only be transferred to the DMV for the purpose of implementing the combined system, at the direction of the North Carolina Association of County Commissioners. The intent of the sponsors to House Bill 1779 and supporters of the bill was that 60% of only the **first month's** interest would be transferred to the Account, not the total interest collected on unpaid taxes. In December, 2005, the North Carolina Department of State Treasurer issued a memorandum directing counties to only remit 60% of the first month's interest to the Treasurer. The memorandum stated that this was the true intent of the bill and that it is anticipated that the language will be corrected during the 2006 Session. The memorandum was sent to all county managers, finance officers, tax administrators, tax assessor, tax collectors, and certified public accountants.

Section 4 of the bill would give a county board of equalization and review the authority to approve a late application for present-use value appraisal of property if the applicant demonstrates good cause for the delay. Under current law, a taxpayer seeking present-use value appraisal of farmland, must file the application within the following time periods:

- An initial application must be filed during the regular listing period of the year for which the benefit of the classification is first claimed, or within 30 days of the date shown on a notice of a change in valuation made pursuant to a county's general reappraisal or horizontal adjustment of real property.
- An application required due to transfer of the land may be submitted at any time during the calendar year but must be submitted within 60 days of the date of the property's transfer.

The bill would allow approval of a late application upon a showing of good cause by the applicant to the board of equalization and review. If the county board of equalization and review is not in session, then the late filing may be approved by the board of county commissioners. Current law allows similar approval for late applications for property tax exemptions or exclusions. (G.S. 105-282.1(a1).)

Sections 5 and 6 of the bill would allow a tax collector to receive tax receipts for assessments that have been appealed to the Property Tax Commission, but would prohibit the tax collector from collecting the tax or enforcing a tax lien resulting from the assessment until the appeal has been finally adjudicated. Pending final adjudication, the tax collector may send an initial tax bill or notice to the taxpayer.

Each year, the county board of commissioners or the municipal governing body directs the tax collector to collect taxes charged in the tax records and receipts. The tax receipt sets out the name and address of the taxpayer, the assessment of the taxpayer's property, the rate of tax

levied, and the amount of property taxes and any penalties due. Current law states that no tax receipts are to be delivered to the tax collector for any assessment appealed to the Property Tax Commission until the appeal has been finally adjudicated. In practice, boards of equalization and review often adjourn on June 30th, except to hear appeals filed prior to June 30th. By August 1, however, the tax collector has received the tax receipts. The proposal validates this practice, but clarifies that the tax collector may not seek any remedies for collection of the taxes or enforcement of the tax lien pending final adjudication of appeal from the assessment. The tax collector, however, may send an initial bill or notice to the taxpayer pending final adjudication. By providing notice pending appeal, the taxpayer may choose to avoid the amount of interest that accrues while the appeal is pending. If the taxpayer wins on appeal, the taxpayer receives a refund of any taxes paid plus interests. Finally, the proposal would put a potential buyer of the property on notice of a tax bill, if the property is transferred pending the appeal.

Section 7 of the bill makes clarifying changes to the lists of items credited to the tax collector in the collector's final settlement with the governing body for all taxes in his hands for collection for the preceding fiscal year. Current law provides that the final settlement must contain the items to be charged against the tax collector and the items to be allowed as credits for the collector.[1] The charges and credits should balance. The proposal adds to the lists of credits the principal amount of taxes for any assessment appealed to the Property Tax Commission when the appeal has not been finally adjudicated.

[1] Charges include the total amount of all taxes placed in the collector's hands for collection for the year, all late-listing penalties and costs collected by the collector, all interests on taxes collected by the collector, and any other sums collected or received by the tax collector. Credits include all sums deposited by the collector to the credit of the taxing unit, releases allowed by the governing body, discounts allowed for early payment of taxes, the principal amount of taxes constituting liens against real property, the principal amount of taxes determined to be insolvent and to be allowed as credits, and any commission the collector is entitled to deduct from amounts collected.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

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 8, 2006

TO: Revenue Laws

FROM: Rodney Bizzell
Fiscal Research Division

RE: Property Tax Changes

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:	No Significant Impact				
EXPENDITURES:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue, North Carolina Local Governments

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:
Sections 1 and 2 of the bill provide for the electronic filing of personal property. Currently, counties are allowed to provide for electronic listing only for business personal property. The Department indicates no reason that this listing mechanism should not be allowed for all personal property. Current law allows the period for electronic listing of business personal property to be extended to June 1. Section 2 of this bill clarifies that this extension is provided only to business personal property.

Section 3 of the bill makes a clarifying change to House Bill 1779, which was enacted during the 2005 Session. The bill creates a combined system for registration and taxation of motor vehicles. The bill increases the first-month interest payments on unpaid vehicle property taxes from 2% to

5% and directs 60% of interest revenue to a special account within the Department of State Treasurer for the purpose of creating a registration renewal and property tax collection computer system within the Division of Motor Vehicles. The intent of the bill, and the practice put into place by the Department of State Treasurer, is to transfer 60% of only the first month of interest on unpaid taxes to the special account. This bill clarifies that the transfer applies to only the month of interest.

Section 4 of the bill would give county boards of equalization and review the authority to approve a late application for present-use value appraisal of property if the applicant demonstrates a good cause for the delay. Current law allows similar approvals for property tax exemptions or exclusions.

Sections 5 and 6 of the bill would allow tax collectors to receive tax receipts for assessments that have been appealed to the Property Tax Commission, but would not allow the collector to collect the tax or enforce a tax lien resulting from the assessment while the appeal is pending. This bill would validate the current practice in which boards of equalization provide tax receipts to collectors by August 1, but clarifies that the collector may not seek remedies for appealed assessments until the appeal is adjudicated.

Section 7 of the bill makes a clarifying change to add taxes appealed to the Property Tax Commission to the list of items credited to the tax collector in the collector's final settlement with the governing body.

ASSUMPTIONS AND METHODOLOGY: All of the proposed changes contained in the bill are administrative or clarifying in nature and would result in no significant fiscal impact.

SOURCES OF DATA: North Carolina Department of Revenue

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

U D

BILL DRAFT 2005-SVz-10 [v.9] (01/24)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
2/8/2006 10:16:03 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. 105-113.82(a) reads as rewritten:

"§ 105-113.82. Distribution of part of beer and wine taxes.

(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 ~~Agriculture and Consumer Services~~ 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%).

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 2. G.S. 105-122(d) reads as rewritten:

"(d) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection (c) of this section, which amount ~~so determined~~ shall ~~in no case~~ not be less than fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each ~~such~~ corporation ~~plus the total appraised value of intangible property returned for taxation of intangible personal property as herein specified~~ nor less than its total actual investment in tangible property in this State, every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the report and statement are due, a franchise or privilege ~~tax, which is hereby levied~~ tax at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the total amount of capital stock, surplus and undivided profits as ~~herein provided.~~ provided in this section. The tax imposed in this section shall ~~in no case~~ not be less than thirty-five dollars ($35.00) and shall be for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each ~~such~~ corporation in this State. Appraised value of tangible property including real estate ~~shall be~~ is the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. ~~Appraised value of intangible property shall be the total gross valuation required to be reported for intangible tax purposes on April 15 coincident with or next preceding the due date of the franchise tax return.~~ The term "total actual investment in tangible property" as used in this section ~~shall be construed to mean~~ means the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax purposes, and also less any indebtedness incurred and existing by virtue of the purchase of any real estate and any permanent improvements made thereon. In computing "total actual investment in tangible personal property" there shall also be deducted reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or into streams, lakes, or rivers, upon condition that the corporation claiming ~~such~~ this deduction shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that said Department or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that ~~such~~ the device, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to ~~such~~ the devices, plants or equipment, that ~~such~~ the device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management

Commission or local air pollution control program and that the primary purpose ~~thereof~~ is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas ~~shall be~~ is treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to ~~such~~ pollution abatement plants or equipment constructed or installed on or after January 1, 1955."

SECTION 3.(a) G.S. 105-130.5(a) reads as rewritten:

"§ 105-130.5. Adjustments to federal taxable income in determining State net income.

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

. . .

(10) The total amounts allowed under this Chapter during the taxable year as a credit against the taxpayer's income tax. A corporation that apportions part of its income to this State shall make the addition required by this subdivision after it determines the amount of its income that is apportioned and allocated to this State and shall not apply to a credit taken under this Chapter the apportionment factor used by it in determining the amount of its apportioned income. The amount of a credit claimed under G.S. 105-130.47 or under G.S. 105-130.34 is not required to be added to income as otherwise required by this subdivision.

. . ."

SECTION 3.(b) G.S. 105-130.47(i) reads as rewritten:

"(i) No Double Benefit. – A taxpayer may not claim a credit under this section for qualifying expenses for which it claimed a deduction under the Code. A taxpayer that claims a credit provided under this section must adjust taxable income as provided in G.S. 105-130.5(a)(18). The amount of the credit claimed is not, however, required to be added to income under G.S. 105-130.5(a)(10)."

SECTION 3.(c) G.S. 105-130.47(a) reads as rewritten:

"§ 105-130.47. Credit for qualifying expenses of a production company.

(a) Definitions. – The following definitions apply in this section:

(1) Highly compensated ~~individual. – An individual~~ person. – A person who receives compensation in excess of one million dollars ($1,000,000) with respect to a single production.

(2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event shall not include commercial advertising, an episodic television series, a television pilot, music video, motion picture, or documentary production where any sporting events are

presented through archived historical footage or similar footage depicting earlier live sporting events that originated more than thirty days before the time of such usage.

(3) Production company. – Defined in G.S. 105-164.3.

(4) Qualifying expenses. – The sum of the total amount spent in this State for the following by a production company in connection with a production:

a. Goods and services leased or purchased by the production ~~company.~~ company, other than amounts paid to a highly compensated person. For goods with a purchase price of twenty-five thousand dollars ($25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

b. Compensation and wages paid by the production company, other than amounts paid to a highly compensated ~~individual,~~ person, on which the production company remitted withholding payments to the Department of Revenue under Article 4A of this Chapter.

SECTION 3.(d) G.S. 105-151.29(a) reads as rewritten:

"§ 105-151.29. Credit for qualifying expenses of a production company.

(a) Definitions. – The following definitions apply in this section:

(1) Highly compensated ~~individual. An individual~~ person. – A person who receives compensation in excess of one million dollars ($1,000,000) with respect to a single production.

(2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event shall not include commercial advertising, an episodic television series, a television pilot, music video, motion picture, or documentary production where any sporting events are presented through archived historical footage or similar footage depicting earlier live sporting events that originated more than thirty days before the time of such usage.

(3) Production company. – Defined in G.S. 105-164.3.

(4) Qualifying expenses. – The sum of the total amount spent in this State for the following by a production company in connection with a production:

a. Goods and services leased or purchased by the production ~~company.~~ company, other than amounts paid to a highly compensated person. For goods with a purchase price of twenty-five thousand dollars ($25,000) or more, the amount included in qualifying expenses is the purchase price less the

fair market value of the good at the time the production is completed.

b. Compensation and wages paid by the production company, other than amounts paid to a highly compensated ~~individual,~~ person, on which the production company remitted withholding payments to the Department of Revenue under Article 4A of this Chapter."

SECTION 3.(e) G.S. 105-259(b) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

~~(32) To provide the report required under G.S. 105-164.14(c) to the Department of Public Instruction and the Fiscal Research Division of the General Assembly.~~

. . .

(36) To furnish to a taxpayer claiming a credit under G.S. 105-130.47 or G.S. 105-151.29 information from a third party to the extent the information was used by the Secretary to adjust the amount of the credit claimed by the taxpayer."

SECTION 4. G.S. 105-164.6(c) reads as rewritten:

"(c) Credit. – A credit is allowed against the tax imposed by this section for the following:

(1) The amount of sales or use tax paid on the item to this State. Payment of sales or use tax to this State on an item by a retailer extinguishes the liability of a purchaser for the tax imposed under this section.

(2) The amount of sales or use tax paid on the item to another state. If the amount of tax paid to the other state is less than the amount of tax imposed by this section, the difference is payable to this State. The credit allowed by this subdivision does not apply to tax paid to a state that does not grant a similar credit for sales or use taxes paid in North Carolina."

SECTION 5. G.S. 105-164.7 reads as rewritten:

"**§ 105-164.7. Sales tax part of purchase price.**

Every retailer subject to the tax levied in G.S. 105-164.4 shall at the time of selling or delivering or taking an order for the sale or delivery of taxable tangible personal property or a taxable service, or collecting the sales price, add to the sales price the amount of tax due. The tax constitutes a part of the purchase price, is a debt from the purchaser to the retailer until paid, and is recoverable at law in the same manner as other debts. The tax must be stated and charged separately from the sales price, shown separately on the retailer's sales records, and paid by the purchaser to the retailer as trustee for and on account of the State. The retailer is liable for the collection of the tax and for its payment to the Secretary. The retailer's failure to charge the tax to or to collect the tax from the purchaser does not affect this liability. It is the intent of this Article that the tax be added to the sales price of tangible personal property and services

when sold at retail and be borne and passed on to the customer, instead of being borne by the retailer."

SECTION 6. G.S. 105-164.13 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:

. . .

(4e) Sales to a farmer of a~~A~~ grain, feed, or soybean storage facility, and parts and accessories attached to the facility. The term "farmer" has the same meaning as defined in subdivision (1) of this section."

SECTION 7. G.S. 105-164.14(k) reads as rewritten:

"(k) Reports. – The Department of Revenue shall publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The number of taxpayers claiming a refund allowed in subsections (a1), (g), (h), (i), ~~and (j)~~(j), and (*l*) of this section.

(2) The total amount of purchases with respect to which refunds were claimed.

(3) The total cost to the General Fund of the refunds claimed."

SECTION 8.(a) G.S. 105-236 reads as rewritten:

"**§ 105-236. ~~Penalties.~~Penalties; situs of violations; penalty disposition.**

(a) Penalties. – ~~Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. The clear proceeds of any civil penalties levied pursuant to subdivisions (3), (4), (5)a., and (6) of this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:~~The following civil penalties and criminal offenses apply:

(1) Penalty for Bad Checks. – When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess a penalty equal to ten percent (10%) of the check, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution ~~in this State~~ to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds.

. . .

~~(11) Any violation of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes is considered an act committed in part at the office of the Secretary in Raleigh. The~~

~~certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.~~

(12) Repealed by Session Laws 1991, c. 45, s. 27.

(b) Situs. – Violation of a tax law is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

(c) Penalty Disposition. – Civil penalties assessed by the Secretary are assessed as an additional tax. The clear proceeds of civil penalties assesses by the Secretary must be credited to the Civil Penalty and Forfeiture Fund, established in G.S. 115C-457.1."

SECTION 8.(b) G.S. 105-449.127 is repealed.

SECTION 8.(c) G.S. 105-449.48 is repealed.

SECTION 8.(d) G.S. 105-449.49 reads as rewritten:

"**§ 105-449.49. Temporary permits.**

(a) Issuance. – Upon application to the Secretary and payment of a fee of fifty dollars ($50.00), a motor carrier may obtain a temporary permit authorizing the carrier to operate a vehicle in the State for three days without registering the vehicle in accordance with G.S. ~~105-449.47 for not more than three days.~~ 105-449.47. A motor carrier to whom a temporary permit has been issued may elect not to report its operation of the vehicle during the three-day period. Fees collected under this subsection are credited to the Highway Fund.

(b) Refusal. – The Secretary may refuse to issue a temporary permit to any of the following:

(1) A motor carrier whose registration has been withheld or revoked.

(2) A motor carrier who the Secretary determines is evading payment of tax through the successive purchase of temporary permits."

SECTION 9. The caption of G.S. 105-249.2 reads as rewritten:

"**§ 105-249.2. Due date extended and penalties waived for certain military personnel or ~~individuals~~ persons affected by a presidentially declared disaster.**"

SECTION 10. The caption of G.S. 143B-437.71 reads as rewritten:

"**§ 143B-437.71. One North Carolina Fund established as a ~~nonreverting account.~~special revenue fund.**"

SECTION 11.(a) G.S. 153A-155(d) reads as rewritten:

"(d) Administration. – The taxing county shall administer a room occupancy tax it levies. A room occupancy tax 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 20th day of each month, prepare and render a return on a form prescribed by the taxing county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax

return filed with the county finance officer 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 11.(b) G.S. 160A-215(d) reads as rewritten:

"(d) Administration. – The taxing city shall administer a room occupancy tax it levies. A room occupancy tax 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 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 room occupancy tax return filed with the city finance officer 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 12. G.S. 160A-49(f2) reads as rewritten:

"(f2) Effective Date of Annexation for Certain Property. – Annexation of property subject to annexation under subsection (f1) of this section shall become effective:

(1) Upon the effective date of the annexation ordinance, the property is considered part of the city only (i) for the purpose of establishing city boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city authority pursuant to Article 19 of this Chapter.

(2) For all other purposes, the annexation becomes effective as to each tract of such property or part thereof on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to ~~G.S. 105-227.4~~ G.S. 105-277.4 or no longer meets the requirements of subdivision (f1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subdivision, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General Statutes nor is the tract or part of a tract entitled to services provided by the city."

SECTION 13. The introductory language for Section 59.2 of S.L. 2005-435 reads as rewritten:

"**SECTION 59.2.(a)** ~~G.S. 105-114.1(a4)~~ G.S. 105-114(a4) reads as rewritten:"

SECTION 14. The introductory language of Section 4 of S.L. 2005-413 reads as rewritten:

"**SECTION 4.** ~~G.S. 105-129.15(7) reads~~ Subdivisions (6) and (7) of G.S. 105-129.15 read as rewritten:"

SECTION 15. Section 3 is effective for taxable years beginning on or after January 1, 2005. The remainder of this act is effective when it becomes law.

BILL DRAFT 2005-SVz-10: Revenue Laws Technical Changes

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	February 8, 2006
Introduced by:		**Summary by:**	Trina Griffin Committee Counsel
Version:	Draft		

SUMMARY: ***This bill draft makes several technical, clarifying, and administrative changes to the revenue laws and related statutes.***

Sections 1, 2, 5, 10, 12, 13, and 14 are technical changes. Sections 4, 6, 8, and 9 are clarifying changes. Sections 3, 7, and 11 make administrative changes.

BILL ANALYSIS: This bill draft makes the following technical, clarifying, and administrative changes:

Section	Explanation
1	Corrects a departmental reference since S.L. 2005-380 transferred the NC Grape Growers Council from the Department of Agriculture and Consumer Services to the Department of Commerce.
2	Removes obsolete language and makes other stylistic changes. This statutory subsection makes two obsolete references to including the appraised value of intangible property in the appraised value base. This language became obsolete with the repeal of the intangibles tax effective for tax years beginning on or after January 1, 1995. The Department of Revenue does not require intangible property to be included in the appraised value base.
3	Section 3 relates to the new film incentives tax credit enacted last year. Subsection (a) clarifies that the film incentives tax credit is not required to be added back to federal taxable income for purposes of determining State net income because corporations are already required to add to federal taxable income those expenses used to calculate the credit to prevent the taxpayer from receiving a double benefit. Currently, a similar provision applies to G.S. 105-130.34, the credit for certain real property donations, where the amount of the credit is not required to be added to federal taxable income, but this provision is found in G.S. 105-130.9. To be consistent, Section 3 adds G.S. 105-130.34 to G.S. 105-130.5(a) so that both exclusions from the add back requirement are both found in the add back statute. Subsection (b) makes a corresponding change in the film incentives tax credit statute. Subsections (c) and (d) change in both the corporate and individual income tax articles, the term "highly compensated individual" to "highly compensated person" with regard to the film incentives credit.[1] This change is to clarify that a production company that

[1] G.S. 105-228.90 defines "person" as "an individual, a fiduciary, a firm, an association, a partnership, a limited liability company, a corporation, a unit of government, or another group acting as a unit. The term includes an officer or employee of a corporation, a member, a manager, or an employee of an LLC, and a member or employee of a partnership who, as officer, employee, member, or manager, is under a duty to perform an act in meeting the requirements of Subchapter I, V, or VIII of

	hires an actor who receives his salary from a loan-out company is subject to the "highly compensated" limitation, regardless of whether the actor is classified as an employee of the production company or the loan-out company is considered a service provider. Subsection (e) makes two changes to the confidentiality statute, one of which is related to the film incentives tax credit. It adds a new subdivision (36), which allows the Department of Revenue to provide to a production company claiming a film production credit information from a third party to the extent the information was used by the Department to adjust the amount of the credit claimed by the production company. It also repeals subdivision (32), which allows the Department of Revenue to provide to Department of Public Instruction and the Fiscal Research Division reports regarding sales and use tax refunds received by school administrative units. This provision was enacted last year. However, Section 32(b) of S.L. 2005-435 amended the definition of tax information to exclude governmental agency refunds. Therefore, an exception is not needed in the confidentiality statute since the information is no longer confidential tax information.
4	Corrects an inadvertent omission. In last year's budget bill, there was a rewrite of this statutory section on use tax. A credit should be allowed for both sales and use tax paid to another state, but the revised statute only provides a credit for sales tax paid. There was no intent to change the application of the tax and so, this section adds the phrase "or use" back into the statute.
5	Makes a grammatical change to the statute.
6	Clarifies that the exemption from sales tax for sales of grain, feed, or soybean storage facilities and accessories only applies to sales made to farmers. This was one of the items previously subject to the 1%, $80 maximum rate of tax. The 1% rate was imposed on sales to farmers of grain, feed, or soybean storage facilities and accessories. Last year, to conform to the Streamlined Agreement, the General Assembly exempted these items from sales tax. However, the new exemption language did not limit the exemption to farmers.
7	Last year, a sales and use tax refund was authorized for the purchase of fuel by interstate passenger air carriers and by motorsports racing team or sanctioning body. Under current law, the Department of Revenue is required annually to publish the number of taxpayers claiming certain sales and use tax refunds. This section would add these categories of refunds to the reporting requirement.
8	**Subsection 8(a)** reorganizes the penalties statute and makes some technical and clarifying changes. It divides the former statutory section into three subsections: subsection (a) lists the various penalties available to the Department of Revenue for violations of the tax laws; subsection (b) is a recodification of the principle previously set out in subdivision (11), which states that a violation of a tax law is considered an act committed in part at the office of the Secretary in Raleigh; and subsection (c) restates language previously found at the beginning of the statute directing the disposition of the penalty proceeds to the Civil Penalty and Forfeiture Fund. This subsection also deletes

this Chapter, G.S. 55-16-22, of Article 12 of Chapter 113A of the General Statutes, or of Article 3 of Chapter 119 of the General Statutes."

	an obsolete requirement to avoid the penalty for a bad check, which states that a person had sufficient funds in a bank account "in this State." Since the Department does not follow this requirement, it is being deleted. **Subsection 8(b)** repeals G.S. 105-449.127, which provides that civil penalties assessed for violation of the motor fuels tax laws be credited to the Highway Fund. G.S. 105-449.48 provides that fees collected for the issuance of temporary permits for motor carriers and all civil penalties collected for violations of the motor carrier laws be credited to the Highway Fund. **Subsection 8(c)** repeals this statute and moves the fee disposition language to G.S. 105-449.49. The repeal of these two statutes redirects from the Highway Fund to the Civil Penalty and Forfeiture Fund civil penalty proceeds collected under these two articles as required by *North Carolina School Boards Assn. v. Moore*. In July of 2005, the North Carolina Supreme Court held in *North Carolina School Boards Assn. v. Moore* that the penalties assessed under Chapter 105 are imposed as a monetary payment for a taxpayer's noncompliance with a mandate of the Revenue Act, that they are punitive in nature, and, as such, they are subject to Article IX, Section 7 of the NC Constitution requiring those funds be remitted to the Civil Penalty and Forfeiture Fund for use by the schools.
9	Amends the caption of G.S. 105-249.2 by replacing the word "individuals" with the word "persons." This statute provides, in part, that no penalties may be assessed for any period in which the time for filing a federal return or for paying a federal tax is extended because of a presidentially declared disaster. The relief provided by this statute is applied by the Department of Revenue equally to all tax entities, including businesses, and not just individuals.
10	Amends the caption of the statute to reflect what the statute actually provides. G.S. 143B-437.71(a) states, "The One North Carolina Fund is established as a special revenue fund in the Department of Commerce."
11	Subsections 12(a) and (b) conform the date an occupancy tax return is due to the date that the occupancy taxes are due.
12	Corrects an incorrect statutory reference.
13	Corrects an incorrect statutory reference.
14	Corrects introductory language from a 2005 session law.

EFFECTIVE DATE: Section 3 is effective for tax years beginning on or after January 1, 2005. The remainder of the act is effective when it becomes law.

2005 Biennial Tax Expenditure Report

Presentation to the Revenue Laws Study Committee

February 8, 2006

Tax Expenditure Report

- Mandated by G.S. 105-256(a)(2)
- A "tax expenditure" is defined as an exemption, exclusion, deduction, allowance, credit, refund, preferential tax rate or other device which reduces the amount of tax revenue which otherwise would be collected.

Tax Expenditures by Type of Tax

Tax	Number of Expenditures	Value of Expenditures Over $100K ($ millions)	Number of Expenditures Estimated at <$100K	Number of Expenditures with Estimate Unavailable
Privilege	19	11.9	9	1
Tobacco Products	3	2.5	1	0
Alcoholic Beverage	2	2.4	1	0
Franchise	20	276.0	0	8
Corporation Income	47	380.5	13	5
Business Incentives	21	165.0	6	0
Individual Income	27	765.0	6	1
Sales and Use	71	1,754.1	6	18
Highway Use	10	15.3	2	3
Scrap Tire Disposal	1	0.0	0	1
White Goods	1	0.0	1	0
Piped Natural Gas	1	3.9	0	0
Gift	3	21.2	0	0
Insurance	5	127.6	0	1
Conveyances	8	8.5	2	2
Motor Fuels	14	36.4	3	1
TOTAL	259	3,750.3	50	41

Top Ten Tax Expenditures

Tax	Expenditure	$ Millions
Sales and Use	Food for Home Consumption Exemption	416.8
Individual Income	Bailey Case State Employee Retirement Income Deduction	246.0
Sales and Use	Prescription Drug and Insulin Exemption	242.0
Franchise	Holding Company Cap	200.0
Sales and Use	Refunds to Nonprofits	183.0
Individual Income	Social Security Deduction	179.4
Individual income	Credit for Children	134.3
Sales and Use	Farming Feed, Litter, and Medication Exemption	128.0
Corporation Income	Net Economic Loss Deduction	127.4
Sales and Use	3% Preferential Rate on Residential and Commercial Electricity	107.1

BILL ANALYSIS OF LEGISLATIVE PROPOSAL #: Additional Personal Income Tax Filing Option

BILL ANALYSIS

Committee:	Revenue Laws	**Sponsor:**	
Date:	February 8, 2006	**Analysis by:**	Martha Walston Committee Counsel
Version:	2005-LAz-20		

SUMMARY: This bill is a recommendation of the Department of Revenue and would allow married couples the option of filing a joint return if one spouse is a nonresident with no North Carolina income.

BILL ANALYSIS: Under current law, a married couple who file a federal joint return are required to file a North Carolina joint return if each spouse is either a resident or has North Carolina income. If one spouse is a nonresident and has no North Carolina income, that spouse is not subject to North Carolina income tax and the other spouse must file a separate return. The current law is based on the fact that North Carolina has no jurisdiction to tax a person who is not a resident and does not have income from North Carolina sources. The current law makes filing more complicated because the couple must recompute their income separately in order to file a North Carolina return.

The bill would allow a married couple the option of filing jointly if they file a federal joint return and if one spouse is a nonresident with no income from North Carolina. Because North Carolina does not have jurisdiction over the nonresident spouse, the bill does not require a joint return.[1] It merely gives a couple a joint return option so that they may choose to file jointly, for example if doing so would simplify their tax preparation or reduce their North Carolina taxes. This option would also allow North Carolina residents to file jointly in Georgia and South Carolina. Currently, these two states do not allow nonresident joint filings for residents of states that do not allow joint filings for Georgia and South Carolina residents.

[1] A New York court found that a provision, which required married nonresidents to file a joint nonresident tax return in New York if they filed a joint federal return, was unconstitutional. The court explained that the provision exposed a nonresident spouse with no New York connections to civil and criminal liability in New York by virtue of that spouse's signature on the State tax return.

See Library shelves

North Carolina

Biennial Tax Expenditure Report

2005

Tax Research Division
October 2005

275 copies of this report were printed at a cost of $248.50, or $0.90 per copy.

REVENUE LAWS STUDY COMMITTEE AGENDA

Sen. John Kerr Rep. Paul Luebke

Wednesday, March 1, 2006
Room 544, Legislative Office Building
1:00 p.m.

I. **Approval of the Minutes from the February 8, 2006, Meeting**

II. **Revenue Laws Technical Changes: Draft Proposal and Summary**

Continuation of the draft from previous meeting – Provisions to improve the collection and administration of the motor fuel tax.

Cindy Avrette, Research Division

III. **Streamlined Sales Tax Definitions: Draft Proposal and Summary**

Sabra Faires, Senate Tax Counsel

IV. **S Corp Income Tax Adjustments: Draft Proposal and Summary**

Trina Griffin, Research Division

V. **Clarify Additional Gross Premiums Tax: Draft Proposal and Summary**

Cindy Avrette, Research Division

VI. **Franchise Tax Loophole Closing: Draft Proposal and Summary**

Trina Griffin, Research Division

VII. **Franchise Tax Base Calculation: Draft Proposal and Summary**

Cindy Avrette, Research Division

VIII. **Expansion of Royalty Reporting Option: Draft Proposal and Summary**

Trina Griffin, Research Division

IX. **Real Estate Investment Trusts**

Cindy Avrette, Research Division

X. **Taxation of Communications Services**

- **Review of Current Tax Treatment** – Cindy Avrette, Research Division
- **Review of Current NC Market** – Brenna Erford, Fiscal Research Division
- **Review of Current Legislation in other States** – Sabra Faires, Senate Tax Counsel

XI. **Adjournment**

Next Meeting: April 5, 2006, in Room 544 LOB at 1:00 pm

REVENUE LAWS STUDY COMMITTEE
Wednesday, February 8, 2006 at 1:00 PM
Room 544, Legislative Office Building

MINUTES

The Revenue Laws Study Committee met at 1:00 PM on February 8, 2006, in Room 544 of the Legislative Office Building. Fourteen members of the committee were present. Senator Kerr and Representative Luebke presided.

Approval of the Minutes.

Sen. Clodfelter motioned for the approval of the January 11, 2005 minutes and the motion carried. A copy of the minutes is attached.

Synopsis of the Institute of Emerging Issues Forum on 'Financing the Future'.

Sabra Faires, Senate Tax Counsel, was recognized for a description of the 2006 Emerging Issues Forum on 'Financing the Future". A copy of the presentation is attached.

Streamlined Sales Tax Update.

Andy Sabol, Director of the Sales & Use Tax Division, Department of Revenue, was recognized for an update on the Streamlined Sales Tax. A copy of the presentation is attached.

Additional Personal Income Tax Filing Option.

Martha Walston, a staff attorney with the Fiscal Research Division, was recognized to explain the 'Additional Personal Income Tax Filing Option' draft proposal and fiscal memo. Rep. Luebke made a motion for consideration of the draft proposal and the motion carried. A copy of the draft proposal, summary and fiscal memo are attached.

IRC Update.

Canaan Huie, a staff attorney with the Bill Drafting Division, was recognized to explain the 'IRC Update' draft proposal and fiscal memo. Greg Radford, Director of the Corporate, Excise, and Insurance Tax Division, NC Department of Revenue, was available to answer questions. In addition to updating the reference to the Internal Revenue Code, the bill would shorten the time span in which a taxpayer must report a federal change from two years to six months. Rep. Brubaker made a motion that this part of the bill be amended to provide a taxpayer with the right to request a six-month extension of time to report the federal change. The motion carried. A copy of the draft proposal and summary are attached.

Property Tax Changes.

Martha Walston, a staff attorney with the Fiscal Research Division, was recognized to explain the 'Property Tax Changes' draft proposal and fiscal memo. Pete Rodda, Forsyth County Tax Administrator, and Paul Meyer, Assistant Counsel for NC Association of County Commissioners, were available to answer questions. A copy of the draft proposal, summary and fiscal memo are attached.

Revenue Laws Technical Changes.

Trina Griffin, a staff attorney with the Research Division, was recognized to explain the 'Revenue Laws Technical Changes' draft proposal. Greg Radford, Director of the Corporate, Excise, and Insurance Tax Division, NC Department of Revenue, was available to answer questions. A copy of the draft proposal and summary are attached.

2005 Biennial Tax Expenditure Report.

Karl Knapp, Director of the Tax Research Division, Department of Revenue, presented the 2005 Biennial Tax Expenditure report as required by G.S. 105-256(a)(2). A copy of the report is attached.

Rep. Wainwright made a motion to adjourn the meeting and the motion carried. The meeting adjourned at 3:37 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

U D

BILL DRAFT 2005-RBxz-29 [v.7] (02/08)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
3/1/2006 9:54:47 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 AND TO IMPROVE THE COLLECTION AND ADMINISTRATION OF THE MOTOR FUEL TAX.

The General Assembly of North Carolina enacts:

...

SECTION 15.(a) G.S. 105-449.65(b) reads as rewritten:

"(b) Multiple Activity. – A person who is engaged in more than one activity for which a license is required must have a separate license for each activity, unless this subsection provides otherwise. A person who is licensed as a supplier is considered to have a license as a distributor. A person who is licensed as an occasional importer or a tank wagon importer is not required to obtain a separate license as a distributor unless the importer is also purchasing motor fuel, at the terminal rack, from an elective or permissive supplier who is authorized to collect and remit the tax to the State. A person who is licensed as a distributor is not required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or a permissive supplier and is not required to obtain a separate license as an exporter. A person who is licensed as a distributor or a blender ~~is not required to obtain a separate license~~ and who transports fuel is considered to be licensed as a motor fuel ~~transporter if the distributor or blender does not transport motor fuel for others for hire.~~transporter."

SECTION 15.(b) G.S. 105-449.101 reads as rewritten:

"§ 105-449.101. Motor fuel transporter to file informational return showing deliveries of ~~imported or exported~~ motor fuel.

(a) Requirement. – A motor fuel transporter ~~that imports motor fuel into this State or exports motor fuel from this State~~ must file a monthly informational return with the Secretary that shows motor fuel ~~received or delivered for import or export~~

transported in this State by the transporter during the month. ~~This requirement does not apply to a distributor that is not required to be licensed as a motor fuel transporter.~~

(b) Content. – The return required by this section is due ~~by the 25th day of the month following the month covered by the return.~~ on the same date as a monthly return due under G.S. 105-449.90. The return must contain the following information and any other information required by the Secretary:

(1) The name and address of each person from whom the transporter received motor fuel outside the State for delivery in the State, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel.

(2) The name and address of each person from whom the transporter received motor fuel in the State for delivery outside the State, the amount of motor fuel delivered, the date the motor fuel was delivered, and the destination state of the fuel.

(3) The name and address of each person from whom the transporter received motor fuel in the State for delivery in the State, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel."

SECTION 16.(a) G.S. 105-449.60 is amended by adding a new subdivision to read:

"§ 105-449.60. Definitions.

The following definitions apply in this Article:

...

(10a) Exempt card or code. – A credit card or an access code that enables the person to whom the card or code is issued to buy motor fuel at retail without paying the motor fuel excise tax on the fuel."

SECTION 16.(b) G.S. 105-449.88A reads as rewritten:

"§ 105-449.88A. Liability for tax due on motor fuel designated as exempt by the use of cards or codes.

~~(a) Exempt Cards at Rack. When a licensed distributor or licensed importer removes motor fuel from a terminal by means of an exempt card or exempt access code issued by the supplier, the distributor or importer represents that the fuel removed will be resold to a governmental unit that is exempt from the tax. A supplier may rely on this representation. A licensed distributor or licensed importer that does not resell motor fuel removed from a terminal by means of an exempt card or exempt access code to an exempt governmental unit is liable for any tax due on the fuel.~~

(b) Exempt ~~Cards at Retail.~~ Card or Code. ~~An "exempt card or code" is a credit card or an access code that enables the person to whom the card or code is issued to buy motor fuel at retail without paying the motor fuel excise tax on the fuel.~~ An entity that issues an exempt card or code has a duty to determine if the person to whom it is issued is exempt from the motor fuel excise tax. An entity that issues an exempt card or code to a person who is not exempt from tax is liable for tax due on motor fuel the person purchases at retail by use of the exempt card or code. If a supplier authorizes another entity to issue an exempt card or code to a person who is not exempt from tax, the

supplier and the entity that issued the card are jointly and severally liable for tax due on motor fuel the person purchases at retail by use of the exempt card or code.

(c) Card Holder. – A person to whom an exempt card or ~~exempt access card~~ code is issued ~~for use at a terminal or at retail~~ is liable for any tax due on fuel purchased with the card or code for a purpose that is not exempt. A person who misuses an exempt card or code by purchasing fuel with the card or code for a purpose that is not exempt is liable for the tax due on the fuel."

SECTION 16.(c) G..S. 105-449.90(c) is repealed.

SECTION 16.(d) G.S. 105-449.93 reads as rewritten:

"**§ 105-449.93. ~~Exempt sale deduction and percentage~~ Percentage discount for licensed distributors and some licensed importers.**

~~(a) Deduction. – A license holder listed below may deduct from the amount of tax otherwise payable to a supplier the amount calculated on motor fuel the license holder received from the supplier and resold to a governmental unit whose purchases of motor fuel are exempt from the tax under G.S. 105-449.88 if, when removing the fuel, the license holder used an access card or code specified by the supplier to notify the supplier of the license holder's intent to resell the fuel in an exempt sale:~~

~~(1) A licensed distributor.~~

~~(2) A licensed importer that removed the motor fuel from a terminal rack of a permissive or an elective supplier.~~

(b) Percentage Discount. – A licensed distributor that pays the tax due a supplier by the date the supplier must pay the tax to the State may deduct from the amount due a discount of one percent (1%) of the amount of tax payable. A licensed importer that removes motor fuel from a terminal rack of a permissive or an elective supplier and that pays the tax due the supplier by the date the supplier must pay the tax to the State may deduct from the amount due a discount of the same amount allowed a licensed distributor. The discount covers the expense of furnishing a bond and losses due to shrinkage or evaporation. A supplier may not directly or indirectly deny this discount to a licensed distributor or licensed importer that pays the tax due the supplier by the date the supplier must pay the tax to the State."

SECTION 16.(e) G.S. 105-449.94 is repealed.

SECTION 16.(f) G.S. 105-449.97(d) reads as rewritten:

"(d) Taxes Paid on Exempt Retail Sales. – When filing a return, a supplier that issues or authorizes the issuance of an exempt card or ~~an exempt access~~ code to a person that enables the person to buy motor fuel ~~at retail~~ without paying tax on the fuel may deduct the amount of excise tax imposed on fuel purchased with the exempt ~~retail~~ card or code. The amount of excise tax imposed on fuel purchased ~~at retail~~ with an exempt ~~retail~~ card or code is the amount that was imposed on the fuel when it was delivered to the retailer of the fuel."

SECTION 16.(g) G.S. 105-449.105A(a) reads as rewritten:

"(a) Refund. – A distributor who sells kerosene to any of the following may obtain a refund for the excise tax the distributor paid on the kerosene, less the amount of any discount allowed on the kerosene under G.S. 105-449.93:

(1) The end user of the kerosene, if the distributor dispenses the kerosene into a storage facility of the end user that contains fuel used only for one of the following purposes and the storage facility is installed in a manner that makes use of the fuel for any other purpose improbable:
   a. Heating.
   b. Drying crops.
   c. A manufacturing process.

(2) A retailer of kerosene, if the distributor dispenses the kerosene into a storage facility that meets both of the following conditions:
   a. It is marked with the phrase "Undyed, Untaxed Kerosene, Nontaxable Use Only" or a similar phrase that clearly indicates that the fuel is not to be used to operate a highway vehicle.
   b. It either has a dispensing device that is not suitable for use in fueling a highway vehicle or is kept locked by the retailer and must be unlocked by the retailer for each sale of kerosene.

(3) An airport, if the distributor dispenses the kerosene into a storage facility that contains fuel used only for fueling airplanes and that meets at least one of the following conditions:
   a. It is marked with the phrase "Undyed, Untaxed Kerosene, Nontaxable Use Only" or a similar phrase that clearly indicates that the fuel is not to be used to operate a highway vehicle.
   b. It has a dispensing device that is not suitable for use in fueling a highway vehicle."

SECTION 17.(a) G.S. 105-449.100 reads as rewritten:

"**§ 105-449.100. Terminal operator to file informational return showing changes in amount of motor fuel at the terminal.**

A terminal operator must file a monthly informational return with the Secretary that shows the amount of motor fuel received or removed from the terminal during the month. The return is due ~~by the 25th day of the month following the month covered by the return.~~ on the same date as a monthly return due under G.S. 105-449.90. The return must contain the following information and any other information required by the Secretary:

(1) The number of gallons of motor fuel received in inventory at the terminal during the month and each position holder for the fuel.

(2) The number of gallons of motor fuel removed from inventory at the terminal during the month and, for each removal, the position holder for the fuel and the destination state of the fuel.

(3) The number of gallons of motor fuel gained or lost at the terminal during the month."

SECTION 17.(b) G.S. 105-449.102(a) reads as rewritten:

"(a) Return. – A distributor that exports motor fuel from a bulk plant located in this State must file a monthly return with the Secretary that shows the exports. The return is due ~~by the 25th day of the month following the month covered by the return.~~

on the same date as a monthly return due under G.S. 105-449.90. The return serves as a claim for refund by the distributor for tax paid to this State on the exported motor fuel."

SECTION 17.(c) G.S. 105-449.137(b) reads as rewritten:

"(b) Payment. – The tax imposed by this Article is payable when a return is due. A return is due ~~monthly within 25 days after the end of each month.~~ on the same date as a monthly return due under G.S. 105-449.90. A monthly return covers liabilities that accrue in the calendar month preceding the date the return is due. A return must be filed with the Secretary and must be in the form and contain the information required by the Secretary."

SECTION 17.(d) G.S. 119-18(a) reads as rewritten:

"(a) Tax. – An inspection tax of one fourth of one cent (1/4 of 1¢) per gallon is levied upon all of the fuel listed in this subsection regardless of whether the fuel is exempt from the per-gallon excise tax imposed by Article 36C or 36D of Chapter 105 of the General Statutes. The inspection tax on motor fuel is due and payable to the Secretary of Revenue at the same time that the per gallon excise tax on motor fuel is due and payable under Article 36C of Chapter 105 of the General Statutes. The inspection tax on alternative fuel is due and payable to the Secretary of Revenue at the same time that the excise tax on alternative fuel is due and payable under Article 36D of Chapter 105 of the General Statutes. The inspection tax on kerosene is payable monthly to the Secretary by a supplier that is licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and by a kerosene supplier. A monthly report is due ~~by the 22nd of each month~~ on the same date as a monthly return due under G.S. 105-449.90 and applies to kerosene sold during the preceding month by a supplier licensed under that Part and to kerosene received during the preceding month by a kerosene supplier. A kerosene terminal operator must file a return in accordance with the provisions of ~~G.S. 105-449.100.~~G.S. 105-449.90.

(1) Motor fuel.

(2) Alternative fuel used to operate a highway vehicle.

(3) Kerosene."

SECTION 18. G.S. 105-449.120(a)(3a) is repealed.

SECTION 19. ... Sections 15 through 18 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. The remainder of this act is effective when it becomes law.

BILL DRAFT 2005-RBxz-29: Revenue Laws Technical Changes

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	March 1, 2006
Introduced by:		**Summary by:**	Cindy Avrette
Version:	Draft		Committee Counsel

SUMMARY: Draft Proposal 2005-RBx-29 makes the following changes to the motor fuel tax laws:

- ***It would allow the Department of Revenue to track both interstate and intrastate movements of motor fuel.***
- ***It would provide that the motor fuel tax must be paid on all motor fuel that leaves the rack by removing the current motor fuel exemptions that apply to fuel at the rack and replacing them with refunds.***
- ***It would provide that all returns, both informational returns and tax returns, are due on the same date.***
- ***It would delete an obsolete misdemeanor.***

BILL ANALYSIS: The following changes to the motor fuel tax statutes are proposed as an addition to the 'Revenue Laws Technical Changes' proposal discussed at the last meeting. The Department of Revenue requested the changes to enable it to better administer and enforce the motor fuel tax laws.

Section 15 would give the Department the ability to cross match all motor fuel to ensure compliance with the motor fuel tax laws. Under current law, the Department may cross-match information regarding fuel entering the State and fuel leaving the State, but it cannot cross-match information regarding the intrastate movement of motor fuel. The Department has a new fuel tracking system that will better enable it to monitor the movement of fuel. The Department expects the system to be operational by the last quarter of this fiscal year. Section 15 makes the statutory changes necessary to enable the Department to review intrastate movements of fuel by providing that anyone who transports fuel must be licensed as a transporter and that all transporters must file informational returns on all movements of motor fuel.

Section 15(a) provides that all people who transport motor fuel will be licensed as a motor fuel transporter. Under current law, a person licensed as a distributor or blender is considered to be licensed as a motor fuel transporter if the person transports the fuel for other for hire. This section would remove the exception for persons who transport their own fuel so that any distributor or blender who transports fuel – whether for hire or for their own use – would also be considered licensed as a transporter.

Section 15(b) provides that a transporter must file an informational return showing deliveries of motor fuel. Under current law, only interstate movements of fuel must be reported on a monthly informational return. The change in this section of the bill would require such a return for all deliveries of fuel.

Section 16 would provide that all motor fuel leaving the terminal rack would be subject to the motor fuel excise tax. The Department requested this change to reduce the areas of evasion and inadvertent duplicate refunds. Under current law, a licensed distributor or importer may remove fuel from a terminal without paying the tax if the person has an exempt card issued by the supplier. This section would remove the ability of distributors and importers to use exempt cards at the terminal rack. Instead, they

would be able to obtain a monthly refund on any sales of fuel to exempt entities.[1] This change would conform North Carolina's law to the laws of the surrounding states who do not allow untaxed gasoline or undyed fuel to leave their terminals without the imposition of the tax.

Section 16(a) puts the definition of 'exempt card or code' in the definitional statute for the motor fuel article. Section 16(b) repeals the portion of the statute that allows fuel to be removed from the terminal without paying the tax. Section 16(c) removes the deduction a licensed distributor or importer may make for tax exempt fuel taken from the terminal rack because the ability to obtain the fuel without paying the tax is repealed in section 16(b). Section 16(d) repeals the statute requiring a licensed distributor or importer who obtains fuel at the terminal rack with an exempt card to file a quarterly reconciling return. Section 16(e) makes conforming changes. Section 16(f) provides a monthly refund procedure for a distributor who sells diesel fuel to an airport. A refund procedure already exists for sales of motor fuel to the other listed exempt entities.

Section 15(b) and section 17 would establish a common due date for all motor fuel tax due and informational returns. Under current law, most of the monthly tax returns are due on the 22nd day of the month following the month covered by the return. Informational returns are due on the 25th day of the month following the month covered by the return. These sections provide that all monthly returns are due on the 22nd day of the month following the month covered by the return.

Section 18 would remove the misdemeanor for taxpayers failing to pay the destination state taxes collected to that state. This provision was put into the law when North Carolina first moved to tax-at-the-rack. Today, all of the surrounding states have destination state tax laws. North Carolina does not collect and remit the taxes to those states, therefore this misdemeanor is no longer needed.

Sections 15 through 17 become effective January 1, 2007, and apply to motor fuel purchased on or after that date. Section 18 is effective when it becomes law.

[1] G.S. 105-449.88 exempts the following entities from the motor fuel excise tax if it is sold to them for their use: the federal government, the State, local boards of education, charter schools, community colleges, counties, municipalities, and airports.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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BILL DRAFT 2005-RBxz-33 [v.4] (02/27)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
2/28/2006 3:26:10 PM

Short Title: Streamlined Sales Tax Definitions. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE STREAMLINED SALES TAX DEFINITIONS CONCERNING TELECOMMUNICATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.3 is amended by amending or adding the following definitions to read:

"§ 105-164.3. Definitions.

The following definitions apply in this Article:

(01) 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.

...

(27) Prepaid telephone calling service. – Prepaid wireline calling service or prepaid wireless calling service.

(27a) Prepaid Wireline Calling Service. -- A right that meets all of the following requirements:

a. Authorizes the exclusive purchase of wireline telecommunications service.

b. Must be paid for in advance.

c. Enables the origination of calls by means of an access number, authorization code, or another similar means, regardless of whether the access number or authorization code is manually or electronically dialed.

d. Is sold in units or dollars whose number or dollar value declines with use and is known on a continuous basis.

(27b) Prepaid Wireless Calling Service. – A right that meets all of the following requirements:

a. Authorizes the purchase of mobile telecommunications service, either exclusively or in conjunction with other services.

b. Must be paid for in advance.

c. Is sold in units or dollars whose number or dollar value declines with use and is known on a continuous basis.

...

(45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement ~~adopted November 12, 2002,~~ as amended on ~~November 19, 2003, November 16, 2004, and April 16, 2005.~~November, 2005.

...

(48) Telecommunications service. – The electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among ~~points, by or through any electronic, radio, satellite, optical, microwave, or other medium, regardless of the protocol used for the transmission, conveyance, or routing. The term includes mobile telecommunications service and vertical services. Vertical services are switch-based services offered in connection with a telecommunications service, such as call forwarding services, caller ID services, and three-way calling services.~~ points. The term includes any transmission, conveyance, or routing in which a computer processing application is used to act on the form, code, or protocol of the content for purposes of the transmission, conveyance, or routing, regardless of whether it is referred to as voice over Internet protocol or the Federal Communications Commission classifies it as enhanced or valued added. The term does not include the following:

a. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a customer whose primary purpose for using the service is to obtain the processed data or information.

b. The sale, installation, maintenance, or repair of tangible personal property.

c. Directory advertising and other advertising.

d. Billing and collection services provided to a third party.

e. Internet access service.

f. Radio and television audio and video programming service, regardless of the medium of delivery, and the transmission, conveyance, or routing of the service by the programming service provider. The term includes cable service and audio and video

programming service provided by a mobile telecommunications service provider.

g. Ancillary service.

h. A digital product delivered electronically, including software, music, a ring tone, video, and reading material."

SECTION 2. G.S. 105-164.4(a)(4c) and (4d) read as rewritten:

"§ 105-164.4. Tax imposed on retailers.

(a) **(Effective for sales made before July 1, 2007)** A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four and one-half percent (4 1/2%).

(4c) The combined general rate applies to the gross receipts derived from providing telecommunications service and ancillary service. A person who provides telecommunications service or ancillary service is considered a retailer under this Article. ~~Telecommunications service is~~ These services are taxed in accordance with G.S. 105-164.4C.

(4d) The sale or recharge of prepaid telephone calling service is taxable at the general rate of tax. The tax applies regardless of whether tangible personal property, such as a card or a telephone, is transferred. The tax applies to a service that is sold in conjunction with prepaid wireless calling service. Prepaid telephone calling service is taxable at the point of sale instead of at the point of use and is sourced in accordance with G.S. 105-164.4B. Prepaid telephone calling service taxed under this subdivision is not subject to tax as a telecommunications service."

SECTION 3. G.S. 105-164.4B(a)(3) reads as rewritten:

"§ 105-164.4B. Sourcing principles.

(a) General Principles. – The following principles apply in determining where to source the sale of a product. These principles apply regardless of the nature of the product.

(1) Over-the-counter. – When a purchaser receives a product at a business location of the seller, the sale is sourced to that business location.

(2) Delivery to specified address. – When a purchaser receives a product at a location specified by the purchaser and the location is not a business location of the seller, the sale is sourced to the location where the purchaser receives the product.

(3) Delivery address unknown. – When a seller of a product does not know the address where a product is received, the sale is sourced to the first address or location listed in this subdivision that is known to the seller:

a. The business or home address of the purchaser.

b. The billing address of the purchaser or, if the product is ~~a~~ prepaid ~~telephone~~ wireless calling ~~service that authorizes the purchase of mobile telecommunications~~ service, the location associated with the mobile telephone number.

c. The address from which tangible personal property was shipped or from which a service was provided."

SECTION 4. G.S. 105-164.4C reads as rewritten:

"§ **105-164.4C.** ~~**Tax on telecommunications.**~~**Telecommunications service and ancillary service.**

(a) General. – The gross receipts derived from providing telecommunications service or ancillary service in this State are taxed at the rate set in G.S. 105-164.4(a)(4c). Telecommunications service is provided in this State if the service is sourced to this State under the sourcing principles set out in subsections (a1) and (a2) of this section. Ancillary service is provided in this State if the telecommunications service to which it is ancillary is provided in this State. The definitions and provisions of the federal Mobile Telecommunications Sourcing Act apply to the sourcing and taxation of mobile telecommunications services.

(a1) General Sourcing Principles. – The following general sourcing principles apply to telecommunications services. If a service falls within one of the exceptions set out in subsection (a2) of this section, the service is sourced in accordance with the exception instead of the general principle.

(1) Flat rate. – A telecommunications service that is not sold on a call-by-call basis is sourced to this State if the place of primary use is in this State.

(2) General call-by-call. – A telecommunications service that is sold on a call-by-call basis and is not a postpaid calling service is sourced to this State in the following circumstances:

a. The call both originates and terminates in this State.

b. The call either originates or terminates in this State and the telecommunications equipment from which the call originates or terminates and to which the call is charged is located in this State. This applies regardless of where the call is billed or paid.

(3) Postpaid. – A postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either the seller's telecommunications system or, if the system used to transport the signal is not the seller's system, by information the seller receives from its service provider.

(a2) Sourcing Exceptions. – The following telecommunications services and products are sourced in accordance with the principles set out in this subsection:

(1) Mobile. – Mobile telecommunications service is sourced to the place of primary use, unless the service is ~~authorized by a~~ prepaid ~~telephone~~ wireless calling service or is air-to-ground radiotelephone service. Air-to-ground radiotelephone service is a postpaid calling service that is offered by an aircraft common carrier to passengers on its aircraft and enables a telephone call to be made from the aircraft. The sourcing principle in this subdivision applies to a service provided as an adjunct to mobile telecommunications service if the charge for the service is

included within the term "charges for mobile telecommunications services" under the federal Mobile Telecommunications Sourcing Act.

(2) Prepaid. – Prepaid telephone calling service is sourced in accordance with G.S. 105-164.4B.

(3) Private. – Private telecommunications service is sourced in accordance with subsection (e) of this section.

~~(b) Included in Gross Receipts. – Gross receipts derived from telecommunications service include the following:~~

~~(1) Receipts from flat rate service, service provided on a call-by-call basis, mobile telecommunications service, and private telecommunications service.~~

~~(2) Charges for directory assistance, directory listing that is not yellow-page classified listing, call forwarding, call waiting, three-way calling, caller ID, voice mail, and other similar services.~~

~~(3) Customer access line charges billed to subscribers for access to the intrastate or interstate interexchange network.~~

~~(4) Charges billed to a pay telephone provider who uses the telecommunications service to provide pay telephone service.~~

~~(c) Excluded From Gross Receipts. – Gross receipts derived from telecommunications service do not include any of the following:~~

~~(1) Charges for telecommunications services that are a component part of or are integrated into a telecommunications service that is resold. Examples of services that are resold include carrier charges for access to an intrastate or interstate interexchange network, interconnection charges paid by a provider of mobile telecommunications service, and charges for the sale of unbundled network elements. An unbundled network element is a network element, as defined in 47 U.S.C. § 153(29), to which access is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3).~~

~~(2) Telecommunications services that are resold as part of a prepaid telephone calling service.~~

~~(3) 911 charges imposed under G.S. 62A-4 or G.S. 62A-23 and remitted to the Emergency Telephone System Fund under G.S. 62A-7 or the Wireless Fund under G.S. 62A-24.~~

~~(4) Allowable surcharges imposed to recoup assessments for the Universal Service Fund.~~

~~(5) Receipts of a pay telephone provider from the sale of pay telephone service.~~

~~(6) Charges for commercial, cable, mobile, broadcast, or satellite video or audio service unless the service provides two-way communication, other than the customer's interactive communication in connection with the customer's selection or use of the video or audio service.~~

~~(7) Paging service, unless the service provides two-way communication.~~

~~(8) Charges for telephone service made by a hotel, motel, or another entity whose gross receipts are taxable under G.S. 105-164.4(a)(3) when the charges are incidental to the occupancy of the entity's accommodations.~~

~~(9) Receipts from the sale, installation, maintenance, or repair of tangible personal property.~~

~~(10) Directory advertising and yellow page classified listings.~~

(11) Repealed by Session Laws 2005-276, s. 33.7, effective October 1, 2005.

~~(12) Information services. An information service is a service that can generate, acquire, store, transform, process, retrieve, use, or make available information through a communications service. Examples of an information service include an electronic publishing service and a web hosting service.~~

~~(13) Internet access service, electronic mail service, electronic bulletin board service, or similar on-line services.~~

~~(14) Billing and collection services.~~

~~(15) Charges for bad checks or late payments.~~

~~(16) Charges to a State agency or to a local unit of government for the North Carolina Information Highway and other data networks owned or leased by the State or unit of local government.~~

(d) Bundled Services. – When a taxable telecommunications 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.

(e) Private Line. – The gross receipts derived from private telecommunications service are sourced as follows:

(1) If all the customer's channel termination points are located in this State, the service is sourced to this State.

(2) If all the customer's channel termination points are not located in this State and the service is billed on the basis of channel termination

points, the charge for each channel termination point located in this State is sourced to this State.

(3) If all the customer's channel termination points are not located in this State and the service is billed on the basis of channel mileage, the following applies:

a. A charge for a channel segment between two channel termination points located in this State is sourced to this State.

b. Fifty percent (50%) of a charge for a channel segment between a channel termination point located in this State and a channel termination point located in another state is sourced to this State.

(4) If all the customer's channel termination points are not located in this State and the service is not billed on the basis of channel termination points or channel mileage, a percentage of the charge for the service is sourced to this State. The percentage is determined by dividing the number of channel termination points in this State by the total number of channel termination points.

(f) Call Center Cap. The gross receipts tax on telecommunications service that originates outside this State, terminates in this State, and is provided to a call center that has a direct pay permit issued by the Department under G.S. 105-164.27A may not exceed fifty thousand dollars ($50,000) a calendar year. This cap applies separately to each legal entity.

(g) Credit. – A taxpayer who pays a tax legally imposed by another state on a telecommunications service taxable under this section is allowed a credit against the tax imposed in this section.

(h) Definitions. – The following definitions apply in this section:

(01) Ancillary service. – Defined in G.S. 105-164.3.

(1) Call-by-call basis. – A method of charging for a telecommunications service whereby the price of the service is measured by individual calls.

(2) Call center. – Defined in G.S. 105-164.27A.

(3) Mobile telecommunications service. – Defined in G.S. 105-164.3.

(4) Place of primary use. – Defined in G.S. 105-164.3.

(5) Postpaid calling service. – A telecommunications service that is charged on a call-by-call basis and is obtained by making payment at the time of the call either through the use of a credit or payment mechanism, such as a bank card, travel card, credit card, or debit card, or by charging the call to a telephone number that is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a service that meets all the requirements of a prepaid wireline telephone calling service, except the exclusive use requirement.

(6) Prepaid telephone calling service. – Defined in G.S. 105-164.3.

(7) Private telecommunications service. – Telecommunications service that entitles a subscriber of the service to exclusive or priority use of a communications channel or group of channels.

(8) Telecommunications service. – Defined in G.S. 105-164.3."

SECTION 5. G.S. 105-164.13 is amended by adding the following subdivision to read:

"(54) The following telecommunications services and charges:

a. Telecommunications service that is a component part of or is integrated into a telecommunications service that is resold. This exemption does not apply to service purchased by a pay telephone provider who uses the service to provide pay telephone service. Examples of services that are resold include carrier charges for access to an intrastate or interstate interexchange network, interconnection charges paid by a provider of mobile telecommunications service, and charges for the sale of unbundled network elements. An unbundled network element is a network element, as defined in 47 U.S.C. § 153(29), to which access is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3).

b. Pay telephone service.

c. 911 charges imposed under G.S. 62A-4 or G.S. 62A-23 and remitted to the Emergency Telephone System Fund under G.S. 62A-7 or the Wireless Fund under G.S. 62A-24.

d. Charges for telecommunications service made by a hotel, motel, or another entity whose gross receipts are taxable under G.S. 105-164.4(a)(3) when the charges are incidental to the occupancy of the entity's accommodations.

e. Telecommunications service purchased by a State agency or a unit of local government for the North Carolina Information Highway or another data network owned or leased by the State or unit of local government."

SECTION 6. This act becomes effective January 1, 2007.

LEGISLATIVE PROPOSAL 2005-RBx-33: Streamlined Sales Tax Definitions

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	March 1, 2006
Introduced by:		**Summary by:**	Sabra Faires
Version:	Draft 2005-RB xz-33		Senate Tax Counsel

SUMMARY: This legislative proposal modifies the definitions used in the sales and use tax law that apply to telecommunications services. The changes are made to adopt the definitions in the Streamlined Sales Tax Agreement.

BILL ANALYSIS: A section-by-section-analysis follows:

Section-1. Definitions.

1. Adds definition of "ancillary service" in new (01) because the Streamlined definitions separate ancillary services from telecommunications services. Current North Carolina law considers ancillary services to be part of telecommunications services. All of the ancillary services are currently taxed and will continue to be taxed.
2. Modifies the definition of "prepaid telephone calling service" in (27) to include the newly defined terms for "prepaid wireless calling service" and prepaid wireline calling service." Current law does not distinguish between prepaid wireline and prepaid wireless. The definition of prepaid wireless was added to recognize that prepaid wireless includes whatever services can be obtained with the same card used to obtain wireless telecommunications service. Prepaid cards are taxed at the point of sale rather than as telecommunications when the minutes are used. Some services that are not within the definition of telecommunications service can be purchased with the card that authorizes prepaid wireless use. The current definition of prepaid telephone calling service has an exclusive use requirement that conflicts with the practice for prepaid wireless.
3. Converts the current definition of prepaid telephone calling service into the definition of "prepaid wireline calling service" in new (27a). This is a technical change for prepaid wireline with no change in meaning.
4. Adds a definition for "prepaid wireless calling service" in new (27b). This does not have an exclusive use requirement, in contrast to prepaid wireline.
5. Updates the definition for "Streamlined Agreement" in (45a) to include the latest (January 13, 2006) amendments.
6. Conforms the definition of "telecommunications service" in (48) to the Streamlined definition and incorporates into the definition the appropriate inclusions and exclusions that are now in G.S. 105-164.4C(b) and (c). (See also the new exemptions in G.S. 105-164.13(54) in Section 5.) As changed, the definition is the same as current law with two exceptions. The first is Universal Service Fund surcharges. These surcharges are part of the sales price and will be subject to tax. The second is paging service. Universal Service Fund surcharges cannot be "carved out" and remain as is because there is no Streamlined "carve out" in sales price or telecommunications service for this. Paging service could be carved out because there is a Streamlined definition for this, but this draft does not include that carve out. The subparts of new (48) match up with current law as follows:

Subpart in (48)	Location in Current Law
a. (info service)	105-164.4C(c)(12) and (13)
b. (sale, etc. of tpp)	105-164.4C(c)(9)
c. (advertising)	105-164.4C(c)(10)
d. (billing)	105-164.4C(c)(14)
e. (Internet)	105-164.4C(c)(13)
f. (cable and radio)	105-164.4C(c)(6)
g. (ancillary)	105-164.4C(b)(2)
h. (digital)	No specific exclusion but not taxed now.

Section 2: 105-164.4.

Changes the tax imposition statute to add the now-separate category of "ancillary service" and to include non-telecommunications services that are sold as part of a prepaid wireless calling service.

Section 3: 105-164.4B

Makes a conforming change to the sourcing statute to apply the new definition of prepaid wireless call service.

Section 4: 105-164.4C

Makes conforming changes to the separate statute on telecommunications to include ancillary service and to apply the new definition of prepaid wireless calling service. The items that were in subsections (b) and (c) are now either part of the definition of telecommunications or are exempt in Section 5.

Section 5: 105-164.13

Moves to the exemption statute the items that were formerly excluded from the definition of telecommunications and are not intended to be taxed. The items in new (54) were all in G.S. 105-164.4C(c).

EFFECTIVE DATE: This act would become effective for taxable years beginning on or after January 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

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: March 1, 2006

TO: Revenue Laws Study Committee

FROM: Linda Struyk Millsaps
Fiscal Research Division

RE: 2005-RBxz-33 [v.4] – Streamlined Sales Tax Definitions

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:		See Assumptions			
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue.

EFFECTIVE DATE: January 1, 2007.

BILL SUMMARY: The bill makes numerous technical changes to the sales tax statutes, most to comply with the revised requirements of the Streamlined Sales Tax Project. These changes must be made by January 1, 2008 to continue to be in compliance with the Agreement.

ASSUMPTIONS AND METHODOLOGY: Sections 1 and 2 make several changes to telecommunications related definitions. Definitions altered or added include ancillary service, prepaid wireless calling service, and telecommunications service. The first to of these changes are technical in nature and are not expected to have a fiscal impact. The third – telecommunications

service – actually consolidates and clarifies some definitions already addressed by the General Assembly in previous sessions. This change is also not expected to have a significant fiscal impact. Section 1 also updates the reference date for the Agreement, which has no fiscal affect. Section 3 addresses the sourcing of sales of prepaid wireless services. Because it only impacts local revenues, no state impact is expected. Moreover, because the change is not expected to actually alter the treatment of these sales, no local impact is expected. Section 4 makes conforming definitional changes and is not expected to have a fiscal impact. Section 5 moves to the exemption statute the items that were formerly excluded from the definition of telecommunications and are not intended to be taxed. The items in exemption section were all in the prior telecommunication section statutes. No fiscal impact is expected.

SOURCES OF DATA: NC Department of Revenue.

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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BILL DRAFT 2005-SVxz-11 [v.5] (02/13)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
2/28/2006 3:00:15 PM

Short Title: S Corp Income Tax Adjustments. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE CORPORATE INCOME TAX ADJUSTMENTS INAPPLICABLE TO S CORPORATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-131.2 reads as rewritten:

"**§ 105-131.2. Adjustment and characterization of income.**

(a) Adjustment. – ~~The pro rata share of each shareholder in the income attributable to the State of an S Corporation shall be adjusted as provided in G.S. 105-130.5. The pro rata share of each resident shareholder in the income not attributable to the State of an S Corporation shall be adjusted as provided in G.S. 105-134.6(b), (c), and (d).~~Each shareholder's pro rata share of an S Corporation's income is subject to the adjustments provided in G.S. 105-134.6.

(b) Repealed by Session Laws 1989, c. 728, s. 1.35.

(c) Characterization of Income. – S Corporation items of income, loss, deduction, and credit taken into account by a shareholder pursuant to G.S. 105-131.1(b) ~~shall be~~ are characterized as though received or incurred by the S Corporation and not its shareholder."

SECTION 2. G.S. 105-134.6(a) reads as rewritten:

"(a) S Corporations. ~~The pro rata share of each shareholder in the income attributable to the State of an S Corporation shall be adjusted as provided in G.S. 105-130.5. The pro rata share of each resident shareholder in the income not attributable to the State of an S Corporation shall be~~ Each shareholder's pro rata share of an S Corporation's income is subject to the adjustments provided in ~~subsections (b), (c), and (d) of~~ this section."

SECTION 3. This act is effective for tax years beginning on or after January 1, 2006.

LEGISLATIVE PROPOSAL 2005-SVxz-11: S Corp. Income Tax Adjustments

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	March 1, 2006
Introduced by:		**Summary by:**	Trina Griffin
Version:	Draft 2005-SVxz-11		Committee Counsel

SUMMARY: This legislative proposal would make corporate income tax adjustments inapplicable to S Corporations, effective beginning with the 2006 taxable year.

CURRENT LAW: An S Corporation is a corporation that has elected to have the corporation's income pass through to the shareholders. Thus, the business profits are taxed at individual tax rates. An S Corporation election allows the shareholders to preserve the benefit of limited liability for the corporate form while at the same time being treated as partners for federal income tax purposes. The S Corporation itself does not pay any income tax, but an S Corporation is required to file an informational return with the IRS, similar to a partnership tax return, to inform the IRS of each shareholder's ownership interest in the S corporation. To be eligible for S Corporation status, a corporation must meet all of the following requirements:

- The corporation may have no more than 75 shareholders.
- The corporation may have only one class of stock, although different voting rights among shareholders are allowed.
- All shareholders must be individuals or trusts.
- The corporation must be formed in the United States.
- No shareholder may be a non-resident alien.
- The corporation may not be an insurance company or a domestic international sales corporation.

A C Corporation, on the other hand, assumes a separate legal and tax life distinct from its shareholders. A corporation pays taxes at its own corporate income tax rates and files its own corporate tax forms each year. C Corporations may choose to retain their profits and earnings as part of their operating capital, or they may choose to distribute some or all of their profits and earnings as dividends paid to shareholders. Dividends paid to shareholders are essentially taxed twice. They are taxed once at the corporate level and again at the individual level.

As noted above, C Corporations cannot be shareholders of an S Corporation. All shareholders must be individuals or trusts. Trusts, and obviously individuals, are subject to tax using the individual income tax rates. Thus, the tax imposed on the income of an S Corporation is an individual income tax, not a corporate tax. However, current law results in an individual's pro rata share of S Corporation income attributable to North Carolina being subject to corporate income tax adjustments, while S Corporation income not attributable to North Carolina is subject to individual income tax adjustments.

BILL ANALYSIS: This bill would make an individual's pro rata share of income from an S Corporation subject only to the individual income tax adjustments, rather than being subject to both individual and corporate income tax adjustments. This approach would be more consistent with the tax treatment of an S Corporation generally and would simplify tax form preparation. Consequently, it may result in a higher degree of compliance with the law.

EFFECTIVE DATE: This act would become effective for taxable years beginning on or after January 1, 2006.

BACKGROUND: Of the approximately 20 states that tax S Corporation income at the shareholder level, 18 of those states use the individual law to make adjustments. Louisiana applies corporate adjustments. North Carolina is the only state that uses both.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

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DATE: March 1, 2006

TO: Revenue Laws

FROM: Dave Crotts
Fiscal Research Division

RE: Draft 2005-SVxz-11 (v.5) (S Corporation Income Tax Adjustments)

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:			See "Assumptions and Methodology"		
EXPENDITURES:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue.

EFFECTIVE DATE: Tax years beginning on or after January 1, 2006.

BILL SUMMARY: A C Corporation cannot be a shareholder of an S Corporation. All S shareholders must be individuals or trusts, which means that the taxpayer is subject to the individual income tax. However, current law results in an individual's pro rata share of S Corporation income attributable to North Carolina being subject to corporate income tax adjustments, while S Corporation income not attributable to North Carolina is subject to individual income tax adjustments. The proposal would make an individual's pro rata share of income from an S Corporation subject only to the individual income tax adjustments, rather than being subject to both individual and corporate income tax adjustments. This approach would be more consistent

with the tax treatment of an S Corporation generally and would simplify tax form preparation. Consequently, it may result in a higher degree of compliance with the law.

ASSUMPTIONS AND METHODOLOGY: The Department of Revenue indicates that the proposal would have a negligible revenue impact because many of the adjustments are duplicated in both individual and corporate income tax law and that some of the adjustments under the corporate income tax that are not under the individual income tax are not applicable to S corporation income tax. Thus, the change has limited application

SOURCES OF DATA: North Carolina Department of Revenue.

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

U D

BILL DRAFT 2005-RBxz-30 [v.4] (02/23)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
3/1/2006 8:56:48 AM

Short Title: Clarify Additional Gross Premiums Tax. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE APPLICATION OF THE ADDITIONAL GROSS PREMIUMS TAXES ON FIRE AND LIGHTNING COVERAGE AND TO INCLUDE ALL POLICIES.

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 that provide fire and lightning coverage. 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	
Other than Liability Coverage	100%
Liability Coverage	0%
Homeowner's	50%
Farm Owner's	30%."

SECTION 2. G.S. 105-288.5(d)(4) reads as rewritten:

"(d) Tax Rates; Disposition. –

...

(4) Additional Local Fire and Lightning Rate. – An additional tax ~~shall be applied to gross premiums on contracts of insurance applicable to fire and lightning coverage within fire districts~~ at the rate of one-half of one percent ~~(½ of 1%).~~(0.5%) applies to gross premiums on insurance contracts that provide fire and lightning coverage within a fire district. The tax is a percentage of the gross premiums from the contracts, determined in accordance with the table in subdivision (3) of this subsection. The net proceeds shall be credited to the Department of Insurance for disbursement pursuant to G.S. 58-84-25."

SECTION 3. G.S. 105-288.5(d)(3), as amended by Section 1 of this act, reads as rewritten:

"(d) Tax Rates; Disposition. –

...

(3) Additional Statewide Fire and Lightning Rate. – An additional tax at the rate of one and thirty-three hundredths percent (1.33%) applies to gross premiums on insurance contracts that provide fire and lightning coverage. 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	
Liability Coverage	100%
Other Type of Coverage	0%
Homeowner's	50%
Farm Owner's	30%
Marine	20%
Automobile	10%
Other	10%."

SECTION 4. Sections 1 and 2 of this act are effective for taxable years beginning on or after January 1, 2006. Section 3 of this act is effective for taxable years beginning on or after January 1, 2007. The remainder of this act is effective when it becomes law.

BILL DRAFT 2005-RBxz-30: Clarify Additional Gross Premiums Tax

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	March 1, 2006
Introduced by:		**Summary by:**	Cindy Avrette Committee Counsel
Version:	Draft		

SUMMARY: Draft Proposal 2005-RBxz-30 would clarify the application of the additional gross premiums tax on fire and lightning coverage and it would provide that the additional tax would apply to all types of policies.

BILL ANALYSIS: 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 statute specifically excludes marine and automobile policies from this additional tax. 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 does not provide any exceptions from this tax. The net proceeds of this tax are credited to the Department of Insurance.[3]

The General Assembly enacted the additional statewide fire and lightning tax in 1959. Although the statute does not provide that the tax will apply differently to different types of policies, the Department has administered the tax this way. The additional tax has been imposed on 100% of premiums from insurance that covers only fire losses and on a percentage of premiums from insurance that covers multiple risks. The percentages applied are neither statutory nor imposed by administrative rule. Within the past few years, the Department has been informally advised by both the Department of Insurance and the Attorney General's Office that the statute as written does not provide for assessing the tax against only a percentage of a policy's premium. Rather, without a statutory change, it is their opinion that the tax should be applied to 100% of the premiums of any policy that includes fire and lightning coverage.

Section 1 of this bill draft would codify the current administrative practice of the Department by setting in statute the percentage of an insurance policy's gross premiums to which the additional tax applies. It would provide that policies covering fire loss would be taxable at 100% and that commercial multiple peril liability coverage would be taxable at 100%.[4] It would provide that 50% of homeowner's policy premiums[5] would be subject to the additional tax and 30% of farm owner's policy premiums [6]would be

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[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.

[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.*

[4] In 1992, the tax forms split commercial multiple peril policies into two categories: fire and allied coverage and liability coverage. Since that time, the additional fire and lightning rate has been applied only to the coverage designated as 'fire and allied coverage'.

[5] The Department has applied the tax against 50% of homeowner's policy premiums since 1998.

subject to the tax. The percentages used for homeowner's policies and farm owner's policies were determined several years ago using information from the Department of Insurance based on industry loss experiences.

It appears 21 other states impose a gross premiums tax on policies covering fire losses. Of those states, seven provide for the taxable percentage statutorily – of those two use 100% for all policies that include fire and lightning coverage and five have a range of percentages for different types of coverage.[7] Florida sets its taxable percentages through administrative rule. At least ten states provide taxable percentages on tax forms without statutory support or administrative rule[8] and Montana instructs taxpayers to use their own experience to determine the percentage of their premiums subject to the additional tax.

Section 2 of the bill provides that the taxable percentages applicable for the statewide fire and lightning tax would also apply to the local fire and lightning tax rate.

Section 3 would eliminate the current exemption for marine and automobile policies from the additional statewide fire and lightning rate. North Carolina is the only state that imposes an additional statewide fire and lightning tax that excludes premiums from marine and automobile coverage from the taxable premiums base. The local fire and lightning tax does not exclude these policies. The bill draft provides that the taxable percentage for a marine policy would be 20% and the taxable percentage for all other types of policies would be 10%.

Sections 1 and 2 of the bill would become effective for taxable years beginning on or after January 1, 2006. Section 3 would become effective for taxable years beginning on or after January 1, 2007.

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[6] The Department has applied the tax against 30% of farm owner's policy premiums since 1985.
[7] Arkansas, Georgia, Kansas, Mississippi, Oregon, Tennessee, and Virginia. Arkansas and Virginia tax all policy premiums at 100%.
[8] Kentucky, Louisiana, Maine, Minnesota, Nebraska, Ohio, South Carolina, South Dakota, West Virginia, and Wisconsin. One other state, Indiana, provides percentages on the tax form, but it could not verify its authority for the percentages used.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

U D

BILL DRAFT 2005-SVxz-12 [v.2] (02/15)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
2/28/2006 2:51:12 PM

Short Title: Franchise Tax Loophole Closing. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO APPLY THE FRANCHISE TAX TO CERTAIN LIMITED LIABILITY COMPANIES AND TO PROVIDE A CREDIT FOR ADDITIONAL ANNUAL REPORT FEES PAID BY LIMITED LIABILITY COMPANIES SUBJECT TO FRANCHISE TAX.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-114(b) reads as rewritten:

"(b) Definitions. – The following definitions apply in this Article:

(1) City. – Defined in G.S. 105-228.90.

(1a) Code. – Defined in G.S. 105-228.90.

(2) Corporation. – A domestic corporation, a foreign corporation, an electric membership corporation organized under Chapter 117 of the General Statutes or doing business in this State, or an association that is organized for pecuniary gain, has capital stock represented by shares, whether with or without par value, and has privileges not possessed by individuals or partnerships. The term includes a mutual or capital stock savings and loan association or building and loan association chartered under the laws of any state or of the United States. The term <u>includes a limited liability company that elects to be taxed as a C Corporation under the Code, but</u> does not <u>otherwise</u> include a limited liability company.

(3) Doing business. – Each and every act, power, or privilege exercised or enjoyed in this State, as an incident to, or by virtue of the powers and privileges granted by the laws of this State.

(4) Income year. – Defined in G.S. 105-130.2(5)."

SECTION 2. G.S. 105-114.1 reads as rewritten:

"**§ 105-114.1. Limited liability companies.**

(a) Definitions. – The following definitions apply in this section:

(1) Affiliated group. – Defined in section 1504 of the Code.

(2) Capital interest. – The right under a limited liability company's governing law to receive a percentage of the company's assets upon dissolution after payments to creditors.

(3) Entity. – A person that is not a human being.

(4) Governing law. – A limited liability company's governing law is determined under G.S. 57C-6-05 or G.S. 57C-7-01, as applicable.

(5) Noncorporate limited liability company. – A limited liability company that does not elect to be taxed as a C Corporation under the Code.

(b) Controlled Companies. – If a corporation or an affiliated group of corporations owns more than fifty percent (50%) of the capital interests in a noncorporate limited liability company, the corporation or group of corporations must include in its three tax bases pursuant to G.S. 105-122 the same percentage of (i) the noncorporate limited liability company's capital stock, surplus, and undivided profits; (ii) fifty-five percent (55%) of the noncorporate limited liability company's appraised ad valorem tax value of property; and (iii) the noncorporate limited liability company's actual investment in tangible property in this State, as appropriate.

(c) Constructive Ownership. – Ownership of the capital interests in a noncorporate limited liability company is determined by reference to the constructive ownership rules for partnerships, estates, and trusts in section 318(a)(2)(A) and (B) of the Code with the following modifications:

(1) The term "capital interest" is substituted for "stock" each place it appears.

(2) A noncorporate limited liability company and any noncorporate entity other than a partnership, estate, or trust is treated as a partnership.

(3) The operating rule of section 318(a)(5) of the Code applies without regard to section 318(a)(5)(C).

(d) No Double Inclusion. – If a corporation is required to include a percentage of a noncorporate limited liability company's assets in its tax bases under this Article pursuant to subsection (b) of this section, its investment in the noncorporate limited liability company is not included in its computation of capital stock base under G.S. 105-122(b).

(e) Affiliated Group. – If the owner of the capital interests in a noncorporate limited liability company is an affiliated group of corporations, the percentage to be included pursuant to subsection (b) of this section by each group member that is doing business in this State is determined by multiplying the capital interests in the noncorporate limited liability company owned by the affiliated group by a fraction. The numerator of the fraction is the capital interests in the noncorporate limited liability company owned by the group member, and the denominator of the fraction is the capital interests in the noncorporate limited liability company owned by all group members that are doing business in this State.

(f) Exemption. – This section does not apply to assets owned by a noncorporate limited liability company if the total book value of the noncorporate limited liability

company's assets never exceeded one hundred fifty thousand dollars ($150,000) during its taxable year.

(g) Timing. – Ownership of the capital interests in a noncorporate limited liability company is determined as of the last day of its taxable year. The adjustments pursuant to subsections (b) and (d) of this section must be made to the owner's next following return filed under this Article. If a noncorporate limited liability company and a corporation or an affiliated group of corporations have engaged in a pattern of transferring assets between them with the result that each did not own the capital interests on the last day of its taxable year, the ownership of the capital interests in the noncorporate limited liability company must be determined as of the last day of the corporation or group of corporations' taxable year.

(h) Penalty. – A taxpayer who, because of fraud with intent to evade tax, underpays the tax under this Article on assets attributable to it under this section is guilty of a Class H felony in accordance with G.S. 105-236(7)."

SECTION 3. Article 3 of Chapter 105 is amended by adding a new section to read:

"**§ 105-122.1. Credit for additional annual report fees paid by limited liability companies subject to franchise tax.**

A limited liability company subject to tax under this Article is allowed a credit against the tax imposed by this Article equal to the difference between the annual report fee for corporations under G.S. 55-1-22 and the annual report fee for limited liability companies under G.S. 57C-1-22(a). The credit allowed by this section may not exceed the amount of tax imposed by this Article for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer."

SECTION 4. This act is effective for taxable years beginning on or after January 1, 2007.

LEGISLATIVE PROPOSAL 2005-SVxz-12: Franchise Tax Loophole Closing

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	March 1, 2006
Introduced by:		**Summary by:**	Trina Griffin
Version:	Draft 2005-SVxz-12		Committee Counsel

SUMMARY: This legislative proposal would apply the corporate franchise tax to limited liability companies that elect to be taxed as a C Corporation for federal income tax purposes. The bill would also provide LLCs that elect to be taxed as a C Corporation a credit for the difference between annual report fees for corporations and LLCs such that those LLCs are paying the lower corporation annual report fee rate. This proposal is substantially similar to Senate Bill 540, introduced last session, which has passed the Senate.

CURRENT LAW: Under North Carolina law, limited liability companies[1] (LLCs) are not subject to the franchise tax. In 1997, the North Carolina law regarding LLCs was changed to allow for a single-member LLC. This change had the unintended consequence of allowing a corporation subject to North Carolina franchise tax to set up an LLC and transfer assets to the LLC in a tax-free transfer. The assets then held by the LLC would not be subject to the franchise tax. Thus, the corporation could avoid a significant portion of its franchise tax liability by transferring assets into a wholly owned LLC without affecting its income tax liability. This loophole was the first of a number of loopholes that gave rise to a series of legislative changes enacted over the last five years attempting to close those loopholes.[2]

Under current law, the franchise tax now extends to all LLC assets that a corporation controls through trusts and other entities, with some limitation. Specifically, a corporation (or an affiliated group of corporations) must own more than 50% of the capital interests in a limited liability company for the attribution rules to apply, and LLCs whose assets do not exceed $150,000 are exempt.

The concept of control is determined by tracing ownership of the capital interests in the LLC's assets. A capital interest is the right to receive some or all of the assets under the LLC's governing law if the LLC was dissolved. Ownership of the capital interests in an LLC is traced, using the principles of constructive ownership, through any noncorporate entities. The chain of constructive ownership can run through layers of noncorporate entities but not through individuals. The franchise tax is payable by the corporation or affiliated group of corporations to which ownership of the capital interests is traced. Ownership of capital interests in an LLC is determined as of the last day of the LLC's tax year. If an LLC and a corporation engage in a pattern of trading assets back and forth so that neither owns them on its respective trigger date, the Secretary may require the determination to be made as of the last day of the corporation's tax year. If the capital interests in an LLC are owned by an affiliated group of corporations, the value of the assets is allocated among the members of the group for franchise tax purposes so that there will not be double taxation of any assets. The allocation is in proportion to each affiliate's ownership interest.

[1] A limited liability company is a business entity that is essentially a hybrid of a partnership and a corporation. Like a corporation, an LLC limits the liability of its owners. Like a partnership, an LLC is usually not subject to entity-level taxation.

[2] See the BACKGROUND section of this summary for a detailed description of recent legislative changes regarding the franchise tax loophole.

BILL ANALYSIS: This legislative proposal is virtually identical to Senate Bill 540, which was introduced during the 2005 session and passed the Senate. The Department has requested that the Revenue Laws Study Committee revisit this issue and would encourage the General Assembly to address it during the short session.

The bill would apply the corporate franchise tax to limited liability companies that elect to be taxed as a C Corporation. It also makes conforming changes to G.S. 105-114.1 regarding the attribution of certain LLC assets to controlling corporations for franchise tax purposes.

This bill originated as the result of at least one request for a private letter ruling from a major accounting firm. Based on this request, the Department of Revenue identified another scenario that could result in a corporation's avoidance of paying franchise tax. This scenario would involve a corporation headquartered in North Carolina, but whose parent company is domiciled outside North Carolina. In addition, the parent's only contact with North Carolina is its ownership of the corporation. This corporation, which already files as a C Corporation for federal tax purposes, could convert to an LLC but make an election to continue being taxed as a C Corporation and avoid franchise tax because the parent has no nexus with this State and thus the "constructive ownership" attribution rules do not apply.

Current law provides that an LLC may be disregarded and treated as a division of its parent. The parent company is then considered to own property in this State and therefore has nexus, making it subject to income and franchise tax, and the constructive ownership rules apply for attributing the LLC's assets to the parent's franchise tax calculation. However, when an LLC elects to be taxed as a C Corporation, nexus is not conferred on the parent and the attributes of the LLC do not flow to the parent. Therefore, companies currently operating in this State as C Corporations could convert to an LLC, make an election to file as a C Corporation, as they always have, and eliminate their North Carolina franchise tax obligations.

Under this bill, LLCs that elect to be taxed as a C Corporation would be subject to franchise tax. LLCs that do not elect to be taxed as a C Corporation would be considered "noncorporate LLCs" and would be subject to the attribution rules in G.S. 105-114.1 for franchise tax purposes.

The bill also provides LLCs that elect to be taxed as a C Corporation a nonrefundable credit for the difference between the annual report fee for corporations, which is $20.00, and the annual report fee for limited liability companies, which is $200.

EFFECTIVE DATE: This bill would become effective for taxable years beginning on or after January 1, 2007.

BACKGROUND:

Franchise Tax Generally – The State franchise tax is among the oldest taxes in North Carolina. It is a tax on S Corporations and C Corporations for the privilege of doing business in the State. The tax rate is $1.50 per $1,000 of value of the greatest of (1) apportioned net book value of the corporation; (2) 55% of appraised value of real and tangible personal property in NC; or (3) total actual investment in tangible property in NC.

The Department of Revenue, in its 2003 reports to the Revenue Laws Study Committee, noted that there exists a general franchise tax inequity because the imposition of the tax depends on the type of entity. The Governor's Commission to Modernize State Finances recommended that the State impose the franchise tax on all types of business entities, not just on traditional corporations. The Commission recommended that the revenues generated from this base broadening could be used to establish a minimum net worth threshold for payment of the tax.

Franchise Tax Loophole History – In 2001, the General Assembly enacted S.L. 2001-327 to close a loophole whereby a corporation, subject to North Carolina franchise tax, could set up a single-member LLC, transfer assets to the LLC in a tax-free transfer, and avoid paying taxes on the transferred assets since LLCs are not subject to the franchise tax. The 2001 legislation tried to address the problem by requiring a corporation to pay tax on assets owned by the LLC if the corporation, including its affiliated corporations, indirectly owned[3] at least 70% of the LLC's assets. Unfortunately, tax planners found that the tax could still be avoided by using an additional paper transaction. If the corporation interposed a partnership between itself and the LLC holding its assets, then technically the 2001 legislation would not apply and the assets would continue to escape franchise tax.

In 2002, the General Assembly enacted S.L. 2002-126 to tighten the 2001 law. The 2002 legislation required attribution through "related members" (other entities and individuals) who may partner with one or more corporate entities to own the LLC that will hold the corporate assets. "Related members" is a defined term and includes shareholders, partnerships, etc. If a corporation and its related members together indirectly own at least 70% of an LLC's assets, the 2002 legislation provides that each corporation pays franchise tax on its relative share of the LLC's assets. The relative share is calculated after excluding those related members that are not corporations. Thus, the entire assets are subject to franchise tax, with the tax burden shared proportionally by the corporations that are involved in the ownership scheme.

After the 2002 legislation was enacted, it became apparent that it not only failed to close the loophole but also extended the franchise tax to situations that did not involve corporate control of LLC assets. The loophole remained open because there are additional paper transactions that can be interposed between the corporation and the LLC in order to circumvent the attribution of the LLC's assets to the corporation. For example, control may be passed through a business trust.[4]

In 2004, the General Assembly enacted S.L. 2004-74 to address these issues by providing that for purposes of determining ownership of an LLC's assets, any membership interest of a business trust would be attributed to the owners of the beneficial interest in the business trust, according to their interests in the trust, and the trust itself would be disregarded as a separate entity. In addition, the legislation limited the tax to only those assets that a corporation controls, it reduced the minimum threshold of LLC asset ownership from 70% or more to more than 50%, and it exempted small LLCs.

2005-SVxz-12-SMSV

[3] Indirect ownership of an LLC's assets is determined based on who is entitled to receive those assets upon dissolution of the LLC.
[4] A business trust is not considered a related member, as that term is defined in G.S. 105-130.7A, because it would be the corporation, not the shareholders, that would form the trust.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

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: March 1, 2006

TO: Revenue Laws Study Committee

FROM: David Crotts
Fiscal Research Division

RE: Proposal 2005-SVxz-12 (Franchise Tax Loophole Closing)

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (x**

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: The franchise tax is administered by the Department of Revenue. The enactment of the bill is not expected to affect the Department's budget requirements.

EFFECTIVE DATE: Tax years beginning on or after January 1, 2007.

ISSUE BACKGROUND: Under North Carolina law, limited liability companies (LLCs) are not subject to the franchise tax. In 1997 single-member LLCs were authorized in North Carolina. This allowed a corporation the opportunity to set up an LLC and transfer assets to the LLC in a tax-free transfer. The assets then held by the LLC would not be subject to the franchise tax.

The 2001 General Assembly attempted to correct this situation by requiring a corporation to pay tax on assets owned by the LLC if the corporation, including its affiliated corporations, indirectly owned at least 70% of the LLC's assets. However, tax planners found that the tax could still be avoided by using an additional paper transaction. For example, if the corporation interposed a partnership between itself and the LLC holding its assets, the assets would continue to escape the franchise tax.

In 2002, the General Assembly addressed this issue by including "related members" (other entities and individuals) who may partner with one or more corporate entities to own the LLC to which the corporate assets are transferred. If a corporation and its related members together indirectly own at least 70% of an LLC's assets, each corporation would pay the franchise tax on its relative share of the LLC's assets.

After the enactment of the 2002 session change, it was discovered that there are other paper transactions that can be interposed between the corporation and the LLC to avoid the franchise tax. One example is a business trust. The tax does not apply in this situation because the trust is not considered a "related member". In addition, the 2002 legislation also had the effect of extending the tax to situations that did not involve corporate control of LLC assets.

The 2004 General Assembly attempted to address these issues by providing that for purposes of determining the ownership of an LLC's assets, any membership interest of a business trust would be attributed to the owners of the beneficial interest in the business trust, according to their interests in the trust, and the trust itself would be disregarded as a separate entity. In addition, the 2002 bill limits the tax to only those assets that a corporation controls and exempts small LLC's.

BILL SUMMARY: (1) Applies the corporate franchise tax to limited liability companies (LLCs) that elect to be taxed as a C corporation for federal income tax purposes; (2) provides these corporations are eligible for a nonrefundable credit equal to the difference between the annual report fee for corporations ($20) and the same fee for LLC's ($200); (3) makes conforming changes regarding attribution of certain LLC assets to controlling corporations for franchise tax purposes.

ASSUMPTIONS AND METHODOLOGY: Discussions with the Department of Revenue indicate that the practical effect of the legislation is to address another potential method of avoiding franchise tax liability by corporate structuring arrangements. The concern arose as a result of a request from a major accounting firm for a private letter ruling. The tax planning scenario would involve a corporation headquartered in North Carolina, but whose parent company is domiciled outside the State. In addition, the parent's only contact with North Carolina is its ownership of the corporation. This corporation, which already files as a C-corporation for federal tax purposes, could convert to an LLC but make an election to continue being taxed as a C-corporation and avoid franchise tax because the parent has no nexus (tax situs) with this State, Thus, the "constructive ownership" attribution rules do not apply.

The Department has no data on whether any companies have already established such arrangements. However, the request for a private letter ruling suggests that one or more accounting firms were contemplating the use of such a tax sheltering vehicle. Thus, the proposed legislation attempts to prevent a potential tax avoidance scheme. In addition, it could be argued

that the fiscal impact of the bill's concept has been captured in the estimates used for the 2001 legislation that attempted to close the original franchise tax loophole.

SOURCES OF DATA: Discussions with Department of Revenue

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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BILL DRAFT 2005-RBz-31 [v.5] (02/24)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
3/1/2006 11:05:37 AM

Short Title: Franchise Tax Base Calculation. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE TREATMENT OF DEFERRED TAX ASSETS IN THE COMPUTATION OF THE FRANCHISE TAX CAPITAL BASE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-122(b) reads as rewritten:

"(b) Determination of Capital Base. -- ~~Every such~~ A corporation taxed under this section shall determine the total amount of its issued and outstanding capital stock, ~~surplus~~ surplus, and undivided ~~profits; no reservation or allocation~~ profits. No reservation or allocation from surplus or undivided profits ~~shall be~~ is allowed ~~other than for~~ except as provided below:

(1) Definite ~~definite~~ and accrued legal ~~liabilities, except as herein provided:~~ liabilities.

OPTION 1: CLARIFICATION OF CURRENT LAW

(2) ~~taxes~~ Taxes accrued, dividends ~~declared~~ declared, and reserves for depreciation of tangible assets as permitted for income tax ~~purposes shall be treated as deductible liabilities. There shall also be treated as a deductible liability reserves for the entire cost~~ purposes. Deferred tax assets are not deductible.

OPTION 2: ALLOW DEFERRED TAX LIABILITIES TO BE REDUCED BY DEFERRED TAX ASSETS

(2) ~~taxes~~ Taxes accrued, dividends ~~declared~~ declared, and reserves for depreciation of tangible assets as permitted for income tax ~~purposes shall be treated as deductible liabilities. There shall also be treated as a deductible liability reserves for the entire cost~~ purposes.

(3) When including a deferred tax liability account, a corporation may reduce the amount included in its base by netting against that account the amount of a deferred tax asset account. The reduction may not decrease the deferred tax liability below zero (0).

(4) Reserves for the cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or streams, lakes, or rivers, upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that the Environmental Management Commission or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions.

(5) ~~The~~ Reserves for the cost of purchasing and installing equipment or constructing facilities for the purpose of recycling or resource recovering of or from solid waste or for the purpose of reducing the volume of hazardous waste generated shall be treated as deductible for

the purposes of this section upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources certifying that the Department of Environment and Natural Resources has found as a fact that the equipment or facility has actually been purchased, installed or constructed, that it is in conformance with all rules and regulations of the Department of Environment and Natural Resources, and the recycling or resource recovering is the primary purpose of the facility or equipment.

(6) ~~The~~ Reserves for the cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas shall be treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955.

(7) ~~Treasury stock shall not be considered in computing the capital stock, surplus and undivided profits as the basis for franchise tax, but shall be excluded proportionately from said capital stock, surplus and undivided profits as the case may be upon the basis and to the extent of the cost thereof.~~ The cost of treasury stock.

(8) In the case of an international banking facility, the capital base shall be reduced by the excess of the amount as of the end of the taxable year of all assets of an international banking facility which are employed outside the United States over liabilities of the international banking facility owed to foreign persons. For purposes of such reduction, foreign persons shall have the same meaning as defined in G.S. 105-130.5(b)(13)d.

Every corporation doing business in this State which is a parent, subsidiary, or affiliate of another corporation shall add to its capital stock, ~~surplus~~ surplus, and undivided profits all indebtedness owed to a parent, ~~subsidiary~~ subsidiary, or affiliated corporation as a part of its capital used in its business and as a part of the base for franchise tax under this section. ~~The term "indebtedness" as used in this paragraph includes all loans, credits, goods, supplies, or other capital of whatsoever nature furnished by a parent, subsidiary, or affiliated corporation, other than indebtedness endorsed, guaranteed, or otherwise supported by one of these corporations. The terms "parent," "subsidiary," and "affiliate" as used in this paragraph shall have the meaning specified in G.S. 105-130.6.~~ If any part of the capital of the creditor corporation is capital borrowed from a source other than a parent, ~~subsidiary~~ subsidiary, or affiliate, the debtor corporation, which is required under this ~~paragraph~~ subsection to include in its tax base the amount of debt by reason of being a parent, subsidiary, or affiliate of the ~~said~~ creditor corporation, may deduct from the debt ~~thus~~ included a proportionate part determined on the basis of the ratio of ~~such~~ the borrowed capital ~~as above specified~~ of the creditor corporation to the total assets of the ~~said~~ creditor corporation. If ~~Further, in case~~ the creditor corporation ~~as above specified~~ is also taxable under the provisions of

this section, ~~such~~ the creditor corporation ~~shall be~~ is allowed to deduct from the total of its capital, ~~surplus~~ surplus, and undivided profits the amount of any debt owed to it by a parent, subsidiary or affiliated corporation to the extent that ~~such~~ the debt has been included in the tax base of ~~said~~ the parent, ~~subsidiary~~ subsidiary, or affiliated debtor corporation reporting for taxation under the provisions of this section.

The following definitions apply in this subsection:

(1) Affiliate. – The same meaning as specified in G.S. 105-130.6.

(2) Indebtedness. – All loans, credits, goods, supplies, or other capital of whatsoever nature furnished by a parent, subsidiary, or affiliated corporation, other than indebtedness endorsed, guaranteed, or otherwise supported by one of these corporations

(3) Parent. – The same meaning as specified in G.S. 105-130.6.

(4) Subsidiary. – The same meaning as specified in G.S. 105-130.6."

SECTION 2. Effective date

OPTION 1:

This act becomes effective for taxable years beginning on or after January 1, 2007.

OPTION 2:

This act is effective when it becomes law.

BILL DRAFT 2005-RBxz-31: Franchise Tax Base Calculation

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	March 1, 2006
Introduced by:		**Summary by:**	Cindy Avrette Committee Counsel
Version:	Draft		

SUMMARY: Draft Proposal 2005-RBz-31 seeks to clarify the treatment of deferred tax assets in the computation of the franchise tax capital base.

BILL ANALYSIS: North Carolina imposes a franchise tax at the rate of $1.50 per $1,000 of the total amount of a corporation's capital stock, surplus, and undivided profits (hereinafter referred to as the corporation's capital base). The corporation's capital base may not be less than 55% of the appraised value of all the real and tangible personal property owned by the corporation in the State nor less than its total actual investment in tangible property in the State.

Most public corporations compute their capital base for financial reporting purposes. Public corporations must comply with the requirements of the Financial Accounting Standards Board (FASB) when reporting the results of their operations and financial positions. Under FASB, corporations are required to accrue certain liabilities and the related deferred tax assets which are applicable to those accrued liabilities in order to accurately reflect the financial position of the corporation.

A corporation's determination of its capital base for purposes of the franchise tax is not the same as the calculation of its capital base for financial reporting purposes. The calculation of its capital base for franchise tax purposes is determined by G.S. 105-122(b), not by the requirements of FASB. The statute refers to book value as 'issued and outstanding capital stock, surplus, and undivided profits.' This is similar to net book value with certain adjustments. The principal adjustment is for contingent or deferred liabilities.

Deferred tax assets and deferred tax liabilities are accounts carried on the books of a corporation for financial reporting purposes. They represent timing differences in the recognition of income and deductions for income tax purposes and for financial accounting purposes. Deferred tax liability typically arises where income has been recognized on the corporation's books but not for tax purposes. For example, where a gain is reflected on the books but reported for tax purposes on the installment basis.

- Under FASB, deferred tax liabilities are recognized as liabilities for accounting purposes.
- Deferred liabilities are not recognized for franchise tax purposes because they are not 'definite and accrued'. Therefore, deferred tax liabilities must be added back to a corporation's capital base for franchise tax purposes.
- Frequently, a taxpayer that has a deferred liability will also have a deferred tax asset. The issue is whether the deferred liability that must be added-back can be reduced by the amount of the related deferred tax asset. In 1996, the Department of Revenue issued a TAM (technical advice memorandum) that permitted the netting of deferred liability accounts and deferred tax asset accounts. The TAM provided that the deferred asset account had to be clearly identified with the deferred liability account and the deferred asset could not reduce the related deferred liability below zero (0).

The statute, the 1996 TAM, and GAAP differ on how to account for deferred liabilities. The purpose of this bill is to determine how deferred tax liabilities should be treated for franchise tax purposes and to state that treatment clearly in the statute.

The franchise tax statute begins the calculation of a corporation's franchise tax capital base with the '*total amount of its issued stock, surplus, and undivided profit*'. The statute provides that '*no reservation or allocation from surplus or undivided profits shall be allowed other than for definite and accrued legal liabilities, except as herein provided: taxes accrued, dividends declared and reserves for depreciation of tangible assets as permitted for income tax purposes shall be treated as deductible liabilities.*'

The question as to the proper franchise tax treatment of deferred tax liability has been an issue for many years. In 1976, the North Carolina Supreme Court in Broadwell Realty v. Coble, 291 N.C. 608, ruled that a deferred tax liability may not be deducted from the capital stock base for the reason that it constitutes neither a definite and accrued legal liability nor taxes accrued, and is therefore, not within the scope of the deductions allowable by the express terms of G.S. 105-122(b). The same determination was made in an Attorney General's opinion in 1983 and in a final decision of the Secretary of Revenue in 1990.

In 1992, FASB Statement No. 109 established financial accounting and reporting standards for the effects of income taxes that result from an enterprise's activities during the current and preceding years. The statement resulted in deferred tax assets being separately stated from deferred tax liabilities. When the two accounts were netted, a smaller net tax liability account was added-back to the franchise tax base. When the accounts had to be separately stated, the Department did not permit the netting of the two accounts. This resulted in the add-back of the deferred tax liability unreduced by the amount of the related deferred tax asset.

Taxpayers having deferred tax asset accounts contended that they should be allowed to reduce their capital stock bases by the balances in those accounts. Since the asset and liability accounts are reciprocal concepts, they argued that it was inequitable to include a deferred tax liability in the capital stock base without decreasing it by its related deferred tax asset.

In response to taxpayer concerns, the Department of Revenue issued TAM-CF-96-1 in August of 1996. The TAM appears to contradict the plain meaning of the statute because it permits the deferred liability accounts to be reduced by deferred tax asset accounts.[1] In explaining the change, the TAM states that a more equitable and consistent position is to recognize that net worth is incorrectly stated when the total amount of a deferred liability is included without a netting adjustment for the deferred tax benefit resulting directly from such liability. The TAM provides that the inclusion of a deferred liability in the computation of the net worth base should permit an offset or adjustment for the deferred tax asset required to be computed under the accounting standards without regard to how the deferred tax asset is reflected on the financial statement.

The FASB change in 1992 concerned the accounting for income taxes. Arguably, the TAM written in 1996 attempted to address the accounting changes precipitated by that FASB change. The wording of the TAM, however, refers to deferred liabilities. Any deferred liability may create a corresponding deferred tax asset. Taxpayers contend that the TAM permits them to reduce the amount of any deferred liability required to be added back to its net book value for franchise tax purposes by the amount of a deferred tax asset. Examples of the types of contingent and deferred liabilities that have been reduced include post retirement benefits, loan loss reserves, credit card reserves, and litigation reserves.

[1] The TAM became effective for tax years ending on or after July 1, 1996.

The bill draft provides two different options for the Committee to consider: **Option 1** would retain a strict interpretation of the statute. By so doing, it would clarify that deferred tax assets are not deductible and thus effectively repeal the TAM issued by the Department in 1996. **Option 2** would change the law to allow deferred tax liabilities to be reduced by their corresponding deferred tax assets.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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BILL DRAFT 2005-SVz-13 [v.6] (02/15)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
2/28/2006 2:02:17 PM

Short Title: Expansion of Royalty Reporting Option. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE ROYALTY INCOME REPORTING OPTION TO INCLUDE ADDITIONAL TYPES OF INTANGIBLE PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.7A reads as rewritten:

"**§ 105-130.7A. Royalty income reporting option.**

(a) Purpose. – Royalty payments received for the use of ~~trademarks~~ intangible property in this State are income derived from doing business in this State. This section provides taxpayers with an option concerning the method by which these royalties can be reported for taxation when the recipient and the payer are related members. As provided in this section, these royalty payments can be either (i) deducted by the payer and included in the income of the recipient, or (ii) added back to the income of the payer and excluded from the income of the recipient.

(b) Definitions. – The following definitions apply in this section:

(1) Component member. – Defined in section 1563(b) of the Code.

(1a) Intangible property. – Copyright, patent, trademark, or similar type of intangible asset.

(2) North Carolina royalty. – An amount charged that is for, related to, or in connection with the use in this State of ~~a trademark.~~ intangible property. The term includes royalty and technical fees, licensing fees, and other similar charges.

(3) Own. – To own directly, indirectly, beneficially, or constructively. The attribution rules of section 318 of the Code apply in determining ownership under this section.

(4) Related entity. – Any of the following:

a. A stockholder who is an individual, or a member of the stockholder's family enumerated in section 318 of the Code, if

the stockholder and the members of the stockholder's family own in the aggregate at least eighty percent (80%) of the value of the taxpayer's outstanding stock.

b. A stockholder, or a stockholder's partnership, limited liability company, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts, and corporations own in the aggregate at least fifty percent (50%) of the value of the taxpayer's outstanding stock.

c. A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of section 318 of the Code, if the taxpayer owns at least eighty percent (80%) of the value of the corporation's outstanding stock.

(5) Related member. – A person that, with respect to the taxpayer during any part of the taxable year, is one or more of the following:

a. A related entity.

b. A component member.

c. A person to or from whom there would be attribution of stock ownership in accordance with section 1563(e) of the Code if the phrase "5 percent or more" were replaced by "twenty percent (20%) or more" each place it appears in that section.

(6) Royalty payment. – Either of the following:

a. Expenses, losses, and costs paid, accrued, or incurred for North Carolina royalties, to the extent the amounts are allowed as deductions or costs in determining taxable income before operating loss deduction and special deductions for the taxable year under the Code.

b. Amounts directly or indirectly allowed as deductions under section 163 of the Code, to the extent the amounts are paid, accrued, or incurred for a time price differential charged for the late payment of any expenses, losses, or costs described in this subdivision.

(7) Trademark. – A trademark, trade name, service mark, or other similar type of intangible asset.

(8) Use. – Use of ~~a trademark~~ intangible property includes direct or indirect maintenance, management, ownership, sale, exchange, or disposition of the ~~trademark.~~ intangible property.

(c) Election. – For the purpose of computing its State net income, a taxpayer must add royalty payments made to, or in connection with transactions with, a related member during the taxable year. This addition is not required for an amount of royalty payments that meets either of the following conditions:

(1) The related member includes the amount as income on a return filed under this Part for the same taxable year that the amount is deducted

by the taxpayer, and the related member does not elect to deduct the amount pursuant to G.S. 105-130.5(b)(20).

(2) The taxpayer can establish that the related member during the same taxable year directly or indirectly paid, accrued, or incurred the amount to a person who is not a related member.

(d) Indirect Transactions. – For the purpose of this section, an indirect transaction or relationship has the same effect as if it were direct."

SECTION 2. This act is effective for taxable years beginning on or after January 1, 2006.

LEGISLATIVE PROPOSAL 2005-SVz-13: Expansion of Royalty Reporting Option

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	March 1, 2006
Introduced by:		**Summary by:**	Trina Griffin
Version:	Draft 2005-SVz-13		Committee Counsel

SUMMARY: This legislative proposal expands the reporting option available to corporations and their related members with regard to reporting the receipt of royalty payments by including payments for other types of intangible property, such as patents and copyrights.

BACKGROUND[1] & CURRENT LAW: In recent years, intellectual property has become an enormously valuable intangible corporate asset due to the rapid change in science and technology coupled with expanding legal protections and increasing commercial success based on innovation. As intellectual property becomes a more important corporate asset, many companies with large intellectual property portfolios search for ways to maximize revenues, such as licensing those assets. Income derived from licensing intellectual property is subject to federal and state taxation as ordinary income. Given this, many companies have also developed tax strategies to minimize state taxation of royalty income.

Under one such strategy, a company with a large intellectual property portfolio forms a wholly-owned subsidiary to hold its intellectual property assets in a state that does not tax royalty income received from licensing intellectual property assets. The parent company transfers all of its intellectual property assets to the subsidiary in exchange for ownership of stock in the subsidiary. The subsidiary then licenses the intellectual property assets back to the parent company in exchange for royalties. If the parent corporation is late paying these royalties, it also owes the subsidiary late fees. The parent corporation deducts against its state income tax the royalties and late fees it owes the subsidiary. The subsidiary likely pays little or no tax on these receipts to the state in which it was formed because the receipts are either exempt or apportioned away from that state. Moreover, the subsidiary's receipts are paid back to the parent corporation in the form of deductible dividends. As a result of this arrangement, the parent corporation ends up paying little or no state tax on these profits even though it may generate substantial profits from its retail or manufacturing activities in a state. Recognizing this transfer and license-back arrangement as a tax avoidance strategy, many states have enacted laws attempting to reach this income for taxation.

In North Carolina, every C Corporation "doing business" in this State is subject to corporate income and franchise taxes.[2] Some corporations have argued that an out-of-state investment company's receipt of royalty income from the use of trademarks in this State does not constitute "doing business" in North Carolina and, therefore, the investment company is not subject to North Carolina income or franchise tax on the royalties.

However, in *A&F Trademark, Inc. v. Tolson* the North Carolina Court of Appeals upheld the State's position on the taxation of royalty income received by an out-of-state investment company for the use of trademarks in this State. The Court ruled that the out-of-state taxpayers who hold trademarks used in North Carolina were doing business in North Carolina. Therefore, under current law, an out-of-state

[1] Much of this information is drawn from Xuan-Thao N. Nguyen, "Holding Intellectual Property," 38 State Tax Notes 699 (November 21, 2005).
[2] See G.S. 105-130.3 and G.S. 105-122.

holding company receiving royalty payments for the use of trademarks, patents, or copyrights in North Carolina is subject to both North Carolina income and franchise taxes.

In 2001, the General Assembly enacted G.S. 105-130.7A to enhance corporate compliance with taxes on trademark income. This statute did not change what was already considered taxable but merely enhanced compliance with the State tax on income generated from using trademarks and added a reporting option to the income tax statute.

Specifically, G.S. 105-130.7A restates that a company's receipts from royalty payments for the use of trademarks in North Carolina are income from doing business in North Carolina. Then it provides adjustments to assure full and fair accountability of this income in relationship to where it is actually earned. In cases where the recipient of the North Carolina royalty income is unrelated to the payer, the recipient is required to pay tax on the income to North Carolina. In cases where the recipient and the payer are related, they have an option on how the income is reported to North Carolina. Either the payer can deduct the North Carolina royalty payments on its North Carolina return and the recipient can include them on its North Carolina return, or the payer can add them to its North Carolina income and the recipient can deduct them on its North Carolina return.[3]

This provision solves the problem as it relates to trademarks and trade names, but does not address other types of intellectual property, such as patents,[4] copyrights,[5] or other types of intangible assets.

BILL ANALYSIS: This legislative proposal would expand the royalty payment reporting option for corporations and their related members to include payments received for use of other types of intangible property, such as patents and copyrights.

This proposal does not change or expand what is already taxable in North Carolina. Royalty income received for the use of trademarks, patents, and copyrights in North Carolina *is* taxable and must be reported to North Carolina by an out-of-state corporation receiving this income. However, there is a reporting option currently available to corporations and their related members for royalty payments received for trademark usage that is not available when those payments are for patent or copyright usage.

This proposal would give corporations and their related members that receive royalty payments derived from patent or copyright usage (or other similar intangible property) the ability to select which entity, the parent or the holding company, reports the income, just as that option is currently available to those corporations with regard to trademark royalties. That is, the payer has the option of deducting the payments on its North Carolina return and the recipient can include them on its North Carolina return, or the payer can add them to its North Carolina return and the recipient can deduct them on its North Carolina return.

EFFECTIVE DATE: This act would become effective for taxable years beginning on or after January 1, 2006.

2005-SVz-13

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[3] See *Geoffrey, Inc. v. South Carolina Tax Com'n*, 437 S.E.2d 13 SC, 1993, cert. denied by U.S. Supreme Court, 114 S.Ct. 50 (1993). The South Carolina Supreme Court held that (1) royalty income of a foreign corporation, obtained from trademark licenses issued to an affiliate, could be taxed without violating due process clause and (2) tax could be imposed without violating interstate commerce clause.

[4] A patent for an invention is the grant of a property right to the inventor that gives the inventor the right to exclude others from making, using, offering for sale, selling or importing the invention for a specified period of time.

[5] Copyright is a form of protection provided under federal law to the authors of original works of authorship, including literary, dramatic, musical, artistic, and certain other intellectual works, both published and unpublished.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

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: March 1, 2006

TO: Revenue Laws

FROM: Dave Crotts
Fiscal Research Division

RE: Draft 2005-SVz-13 (v.6) (Expansion of Royalty Reporting Option)

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:			See "Assumptions and Methodology"		
EXPENDITURES:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue.

EFFECTIVE DATE: Tax years beginning on or after January 1, 2007.

BILL SUMMARY .The 2001 General Assembly enacted legislation that eliminated the tax planning strategy of shifting trademark royalty income to another state in order to avoid the North Carolina income tax. The proposal would extend the 2001 treatment to royalty income patents and copyrights.

ASSUMPTIONS AND METHODOLOGY: A discussion with the Department of Revenue indicates that the enactment of the bill could have a positive impact on General Fund tax revenue but the magnitude of this amount is not known. One factor limiting the impact of the proposal is

that fact that in the wake of the **A & F Trademark** case, some affected taxpayers may be in compliance. Another issue is the fact that the proposal applies to patent and copyright royalty income only. In general, any revenue gain would be smaller than the receipts from the 2001 act affecting trademark income. During the 2001 discussion the estimated fiscal impact from the trademark provision was $20 million per year.

SOURCES OF DATA: North Carolina Department of Revenue.

TECHNICAL CONSIDERATIONS: None

Discussion of Issue:
Real Estate Investment Trusts

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	March 1, 2006
Introduced by:		**Summary by:**	Cindy Avrette Committee Counsel
Version:			

REIT – A real estate investment trust (REIT) is a corporation or trust that uses the pooled capital of many investors to purchase and manage real estate. REITs are traded on major exchanges just like stocks and are granted special tax considerations. A REIT pays yields in the form of dividends. It is required to pay out at least 90% of its income to shareholders and deducts the amounts paid out. The REIT is subject to federal and State income tax only on the income that is not distributed to its shareholders. The shareholders pay tax on the dividends they receive.[1]

DIVIDENDS RECEIVED DEDUCTION. – The federal dividends received deduction[2] is meant to reduce the negative effects of the double tax on C corporation profits distributed as dividends to corporate shareholders. Subject to certain limitations, corporations may deduct a percentage of the dividends it receives from another domestic corporation. The percentage it may deduct varies depending upon the receiving corporation's ownership share in the distributing corporation. If the corporations are affiliated under the Internal Revenue Code, then the receiving corporation may deduct 100% of the dividends received from the distributing corporation.[3] In 2001, North Carolina began piggy-backing the federal dividends received deduction. In 2003, it began treating dividends from REITs the same as federal law.[4]

EXAMPLE 1 – If a North Carolina corporation owns a REIT that owns North Carolina rental property, the REIT gets a deduction for the income it distributes to the corporation and the corporation pays tax on the distribution.

EXAMPLE 2 – If a North Carolina corporation establishes a holding company in another state and transfers it ownership in the REIT to the holding company, the distributions from the REIT escape taxation: The REIT distributes all of its income to the holding company so it has no tax liability. The holding company has no nexus with North Carolina so it has not tax liability on the dividends received. The holding company dividends the income to the North Carolina corporation, which pays no tax on the dividend because it qualifies for the dividends received deduction.

ALTERNATIVES –

1. For instances where the corporation and the REIT are related entities, the rental expense deduction could be disallowed for the operating corporation.
2. Require the REIT to pay tax on its income from a related entity.

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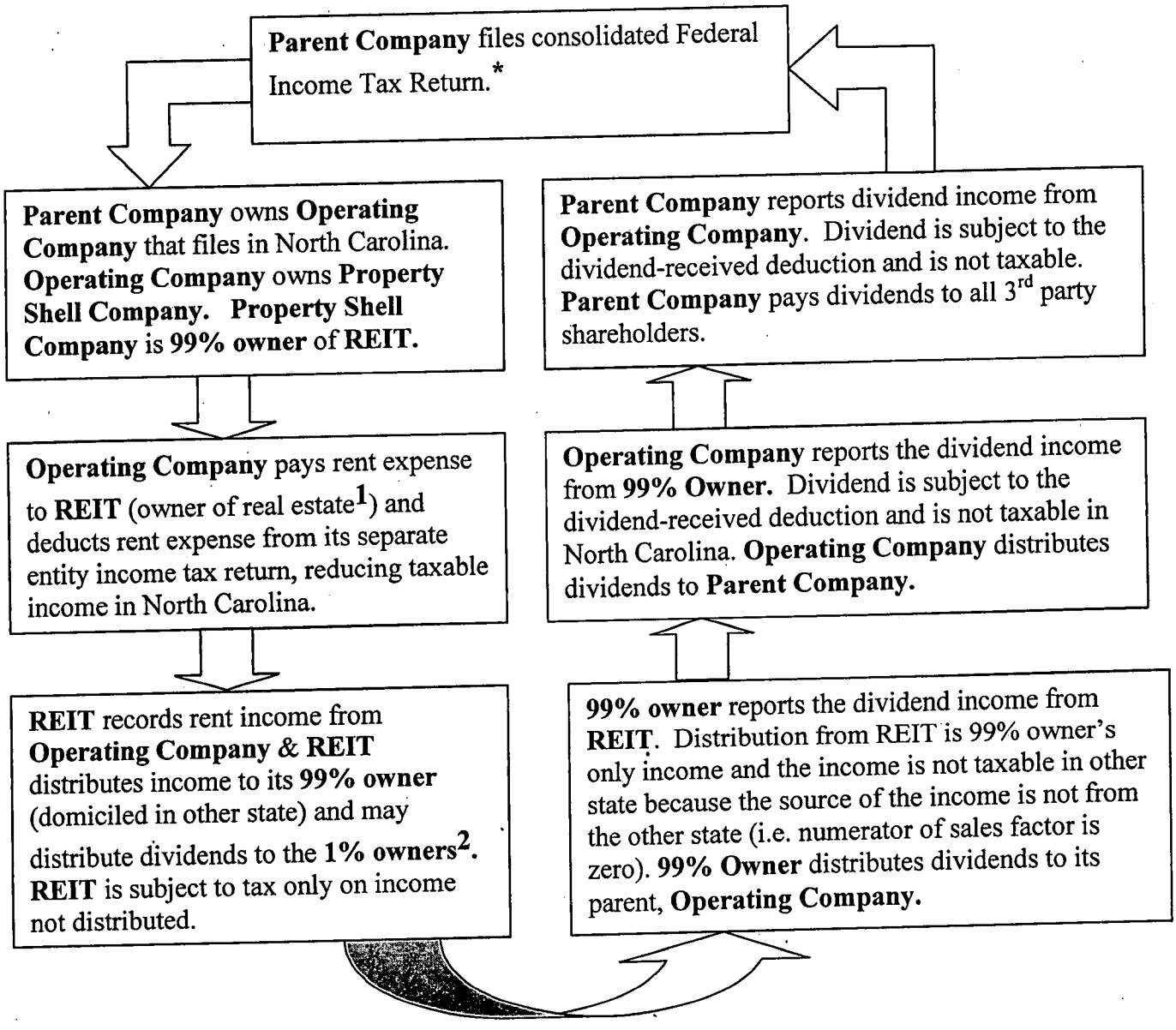
[1] The dividend received deduction does not apply to dividends received from a REIT.
[2] 26 U.S.C. 243.
[3] Corporations are considered 'affiliated' under the Code if the receiving corporation owns 80% or more of the distributing corporation.
[4] Prior to 2003, North Carolina allowed shareholders to deduct dividends received from a REIT to the extent that the income would not be taxed by the State if it had been received directly by the corporation.

REIT Income Shifting Structure
Cash Flow

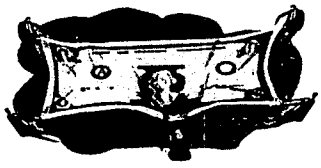


***Note: REIT is not included in the consolidated US Federal income tax return for Parent Company and Subsidiaries pursuant to the Internal Revenue Code. One requirement for qualification as a REIT is that the REIT must distribute at least 90% of its income to its shareholders.**

1 REIT assets consist of real estate or real estate mortgages.

2 A REIT is required to have 100 beneficial owners.

Summary result: Operating income subject to tax in North Carolina is diluted by a "manufactured" rental expense. The entity receiving the rental income is not taxable in North Carolina.



Video Competition in North Carolina

Revenue Laws Study Committee
March 1, 2006

FCC's 12th Annual Video Competition Report

(adopted Feb. 10, 2006)

- Annual national report
- Cable still serves largest % of households, but market share is declining (69.4%, down 2.2% from June 2004)
- DBS comprise second largest group of households (27.7%)
- 14% of U.S. households still get broadcast

NC video market reflects national trends in FCC report

- Cable leads in NC with 1.8 million subscribers, but market share has declined
- DBS holds 26% market share in NC
- Most North Carolinians have option of purchasing video service from at least one cable operator or one or more satellite operators

Incumbent Local Exchange Carriers (ILECs)

- FCC report states that most ILECs have reported plans to provide video service
- Larger LECs have accelerated plans to roll out video services in some markets (Verizon, SBC)
- Smaller LECs are offering video service over existing lines using VDSL or ADSL technologies

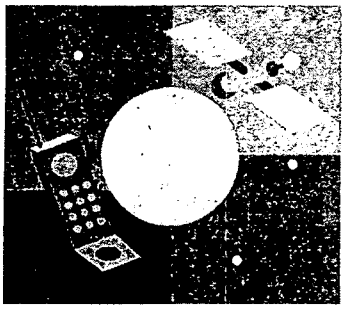
NCGA Revenue Laws Cable Franchise Survey

- Purpose: to gather current information on both the tangible and intangible value of existing local franchise agreements
- Approximately 270 local governments (county & municipal) asked to respond

NCGA Revenue Laws Cable Franchise Survey

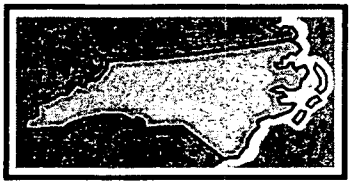
- Data requested:
  - Franchise fee collections
  - Negotiation of franchise agreement
  - In-kind contributions
  - Competition and cable prices
  - Length and expiration date of contracts
- Results will be presented at next meeting of Revenue Laws Study Committee

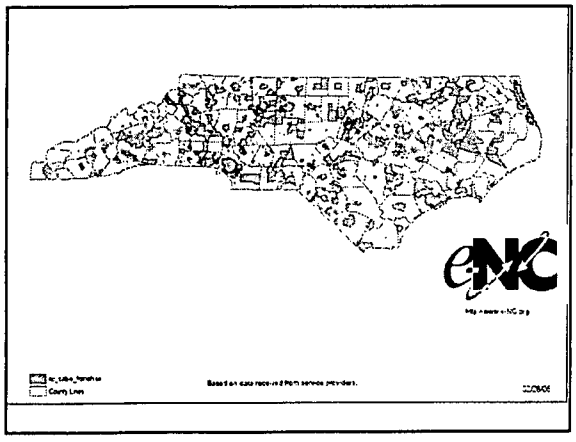
In the meantime …

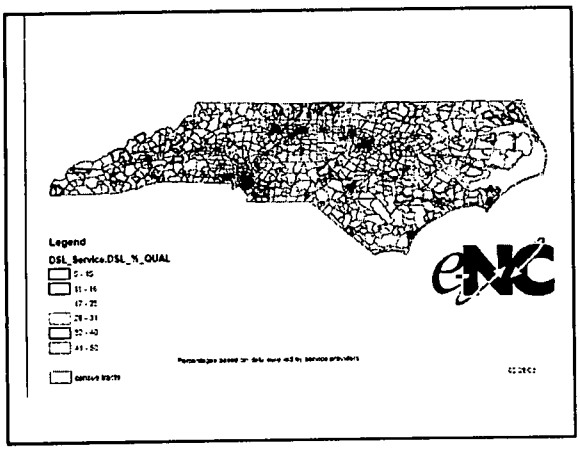


e-NC Telecom Service Provider Mapping System

- http://204.211.135.120/enc-telco-maps/eNC_LaunchMap.htm



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THE BUSINESS OF TELEVISION
BROADCASTING & CABLE
www.broadcastingcable.com

Virginia Eases Way for Telcos

By John Eggerton -- Broadcasting & Cable, 2/27/2006 5:35:00 PM

Virginia has joined Texas as the second state to pass legislation easing the entry for cable competitors. While not a statewide franchise like Texas, Virginia is essentially guaranteeing a franchise anyplace in the state where a new entrant agrees to meet certain specific franchise terms.

Verizon says the Virginia House and Senate have both passed legislation that makes it easier for telco video services, like Verizon's FiOS, to roll out video service in the state. Essentially the idea is to agree to a set list of access and provision requirements without having to go through the time-consuming local franchise process.

The FCC and Congress have made easing the roll-out of broadband a priority.

If signed by the governor--one of his aides helped negotiate the final compromise bill, according to Verizon--the legislation would become effective July 1.

Unlike the Texas bill, which created a statewide franchising regime, the Virginia franchises remain under the control of the municipalities, according to Verizon spokesman Harry Mitchell. Verizon had pushed for a statewide franchise, but was foreclose that route by the Virgininia Constitution, which establishes municipalities' control over their rights of way. Verizon would still prefer the state franchise route.

Instead, in a sort of must-carry take on the franchise process, new video entrants can opt for either a standard franchise process, or after 45 days of negotiations without a deal, officially opt for a so-called "ordinance" franchise.

So long as the video service provider agrees to the terms of that franchise, which include service build-out requirements as well as fee and channel commitments similar to incumbent cable operators, the new provider may begin offering video service within 75 days and the municipality must accommodate it.

Mitchell said the company still thinks the build-out requirements-100% of a pre-established coverage area within three years, for instance--are a barrier to entry, saying neither side got everything it wanted.

Still, Verizon got a faster track to entry, and essentially a guaranteed franchise wherever it agrees to requirements for access and service provision, franchise fees, and customer service as set forth in the bill.

Verizon also got a three-year out clause. That means that if it finds after three years it cannot make a business out of the franchise, it can get out of the deal--a provision it has gotten in most other markets. But there is a compromise there, too.

If it does exit, it cannot re-enter for the balance of the unexpired franchise, which would be a dozen years in most cases.

There is no three-year out clause in its Fairfax franchise, but that is grandfathered, said Mitchell.

"With this compromise legislation, Verizon will be able to accelerate investment in our fiber-optic network in Virginia, more quickly adding an awesome FiOS TV component to our reliable voice phone service and blazing-fast FiOS Internet Service," said Verizon Virginia President Robert W. Woltz Jr.

"We will have more to say about our investment plans in Virginia in coming days," said Woltz, "but it's safe to say that – as this legislation becomes law – those plans will reflect the progressive business environment in the Commonwealth."

Verizon, the most aggressive telco video provider to date, has launched a franchise in the Virginia suburb of Herndon, Va., having secured a franchise to overbuild the market last July. Cox has the cable franchise there.

FiOS expanded its Virginia presence with a franchise deal with Fairfax County, the suburb that surrounds the separately incorporated Herndon.

Verizon had been working to secure franchises in over 200 Virginia municipalities but was also seeking some help from the Virginia legislature.

Telcos argue that not having to seek individual franchises will allow it to more quickly provide more competition in the multichannel video market, one of the Bush administration's, the FCC's and Congress's stated priorities.

Cable argues that if the franchising process is to be streamlined or short-cut, the same advantages should apply to cable.

Verizon's FiOS TV debuted in Keller, Tex., Sept. 22. Verizon. Texas' Public Utility Commission last month approved that state's first statewide franchise for telco video service. Verizon had filed for franchises in 21 communities under the state's franchise law.

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CONSTITUTION OF VIRGINIA

ARTICLE VII
Local Government

...

Section 8. Consent to use public property.

No street railway, gas, water, steam or electric heating, electric light or power, cold storage, compressed air, viaduct, conduit, telephone, or bridge company, nor any corporation, association, person, or partnership engaged in these or like enterprises shall be permitted to use the streets, alleys, or public grounds of a city or town without the previous consent of the corporate authorities of such city or town.

Section 9. Sale of property and granting of franchises by cities and towns.

No rights of a city or town in and to its waterfront, wharf property, public landings, wharves, docks, streets, avenues, parks, bridges, or other public places, or its gas, water, or electric works shall be sold except by an ordinance or resolution passed by a recorded affirmative vote of three-fourths of all members elected to the governing body.

No franchise, lease, or right of any kind to use any such public property or any other public property or easement of any description in a manner not permitted to the general public shall be granted for a longer period than forty years, except for air rights together with easements for columns of support, which may be granted for a period not exceeding sixty years. Before granting any such franchise or privilege for a term in excess of five years, except for a trunk railway, the city or town shall, after due advertisement, publicly receive bids therefor. Such grant, and any contract in pursuance thereof, may provide that upon the termination of the grant, the plant as well as the property, if any, of the grantee in the streets, avenues, and other public places shall thereupon, without compensation to the grantee, or upon the payment of a fair valuation therefor, become the property of the said city or town; but the grantee shall be entitled to no payment by reason of the value of the franchise. Any such plant or property acquired by a city or town may be sold or leased or, unless prohibited by general law, maintained, controlled, and operated by such city or town. Every such grant shall specify the mode of determining any valuation therein provided for and shall make adequate provisions by way of forfeiture of the grant, or otherwise, to secure efficiency of public service at reasonable rates and the maintenance of the property in good order throughout the term of the grant.

....

VA SB706 / HB1404
Cable Competition Act
Key Provisions

1. Definitions [§ 15.2-2108.19] – Updates Virginia definitions to agree with federal Cable Act and:
   a. Cable Service excludes video programming provided by a CMRS provider
   b. Gross Revenues defined to apply uniformly to ordinance based franchises
   c. Transfers requiring LFA approval limited

2. Two types of franchise: (1) negotiated cable franchise [§ 15.2-2108.20(A)] and (2) new ordinance cable franchise [§ 15.2-2108.21]

3. Eligibility for Ordinance Cable Franchise [§ 15.2-2108.21(B)]

   a. Certificated telecom provider with previous consent to use ROW
   b. Certificated telecom provider without prior consent who provides services over facilities leased from an entity with previous consent to use the ROW
   c. Cable operator that has a cable franchise can renew its existing franchise as an ordinance franchise <u>or</u> opt into the new terms of an ordinance franchise granted to another cable operator in the locality under mandatory reciprocity in § 15.2-2108.26

4. General Requirements for ordinance cable franchises [§ 15.2-2108.21]

   a. Ordinance franchise has 15-year term [§ 15.2-2108.21(B)]
   b. Applicant must file request with locality to negotiate and be available to negotiate at least 45 days prior to filing notice that it elects an ordinance franchise. This prerequisite does not apply if locality refuses to negotiate <u>or</u> the applicant already holds a negotiated cable franchise from the locality. [§ 15.2-2108.21(C)]
   c. Must file notice with locality at least 30 days prior to offering service, along with map/description of initial service area in which applicant intends to provide service within the three year period required for an initial service area, and the area in the locality in which operator has its telephone facilities. May amend later. [§ 15.2-2108.21(C)]
   d. Compliance with nondiscrimination standard. Cable operator shall assure that access to cable service is not denied to any group of potential residential subscribers because of the income of the residents of the local area in which such group resides. [§ 15.2-2108.21(D)]
      1. LFA may monitor and inspect deployment of cable services. Cable operators required to submit semi-annual progress reports detailing current provision of services under the deployment schedule and new service area plans for the next six months. [§ 15.2-2108.21(D)]
      2. Failure to correct or remedy any material deficiencies shall be subject to same remedies as those in existing cable franchise. [§ 15.2-2108.21(D)]
   e. LFA has 120 days to pass required ordinances to regulate new franchisee which will apply retroactively to the date on which the cable operator began offering service. [§ 15.2-2108.21(E)]

5. Permitted provisions in cable franchise ordinances [§ 15.2-2108.22]

   a. PEG channels – Access to channels equal to lowest number of channels provided by any other operator, with an opportunity for non-discriminatory growth of based on substantial utilization of existing channels. Locality can get up to an additional 3 PEG channels in the basic service tier so long as total number of PEG channels doesn't exceed 7 channels in aggregate. [§ 15.2-2108.22(1)]

b. PEG interconnection may be required; if no agreement within 180 days of request to interconnect by new operator, then locality can determine interconnection point. [§ 15.2-2108.22(1)]
c. Franchise fee – Not exceed 5% or lowest fee rate paid by an incumbent in locality, based on statewide definition of gross revenues. [§ 15.2-2108.22(2)]
d. PEG and INET fee [§ 15.2-2108.22(3)]
   i. New operator pays 1% if existing cable operator provides in-kind; can be higher if necessary to match fees paid by incumbent, but higher fee only paid during remainder of existing operator's franchise.
   ii. At expiration of existing term, locality may negotiate with all operators regarding amount of any support. If parties cannot agree, LFA may continue to impose fee to support capital costs which does not exceed the amount paid by the existing cable operator. LFA may assess this additional fee on a per subscriber basis or as % of gross revenue. Offset may be allowed for unamortized value of in-kind services provided.
e. Customer service requirements – comply with requirements imposed by LFA under limitations of bill or with federal requirements if none are established by LFA. [§ 15.2-2108.22(4)]

6. Service Availability Requirements [§ 15.2-2108.22(12)]

   a. Locality shall adopt ordinance to require cable operators to make cable service available to (i) up to 100% of initial service area within three years, and (ii) no more than 65% of the entire locality in which the cable operator has its telephone facilities, within seven years of the date the franchise is granted, subject to statutory exclusions.
   b. Availability subject to exclusions – e.g., force majeure; certain delays or lack of access caused by locality or others; certain technical reasons or lack of facilities; average occupied residential household density is less than 30 occupied residential dwelling units per mile; and when prior service, payment, or theft of service history with a subscriber or potential subscriber has been unfavorable.
   c. Cable operator using its telephone facilities to provide cable service not required to provide any cable service outside of the area in the locality in which it has its telephone facilities.
   d. Between the seventh and eighth years from the date of grant of the franchise, cable operator may be required, after a public hearing and a finding that it is necessary to foster competition, to make service available to no more than 80% of the entire locality in which the cable operator has its telephone facilities within 10 years, subject to the exclusions. If cable operator notifies locality that it is unwilling to accept this requirement, the locality may terminate the cable operator's ordinance cable franchise. The cable operator must certify compliance at third, seventh and tenth anniversary dates with the service requirements.
   e. For cable ordinance franchise, the date of grant of the franchise is the date the required notice is filed with the LFA.

7. Free service for government buildings [§ 15.2-2108.22(9)]

8. Enforcement mechanisms

   a. Default process (informal discussions, notice, cure period, public hearing) [§ 15.2-2108.22(5)]
   b. Civil penalties - For customer service, carriage of PEG, reporting requirements, and nonpayment [§ 15.2-2108.22(6)]
   c. Audits – books and records for fee payment only [§ 15.2-2108.22(7)]
   d. Reports – May require annual financial and quarterly customer service information so long as it does not exceed requirements on any other provider. [§ 15.2-2108.22(8)]

9. Line items on bill – Franchise fees, PEG and INET fees; and any other fee, tax, assessment or charge may be passed through by any cable operator with negotiated or ordinance franchise. [§ 15.2-2108.25]

10. ROW fee consistency and override to existing state cable bidding process. [§ 15.2-2108.23 and 24]

11. Prohibits localities from forcing renegotiation or modification, etc. of franchises. [§ 15.2-2108.27]

12. Transfer provisions – key term is the definition of "transfer" that excludes affiliate transactions and mergers; must have prior consent of locality. [§ 15.2-2108.28]

13. Optional Surrender – new franchisee within three years after grant of cable franchise may notify locality and surrender cable franchise for entire locality without liability; no effect on other franchises held by new franchisee. If a franchisee surrenders, it is not eligible to receive another franchise in the locality for the unexpired term of the surrendered franchise. [§ 15.2-2108.29]

14. Mandatory Reciprocity – Existing cable operator has ability to substitute new terms and conditions of any new negotiated franchise or ordinance cable franchise granted to a new cable franchisee in lieu of its existing franchise. LFA must make terms and conditions in all negotiated franchises granted to new operator available to existing cable operator in the same franchise area. LFA must also make available to existing cable operator terms and conditions from any ordinance franchise by allowing it to opt into an ordinance cable franchise. Existing operator must accept in entirety all applicable terms and conditions. [§ 15.2-2108.26]

15. Allows allocation of discounts for bundled services. [§ 15.2-2108.22(11)]

16. Federal law includes amendments. [§ 15.2-2108.19]

17. Process for renewal of negotiated cable franchises [§ 15.2-2108.30]

    a. May elect to renew under the Cable Act or opt into an ordinance cable franchise
    b. Opt-in option requires prior notification to local government

18. Fact that person obtains negotiated franchise or ordinance cable franchise under this article does not create presumption that such person is providing cable services, is controlling or responsible for the management and operation of a cable system, or is a cable operator, for purposes of federal law. [e.g., IPTV] [§ 15.2-2108.31]

State Cable Legislation

State	Bill #	Type of Franchise	Application to Incumbent Operators	Franchise Fees	Buildout	PEG Channels
Florida	H 1199	Statewide - issued by Secretary of State in 15 days	When existing franchise expires (incumbent is one serving at least 40% of subscribers) and incumbent can opt for statewide if another provider enters 50% of service area	None	None	Same number as incumbent
Indiana	S 245; H1279	Statewide - issued by Utility Regulatory Commission	Has option of existing franchise or statewide	Payable quarterly to locality on comparable basis as incumbent. If no incumbent, rate is 5%. If incumbent is required to make payments to support PEG programming, statewide franchise holder must make similar payments.	None	Same number as incumbent
Iowa	H 670; S 3146	Statewide - issued by Secretary of State; utility providing local telephone service is considered to have a franchise	When existing franchise expires (incumbent is one serving at least 40% of subscribers)	Payable quarterly to locality on percentage of gross revenue set by locality, not to exceed incumbent rate	None	Same number as incumbent
Kansas	S 449	Statewide - issued by Secretary of State	When existing franchise expires, but incumbent can ask for modification of its franchise agreement if another provider enters its service area	Locality can impose at % of gross revenues, with rate not to exceed incumbent rate. Payable quarterly.	None	Same number as incumbent
Louisiana	Expect Soon					
Missouri	S 816	Statewide - issued by Public Service Commission; entity providing local telephone service is considered to have a franchise	When existing franchise expires	Payable quarterly to locality on percentage of gross revenue at rate of incumbent	None	Same number as incumbent

State Cable Legislation

State	Bill #	Type of Franchise	Application to Incumbent Operators	Franchise Fees	Buildout	PEG Channels
New Jersey	A804; S192	Statewide - issued by Board of Public Utilities	When existing franchise expires	3% to city and 1.5% to county in which city is located; payment assistance to low-income subscribers	6 yrs to cover state	2 PEG channels; free cable and Internet to public buildings; some infrastructure
South Carolina	H 4428	Statewide - issued by Secretary of State in 10 days	When existing franchise expires, but can opt for statewide if another provider enters service area	Locality can impose fee at lowest incumbent rate; fee collected quarterly by locality; gross revenue defined	None	Same number as incumbent
Tennessee	H 3636; S 3210	Statewide - issued by Secretary of State in 10 days	When existing franchise expires (incumbent is one serving most customers)	Locality can impose fee at lowest incumbent rate; fee collected quarterly by State Comptroller and distributed to source; gross revenue defined	None	Same number as incumbent
Texas	Enacted	Statewide - issued by Public utilities Commission	When existing franchise expires (incumbent is one serving at least 40% of subscribers)	5% of gross revenue payable quarterly plus same per subscriber payments as incumbent until incumbent's franchise expires, then additional 1% or subscriber fee in lieu of in-kind compensation and grant	None	Same number as incumbent
Virginia	H 1404; S 706	Local: Negotiated Franchise (applies to anyone) and Ordinance Franchise (applies to telco provider or incumbent). To get ordinance franchise, telco must file request to negotiate, then notice for ordinance franchise	Incumbent can obtain an ordinance franchise if a new provider receives an ordinance franchise	Franchise Fee at lowest incumbent rate payable quarterly; PEG Capital Fee at lowest recurring per subscriber or % of revenue basis; PEG Capital Grant Surcharge Fee of 1.5% or lowest capital contribution paid or provided in-kind. Gross revenue defined.	100% of initial area in 3 yrs.; 65% of phone service area in 7 yrs and 100% in 10 yrs. 35 homes per mile exception	Same number as incumbent, but at least 3 and no more than 7

REVENUE LAWS STUDY COMMITTEE
Friday, December 14, 2007
Room 544, Legislative Office Building
9:30 a.m.

MINUTES

The Revenue Laws Study Committee met at 9:30 a.m. on Friday, December 14, 2007, in Room 544 of the Legislative Office Building. Nine members of the committee were present. Senator Kerr presided.

Welcoming Remarks and Introductions

Senator Kerr introduced new staff member, Ryan Blackledge, a staff attorney with the Bill Drafting Division.

Overview of 2007 Tax Law Changes and Fate of the Revenue Laws Study Committee's Recommendations to the 2007 General Assembly

Cindy Avrette and Trina Griffin, staff attorneys with the Research Division, were recognized outline the 2007 tax law changes. This included a review of a new tax credits, a brief budget outlook, changes to Medicaid, and changes to the tax appeal process. A copy of their power points, 2007 revenue legislation and bills, and a summary report of the 2007 Finance Law Changes are attached.

Overview of 2007 Property Tax Legislation

Martha Walston, a staff attorney with the Fiscal Research Division, and Dan Ettefagh, a staff attorney with the Bill Drafting Division, were recognized to summarize the 2007 property tax legislation. They reviewed changes to the Homestead Exclusion, expansion of property taxed at present-use value legislation, changes to the combined motor vehicle registration and property tax collection system, changes to the Property Tax Commission and changes to school capital leases and the property tax circuit breaker. Copies of their handouts are attached.

Comments from Interested Parties

Pete Rodda, Forsyth County tax assessor/collector, was recognized to discuss and request a circuit tax breaker study group.

Stan Duncan, Henderson County tax assessor and Chair of the Exemptions/Use Value Committee of the NC Association of Assessing Officers, was recognized. He outlined how hard it is to determine if homestead exemption applicants are truly North Carolina citizens versus vacation home owners.

Paul Meyer, NC Association of County Commissioners' Senior Associate General Counsel, was recognized. He stated that he was comfortable with the discussed property tax changes (targeted relief program) and gave an update on the DOT/DMV computer programming system which is moving forward.

Property Tax Issues for 2008

Dan Ettefagh was recognized to outline proposed property tax revaluation changes and proposed property tax values for low-income housing. Martha Walston was recognized to present an overview on liens on mobile homes, which are sold or moved without a permit so tax collectors have trouble collecting the property tax.

The meeting adjourned at 11:45 AM.

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

Representative Paul Luebke, Co-Chair
Revenue Laws Study Committee

DeAnne Mangum

DeAnne Mangum, Committee Clerk

REVENUE LAWS STUDY COMMITTEE AGENDA

Sen. John Kerr Rep. Paul Luebke

Friday, December 14, 2007
Room 544, Legislative Office Building
9:30 a.m.

I. **Welcoming Remarks and Introductions**

II. **Overview of 2007 Tax Law Changes and Fate of the Revenue Laws Study Committee's Recommendations to the 2007 General Assembly**

Cindy Avrette and Trina Griffin, Research Division

III. **Overview of 2007 Property Tax Legislation**

Martha Walston, Fiscal Research Division
Dan Ettefagh, Legislative Drafting Division

Comments from Interested Parties

- Pete Rodda, Forsyth County Tax Assessor/Tax Collector
- Stan Duncan, Henderson County Tax Assessor and Chair of the Exemptions/Use Value Committee of the NC Association of Assessing Officers
- Paul Meyer, Senior Associate General Counsel for the NC Association of County Commissioners

IV. **Property Tax Issues for 2008**

- **Revaluations**

  Overview – Dan Ettefagh, Legislative Drafting Division

- **Liens on Mobile Homes**

  Overview – Martha Walston, Fiscal Research Division

- **Comments from Interested Parties**

V. **Adjournment**

Next Meeting Date: Friday, January 25, 2008
All meetings in Room 544, LOB, at 9:30 a.m.

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — Dec. 14, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Pete Rodda	Forsyth Co Tax Assessor / Collector
Stan Duncan	Henderson Co. Assessor
David Baker	NC DOR
Bill Wilkes	NC DOR
Mitch Blom	NC DOR
[illegible]	Orange Co. Revenue Director
Pam Meyer	NCACC
Connie Wilson	SSI
Meg Gray	NC BTC

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — Dec. 14, 2007

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Amy Schilder	McGuireWoods
Tom Bean	NC Enviro Defense NC Sustainable Energy Assoc.
Jennifer Willis	Wake Co. gov't.
Andy Sabol	NC DOR
Bill Spencer	NC DOR
Keith McCoards	DOR
Donna Alderman	DOR
[illegible]	SA
[illegible]	Henderson Co.
Lee Harris	NC DOR
Deatrice Williams	CUCA

VISITOR REGISTRATION SHEET

Revenue Laws Study Comm. 12-14-07

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Fraser	TWC
Steve Brewer	EMBARQ
Dana Simpson	Smith Anderson
Debra Dew	AT+T
Jean Beaucs	Halifax County
[illegible]	WMMT
[illegible]	Bone & Assoc
Andy Ellen	NCRMA
Elizabeth Dalton	NCRMA
Rick Zechini	NC Assn of Realtors

VISITOR REGISTRATION SHEET

Revenue Laws Study Comm. 12-14-07

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Patrick Buffkin	Nelson Mullins
John Goodman	NC Chamber
Jim Ahler	NCACPA
David Barnes	Poyner & Spruill
Cam Crawley	E&Y
Steve Woodson	NLFB
Cam Cover	BPMHL
Amy McConkey	Smith Anderson
Fred Bone	Bone & Asso.
Mark Schichtel	Time Warner Cable
Marcus Trater	Brooks Pierce

VISITOR REGISTRATION SHEET

Name of Committee | Date

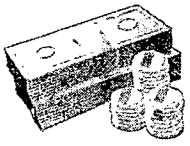
VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	JP, AL, PA
Susann Streb	NCCLA
Jamie Fenwick	Time Warner Cable

2007 TAX LAW CHANGES

Revenue Laws Study Committee
Cindy Avrette & Trina Griffin
Research Division, NCGA
December 14, 2007

Revenue Highlights



- 3rd year in a row State experienced healthy revenue surplus ($1.54 billion)
- $203 million reversions
- $1.34 billion surplus
  - $286 m (21.3%) from tax compliance
  - $1.06 billion
    - Non-withholding – capital gains
    - Withholding
    - Corporate Income Tax

Revenue Highlights

- One-time use of surplus
  - $175 m – Rainy Day Fund ($800 m)
  - $145 m – Repairs & renovations
  - $231 m – Capital projects
- $1.1 billion structural gap declined to less than $200 million
  - Unexpected revenues
  - Permanent Extension of ¼ cent sales tax

Long-Term Budget Outlook

- ✓ Strongest picture in more than a decade
- ✓ 2007-08 revenue estimates continue cautious approach
- ✓ Budget availability highly dependent on health care costs

Tax Highlights

- Net Tax Reductions for FY 07-08 = $87.5 million
- Net Tax Reductions for FY 08-09 = $147.5 million
- Many of Tax Changes in Budget Act
- Big Items
  - IRC Update
  - EITC
  - Continue ¼ Cent

2007 Tax Changes

- Income Taxes
- Sales Taxes
- Excise Taxes
- Incentives
- Tax Appeals Process
- Local Impact Fees
- Property Taxes

2007 Tax Changes

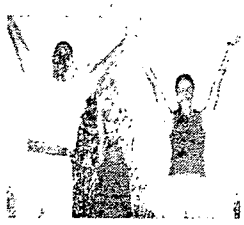
- **Income Taxes**
  - **Social objectives**
  - **Corporate tax avoidance**
- Sales Taxes
- Excise Taxes
- Incentives
- Tax Appeals Process
- Local Impact Fees
- Property Taxes

Income Tax Changes

- Refundable State Earned Income Tax Credit
  - 3.5% of federal credit
  - Effective 2008
  - Expires 2013
- Work Opportunity Tax Credit
  - 6% of federal credit
  - Effective 2007
  - Federal Credit expires December 31, 2007

Adoption Tax Credit

- Credit = 50% of the federal adoption tax credit
- Effective for 2007
- Expires in 2013
- Five-year carry forward
- Credit amount and income phase-out are indexed



Long-Term Care Tax Credit

- Credit = 15% of the premium paid
- Credit capped at $350
- No double benefit
- NEW: Income Limitation
- Reenactment of a tax credit
  - Originally enacted in 1998
  - Expired in 2004
- Effective 2007
- Expires 2013

Enhance 529 Plan Income Tax Deduction

- Removes the January 1, 2011 sunset
- Increases maximum annual deduction amount
  - $2,000 to $2,500 (single)
  - $4,000 to $5,000 (MFJ)
- Removes the income limitations for taxable years 2007 through 2011
- SB 1141 – Would extend deduction for all contributions

Other Income Tax Changes

- Conservation Tax Credit
- Firefighter/Rescue Squad Tax Deduction
- Upper Income Tax Bracket Expires This Year

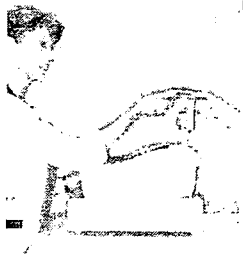
Corporate Tax Avoidance

- Issue of Tax Avoidance
  - Violates tax principles of equity and ability to pay
  - DOR aggressively pursuing through use of consolidated returns
- Combined Reporting
  - Change from a single entity reporting state to a combined reporting state
  - Little attention this Session
  - General Assembly pursuing on an ad hoc basis
- REIT
  - Taxable only on income not distributed to shareholders
  - "Captive REIT" is one owned or controlled by a single entity
    - Mortgage REITS
    - Rental REITS
  - Disallows dividend paid deduction when a REIT is a "captive REIT"
  - Effective 2007
  - Fiscal Impact Studied

2007 Tax Changes

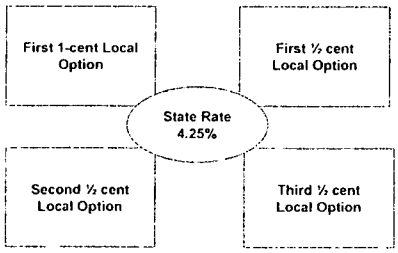
- Income Taxes
- **Sales Taxes**
  - **Medicaid**
  - **Environmental Issues**
- Excise Taxes
- Incentives
- Tax Appeals Process
- Local Impact Fees
- Property Taxes

Sales Tax Rate and Distribution



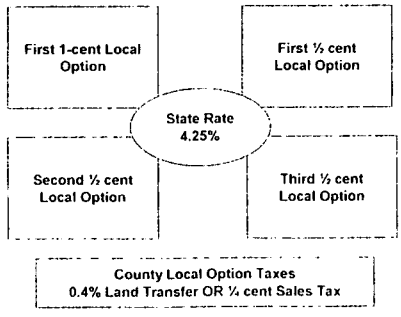
- Cost of Medicaid
  - State assume 100% of costs of Medicaid over a 3-year period
  - Sales tax "swap"
  - Local option taxes
    - Sales tax increase
      - 5 out of 13
      - Catawba, Martin, Pitt, Sampson, and Surry
    - Land transfer tax
      - 0 out of 16

Sales Tax Rate Today = 6.75%



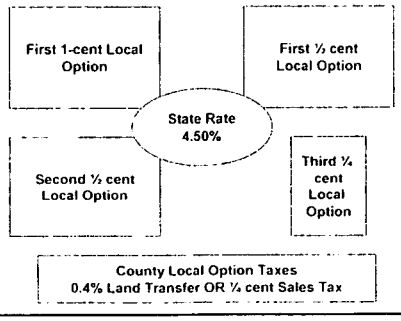
Sales Tax - January 2008

(Combined Sales Tax Rate may be 6.75% or 7%)



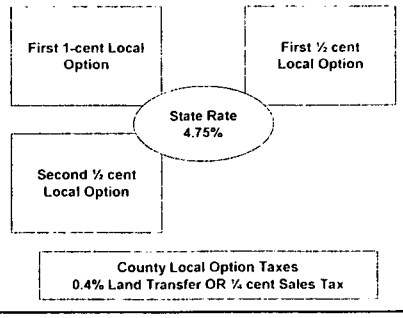
Sales Tax Swap: October 2008

(Combined Sales Tax Rate may be 6.75% or 7%)



Sales Tax Swap: October 2009

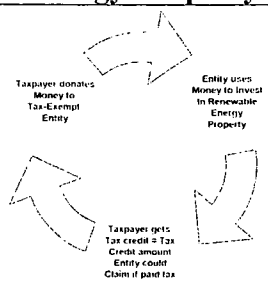
(Combined Sales Tax Rate may be 6.75% or 7%)



Sales Tax Exemption for Fuel

- Created a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) in North Carolina
- Four-year phase-out of the sales tax on:
  - Electricity
  - Piped Natural Gas
  - Fuel
- Applicability
  - Manufacturing facilities
  - Farming operations
- Effective October 1, 2007
- Fully phased-out by July 1, 2010
- Cost = $10 million

Encourage Use of Renewable Energy Property



Other Sales Tax Changes

- Streamlined Sales Tax Agreement (H257)
  - Bundled transactions
- Exemption for commercial fishing (H257)
- Exemption for Baler Twine (H487)
- Exemption for Baked Goods (S1240)
  - Covers Thrift Stores
- Bakery cases settled
- Amend Sales Tax Holiday
  - School supplies exempt if sales price $100 or less
  - ***NEW:*** School instructional material exempt if sales price $300 or less
  - October 2007
- Solid Waste Disposal Tax – July 2009 (S1492)

2007 Tax Changes

- Income Taxes
- Sales Taxes
- **Excise Taxes**
  - **Property Coverage Contracts**
  - **OTP**
  - **Motor Fuel**
- Incentives
- Tax Appeals Process
- Local Impact Fees
- Property Taxes

Gross Premiums Tax: Additional Tax on Property Coverage Contract

- 2006 - Expanded the tax base; lowered the rate
- Revenue neutral rate =0.74% (not 0.85%)
- Includes 'wind only' premiums
- Increase proceeds allocated to VFDF
- Change distribution formula to local fire districts

Excise Tax on OTP

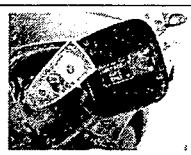
UNC
N.C. CANCER HOSPITAL

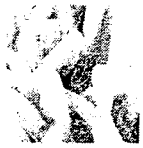
State to provide $50 million annually to the University Cancer Research Fund

- Increase tax on other tobacco products from 3% to 10%
  - $11.4 million for FY 07-08
  - Earmarks increases for the Fund
- Tobacco Trust Fund
- General Fund appropriations

Excise Tax on Motor Fuel

- Continue cap for two more years
  - June 30, 2009
  - 29.9 cents/gallon
  - 21st Century Transportation Committee
- Exempt biodiesel
  - Produced by an individual
  - Used in a private vehicle
  - Registered in that individual's name

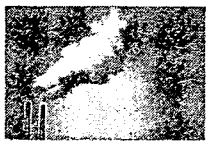




2007 Tax Changes

- Income Taxes
- Sales Taxes
- Excise Taxes
- Incentives
  - **Direction**
  - **Study**
- Tax Appeals Process
- Local Impact Fees
- Property Taxes

Tax Incentives



- State spending on economic development for FY06-07 - $1.26 billion
- Over 85% of spending involve tax expenditures
- Shift in policy to retention of jobs
- Joint Select Committee on Economic Development Incentives

Incentive Legislation

- General Incentives
  - Software publishers – 1%, $80 cap on M&E
  - Businesses engaged in R&D – Increased exemption amounts
  - Aircraft manufacturers – Expansion of existing sales tax refund to include parts and accessories
- Targeted Incentives
  - Research Supplies – Sales tax refund for analytical services
  - Railroad Intermodal Facilities – Income tax credit and sales tax exemption & refund
  - Datacenters – 1%, $80 cap on M&E
  - Job Maintenance and Capital Development Fund

2007 Tax Changes

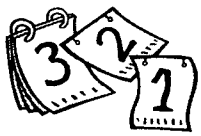
- Income Taxes
- Sales Taxes
- Excise Taxes
- Incentives
- **Tax Appeals Process**
- Local Impact Fees
- Property Taxes

SB 242: Reform Tax Appeals

- Revenue Laws Study recommendation
- Revamps process for the administrative and judicial review of disputed tax matters
- Effective January 1, 2008

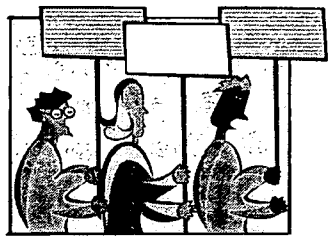
The Highlights

- A taxpayer has 15 additional days to file a request for review of a proposed assessment or a denial of a refund claim.



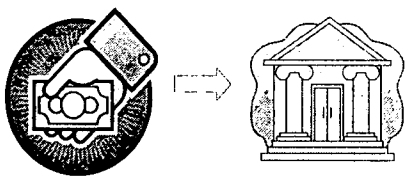
The Highlights

- The "payment under protest" rule is abolished.



The Highlights

- A taxpayer may no longer pay the tax and proceed directly to court.



The Highlights

- Administrative hearings are moved from the Department of Revenue to the Office of Administrative Hearings.

The Highlights

- The Tax Review Board is eliminated.

The Highlights

- Tax cases may be designated as complex mandatory business cases and heard in the NC Business Court.

But Wait. . . .There's More

- Made changes relating to federal corrections
- Extended corporate income and franchise tax filing deadline
- Changed procedure for alternative apportionment formula requests
- Modified tax collection procedures
- Changed procedure for land transfer tax refund requests
- Modified corporate officer authority and liability
- Directed Revenue Laws to study tax class actions

Class Actions Study

- NEWS FLASH! *Dunn v. North Carolina* –
  - On December 7, 2007, the NC Supreme Court upheld class certification.
  - If the plaintiffs succeed, then anyone who paid taxes on out-of-state municipal bonds since 2001 will be entitled to a refund, regardless of whether the person filed a refund claim.
  - Report to 2008 Session

2007 Tax Changes

- Income Taxes
- Sales Taxes
- Excise Taxes
- Incentives
- Tax Appeals Process
- **Local Impact Fees**
- Property Taxes

Local Impact Fees

- *Durham Land Owners Assn. v. County of Durham* case: In June 2006, NC Court of Appeals struck down Durham County ordinance authorizing school impact fee on developers
- County ordered to refund over $8 million plus interest to developers

Response to *Durham Land Owners*

Local Government Response	Court of Appeals Response	General Assembly's Response
'Voluntary monetary exactions'	▪Upheld lower court's decision re: the ordinance ▪But reversed the award of interest because there is no statutory authority	▪2 bills – one passed; one didn t ▪S.L. 2007-371 (SB 1152) requires local governments to pay 6% interest on illegal exactions for development ▪Effective for actions filed on or after 8/19/07 ▪SB 1180 – No Monetary Exaction for Development ▪Passed Senate, but not House

2007 Tax Changes

- Income Taxes
- Sales Taxes
- Excise Taxes
- Incentives
- Tax Appeals Process
- Local Impact Fees
- **Property Taxes**

2007 CHANGES TO THE HOMESTEAD EXCLUSION

Revenue Laws Study Committee

December 14, 2007[1]

History of the Property Tax Homestead Exclusion

- Provides residential property tax relief to low-income elderly or disabled homeowners by excluding a portion of the value of the residence from property taxes.
- In 1936, the North Carolina Constitution was amended to permit the General Assembly to exempt from taxation up to $1,000 in property held by and used as the residence of an owner.
- The homestead exclusion was enacted in 1972. Since its enactment, the homestead exclusion has been amended 10 times.[2]
- In 2006, more than 100,000 North Carolinians claimed the homestead exclusion. About $3.8 billion in property value is excluded from property taxation. This represents $24.8 million in county revenue alone.

Qualifications for the Homestead Exclusion

- A homeowner must be at least 65 years old OR totally and permanently disabled AND have income of no more than $20,500. Since 2001, the income eligibility amount has been adjusted each year by a percentage equal to the cost-of-living adjustment percentage (COLA) used to increase Social Security benefits for the preceding calendar year.

Relief Provided by the Homestead Exclusion

- A qualified homeowner may exclude the greater of $20,000 or 50% of the value of the home from property taxation.

2007 Legislative Changes[3]

- The General Assembly raised both the amount excluded from property taxation and the income eligibility limit. Beginning in the 2008-2009 tax year, the amount excluded from property taxation will be the greater of 50% of the value of the home or $25,000, and the income eligibility limit will be increased to $25,000. Beginning in 2009, this income eligibility limit will be adjusted each year based on the Social Security cost-of-living index.
- The General Assembly also amended the definition of "income" used to determine the income eligibility limit by changing the starting point when determining income. Currently income is defined as adjusted gross income as defined in the IRC, plus all other moneys received from every source other than gifts or inheritances received from a spouse, lineal ancestor, or lineal descendant. Adjusted gross income is defined as gross income less allowable adjustments, such as IRA, alimony and Keogh deductions, capital losses, business, expenses,

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[1] Prepared by Martha Walston, staff attorney, Fiscal Research Division

[2] A history of the homestead exclusion is attached.

[3] During the 2007 Session, thirteen bills were introduced that would provide property tax relief to homeowners. S.L. 2007-497 (HB 1499) is the only bill that was ratified.

and real estate rental expenses. The amended definition deletes the reference to adjusted gross income. This prevents a taxpayer from reducing his or her income by net business or other losses subtracted from income on a federal income tax return to arrive at an adjusted gross income figure. Only a small percentage of taxpayers should be affected by this definitional change. (If a married applicant resides with his or her spouse, the income of both spouses must be included, whether or not the property is in both names.)

- The General Assembly authorized the Revenue Laws Study Committee to study whether to index the minimum excluded appraised value limit in the homestead exclusion and, if so, which index to use.

HISTORY OF THE NC PROPERTY TAX HOMESTEAD EXCLUSION

Effective Year	Action
1972	Excluded first $5,000 in appraised value of real property used as principal place of residence by retired owner, aged 65 years or older, whose disposal income from all sources was less than $3,500.
1974	• Substantially enlarged the class of property entitled to the exclusion. • Increased the income eligibility limit from $3,500 to $5,000. • Excluded social security benefits from the definition of disposable income.
1976	• Expanded eligible taxpayers to include permanent and totally disabled taxpayers regardless of age. • Increased the income eligibility limit from $5,000 to $7,500. • Re-included social security benefits in the definition of disposable income.
1978	• Increased the exclusion amount from $5,000 to $7,500. • Increased the income eligibility limit from $7,500 to $9,000.
1982	• Increased the exclusion amount from $7,500 to $8,500. • Established a mechanism for the State to reimburse cities and counties 15% of the revenue loss from the homestead exclusion. The reimbursement came from cigarette tax revenues. • Replaced the annual application requirement with a one-time application (unless the taxpayer's eligibility changes).

Effective Year	Action
1986	• Increased the exclusion amount from $8,500 to $10,000. • Increased the income eligibility limit from $9,000 to $10,000. • Provided for the State to reimburse cities and counties 35% of the revenue loss from the homestead exclusion.
1987	• Increased the exclusion amount from $10,000 to $12,000. • Increased the income eligibility limit from $10,000 to $11,000. • Provided for the State to reimburse cities and counties 50% of the revenue loss from the homestead exclusion.
1989	Changed the source of reimbursements from an earmarking of cigarette tax revenues to a "draw" from the Local Government Tax Reimbursement Reserve.
1991	Froze the reimbursement amount to the amount that should have been distributed in 1990-91, $7.9 million. In order to balance the budget in 1990-91, the Governor withheld some of the distributions that should have been made in the 1990-91 fiscal year.
1992	Changed the source of reimbursements from appropriations made to the Reserve for Reimbursements to Local Governments and Shared Tax Revenues to current collections of corporate income tax. This switch to an identified revenue stream removes the reimbursements from the budget process.
1994	Increased the exclusion amount from $12,000 to $15,000.

Effective Year	Action
1997	• Increased the exclusion amount from $15,000 to $20,000. • Increased the income eligibility amount from $11,000 to $15,000. • Provided for the State to reimburse the cities and counties 50% of the loss they incur as a result of this tax law change for two years.
2001	• Increased the exclusion amount from $20,000 to the greater of $20,000 or 50% of the taxable value of the property. • Increased the income eligibility amount from $15,000 to $18,000. The amount will be indexed by a percentage equal to the cost of living adjustment (COLA) percentage, effective beginning July 1, 2003 and beyond. • No provision for local reimbursement. • Annual application deadline extended from April 15 to June 1. •
2007 (effective for taxes imposed for taxable years beginning on or after July 1, 2008)	• Increased the exclusion amount to the greater of $25,000 or 50% of the taxable value of the property • Increased the income eligibility amount to a base of $25,000. This amount is to be indexed for taxable years beginning on or after July 1, 2009. • Amended the definition of "income" used to determine the income eligibility amount by changing the starting point when determining income from adjusted gross income as defined in the IRC to all moneys received from every source other than gifts or inheritance received from a spouse.

Updated November 2007
Martha Walston, Staff Attorney

2007 CHANGES EXPANDING PROPERTY TAXED AT PRESENT-USE VALUE

Revenue Laws Study Committee

December 14, 2007[1]

Explanation of Property Taxed at Its Present-Use Value

- Since 1973, the General Assembly has provided special property tax treatment for farmland that is classified and used for agricultural, horticultural, or forest purposes. If the farmland meets certain ownership and size requirements and is engaged in commercial production under a sound management program, the land may be appraised and taxed at its present-use value as opposed to market value. The difference between the taxes due on the present-use value and the taxes that would have been payable in the absence of the special tax treatment are known as deferred taxes. When the property no longer qualifies for the special tax benefit, then the deferred taxes that are due in the year the land losses the benefit plus the preceding three years become payable. Generally disqualification occurs when the property no longer meets one of the three classifications.[2]

2007 Legislative Changes

- Agricultural land used as an aquatic species farm: S.L. 2007-497(HB 1499) amends the classification of agricultural land entitled to taxation at present-use value to include individually owned agricultural land used as an aquatic species farm, effective 2008-2009 tax year. An aquatic species farm tract must meet the existing income requirement for agricultural land (gross income averaging $1,000 for the three years prior to qualification). However, the acreage requirement is lower. Existing agricultural land must consist of a tract that is at least 10 acres in actual production. An aquatic species farm must have at least five acres in actual production OR must produce at least 20,000 pounds of aquatic species for commercial sale annually, regardless of acreage. Aquatic species is defined as any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant, and including but not limited to fish and fishes as defined in G.S. 113-129(7).[3]
- Working waterfront property: S.L. 2007-485 (SB 646) creates a new classification of property eligible for taxation at its present-use rather than market value, effective for the 2009-2010 tax year. This property includes working waterfront property and the land reasonably necessary for the

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[1] Prepared by Martha Walston, staff attorney, Fiscal Research Division

[2] No deferred taxes are due if the property losses its classification for one of the following purposes: (1) the land is enrolled in the federal Conservation Reserve Program and is no longer in production and those does not meet the income requirement, (2) the land is conveyed by gift to certain exempt organizations and governmental entities. This applies to conveyances by gift to nonprofit organizations where the property will qualify for exclusion form the tax base because it is real property that will be exclusively used for educational and scientific purposes as a protected natural area, or where the property will be exclusively used for nonprofit historic preservation purposes, or (3) the property is conveyed by gift to the State, political subdivision of the State, or the United States.

[3] G.S. 113-129(7) defines "fish" and "fishes" as all marine mammals, shellfish, crustaceans, and other fishes.

convenient use of the property. Working water front property is defined as any of the following property that has, for the most recent three-year period, produced an average gross income of at least $1,000:

1. A pier that extends into coastal fishing waters[4] and limits access to those who pay a fee.
2. Real property that is adjacent to coastal fishing waters and is primarily used for a commercial fishing operation[5] or fish processing, including adjacent land that is under improvements used for one of these purposes.

As with other present-use value property, the deferred taxes are a lien on the property. When the property no longer meets the qualifications of working waterfront property, the owner must pay the deferred taxes for the preceding three fiscal years. In addition, taxes for the fiscal year that opens in the calendar year in which the property is disqualified are assessed based on market value. Unlike other present-use value property, there is no ownership requirement. This means that the property does not have to be owned by a family business or natural person.

- The General Assembly authorized the Revenue Laws Study Committee to study the following issues:
  - Whether to implement tax benefits for donating perpetual easements on property to ensure continuation of nondevelopmental uses.
  - Whether to extend present-use value benefits to property that is used for wildlife conservation.
  - Other ways to reduce property taxes to preserve property used for farmland and other nondevelopmental uses.[6]

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[4] Coastal fishing waters are defined as the Atlantic Ocean; the various coastal sounds; and estuarine waters up to the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission.

[5] "Commercial fishing operation is defined as any activity preparatory to, during, or subsequent to the taking of any fish, the taking of which is subject to regulation by the Marine Fisheries Commission, either with the use of commercial fishing equipment or gear, or by any means if the purpose of the taking is to obtain fish for sale. It does not include (i) the taking of fish as part of a recreational fishing tournament, unless commercial fishing equipment or gear is used, (ii) the taking of fish under a Recreational Commercial Gear License, or (iii) the taking of fish for scientific purposes (see G.S. 133-266)

[6] During the 2007 Session, the fourth edition of HB 1889 passed the House. HB 1889 designates wildlife conservation land as a special class of property that would be appraised at its present-use value. If the majority of the land is woodland it would be appraised as if it were classified as forestland. If the majority of the land is open land, it would be appraised as if it were classified as agricultural land. Once the land no longer classifies as wildlife conservation land, deferred taxes for the preceding five fiscal years become due. HB 1889 also allows present-use value property that becomes subject to a conservation easement that qualifies for the conservation income tax credit for donated lands, to remain in present-use value as long as the taxpayer received no more than 75% of the fair market value of the donated property interest in compensation.

2007 CHANGES TO THE COMBINED MOTOR VEHICLE REGISTRATION AND PROPERTY TAX COLLECTION SYSTEM

Revenue Laws Study Committee

December 14, 2007[1]

In 2005, the General Assembly enacted legislation that will combine the registration and property tax billing of classified motor vehicles[2] into a combined process.[3] Instead of DMV sending a statement and collecting annual registration fees on one date and the county sending a statement and collecting annual property taxes on a different date, the combined system will require one statement containing all registration fees and property taxes due on the vehicle. The fees and taxes may be paid to the DMV or a DMV agent in any county on the same date. This combined system is to go into effect beginning July 1, 2010, or earlier if the combined registration and tax collection computer system is in operation before July 1, 2010. Until the computer system is up and running, the county in which the motor vehicle is registered will continue to assess the vehicle for property taxes on a revolving year-round basis and the DMV will continue to collect vehicle registration fees.[4]

S.L. 2007-471(HB 1688) made several modifications to the legislation enacted in 2005:

- Exempts Car Dealers from Collecting Property Taxes. Effective, July 1, 2010, or when the integrated computer system is in operation, allows automobile dealers to register and obtain license plates for newly sold vehicles without collecting the property taxes on the vehicle. Without this legislation, the combined system requires the dealer to collect the property taxes from a customer when a customer purchases a vehicle and does not transfer his or her tag. Under the current law, a dealer who is authorized to issue a 30-day temporary tag, must first collect an application for title and the registration fees from the purchaser and then submit the application and registration fees to the DMV. The combined system would also require the dealer to collect the property taxes due on the vehicle. The 2007 legislation gives the dealer the option of collecting property taxes or providing the purchaser with a limited plate as follows:
    1. Purchaser buys car from dealer on March 15. Dealer is authorized by DMV to issue a temporary 30-day tag and the new limited plate.
    2. Purchaser fills out an application for titling and registration of the vehicle and pays the titling and registration fees to Dealer. Dealer then provides the purchaser with the 30-day tag, and Purchaser drives the car off the lot.

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[1] Prepared by Martha Walston, staff attorney, Fiscal Research Division.

[2] The following motor vehicles are NOT classified motor vehicles: motor vehicles exempt from registration; manufactured homes, mobile classrooms, and mobile offices; semitrailers or trailers registered on a multiyear basis; and motor vehicles owned or leased by a public service company and appraised

[3] S.L. 2005-294.

[4] DMV gives each county a monthly list of vehicles in the county for which registration was renewed or obtained two months earlier. The county then lists and appraises each vehicle and sends the owner of the vehicle a bill for county, municipal, and special district property taxes due. The result is that a vehicle owner receives a tax bill for the vehicle approximately three months after the vehicle is registered or the registration is renewed.

3. Dealer submits the titling and registration fees to DMV, receives the new limited plate, and provides it to Purchaser. The limited plate will bear a clear and visible marker ("T") in the corner denoting its temporary status. The limited plate expires on the last day of the second month following the date on which the Dealer applied for registration and titling. (May)
4. The Department of Revenue mails a notice to Purchaser indicating that the limited plate expires on the last day of May, that registration fees have been paid, and that the registration becomes valid for the remainder of the year upon payment of county and municipal taxes and fees due in the current year. (Purchaser would have 75 days from the date of purchase to pay local taxes and fees.)

Purchasers of motor vehicles from anyone other than a dealer are also authorized to obtain a limited registration plate.

- Exempts all IRP vehicles from the combined system. Effective July 1, 2010, or when the integrated computer system is in operation, all classified motor vehicles registered under the International Registration Plan (IRP) will be exempt from the combined motor vehicle registration and property tax collection system. There are 60,000 to 70,000 vehicles registered with IRP tags. The IRP is a registration reciprocity compact among 48 states, the District of Columbia, and 10 Canadian Provinces, and provides for the payment of license fees for vehicles based upon the total distance operated in all jurisdictions.[5] Under current law, fleet vehicles owned by public service companies are exempt from the definition of classified motor vehicles and, therefore, are exempt from the combined system. The Department of Revenue determines the assessed value of these fleet vehicles by apportioning a fair and reasonable share of the value of the company using property, business, and mileage factors, and allocating the valuations of the property among the local taxing units. Each local taxing unit then applies its tax rate to the apportioned valuation just as it does for any other type of property. Other vehicles registered under the IRP but not owned by public service companies are billed for property taxes like other classified motor vehicles. Once the combined system is in place, the valuation of IRP vehicles owned by public service companies will continue to be assessed by the Department of Revenue. All other IRP vehicles will be listed by the owner during the regular listing period in the county where the vehicle is located, and taxes will be due at the same time as taxes on other personal property.
- Changes Authority over Funds in Account. Effective August 29, 2007, moves the authority of the funds in the Combined Motor Vehicle and Registration Account from the North Carolina Association of County Commissioners to the Office of State Budget and Management. Funds may not be transferred from this Account and appropriated by the General Assembly until the Department of Transportation and the Association of County Commissioners reach agreement on a project plan

[5] The IRP applies to any of the following vehicles: (a) a vehicle having two axles and a gross weight in excess of 26,000 pounds, (b) a vehicle having three axles or more regardless of weight, or (c) a vehicle when the combination exceeds 26,000 pounds gross weight and the vehicle travels in two or more jurisdictions.

for the integrated system. This Account is in the Treasurer's office and the funds are for the purpose of developing and implementing the computer system.[6]

- Credits Interest to Account. Effective August 29, 2007, interest generated by the funds in the Account is credited to the Account. Any funds remaining in the Account after the certification of the integrated computer system must be distributed to the local governments on a pro rata basis. The pro rata share is based on the first month's interest collected by the local government and paid into the Account.

[6] The funds in the Account are made up of 60% of the first month's interest (5% rate) collected on unpaid taxes on classified motor vehicles. (Taxes become due four months after vehicle registration or renewal. If those taxes remain unpaid four months after they become due (8 months after the registration or renewal) the tax collector may submit the registration information to DMV. DMV then places a block on the registration preventing it from being renewed without payment of taxes. The new combined system eliminates the need for blocking by making payment of taxes a prerequisite to issuance of or renewal of the registration for the taxable period. Effective July 1, 2010 (need to add language "or when DMV and DOR certify that the computer system is in operation"), interest collected on unpaid registration fees will be transferred on a monthly basis to the North Carolina Highway Fund for technology improvements within DMV.

2007 CHANGES TO PROPERTY TAX COMMISSION
Revenue Laws Study Committee
December 14, 2007[1]

Overview of Property Tax Commission

The Property Tax Commission (PTC) is a five-member State board of equalization and review that hears and decides taxpayers' appeals from decisions concerning the listing, appraisal, or assessment of property made by county boards of equalization and review and boards of county commissioners. The PTC also hears appeals from orders of boards of county commissioners adopting schedules of values, standards, and rules.

Only the taxpayer is authorized to appeal a decision of a board of equalization and review. The notice of appeal must be filed within 30 days after the board mails notice of its decision. The hearing before the PTC may be before one or more representatives of the PTC (a commissioner or DOR employee) or before the full Commission. The PTC is not bound by the findings and conclusions of the county board, and the appeal is based solely on the record before the PTC. The taxpayer must appear in person or be represented by an attorney. Individuals may represent themselves, but corporate taxpayers and the county must be represented by an attorney. The PTC may subpoena witnesses and documents, and the rules of evidence apply at the hearing. If the PTC reduces the value or removes property from a tax list, and the taxpayer is owed a refund, the taxpayer is entitled to interest on the overpayment. The interest accrues from the date taxes were paid or the date taxes were delinquent, whichever is later.[2]

Property Tax Commission Terms

S.L. 2007-308 (HB 1555) provides four-year terms for all appointments to the PTC beginning with appointments made on or after July 1, 2007. The PTC is composed of five members: three appointed by the Governor and two appointed by the General Assembly. Prior to the 2007 legislation, the Governor's three appointees and the President Pro Tem's appointee served four-year terms, but the Speaker's appointee served a two-year term.

Challenge to Subpoena

S.L. 2007-251 (SB 1432) provides a procedure to quash a subpoena issued by the PTC, member of the Commission, or employee of the Department of Revenue. The PTC may quash the subpoena, upon a motion if, after a hearing, the PTC finds any of the following:

- It requires the production of evidence that does not relate to a matter in issue.
- It fails to describe with sufficient particularity evidence required to be produced.
- It is subject to being quashed for any other reason sufficient in law.

Denial of the motion to quash the subpoena is subject to immediate judicial review in the superior court in the county where the person subject to the subpoena resides.

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[1] Prepared by Martha Walston, staff attorney, Fiscal Research Division

[2] G.S. 105-241.1 provides that the rate established by the Secretary may not be less than 5% per year and may not exceed 16% per year.

PROPOSED LIEN ON MOBILE HOMES
Revenue Laws Study Committee
December 14, 2007[1]

Section 3 of Senate Bill 1309 provides for a tax lien on a mobile home listed as personal property and on all real property owned by the taxpayer in the taxing unit on the date the mobile home is listed. Senate Bill 1309 passed the House and is currently in Senate Finance.

Current Law

Definition of mobile home: For property tax purposes, a mobile home means a manufactured home as described in G.S. 105-273(13) or a structure designed, constructed, and intended for use as a dwelling house, office, place of business, or similar place of habitation and capable of being transported from place to place on wheels attached to its frame.[2] A mobile home can be considered real property or personal property.

When is a manufactured home real property?

Under G.S. 105-273(13), a manufactured home is considered real property if it satisfies all of the following requirements:

1. It is a residential structure;
2. The moving hitch, wheels, and axles have been removed;
3. It is placed on a permanent foundation; and
4. It is situated on land owned by the owner of the home or on land in which the owner of the home has a lease with a term of at least 20 years and that provides for disposition of the home upon termination of the lease.

When is a manufactured home personal property?

The manufactured home is considered personal property if does not meet all of the above real property requirements.

What happens when a mobile home is moved or sold in North Carolina?

Under current law, anyone other than a manufacturer, retailer, or licensed carrier of mobile homes, must obtain a permit from the county tax collector before moving a mobile home.[3] When applying for the permit, the applicant must do one of the following: (a) pay all taxes due to be paid by the owner of the mobile home, (b) show proof that no taxes are due, or (c) demonstrate that removal of the mobile home will not jeopardize the collection of taxes. The applicant must also provide his name and address, the current location of the mobile home, the future location of the mobile home, and the mover. There is no charge for the permit.

If a holder of a lien is repossessing a mobile home, the lienholder must apply for the permit and inform the tax collector of the location to which the home is to be taken. If

[1] Prepared by Martha Walston, staff attorney, Fiscal Research Division
[2] Trailers and vehicles required to be registered annually fall outside the definition of mobile homes.
[3] It is a Class 3 misdemeanor for failure to obtain a permit. 200 permits were issued in 2006.

the lienholder is a North Carolina resident, the taxes must be paid within seven days of issuance of the permit. Nonresident lienholders must pay the taxes at the time of application for a permit.

What are the remedies for nonpayment of property tax?

If taxes are not paid on the mobile home, the tax collector may go against the taxpayer by garnishing wages, attaching bank accounts, using debt setoff. The tax collector may levy on the home by taking possession and selling the home if the taxpayer owns the home. When the mobile home is considered real property, then the unpaid taxes are a lien on the mobile home and a subsequent purchaser of the mobile home is also liable for unpaid taxes.

What happens if there is nonpayment of property taxes on a mobile home considered personal property?

Counties have encountered frequent situations where a mobile home has been repossessed and sold on site or where the mobile home is sold and moved without a permit issued by the county tax collector. Often tax collectors are not aware of the sales until after they are completed and the former owner has disappeared. Once the mobile home is transferred to a new owner for value, the county's ability to collect taxes due by levy and sale expires. The county tax collector has no recourse against the present owner if the mobile home is listed as personal property. The county could garnish the former owner's wages, but usually the whereabouts of the former owner are unknown.

Senate Bill 1309

SB 1309 would remedy the above problem by providing that a tax lien attaches to a mobile home listed as personal property and to all real property of the taxpayer in the taxing unit on the date the mobile home is listed (January 1). Once the lien has attached, its priority is not affected by transfer of title, by death, or by receivership of the property owner. In other words, the delinquent taxes follow the mobile home, and a subsequent buyer is liable for the unpaid taxes. The North Carolina Association of Commissioners and the North Carolina Tax Collectors Association support this proposal.

Revenue Laws Study Committee
December 14, 2007

- *Overview of 2007 property tax changes*
  - *Changes to the homestead exclusion*
  - *Changes expanding property taxed at present use value*
  - *Changes to the combined motor vehicle registration and property tax collection system*
  - *Changes to property tax commission*
  - Property tax circuit breaker benefit
  - School capital leases
- Proposed changes from 2007
  - Proposed property tax revaluation schedule
  - Proposed property tax value for low-income housing
  - Proposed lien on mobile homes

Session Law 2007-497

The Property Tax Homestead Circuit Breaker

Dan Ettefagh
Bill Drafting Division
North Carolina General Assembly
Revenue Laws Study Committee
December 14, 2008

Introduction

- Analogous to an electrical circuit breaker
  - Reduces property tax owed if "overload"
  - "Overload" is based on taxpayer's income
- Thirty-six states have a circuit breaker or similar program
- North Carolina's circuit breaker program is an alternative to the homestead exclusion

1. Generally, a "circuit breaker" program is a form of tax relief that protects taxpayers from a property tax "overload" like an electric circuit breaker: when one's property tax is greater than a certain percentage of a taxpayer's income, the circuit breaker reduces the property tax that must be paid in excess of that percentage.
2. Thirty-six states have enacted some form of circuit breaker tax relief.
3. In North Carolina, the property tax homestead circuit breaker is a form of tax relief that qualifying owners may elect in lieu of the property tax homestead exclusion.

Qualifying for the Circuit Breaker

- Applies only to permanent residences owned and occupied by a qualifying owner
- With multiple owners, each must qualify and elect the circuit breaker
- To qualify, an owner must:
  - Be a North Carolina resident,
  - Have used the home as a permanent residence for 5/+ years,
  - Be 65/+ years or be totally and permanently disabled, and
  - Have an income of not greater than 150% of the income eligibility limit for the homestead exclusion.

1. Applicable only to permanent residences owned and occupied by a qualifying owner. Where property is owned by two or more persons other than husband and wife, each owner must qualify and elect to defer taxes under the circuit breaker program.
2. A qualifying owner is one with an income of not more than 150% of the income eligibility limit for the homestead exclusion; has occupied the property as a permanent residence for at least 5 years, ignoring temporary absences; is at least 65 years old or is totally and permanently disabled; and is a NC resident.

Deferral

- Circuit breaker tax benefit: deferral of "overload" property tax amount
- Maximum property tax due:
  - 4% of income, if income < income eligibility limit
  - 5% of income, if income ≥ income eligibility limit but < 150% of income eligibility limit
- During periods of deferral:
  - Interest accrues
  - Deferred taxes become a lien against the real property
- Taxes carried forward in the tax records are limited to the three fiscal years preceding the current tax year

1. Under the circuit breaker program, the qualifying owners of a permanent residence may defer that portion of property tax imposed on the permanent residence that exceeds 4% of their income, if their income is less than the income eligibility limit. The qualifying owners of a permanent residence may defer that portion of property tax imposed on the permanent residence that exceeds 5% of their income, if their income is equal to or greater than the income eligibility limit but less than 150% of the income eligibility limit.
2. Deferred taxes accrue interest and become a lien on the real property; however, only the deferred taxes for the three fiscal years preceding the current tax year are carried forward. Deferred taxes for years prior to the three fiscal years preceding the current tax year roll off.

Disqualification

- Disqualifying events:
  - Transfer of the residence by the owner
  - Death of the owner
  - Cessation of use of the property by the owner as a permanent residence
- Exception for transfer/death:
  - Owner transfers property to co-owner or qualifying spouse as part of divorce (transfer) **or** the owner's share passes to co-owner or qualifying spouse;
  - Recipient occupies property as permanent residence; **and**
  - Recipient elects to continue deferral.
- Result of disqualification:
  - Taxes for current year are calculated without circuit breaker benefit
  - Deferred taxes for preceding three years + accrued interest = amount due and must be paid within 9 months

1. Deferred taxes are due upon the occurrence of a disqualifying event. The three disqualifying events are (i) transfer of the residence by the owner, (ii) death of the owner, and (iii) cessation of use of the property by the owner as a permanent residence.
2. Transfer/death is not a disqualifying event if (i) for transfer, the owner transfers the residence to a co-owner or to a qualifying spouse as part of a divorce, or, for death, the owner's share passes to a co-owner or qualifying spouse, (ii) that individual occupies the property as a permanent residence, and (iii) that individual elects to continue deferral of taxes via the circuit breaker.
3. When a disqualifying event occurs, the amount of taxes for that year with no circuit breaker benefit plus those taxes deferred for the preceding three years, together with interest, become due and must be paid within 9 months after the disqualifying event.

Interruption

- Interruption of qualification:
  - Owner fails to qualify for circuit breaker **or**
  - Owner removes himself from program
- Results of interruption:
  - No deferral for current tax year
  - Interest on previously deferred taxes continues to accrue
  - Period of interruption does not count toward previously deferred taxes rolling off

1. Periods of qualification may be interrupted if either (i) the owner fails to qualify for the circuit breaker program or (ii) the owner removes himself from the program via a written revocation of an application for deferral to assessor.
2. An interruption of qualification does not result in deferred taxes from earlier years becoming due but those deferred taxes do not roll off, and the periods do not count for purposes of determining the three years deferred taxes.

Example 1

- Montgomery Burns, aged 102, has lived at 1 Nuclear Ct. in Raleigh in a home with a tax value of $350,000 for 45 years. Mr. Burns' (post-retirement) income in 2008 was $20,000.
- Wake County's 2009 tax rate = $.65 per hundred of value
- Raleigh's 2009 tax rate = $.45 per hundred of value
- Total tax rate = Wake County's tax rate + Raleigh's tax rate
  $.65 + $.45 = $1.10
- Property tax due = property value X total tax rate
  $350,000 X $1.10 = $3,850.00 owed by Mr. Burns.
- Circuit breaker amount = income X applicable circuit breaker tax percentage. Since Mr. Burns' income is less than the income eligibility limit of the homestead exclusion:
  $20,000 X 4% = $800.00.
- Deferral amount = property tax due – circuit breaker amount
  $3,850.00 - $800.00 = $3,050.00.

•Wake County's 2009 tax rate is $.65 per hundred. Raleigh's 2009 tax rate is $.45 per hundred.

•Mr. Burns' taxes are $350,000 X ($.65 per hundred (Wake) + $.45 per hundred (Raleigh)) = $3850.00

•Four percent of Mr. Burns' income of $20,000 = $800.00. Mr. Burns' pays $800.00 in taxes in 2009 and may defer the remaining $3050.00.

Distribution of Proceeds

	Tax Rate	Percentage of taxes	Taxes Due	Taxes Deferred
Wake County	$.65 per hundred	59%	$472	$1799.50
Raleigh	$.45 per hundred	41%	$328	$1250.50
Totals	$1.10 per hundred	100%	$800	$3850

The $800.00 Mr. Burns pays in taxes in 2009 must be distributed between the city and county. The total tax rate is $1.10 per hundred (.65 + .45).

Of the total tax rate, Wake County's tax of $.65 per hundred equates to 59% of the $1.10 per hundred tax rate (.65/1.10 = .59 or 59%). Raleigh's tax is the remaining 41% of the total tax rate. Thus, of the $800 paid/$3,050.00 deferred, 59% goes to the county and 41% goes to the city.

$800 X 59% = taxes paid in 2009 to Wake County = $472.

$800 X 41% = taxes paid in 2009 to Raleigh = $328.

$3,050 X 59% = deferred taxes owed to Wake County = $1799.50.

$3,050 X 41% = deferred taxes owned to Raleigh + $1,250.50.

Other Provisions

- Annual notification of accumulated deferred taxes and interest
- Prepayment permitted
- Restrictions on mortgagees/trustees:
  - No right to foreclose upon payment of deferred taxes
  - Contractual prohibition of electing circuit breaker disallowed
- Notice requirements

1. The assessor must annually notify each owner electing deferral of the accumulated sum of deferred taxes and interest.
2. Prepayment of deferred taxes is allowed at any time with payments first applied to interest.
3. Mortgagees/trustees who pay deferred taxes of a qualifying owner do not acquire a right to foreclose, and contractual provisions prohibiting election of the circuit breaker program are disallowed.
4. A notice concerning the two forms of tax relief must be printed on the county's listing form.

Session Law 2007-477

Property Tax – School Capital Leases

Background

- 2006 legislation authorized capital leases for school facilities
- Capital leases have general economic characteristics of ownership
- Conditions:
  - Legal title to lessee
  - Nominal/bargain purchase options
  - Lease term ≥ 75% of useful life
  - Present value of lease payments ≥ 90% of asset's FMV

•In 2006, the General Assembly authorized local school administrative units to enter into capital leases to provide for school facilities.

•Capital leases, generally, have the economic characteristics of ownership. Typically, a lessee in this type of financing agreement purchases the property over the term of the lease.

•Under generally accepted accounting principles, a capital lease is a non-cancelable contract satisfying one or more of the following conditions:

- •Legal title to the property is transferred to the lessee.
- •The lease contains bargain or nominal purchase options.
- •The lease term equals or exceeds 75% of the asset's useful life.
- •The present value of the minimum lease payments equals or exceeds 90% of the asset's fair market value.

Property tax change

- General rule: property owned by local government is not subject to property tax
- Counties treat lessees in capital leases as property owner for property tax purposes
- S.L. 2007-477 formalizes county's treatment of property subject to capital lease used for public school facility

•Generally, property owned by a unit of local government is not subject to property tax.

•Counties treat lessees in capital leases as the property owner for property tax purposes.

•S.L. 2007-477 added real and tangible personal property that is subject to a capital lease and is used as a public school facility to the list of classes of property excluded from the tax base.

Outstanding Issues

Property Tax Revaluation:
Senate Bill 1309

Property Tax Revaluation: Current System

- Staggered, octennial plan
- Advancement of scheduled general reappraisal
- Horizontal adjustments
- Specific parcel reappraisal required in nonrevaluation year to:
  - Correct clerical or mathematical errors
  - Correct certain appraisal errors
  - Recognize certain increases or decreases in property value
- Purpose of specific parcel reappraisal and effect of reappraisal

•Counties conduct a general reappraisal of real property on a staggered, octennial plan.

•Counties may advance the schedule via adoption of a resolution providing for advancement by the county board of commissioners. Many counties now observe a six- or four-year cycle.

•Horizontal adjustments, where counties review the appraised values of the real property and compare it to the current true value to determine whether an adjustment needs to be made to normalize the appraised value to the current true value, are permitted but, historically, have not been used.

•Specific parcel reappraisal: A tax assessor must reappraise specific parcels in a nonrevaluation year to (i) correct clerical or mathematical errors in the former reappraisal; (ii) correct appraisal errors resulting from misapplication of the county's appraisal manual; or (iii) recognize an increase or a decrease in value resulting from some factor other than normal depreciation, economic changes affecting property in general, or certain improvements such as repainting and landscaping.

•These reappraisals are designed to determine the property's market or present-use value as of January 1 of the revaluation year, not its current value. They take effect as of January 1 of the year in which they are made and do not affect previous tax years.

Property Tax Revaluation: Proposed System Changes

- Quadrennial Plan
- Postponement instead of advancement, if sales assessment ratio > .90.
- Horizontal adjustments eliminated
- Low-income housing under voluntary governmental programs

•Schedule would shift from an octennial plan with the option to advance the schedule to a quadrennial plan with the option to postpone the schedule.

•Postponement remains an option via adoption of a resolution by the county board of commissioners but only if, at the time for the scheduled reappraisal, the sales assessment ratio exceeds .90 for a county.

•Horizontal adjustments have been eliminated entirely.

•Governmental programs for low-income housing or rent or income restrictions: the effect of such restrictions on the true value of the property must be taken into account. A corresponding change was made to G.S. 105-287 to prevent abuse of this practice.

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- Proposed changes from 2007
  - Proposed property tax revaluation schedule
  - Proposed property tax value for low-income housing
  - *Proposed lien on mobile homes*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

SESSION LAW 2007-497
HOUSE BILL 1499

AN ACT TO INCREASE THE BENEFIT OF THE PROPERTY TAX HOMESTEAD EXCLUSION BY RAISING BOTH THE INCOME ELIGIBILITY LIMIT AND THE AMOUNT EXCLUDED FROM TAXATION; TO AUTHORIZE THE REVENUE LAWS STUDY COMMITTEE TO STUDY WHETHER AND HOW TO INDEX THE MINIMUM AMOUNT THAT IS EXCLUDED FROM TAX; TO CREATE A SENIOR CIRCUIT BREAKER PROPERTY TAX BENEFIT; TO MODIFY THE PRESENT-USE VALUE REQUIREMENTS FOR AGRICULTURAL LAND USED AS AN AQUATIC SPECIES FARM; AND TO AUTHORIZE THE REVENUE LAWS STUDY COMMITTEE TO STUDY VARIOUS MODIFICATIONS AND EXPANSIONS TO THE PRESENT-USE VALUE SYSTEM.

The General Assembly of North Carolina enacts:

PART I. PROPERTY TAX HOMESTEAD EXCLUSION MODIFICATION

SECTION 1.1. G.S. 105-277.1 reads as rewritten:

"**§ 105-277.1. Property tax homestead exclusion.**

(a) Exclusion. – A permanent residence owned and occupied by a qualifying owner is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and is taxable in accordance with this section. The amount of the appraised value of the residence equal to the exclusion amount is excluded from taxation. The exclusion amount is the greater of ~~twenty thousand dollars ($20,000)~~twenty-five thousand dollars ($25,000) or fifty percent (50%) of the appraised value of the residence. A qualifying owner is an owner who meets all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

(1) Is at least 65 years of age or totally and permanently disabled.
(2) Has an income for the preceding calendar year of not more than the income eligibility limit.
(3) Is a North Carolina resident.

(a1) Temporary Absence. – An otherwise qualifying owner does not lose the benefit of this exclusion because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

(a2) Income Eligibility Limit. – Until July 1, ~~2003,~~2008, the income eligibility limit is ~~eighteen thousand dollars ($18,000).~~twenty-five thousand dollars ($25,000). For taxable years beginning on or after July 1, ~~2003,~~2008, the income eligibility limit is the amount for the preceding year, adjusted by the same percentage of this amount as the percentage of any cost-of-living adjustment made to the benefits under Titles II and XVI of the Social Security Act for the preceding calendar year, rounded to the nearest one hundred dollars ($100.00). On or before July 1 of each year, the Department of Revenue must determine the income eligibility amount to be in effect for the taxable year beginning the following July 1 and must notify the assessor of each county of the amount to be in effect for that taxable year.

(b) Definitions. – The following definitions apply in this section:

(1) Code. – The Internal Revenue Code, as defined in G.S. 105-228.90.

(1a) Income. – ~~Adjusted gross income, as defined in section 62 of the Code, plus all other~~All moneys received from every source other than gifts or inheritances received from a spouse, lineal ancestor, or lineal descendant. For married applicants residing with their spouses, the income of both spouses must be included, whether or not the property is in both names.

(1b) Owner. – A person who holds legal or equitable title, whether individually, as a tenant by the entirety, a joint tenant, or a tenant in common, or as the holder of a life estate or an estate for the life of another. A manufactured home jointly owned by husband and wife is considered property held by the entirety.

(2) Repealed by Session Laws 1993, c. 360, s. 1.

(2a) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 20.

(3) Permanent residence. – A person's legal residence. It includes the dwelling, the dwelling site, not to exceed one acre, and related improvements. The dwelling may be a single family residence, a unit in a multi-family residential complex, or a manufactured home.

(4) Totally and permanently disabled. – A person is totally and permanently disabled if the person has a physical or mental impairment that substantially precludes him or her from obtaining gainful employment and appears reasonably certain to continue without substantial improvement throughout his or her life.

(c) Application. – An application for the exclusion provided by this section should be filed during the regular listing period, but may be filed and must be accepted at any time up to and through June 1 preceding the tax year for which the exclusion is claimed. When property is owned by two or more persons other than husband and wife and one or more of them qualifies for this exclusion, each owner must apply separately for his or her proportionate share of the exclusion.

(1) Elderly Applicants. – Persons 65 years of age or older may apply for this exclusion by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1.

(2) Disabled Applicants. – Persons who are totally and permanently disabled may apply for this exclusion by (i) entering the appropriate information on a form made available by the assessor under G.S. 105-282.1 and (ii) furnishing acceptable proof of their disability. The proof must be in the form of a certificate from a physician licensed to practice medicine in North Carolina or from a governmental agency authorized to determine qualification for disability benefits. After a disabled applicant has qualified for this classification, the applicant is not required to furnish an additional certificate unless the applicant's disability is reduced to the extent that the applicant could no longer be certified for the taxation at reduced valuation.

(d) Multiple Ownership. – A permanent residence owned and occupied by husband and wife as tenants by the entirety is entitled to the full benefit of this exclusion notwithstanding that only one of them meets the age or disability requirements of this section. When a permanent residence is owned and occupied by two or more persons other than husband and wife and one or more of the owners qualifies for this exclusion, each qualifying owner is entitled to the full amount of the exclusion not to exceed his or her proportionate share of the valuation of the property. No part of an exclusion available to one co-owner may be claimed by any other co-owner and in no event may the total exclusion allowed for a permanent residence exceed the exclusion amount provided in this section."

SECTION 1.2. The Revenue Laws Study Committee may study the issue of whether to index the minimum excluded appraised value limit in the property tax homestead exclusion in G.S. 105-277.1 and, if so, which index to use.

SECTION 1.3. Section 1.1 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2008. The remainder of this section is effective when it becomes law.

PART II. SENIOR CIRCUIT BREAKER PROPERTY TAX BENEFIT

SECTION 2.1. G.S. 105-277.1(b) is amended by adding a new subdivision to read:

"(b) Definitions. – The following definitions apply in this section:

...

(3a) Property tax relief. – The property tax homestead exclusion provided in this section or the property tax homestead circuit breaker provided in G.S. 105-277.1B.

...."

SECTION 2.2. G.S. 105-277.1 is amended by adding a new subsection to read:

"**§ 105-277.1. Property tax homestead exclusion.**

...

(e) Election. – An owner who qualifies for both kinds of property tax relief may elect the property tax homestead circuit breaker under G.S. 105-277.1B instead of the property tax homestead exclusion provided in this section. When property is owned by two or more persons, each person must qualify for both kinds of property tax relief and must elect the property tax homestead circuit breaker in order for the property tax homestead circuit breaker to be allowed instead of the property tax homestead exclusion."

SECTION 2.3. Article 12 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-277.1B. Property tax homestead circuit breaker.**

(a) Classification. – A permanent residence owned and occupied by a qualifying owner is designated a special class of property under Article V, Section 2(2) of the North Carolina Constitution and is taxable in accordance with this section.

(b) Definitions. – The definitions provided in G.S. 105-277.1 apply to this section.

(c) Income Eligibility Limit. – The income eligibility limit provided in G.S. 105-277.1(a2) applies to this section.

(d) Qualifying Owner. – For the purpose of qualifying for the property tax homestead circuit breaker under this section, a qualifying owner is an owner who meets all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

(1) The owner has an income for the preceding calendar year of not more than one hundred fifty percent (150%) of the income eligibility limit specified in subsection (c) of this section.

(2) The owner has occupied the property as a permanent residence for at least five years.

(3) The owner is at least 65 years of age or totally and permanently disabled.

(4) The owner is a North Carolina resident.

(e) Multiple Owners. – When a permanent residence is owned and occupied by two or more persons other than husband and wife, no property tax homestead circuit breaker is allowed unless all of the owners qualify and elect to defer taxes under this section.

(f) Tax Limitation. – A qualifying owner may defer the portion of tax imposed on his or her permanent residence if it exceeds a percentage of the qualifying owner's income as provided in this section.

Income	Percentage
Less than the income eligibility limit	4.0%
100% to 150% of the income eligibility limit	5.0%

(g) Temporary Absence. – An otherwise qualifying owner does not lose the benefit of this circuit breaker because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

(h) Deferred Taxes. – The difference between the taxes due under this section and the taxes that would have been payable in the absence of this section are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes for the three fiscal years preceding the current tax year shall be carried forward in the records of the taxing unit or units as deferred taxes. Interest accrues on the deferred taxes due as if they had been payable on the dates on which they originally became due. On or before September 1 of each year, the assessor shall notify each residence owner to whom a tax deferral has previously been granted of the accumulated sum of deferred taxes and interest.

(i) Disqualifying Events. – Taxes deferred under this section are payable within nine months after a disqualifying event. The tax for the fiscal year that opens in a calendar year in which deferred taxes become due is computed as if the property was not eligible for property tax relief under this section. Each of the following constitutes a disqualifying event:

(1) The owner transfers the residence. Transfer of the residence under this subdivision is not a disqualifying event if (i) the owner transfers the residence as part of a divorce proceeding to either his or her spouse who qualifies for tax deferral under this section or to a co-owner of the residence, (ii) that individual occupies or continues to occupy the property as his or her permanent residence, and (iii) that individual elects to continue deferring payment of the tax.

(2) The owner dies. Death of the owner under this subdivision is not a disqualifying event if (i) the owner's share passes to either his or her spouse who qualifies for tax deferral under this section or to a co-owner of the residence, (ii) that individual occupies or continues to occupy the property as his or her permanent residence, and (iii) that individual elects to continue deferring payment of the tax.

(3) The owner ceases to use the property as a permanent residence.

(j) Interruption of Qualification. – If the owner of a tax-deferred residence does not qualify under this section for deferral as of January 1 preceding a taxable year for reasons other than a disqualifying event or if the owner of a tax-deferred residence revokes an application for deferral by notifying the assessor in writing, the owner may not defer any additional property taxes under this section without submitting a new application. Deferred taxes from earlier years do not become due because of an interruption of qualification; however, deferred taxes existing at the time of an interruption of qualification shall be carried forward until the occurrence of a disqualifying event. If the owner qualifies for tax deferral under this section following an interruption of qualification, the taxing unit or units shall disregard the years during which there was an interruption of qualification for purposes of determining the three fiscal years preceding the current tax year under subsection (g) of this section.

(k) Prepayment. – All or part of the deferred taxes and accrued interest may be paid to the tax collector at any time. Any partial payment is applied first to accrued interest. A residence owner to whom a tax deferral has previously been granted may revoke the application for deferral at any time by notifying the assessor in writing.

(l) Creditor Limitations. – A mortgagee or trustee that elects to pay any tax deferred by the owner of a residence subject to a mortgage or deed of trust does not acquire a right to foreclose as a result of the election. Except for requirements dictated

by federal law or regulation, any provision in a mortgage, deed of trust, or other agreement that prohibits the owner from deferring taxes on property under this section is void.

(m) Construction. – This section does not affect the attachment of a lien for personal property taxes against a tax-deferred residence.

(n) Application. – An application for property tax relief provided by this section should be filed during the regular listing period, but may be filed and must be accepted at any time up to and through June 1 preceding the tax year for which the relief is claimed. Persons may apply for this property tax relief by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1."

SECTION 2.4. G.S. 105-282.1(a)(2) reads as rewritten:

"(2) Single application required. – An owner of one or more of the following properties eligible ~~to be exempted or excluded from taxation~~for a property tax benefit must file an application for ~~exemption or exclusion~~the benefit to receive it. Once the application has been approved, the owner does not need to file an application in subsequent years unless new or additional property is acquired or improvements are added or removed, necessitating a change in the valuation of the property, or there is a change in the use of the property or the qualifications or eligibility of the taxpayer necessitating a review of the ~~exemption or exclusion:~~benefit.

a. Property exempted from taxation under G.S. 105-278.3, 105-278.4, 105-278.5, 105-278.6, 105-278.7, or 105-278.8.

b. Special classes of property excluded from taxation under G.S. 105-275(3), (7), (8), (12), (17), (18), (19), (20), (21), (35), (36), (38), (39), or (41) or under G.S. 131A-21.

c. Special classes of property classified for taxation at a reduced valuation under G.S. 105-277(h), 105-277.1, 105-277.10, 105-277.13, 105-278.

d. Property owned by a nonprofit homeowners' association but where the value of the property is included in the appraisals of property owned by members of the association under G.S. 105-277.8.

e. Special classes of property eligible for tax relief under G.S. 105-277.1B."

SECTION 2.5. G.S. 105-309(f) reads as rewritten:

"(f) The ~~notice set out below must appear~~assessor must print a homestead tax relief notice on each abstract or on an information sheet distributed with the abstract. The abstract or sheet must include the address and telephone number of the assessor below the ~~notice:~~notice required by this section. The notice must be in the form required by the Department of Revenue designed to notify the taxpayer of his or her rights and responsibilities under the homestead property tax exclusion provided in G.S. 105-277.1 and the property tax homestead circuit breaker provided in G.S. 105-277.1B.

~~"PROPERTY TAX HOMESTEAD EXCLUSION FOR ELDERLY OR PERMANENTLY DISABLED PERSONS.~~

~~North Carolina excludes from property taxes a portion of the appraised value of a permanent residence owned and occupied by North Carolina residents aged 65 or older or totally and permanently disabled whose income does not exceed (assessor insert amount). The amount of the appraised value of the residence that may be excluded from taxation is the greater of twenty thousand dollars ($20,000) or fifty percent (50%) of the appraised value of the residence. Income means the owner's adjusted gross income as determined for federal income tax purposes, plus all moneys received other than gifts or inheritances received from a spouse, lineal ancestor or lineal descendant.~~

~~If you received this exclusion in (assessor insert previous year), you do not need to apply again unless you have changed your permanent residence. If you received the exclusion in (assessor insert previous year) and your income in (assessor insert previous year) was above (assessor insert amount), you must notify the assessor. If you received the exclusion in (assessor insert previous year) because you were totally and permanently disabled and you are no longer totally and permanently disabled, you must notify the assessor. If the person receiving the exclusion in (assessor insert previous year) has died, the person required by law to list the property must notify the assessor. Failure to make any of the notices required by this paragraph before June 1 will result in penalties and interest.~~

~~If you did not receive the exclusion in (assessor insert previous year) but are now eligible, you may obtain a copy of an application from the assessor. It must be filed by June 1.~~""

SECTION 2.6. This section is effective for taxes imposed for taxable years beginning on or after July 1, 2009.

PART III. AQUATIC SPECIES FARM MODIFICATIONS TO PUV

SECTION 3.1. G.S. 105-277.3(a)(1) reads as rewritten:

"(1) Agricultural land. – Individually owned agricultural land consisting of one or more tracts, one of which ~~consists~~ satisfies the requirements of this subdivision. For agricultural land used as a farm for aquatic species, as defined in G.S. 106-758, the tract must meet the income requirement for agricultural land and must consist of at least five acres in actual production or produce at least 20,000 pounds of aquatic species for commercial sale annually, regardless of acreage. For all other agricultural land, the tract must meet the income requirement for agricultural land and must consist of at least 10 acres that are in actual ~~production and that,~~production. Land in actual production includes land under improvements used in the commercial production or growing of crops, plants, or animals.

To meet the income requirement, agricultural land must, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have produced an average gross income of at least one thousand dollars ($1,000). Gross income includes income from the sale of the agricultural products produced from the land, any payments received under a governmental soil conservation or land retirement program, and the amount paid to the taxpayer during the taxable year pursuant to P.L. 108-357, Title VI, Fair and Equitable Tobacco Reform Act of 2004. ~~Land in actual production includes land under improvements used in the commercial production or growing of crops, plants, or animals.~~"

SECTION 3.2. This section is effective for taxes imposed for taxable years beginning on or after July 1, 2008.

PART IV. TAX RELIEF STUDY FOR NONDEVELOPMENTAL PROPERTY

SECTION 4.1. The General Assembly finds that increases to property tax values in this State resulting from real estate development often make it difficult for owners who do not want to develop their property to continue to use their property for farming or other nondevelopmental purposes. The Revenue Laws Study Committee may study ways to address the inability of landowners to pay escalating property taxes while maintaining nondevelopmental uses. The study may include a review of the following:

(1) Implementing tax benefits for donating perpetual easements on property to ensure continuation of nondevelopmental uses.

(2) Extending present-use value benefits to property that is used for wildlife conservation.

(3) Other ways to reduce property taxes to preserve property used for farmland and other nondevelopmental uses.

SECTION 4.2. The Revenue Laws Study Committee may report its findings on the issues in this act, including any recommendations or legislative proposals, to the 2008 Regular Session of the General Assembly.

SECTION 4.3. This section is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of August, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 12:48 p.m. this 30th day of August, 2007

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S 3

SENATE BILL 1309

Finance Committee Substitute Adopted 7/30/07
Third Edition Engrossed 8/2/07

Short Title: Fairness in PT Values/Lien on Mobile Home. (Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT RELATING TO PROPERTY TAX VALUATION OF LOW AND MODERATE INCOME HOUSING, TO REDUCE THE DISCREPANCY BETWEEN THE PROPERTY TAX VALUE OF PROPERTY AND ITS MARKET VALUE AND TO TREAT MOBILE HOMES THE SAME AS OTHER HOMES WITH RESPECT TO PROPERTY TAX LIENS.

The General Assembly of North Carolina enacts:

SECTION 0.9. G.S. 105-283 reads as rewritten:

"**§ 105-283. Uniform appraisal standards.**

(a) All property, real and personal, shall as far as practicable be appraised or valued at its true value in money. When used in this Subchapter, the words "true value" shall be interpreted as meaning market value, that is, the price estimated in terms of money at which the property would change hands between a willing and financially able buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of all the uses to which the property is adapted and for which it is capable of being used. For the purposes of this section, the acquisition of an interest in land by an entity having the power of eminent domain with respect to the interest acquired shall not be considered competent evidence of the true value in money of comparable land.

(b) Property that meets all of the conditions provided in this subsection is designated a special class of property pursuant to Section 2(2) of Article V of the North Carolina Constitution and shall be appraised as provided in this subsection. In the case of real property that meets all of the following conditions, the effect of rent restrictions and income restrictions on the true value of the property shall be taken into account for purposes of valuation under this Subchapter:

(1) The property is subject to restriction on the income eligibility of tenants to whom it is leased or on the rents that may be charged

pursuant to any State or federal government program providing for tax incentives, grants, interest subsidies, or loans.

(2) The property is in compliance with the terms, covenants, and conditions of such State or federal government program.

In addition, the value of the tax incentives, grants, interest subsidies, or loans provided to the property or the owner of the property shall be ignored for purposes of valuation under this Subchapter."

SECTION 1. G.S. 105-286 reads as rewritten:

"**§ 105-286. Time for general reappraisal of real property.**

(a) ~~Octennial~~ Quadrennial Plan. – Unless the date shall be ~~advanced~~ postponed as provided in subdivision (a)(2), below, each county of the State, as of January 1 of the year prescribed in the schedule set out in subdivision (a)(1), below, and every ~~eighth~~ fourth year thereafter, shall reappraise all real property in accordance with the provisions of G.S. 105-283 and 105-317.

(1) Schedule of Initial Reappraisals. –

Division One – 1972: Avery, Camden, Cherokee, Cleveland, Cumberland, Guilford, Harnett, Haywood, Lee, Montgomery, Northampton, and Robeson.

Division Two – 1973: Caldwell, Carteret, Columbus, Currituck, Davidson, Gaston, Greene, Hyde, Lenoir, Madison, Orange, Pamlico, Pitt, Richmond, Swain, Transylvania, and Washington.

Division Three – 1974: Ashe, Buncombe, Chowan, Franklin, Henderson, Hoke, Jones, Pasquotank, Rowan, and Stokes.

Division Four – 1975: Alleghany, Bladen, Brunswick, Cabarrus, Catawba, Dare, Halifax, Macon, New Hanover, Surry, Tyrrell, and Yadkin.

Division Five – 1976: Bertie, Caswell, Forsyth, Iredell, Jackson, Lincoln, Onslow, Person, Perquimans, Rutherford, Union, Vance, Wake, Wilson, and Yancey.

Division Six – 1977: Alamance, Durham, Edgecombe, Gates, Martin, Mitchell, Nash, Polk, Randolph, Stanly, Warren, and Wilkes.

Division Seven – 1978: Alexander, Anson, Beaufort, Clay, Craven, Davie, Duplin, and Granville.

Division Eight – 1979: Burke, Chatham, Graham, Hertford, Johnston, McDowell, Mecklenburg, Moore, Pender, Rockingham, Sampson, Scotland, Watauga, and Wayne.

(2) ~~Advancing Scheduled Octennial Reappraisal. – Any county desiring to conduct a reappraisal of real property earlier than required by this subsection (a) may do so upon adoption by the board of county commissioners of a resolution so providing. A copy of any such resolution shall be forwarded promptly to the Department of Revenue. If the scheduled date for reappraisal for any county is advanced as provided herein, real property in that county shall thereafter be reappraised every eighth year following the advanced date unless, in~~

~~accordance with the provisions of this subdivision (a)(2), an earlier date shall be adopted by resolution of the board of county commissioners, in which event a new schedule of octennial reappraisals shall thereby be established for that county.~~Postponing Scheduled Quadrennial Reappraisal. – If, at the time for reappraisal of real property as required by subsection (a), the sales assessment ratio defined in G.S. 105-289(h) exceeds .90 for a county, that county may postpone a reappraisal of real property upon adoption by the board of county commissioners of a resolution until the time for the next subsequent reappraisal of real property as required by subsection (a) for that county. A county passing a resolution under this subsection shall promptly submit a copy to the Department of Revenue.

~~(b) Fourth-Year Horizontal Adjustments. – As of January 1 of the fourth year following a reappraisal of real property conducted under the provisions of subsection (a), above, each county shall review the appraised values of all real property and determine whether changes should be made to bring those values into line with then current true value. If it is determined that the appraised value of all real property or of defined types or categories of real property require such adjustment, the assessor shall revise the values accordingly by horizontal adjustments rather than by actual appraisal of individual properties: That is, by uniform application of percentages of increase or reduction to the appraised values of properties within defined types or categories or within defined geographic areas of the county.~~

(c) Value to Be Assigned Real Property When Not Subject to Appraisal. – In years in which real property within a county is not subject to reappraisal under ~~subsections (a) or (b),~~ subsection (a), above, or under G.S. 105-287, it shall be listed at the value assigned when last appraised under this section or under G.S. 105-287."

SECTION 2. G.S. 105-287 reads as rewritten:

"§ 105-287. Changing appraised value of real property in years in which general reappraisal ~~or horizontal adjustment~~ is not made.

(a) In a year in which a general reappraisal ~~or horizontal adjustment~~ of real property in the county is not made, the assessor shall increase or decrease the appraised value of real property, as determined under G.S. 105-286, ~~to recognize a change in the property's value resulting from one or more of the reasons listed in this subsection. The reason necessitating a change in the property's value need not be under the control of or at the request of the owner of the affected property.~~to accomplish any one or more of the following:

(1) Correct a clerical or mathematical error.

(2) Correct an appraisal error resulting from a misapplication of the schedules, standards, and rules used in the county's most recent general ~~reappraisal or horizontal adjustment.~~reappraisal.

(2a) Recognize an increase or decrease in the value of the property resulting from a conservation or preservation agreement subject to Article 4 of Chapter 121 of the General Statutes, the Conservation and Historic Preservation Agreements Act.

(2b) ~~Recognize an increase or decrease in the value of the property resulting from a physical change to the land or to the improvements on the land, other than a change listed in subsection (b) of this section.~~Recognize a change in whether the property meets the conditions of G.S. 105-283(b).

(2c) ~~Recognize an increase or decrease in the value of the property resulting from a change in the legally permitted use of the property.~~

(3) Recognize an increase or decrease in the value of the property resulting from a factor other than one listed in subsection (b).

(b) In a year in which a general reappraisal ~~or horizontal adjustment~~ of real property in the county is not made, the assessor may not increase or decrease the appraised value of real property, as determined under G.S. 105-286, to recognize a change in value caused by:

(1) Normal, physical depreciation of improvements;

(2) Inflation, deflation, or other economic changes affecting the county in general; or

(3) Betterments to the property made by:

a. Repainting buildings or other structures;

b. Terracing or other methods of soil conservation;

c. Landscape gardening;

d. Protecting forests against fire; or

e. Impounding water on marshland for non-commercial purposes to preserve or enhance the natural habitat of wildlife.

(c) An increase or decrease in the appraised value of real property authorized by this section shall be made in accordance with the schedules, standards, and rules used in the county's most recent general ~~reappraisal or horizontal adjustment.~~reappraisal. An increase or decrease in appraised value made under this section is effective as of January 1 of the year in which it is made and is not retroactive. This section does not modify or restrict the provisions of G.S. 105-312 concerning the appraisal of discovered property.

(d) Notwithstanding subsection (a), if a tract of land has been subdivided into lots and more than five acres of the tract remain unsold by the owner of the tract, the assessor may appraise the unsold portion as land acreage rather than as lots. A tract is considered subdivided into lots when the lots are located on streets laid out and open for travel and the lots have been sold or offered for sale as lots since the last appraisal of the property."

SECTION 3. G.S. 105-355 reads as rewritten:

"**§ 105-355. Creation of tax lien; date as of which lien attaches.**

(a) Lien on Real Property. – Regardless of the time at which liability for a tax for a given fiscal year may arise or the exact amount thereof be determined, the lien for taxes levied on a parcel of real property shall attach to the parcel taxed on the date as of which property is to be listed under G.S. 105-285, and the lien for taxes levied on personal property shall attach to all real property of the taxpayer in the taxing unit on the same date. All penalties, interest, and costs allowed by law shall be added to the

amount of the lien and shall be regarded as attaching at the same time as the lien for the principal amount of the taxes. For purposes of this subsection (a):

(1) Taxes levied on real property listed in the name of a life tenant under G.S. 105-302 (c)(8) shall be a lien on the fee as well as the life estate.

(2) Taxes levied on improvements on or separate rights in real property owned by one other than the owner of the land, whether or not listed separately from the land under G.S. 105-302 (c)(11), shall be a lien on both the improvements or rights and on the land.

(b) Lien on Mobile Home Listed as Personal Property. – The lien for taxes levied on a mobile home listed as personal property shall attach to the mobile home and to all real property of the taxpayer in the taxing unit on the date as of which property is to be listed under G.S. 105-285.

~~(b)~~(c) Lien on Personal Property. – Taxes levied on real and personal property (including penalties, interest, and costs allowed by law) shall be a lien on personal property from and after levy or attachment and garnishment of the personal property levied upon or attached."

SECTION 4. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2008. The reappraisal schedule in G.S. 105-286, determined without regard to the amendment to that statute made by Section 1 of this act, applies to a county until the county conducts its next general reappraisal. When a county conducts its next general reappraisal, the schedule in G.S. 105-286, as amended by Section 1 of this act, applies to that county.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

SESSION LAW 2007-308
HOUSE BILL 1555

AN ACT PROVIDING FOUR-YEAR TERMS FOR ALL APPOINTMENTS TO THE PROPERTY TAX COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-288(a) reads as rewritten:

"(a) Creation and Membership. – The Property Tax Commission is created. It consists of five members, three of whom are appointed by the Governor and two of whom are appointed by the General Assembly. Of the two appointments by the General Assembly, one shall be made upon the recommendation of the Speaker of the House of Representatives and the other shall be made upon the recommendation of the President Pro Tempore of the Senate. The terms of the members ~~appointed by the Governor and of the member appointed upon the recommendation of the President Pro Tempore of the Senate are for four years. Of the members appointed for four-year terms, two expire on June 30 of each odd-numbered year. The term of the member appointed upon the recommendation of the Speaker of the House of Representatives is for two years and it expires on June 30 of each odd-numbered year~~ are for four years and expire on June 30. The General Assembly shall make its appointments in accordance with G.S. 120-121 and shall fill a vacancy in accordance with G.S. 120-122. A vacancy occurs on the Commission when a member resigns, is removed, or dies. The person appointed to fill a vacancy shall serve for the balance of the unexpired term. The Governor may remove any member for misfeasance, malfeasance, or nonfeasance.

The Commission shall have a chair and a vice-chair. The Governor shall designate one of the Commission members as the chair, to serve at the pleasure of the Governor. The members of the Commission shall elect a vice-chair from among its membership. The vice-chair serves until the member's regularly appointed term expires."

SECTION 2. This act is effective when it becomes law and applies to appointments made after July 1, 2007.

In the General Assembly read three times and ratified this the 17th day of July, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 12:12 p.m. this 28th day of July, 2007

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

SESSION LAW 2007-485
SENATE BILL 646

AN ACT TO PROVIDE PROPERTY TAX RELIEF FOR WORKING WATERFRONT PROPERTY, TO ESTABLISH THE ADVISORY COMMITTEE FOR THE COORDINATION OF WATERFRONT ACCESS, TO MAKE EXPANDED PUBLIC ACCESS TO COASTAL WATERS A PRIORITY IN PLANNING STATE ROAD PROJECTS, TO INCREASE FEES FOR VESSEL TITLING, TO WAIVE PERMIT FEES FOR EMERGENCY COASTAL AREA MANAGEMENT ACT PERMITS, AND TO DIRECT A STUDY OF CONSTRUCTION AND REPAIR IN REGULATED FLOOD ZONES, AS RECOMMENDED BY THE WATERFRONT ACCESS STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

PART I. PROPERTY TAX RELIEF FOR WORKING WATERFRONT PROPERTY.

SECTION 1. Article 12 of Subchapter II of Chapter 105 of the General Statutes is amended by adding the following new section to read:

"**§ 105-277.14. Taxation of working waterfront property.**

(a) Definitions. – The following definitions apply in this section:

(1) Coastal fishing waters. – Defined in G.S. 113-129.

(2) Commercial fishing operation. – Defined in G.S. 113-168.

(3) Fish processing. – Processing fish, as defined in G.S. 113-129, for sale.

(4) Working waterfront property. – Any of the following property that has, for the most recent three-year period, produced an average gross income of at least one thousand dollars ($1,000):

a. A pier that extends into coastal fishing waters and limits access to those who pay a fee.

b. Real property that is adjacent to coastal fishing waters and is primarily used for a commercial fishing operation or fish processing, including adjacent land that is under improvements used for one of these purposes.

(b) Classification. – Working waterfront property is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution and must be appraised, assessed, and taxed on the basis of the value of the property in its present use rather than on its true value. Working waterfront property includes land reasonably necessary for the convenient use of the property.

(c) Deferred Taxes. – The difference between the taxes that are due on working waterfront property taxed on the basis of its present use and that would be due if the property were taxed on the basis of its true value is a lien on the property. The difference in taxes must be carried forward in the records of each taxing unit as deferred taxes. The deferred taxes become due when the property no longer qualifies as working waterfront property. The tax for the fiscal year that opens in the calendar year in which deferred taxes become due is computed as if the property had not been classified for that year, and taxes for the preceding three fiscal years that have been deferred are

immediately payable, together with interest, as provided in G.S. 105-360 for unpaid taxes. Interest accrues on the deferred taxes due as if they had been payable on the dates on which they originally became due. If only a part of the property no longer qualifies as working waterfront property, the assessor must determine the amount of deferred taxes applicable to that part and that amount becomes payable with interest. Upon the payment of any taxes deferred under this section for the three years immediately preceding a disqualification, all liens arising under this subsection are extinguished.

(d) Application. – To obtain the benefit of this section, the owner of working waterfront property must submit an application for classification and exclusion to the assessor of the county in which the property is located, and the assessor must approve the application. An application must contain the information and be in the form required by the assessor. An initial application must be filed during the regular listing period of the year for which the benefit of this classification is first claimed or within 30 days of the date shown on a notice of change in valuation made pursuant to G.S. 105-286 or G.S. 105-287. A new application is not required to be submitted unless the property is transferred or becomes ineligible for classification under this section."

PART II. ADVISORY COMMITTEE FOR THE COORDINATION OF WATERFRONT ACCESS.

SECTION 2.1. There is established the Advisory Committee for the Coordination of Waterfront Access within the Department of Environment and Natural Resources. The Advisory Committee shall be composed of the following members:

(1) The Secretary of Environment and Natural Resources or the Secretary's designee, Chair.
(2) The Director of the Division of Coastal Management of the Department of Environment and Natural Resources or the Director's designee.
(3) The Director of the Division of Parks and Recreation of the Department of Environment and Natural Resources or the Director's designee.
(4) The Director of the Division of Marine Fisheries of the Department of Environment and Natural Resources or the Director's designee.
(5) The Director of the Division of Aquariums of the Department of Environment and Natural Resources or the Director's designee.
(6) The Executive Director of the Wildlife Resources Commission or the Executive Director's designee.
(7) A representative of the State Property Office appointed by the Secretary of Administration.
(8) The Executive Director of North Carolina Sea Grant.
(9) One local government representative appointed by the North Carolina League of Municipalities.
(10) One local government representative appointed by the North Carolina Association of County Commissioners.

SECTION 2.2. The Advisory Committee for the Coordination of Waterfront Access shall:

(1) Develop a coordinated plan for providing greater waterfront access in the State. This plan shall specifically address geographic diversity of waterfront access, diversity of types of waterfront access, and funding for waterfront access. The entities represented on the Advisory Committee shall adhere to the plan to the maximum extent practicable.
(2) Develop recommendations for increasing and improving waterfront access in the State.

SECTION 2.3. The Advisory Committee shall report its progress in implementing this Part, including any recommendations developed pursuant to this Part,

to the Joint Legislative Commission on Seafood and Aquaculture no later than October 1 of each year. The first report required by this section shall be submitted no later than October 1, 2008.

PART III. DIRECT THE DEPARTMENT OF TRANSPORTATION TO EXPAND PUBLIC ACCESS TO COASTAL WATERS.

SECTION 3.1. G.S. 136-18 is amended by adding a new subdivision to read:

"(40) To expand public access to coastal waters in its road project planning and construction programs. The Department shall work with the Wildlife Resources Commission, other State agencies, and other government entities to address public access to coastal waters along the roadways, bridges, and other transportation infrastructure owned or maintained by the Department. The Department shall adhere to all applicable design standards and guidelines in implementation of this enhanced access. The Department shall report on its progress in expanding public access to coastal waters to the Joint Legislative Commission on Seafood and Aquaculture and to the Joint Legislative Transportation Oversight Commission no later than March 1 of each year."

SECTION 3.2. The first report required by G.S. 136-18, as enacted by this section, is due no later than March 1, 2008.

PART IV. INCREASE BOATING FUNDING.

SECTION 4.1. G.S. 75A-3(c) reads as rewritten:

"(c) The Boating Account is established within the Wildlife Resources Fund created under G.S. 143-250. Interest and other investment income earned by the Account accrues to the Account. All moneys collected pursuant to the numbering and titling provisions of this Chapter shall be credited to this Account. Motor fuel excise tax revenue is credited to the Account under G.S. 105-449.126. The Commission shall use revenue in the Account, subject to the Executive Budget Act and the Personnel Act, for the administration and enforcement of this Chapter; for activities relating to boating and water safety including education and waterway marking and improvement; and for boating access area acquisition, development, and maintenance. The Commission shall use at least three dollars ($3.00) of each one-year certificate of number fee and at least nine dollars ($9.00) of each three-year certificate of number fee collected under the numbering provisions of G.S. 75A-5 for boating access area acquisition, development, and maintenance."

SECTION 4.2. G.S. 75A-5(a) reads as rewritten:

"(a) Application for Certificate of Number and Fees. – The owner of each vessel requiring numbering by this State shall file an application for a certificate of number with the Commission. The Commission shall furnish application forms and shall prescribe the information contained in the application form. The application shall be signed by the owner of the vessel or the owner's agent and shall be accompanied by a ~~fee of ten dollars ($10.00)~~ fee. The fee is fifteen dollars ($15.00) for a one-year period or ~~by a fee of twenty-five dollars ($25.00)~~ forty dollars ($40.00) for a three-year ~~period; provided, however, there shall be no fee charged for~~ period. The fee does not apply to vessels owned and operated by nonprofit rescue squads if they are operated exclusively for rescue purposes, including rescue training. The owner shall have the option of selecting a one-year numbering period or a three-year numbering period. Upon receipt of the application in approved form, the Commission shall enter the application in its records and issue the owner a certificate of number stating the identification number awarded to the vessel and the name and address of the owner, and a validation decal

indicating the expiration date of the certificate of number. The owner shall paint on or attach to each side of the bow of the vessel the identification number in such manner as may be prescribed by rules of the Commission in order that it may be clearly visible. The identification number shall be maintained in legible condition. The validation decal shall be displayed on the starboard bow of the vessel immediately following the number. The certificate of number shall be pocket size and shall be available for inspection on the vessel for which the certificate is issued at all times the vessel is in operation. Any person charged with failing to so carry a certificate of number shall not be convicted if the person produces in court a certificate of number previously issued to the owner that was valid at the time of the alleged violation."

SECTION 4.3. G.S. 75A-5(c) reads as rewritten:

"(c) Change of Ownership. – Should the ownership of a vessel change, a new application form with a fee ~~of ten dollars ($10.00) for a one year period or by a fee of twenty-five dollars ($25.00) for a three-year period~~ in the amount set in subsection (a) of this section shall be filed with the Commission and a new certificate bearing the same identification number shall be awarded to the new owner in the same manner as an original certificate of number. Possession of the certificate shall in cases involving prosecution for violation of any provision of this Chapter be prima facie evidence that the person whose name appears on the certificate is the owner of the vessel referred to on the certificate."

SECTION 4.4. G.S. 75A-5(h) reads as rewritten:

"(h) Renewal of Certificates. – An owner of a vessel awarded a certificate of number pursuant to this Chapter shall renew the certificate on or before the first day of the month after which the certificate expires; otherwise, the certificate shall lapse and be void until such time as it may thereafter be renewed. Application for renewal shall be submitted on a form approved by the Commission and shall be accompanied by a fee ~~of ten dollars ($10.00) for a one-year period or by a fee of twenty-five dollars ($25.00) for a three-year period; provided, there shall be no fee~~ in the amount set in subsection (a) of this section. No fee is required for a period of one year for renewal of certificates of number that have been previously issued to commercial fishing vessels as defined in G.S. 75A-5.1, upon compliance with all of the requirements of that section."

PART V. WAIVER OF FEES FROM CAMA EMERGENCY PERMITS.

SECTION 5. G.S. 113A-118(f) reads as rewritten:

"(f) The Secretary may issue special emergency permits under this Article. These permits may only be issued in those extraordinary situations in which life or structural property is in imminent danger as a result of storms, sudden failure of man-made structures, or similar occurrence. These permits may carry any conditions necessary to protect the public interest, consistent with the emergency situation and the impact of the proposed development. If an application for an emergency permit includes work beyond that necessary to reduce imminent dangers to life or property, the emergency permit shall be limited to that development reasonably necessary to reduce the imminent danger; all further development shall be considered under ordinary permit procedures. This emergency permit authority of the Secretary shall extend to all development in areas of environmental concern, whether major or minor development, and the mandatory notice provisions of G.S. 113A-119(b) shall not apply to these emergency permits. To the extent feasible, these emergency permits shall be coordinated with any emergency permits required under G.S. 113-229(e1). The fees associated with any permit issued pursuant to this subsection or rules adopted pursuant to this subsection shall be waived."

PART VI. STUDY CONSTRUCTION AND REPAIR IN REGULATED FLOOD ZONES.

SECTION 6. The Division of Emergency Management of the Department of Crime Control and Public Safety shall study ways to facilitate the construction and repair of water dependent structures such as fish processing and packing facilities and boat repair and building facilities located in regulated flood zones. The Division shall report the results of its study, including any recommendations, to the Joint Legislative Commission on Seafood and Aquaculture by March 1, 2008.

PART VII. EFFECTIVE DATE.

SECTION 7. Section 1 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2009. Sections 4.1 through 4.4 of this act become effective January 1, 2008. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of August, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 12:25 p.m. this 30th day of August, 2007

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

SESSION LAW 2007-471
HOUSE BILL 1688

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO CREATE A LIMITED REGISTRATION PLATE, TO EXEMPT MOTOR VEHICLES REGISTERED UNDER THE INTERNATIONAL REGISTRATION PLAN FROM THE COMBINED REGISTRATION AND PROPERTY TAX SYSTEM, TO PROVIDE THAT INTEREST GENERATED BY FUNDS IN THE COMBINED MOTOR VEHICLE AND REGISTRATION ACCOUNT BE CREDITED TO THE ACCOUNT, TO AUTHORIZE THE OFFICE OF STATE BUDGET AND MANAGEMENT TO DIRECT THE TREASURER TO DISTRIBUTE THE FUNDS IN THE ACCOUNT TO IMPLEMENT THE INTEGRATED COMPUTER SYSTEM, TO DISTRIBUTE ANY REMAINING FUNDS IN THE ACCOUNT TO THE LOCAL GOVERNMENTS, AND TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE COMBINED MOTOR VEHICLE REGISTRATION RENEWAL AND PROPERTY TAX COLLECTION SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-79.1 reads as rewritten:

"**§ 20-79.1. Use of temporary registration plates or markers by purchasers of motor vehicles in lieu of dealers' plates.**

(a) The Division may, subject to the limitations and conditions hereinafter set forth, deliver temporary registration plates or markers designed by said Division to a dealer duly registered under the provisions of this Article who applies for at least 25 such plates or markers and who encloses with such application a fee of one dollar ($1.00) for each plate or marker for which application is made. Such application shall be made upon a form prescribed and furnished by the Division. Dealers, subject to the limitations and conditions hereinafter set forth, may issue such temporary registration plates or markers to owners of vehicles, provided that such owners shall comply with the pertinent provisions of this section.

(b) Every dealer who has made application for temporary registration plates or markers shall maintain in permanent form a record of all temporary registration plates or markers delivered to him, and shall also maintain in permanent form a record of all temporary registration plates or markers issued by him, and in addition thereto, shall maintain in permanent form a record of any other information pertaining to the receipt or the issuance of temporary registration plates or markers that the Division may require. Each record shall be kept for a period of at least one year from the date of entry of such record. Every dealer shall allow full and free access to such records during regular business hours, to duly authorized representatives of the Division and to peace officers.

(c) Every dealer who issues temporary registration plates or markers shall also issue a temporary registration certificate upon a form furnished by the Division and deliver it with the registration plate or marker to the owner.

(d) A dealer shall:

(1) Not issue, assign, transfer, or deliver temporary registration plates or markers to anyone other than a bona fide purchaser or owner of a vehicle which he has sold.

(2) Not issue a temporary registration plate or marker without first obtaining from the purchaser or owner a written application for titling and registration of the vehicle and the applicable fees.

(3) Within 10 working days, mail or deliver the application and fees to the Division or deliver the application and fees to a local license agency for processing. Delivery need not be made if the contract for sale has been rescinded in writing by all parties to the contract.

(4) Not deliver a temporary registration plate to anyone purchasing a vehicle that has an unexpired registration plate that is to be transferred to the purchaser.

(5) Not lend to anyone, or use on any vehicle that he may own, any temporary registration plates or markers.

A dealer may issue temporary markers, without obtaining the written application for titling and registration or collecting the applicable fees, to nonresidents for the purpose of removing the vehicle from the State.

(e) Every dealer who issues temporary plates or markers shall write clearly and indelibly on the face of the temporary registration plate or marker:

(1) The dates of issuance and expiration;

(2) The make, motor number, and serial numbers of the vehicle; and

(3) Any other information that the Division may require.

It shall be unlawful for any person to issue a temporary registration plate or marker containing any misstatement of fact or to knowingly write any false information on the face of the plate or marker.

(f) If the Division finds that the provisions of this section or the directions of the Division are not being complied with by the dealer, ~~he~~ the Division may suspend, after a hearing, the right of a dealer to issue temporary registration plates or markers. Nothing in this section shall be deemed to require a dealer to collect or receive property taxes from any person.

(g) Every person to whom temporary registration plates or markers have been issued shall permanently destroy such temporary registration plates or markers immediately upon receiving the limited registration plates or the annual registration plates from the Division: Provided, that if the limited registration plates or the annual registration plates are not received within 30 days of the issuance of the temporary registration plates or markers, the owner shall, notwithstanding, immediately upon the expiration of such 30-day period, permanently destroy the temporary registration plates or markers.

(h) Temporary registration plates or markers shall expire and become void upon the receipt of the limited registration plates or the annual registration plates from the Division, or upon the rescission of a contract to purchase a motor vehicle, or upon the expiration of 30 days from the date of issuance, depending upon whichever event shall first occur. No refund or credit or fees paid by dealers to the Division for temporary registration plates or markers shall be allowed, except in the event that the Division discontinues the issuance of temporary registration plates or markers or unless the dealer discontinues business. In this event the unissued registration plates or markers with the unissued registration certificates shall be returned to the Division and the dealer may petition for a refund. Upon the expiration of the 30 days from the date of issuance, a second 30-day temporary registration plate or marker may be issued by the dealer upon showing the vehicle has been sold, a temporary lien has been filed as provided in G.S. 20-58, and that the dealer, having used reasonable diligence, is unable to obtain the vehicle's statement of origin or certificate of title so that the lien may be perfected.

(i) A temporary registration plate or marker may be used on the vehicle for which issued only and may not be transferred, loaned, or assigned to another. In the event a temporary registration plate or marker or temporary registration certificate is lost or stolen, the owner shall permanently destroy the remaining plate or marker or certificate and no operation of the vehicle for which the lost or stolen registration

certificate, registration plate or marker has been issued shall be made on the highways until the regular license plate is received and attached thereto.

(j) The Commissioner of Motor Vehicles shall have the power to make such rules and regulations, not inconsistent herewith, as he shall deem necessary for the purpose of carrying out the provisions of this section.

(k) The provisions of G.S. 20-63, 20-71, 20-110 and 20-111 shall apply in like manner to temporary registration plates or markers as is applicable to nontemporary plates."

SECTION 2. Part 5 of Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-79.1A. Use of limited registration plates on motor vehicles.**

(a) The Division or its authorized agent shall issue a limited registration plate upon receipt of an application for title and registration fees from a dealer, who is authorized to issue temporary registration plates or markers to owners of vehicles pursuant to G.S. 20-79.1, or from any other person. The limited registration plate must be clearly and visibly designated as "temporary" and shall expire on the last day of the second month following the date of application of the limited registration plate.

(b) Notwithstanding subsection (a) of this section, the Division or its authorized agent shall issue an annual registration plate upon receipt of an application for title, registration fees, and property taxes from the dealer or any other person."

SECTION 3. G.S. 105-330.4(a), as amended by Section 3 of S.L. 2005-294, reads as rewritten:

"**§ 105-330.4. Due date, interest, and enforcement remedies.**

(a) **(Effective until July 1, 2010)** Taxes on a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(2) shall be due on September 1 following the date by which the vehicle was required to be listed. Taxes on a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) shall be due each year on the following dates:

(1) For a vehicle registered under the staggered system, taxes shall be due on the first day of the fourth month following the date the registration expires or on the first day of the fourth month following the last day of the month in which the new registration is applied for.

(2) For a vehicle newly registered under the annual system, taxes shall be due on the first day of the fourth month following the date the new registration is applied for. For a vehicle whose registration is renewed under the annual system, taxes shall be due on May 1 following the date the registration expired.

(a) **(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)** Taxes on a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(2) are due on September 1 following the date by which the vehicle was required to be listed. Taxes on a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) are due each year on the date a new registration is applied for or the fifteenth day of the month following the month in which the registration renewal sticker expired pursuant to G.S. 20-66(g).

(a1) Notwithstanding subsection (a) of this section, taxes on a classified motor vehicle for which the registration fees have been paid pursuant to G.S. 20-79.1 or subsection (a) of G.S. 20-79.1A, are due on the last day of the second month following the date on which the limited registration is applied for."

SECTION 4. G.S. 105-330.5, as amended by Section 6 of S.L. 2005-294, is amended by adding a new subsection to read:

"(a2) For classified motor vehicles where the registration fees have been paid pursuant to G.S. 20-79.1 or subsection (a) of G.S. 20-79.1A, the Property Tax Division's notice shall contain a statement that registration fees have been paid pursuant to G.S. 20-79.1 or G.S. 20-79.1A and that the registration becomes valid for the remainder

of the year upon payment of county and municipal taxes and fees due in the current year."

SECTION 5. G.S. 105-330.5(b), as amended by Section 6 of S.L. 2005-294, reads as rewritten:

"(b) When the combined tax and registration notice required by subsection (a) or (a2) of this section is prepared, the Property Tax Division of the Department of Revenue or a third-party contractor shall mail a copy of the notice, with appropriate instructions for payment, to the motor vehicle owner. The Department shall establish a fee equal to the actual cost of printing and sending the notice. The Department may receive a fee for each notice generated for a vehicle registered in a county or municipal corporation from the taxes and fees remitted to the county or municipal corporation in which the vehicle is registered. The collecting authority is responsible for collecting county and municipal taxes and fees assessed under this Article and may retain a fee for collecting these taxes and fees. The fee retained by the collecting authority shall be an amount equal to at least one-third of the compensation paid for registration renewals conducted by contract agents under G.S. 20-63(h). The Property Tax Division shall establish procedures to ensure that tax payments and fees received pursuant to this Article and Chapter 20 of the General Statutes are properly accounted for and taxes and fees due other taxing units and the Division of Motor Vehicles are remitted at least once each month. Each collecting authority shall provide a weekly financial report containing information required by the Property Tax Division to the taxing units and Division of Motor Vehicles to enable them to account for payments received."

SECTION 6. G.S. 105-330.1(b) reads as rewritten:

"(b) Exceptions. – The following motor vehicles are not classified under subsection (a) of this section:

(1) Motor vehicles exempt from registration pursuant to G.S. 20-51.
(2) Manufactured homes, mobile classrooms, and mobile offices.
(3) Semitrailers or trailers registered on a multiyear basis.
(4) Motor vehicles owned or leased by a public service company and appraised under G.S. 105-335.
(5) Repealed by Session Laws 2000, c. 140, s. 75(a). (1991, c. 624, s. 1; 1991 (Reg. Sess., 1992), c. 961, s. 3; 1993, c. 485, s. 18; c. 543, s. 4; 1993 (Reg. Sess., 1994), c. 745, s. 1; 2000-140, s. 75(a).)
(6) Motor vehicles registered under the International Registration Plan."

SECTION 7.(a) G.S. 105-330.10 reads as rewritten:

"**§ 105-330.10. (Effective until July 1, 2010) Disposition of interest.**

Sixty percent (60%) of the first month's interest collected on unpaid taxes 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. Interest generated by the funds in the Combined Motor Vehicle and Registration Account shall be credited to the Account. ~~The North Carolina Association of County Commissioners~~The Office of State Budget and Management shall direct the Treasurer to distribute the funds in the Account to the Division of Motor Vehicles for the purpose of developing and implementing 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. Funds in the Account shall not be transferred by the Office of State Budget and Management and appropriated by the General Assembly until the Department of Transportation and the North Carolina Association of County Commissioners reach agreement on a project plan for the integrated system. The Treasurer shall report to the Revenue Laws Study Committee semiannually 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. Any funds remaining in the Account after the integrated computer system has been certified to be in operation shall be distributed to the local governments on a pro rata basis determined by the first month's interest collected on the

unpaid taxes on classified motor vehicles and paid into the Account by each local government."

SECTION 7.(b) This section is effective when it becomes law.

SECTION 8. Unless otherwise stated, this act becomes 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.

In the General Assembly read three times and ratified this the 2nd day of August, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 3:35 a.m. this 29th day of August, 2007

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

SESSION LAW 2007-477
HOUSE BILL 63

AN ACT TO EXCLUDE FROM PROPERTY TAX REAL AND PERSONAL PROPERTY THAT IS SUBJECT TO A CAPITAL LEASE WITH A LOCAL SCHOOL ADMINISTRATIVE UNIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-275 is amended by adding a new subdivision to read:
"**§ 105-275. Property classified and excluded from the tax base.**
The following classes of property are hereby designated special classes under authority of Article V, Sec. 2(2), of the North Carolina Constitution and shall not be listed, appraised, assessed, or taxed:

...

(43) Real or tangible personal property that is subject to a capital lease pursuant to G.S. 115C-531."

SECTION 2. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2007.

In the General Assembly read three times and ratified this the 1st day of August, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 2:41 p.m. this 29th day of August, 2007

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

SESSION LAW 2007-251
SENATE BILL 1432

AN ACT TO ALLOW FOR A MEANINGFUL CHALLENGE TO AN ADMINISTRATIVE SUBPOENA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-4(h) reads as rewritten:

"**§ 96-4. Administration.**

...

(h) Oaths and Witnesses. – In the discharge of the duties imposed by this Chapter, the chairman and any duly authorized representative or member of the Commission shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this Chapter. Upon a motion, the chairman and any duly authorized representative or member of the Commission may quash a subpoena if, after a hearing, the Commission finds any of the following:

(1) The subpoena requires the production of evidence that does not relate to a matter in issue.
(2) The subpoena fails to describe with sufficient particularity the evidence required to be produced.
(3) The subpoena is subject to being quashed for any other reason sufficient in law."

SECTION 2. G.S. 96-4 is amended by adding a new subsection to read:

"(h1) Hearing on Motion to Quash Subpoena; Appeal. – A hearing on a motion to quash a subpoena pursuant to subsection (h) of this section shall be heard at least 10 days prior to the hearing for which the subpoena was issued. The denial of a motion to quash a subpoena is subject to immediate judicial review in the Superior Court of Wake County or in the superior court of the county where the person subject to the subpoena resides."

SECTION 3. G.S. 105-290(d) reads as rewritten:

"**§ 105-290. Appeals to Property Tax Commission.**

...

(d) Witnesses and Documents. – Upon its own motion or upon the request of any party to an appeal, the Property Tax Commission, or any member of the Commission, or any employee of the Department of Revenue so authorized by the Commission shall examine witnesses under oath administered by any member of the Commission or any employee of the Department so authorized by the Commission, and examine the documents of any person if there is ground for believing that information contained in such documents is pertinent to the decision of any appeal pending before the Commission, regardless of whether such person is a party to the proceeding before the Commission. Witnesses and documents examined under the authority of this subsection (d) shall be examined only after service of a subpoena as provided in subdivision (d)(1), below. The travel expenses of any witness subpoenaed and the cost of serving any subpoena shall be borne by the party that requested the subpoena.

(1) The Property Tax Commission, a member of the Commission, or any employee of the Department of Revenue authorized by the Commission, is authorized and empowered to subpoena witnesses and to subpoena documents upon a subpoena to be signed by the chairman of the Commission directed to the witness or witnesses or to the person or persons having custody of the documents sought. Subpoenas issued under this subdivision may be served by any officer authorized to serve subpoenas.

(2) Any person who shall willfully fail or refuse to appear, to produce subpoenaed documents in response to a subpoena, or to testify as provided in this subsection (d) shall be guilty of a Class 1 misdemeanor.

(3) Upon a motion, the Property Tax Commission, or a member of the Commission may quash a subpoena if, after a hearing, the Commission finds any of the following:

a. The subpoena requires the production of evidence that does not relate to a matter in issue.

b. The subpoena fails to describe with sufficient particularity the evidence required to be produced.

c. The subpoena is subject to being quashed for any other reason sufficient in law."

SECTION 4. G.S. 105-290 is amended by adding a new subsection to read:

"(d1) Hearing on Motion to Quash Subpoena; Appeal. – A hearing on a motion to quash a subpoena pursuant to subdivision (d)(3) of this section shall be heard at least 10 days prior to the hearing for which the subpoena was issued. The denial of a motion to quash a subpoena is subject to immediate judicial review in the Superior Court of Wake County or in the superior court of the county where the person subject to the subpoena resides."

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of July, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 10:34 a.m. this 20th day of July, 2007

2007

FINANCE LAW CHANGES

PREPARED BY
FINANCE TEAM LEGAL STAFF:
Cindy Avrette
Dan Ettefagh
Heather Fennell
Trina Griffin
Martha Walston

REVENUE LAWS STUDY COMMITTEE
Wednesday, March 5, 2008
Room 544, Legislative Office Building
9:30 a.m.

MINUTES

The Revenue Laws Study Committee met at 9:30 a.m. on Wednesday, March 5, 2008, in Room 1228 of the Legislative Building. Ten members of the committee were present. Representative Luebke presided as chair.

Approval of Minute from the December 14, 2007 Meeting

Representative Hill moved that the minutes be approved and the motion carried.

Work Opportunity Tax Credit

Heather Fennell, a staff attorney with the Research Division, was recognized to explain the Work Opportunity Tax Credit; changes to the federal law and its effects to the North Carolina law; and update option for the State credit. Andy Ellen, a lobbyist for the Retail Merchants Association, was recognized to speak in favor of the credit. A copy of Ms. Fennell's power point is attached.

IRC Update

Trina Griffin, a staff attorney with the Research Division, was recognized to review why the State updates the Internal Revenue Code, outlined what the federal government did last year and what the State will need to do to update its Internal Revenue Code. A copy of her power point is attached. Barry Boardman, a fiscal analyst with the Fiscal Research Division, was recognized to explain the fiscal impact of the federal general provisions. The committee recommended further study of possible decoupling from the federal Economic Stimulus Act.

Recognitions

Representative Luebke recognized longtime staff member, Dave Crotts, a fiscal analyst with the Fiscal Research Division, in appreciation of his efforts and hard work for the committee and the legislature prior to his retirement in April. He also introduced new members of the staff; Sandra Johnson, a fiscal analyst with the Fiscal Research Division, and Jeff Cherry, a staff attorney with the Bill Drafting Division.

Gift Tax

Cindy Avrette, a staff attorney with the Research Division, was recognized to give an overview of the gift tax, explain the 2007 committee proposals, and H235 (Simplify Gift Tax) which is in the House Finance Committee. A copy of her power point, H235, the H235 summary, the H235 fiscal note, and a bill draft are attached. Bill Kratt, Chair of the Estate Planning and Fiduciary Law Section for the NC Bar Association was recognized to explain the Bar's constructive changes to be considered in last year's legislative gift tax proposals. A copy of the Bar's two memorandums is attached.

Revenue Laws Technical & Administrative Changes

Trina Griffin was recognized to offer an overview of the current bill draft for review and discussion. It currently has Department of Revenue recommendations to the new tax appeals process and the Medicaid technical changes. The Department of Revenue requested changes to the employee confidentiality law, repeal of the Rural Redevelopment Authority and true technical changes. Chuck Neely, a lobbyist for the Council on State Taxation, was recognized to speak in favor of the tax appeals sections. A copy of the bill draft and its summary is attached.

The meeting adjourned at 11:28 a.m.

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

Wednesday, March 5, 2008
Room 1228, Legislative Building
9:30 a.m.

I. Approval of the Minutes from the December 14, 2007 Meeting

II. Work Opportunity Tax Credit

- Heather Fennell, Research Division

III. IRC Update

- Trina Griffin, Research Division
- Barry Boardman, Fiscal Research Division

IV. Gift Tax

- Overview
  – *Cindy Avrette, Research Division*
- Discussion of Proposed Revisions
  – *Bill Kratt, Gift Tax Subcommittee of the Legislative Committee of the Estate Planning and Fiduciary Law Section of the NC Bar Association*

V. Revenue Laws Technical & Administrative Changes

- Trina Griffin, Research Division

VI. Adjournment

Future Meeting Dates: April 2 and April 30
All meetings in Room 544, LOB, at 9:30 a.m.

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — March 5, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	JD, AL, PA
Janice W. Davidson	NC DOR
DAVID BARNES	Poyner + Spruill
Joseph Coletta	John Locke Foundation
Amy Schilder	McGuire Woods
[illegible]	[illegible]
[illegible]	TWC
Marvin Trotter	Brooks Pierce
Gene Ainsworth	A & A
Patrick Buffkin	Nelson Mullins
Andy Sabol	NCDOR

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — March 5, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Lennie Collins	NC DOR
Greg Radford	NC DOR
Meg Gray	NC BTC
Bill Spencer	NC DOR
Roger Bone	Bone + Assoc.
Steve Brewer	EMBARQ
Karl Knapp	NC League of Municipalities
Sandy Sayre	WCSR

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — March 5, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Andy Ellen	NCRMA
Elizabeth Dalton	NCRMA
Camilla Boza	BPMHC
Ed Fulton	BPMHC
Jim Ahler	NCACPA
Lucius Pullen	Attorney
John Goodman	NC Chamber
Michael Houser	NC DOR
Reggie Hinton	NC DOR
Linda S Millsaps	NCDOR
[illegible] Tart	NCDOR

VISITOR REGISTRATION SHEET

Revenue Laws — 3-5-08

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Anna Mitchell	NCDOR
Cam Crawley	E&Y
Mitch Kokai	John Locke Foundation
Sharon Miller	CUCA
Joan Myers	SAS

House Pages

Name Of Committee: REVENUE LAW Date: 3-5-08

1. Name:

County:

Sponsor:

2. Name:

County:

Sponsor:

3. Name:

County:

Sponsor:

4. Name:

County:

Sponsor:

5. Name:

County:

Sponsor:

Sgt-At-Arms

HOUSE	SENATE
1. Name: Tom Wilson	Robert YOUNG
2. Name: Dusty Rhodes	CHESTER White
3. Name:	Richard TELFAIR
4. Name:	George Robinson
5. Name:	

The Work Opportunity Tax Credit

Basic overview of Federal Credit & 2007 North Carolina Credit

March 5, 2008
Heather D. Fennell
Research Division

North Carolina

- § 31.21 of the 2007 Appropriations Act:
- "**§ 105-129.16G. Work Opportunity Tax Credit.**
- A taxpayer who is allowed a federal tax credit under Part IV, Subpart F of the Code for the taxable year is allowed a credit against the tax imposed by this Part. The credit is equal to six percent (6%) of the amount of credit allowed under the Code."

What is the WOTC

- The Work Opportunity Tax Credit is a federal tax credit for employers who hire an individual in a designated target group.
- Created by the Small Business Job Protection Act of 1996; reauthorized by the Tax Relief and Health Care Act of 2006 through 2007; extended and modified by the Small Business and Work Opportunity Tax Act of 2007 through 2011.

The Nine Target Groups

A. Qualified recipients of Temporary Assistance to Needy Families (TANF).
B. Qualified veterans.
C. Qualified ex-felons.
D. Designated Community Residents.
E. Vocational rehabilitation referrals.
F. Qualified summer youth.
G. Qualified food stamp recipients.
H. Qualified recipients of SSI.
I. Long-term family assistance recipients.

A. Qualified recipients of (TANF).

- A member of a family that is receiving or recently received Temporary Assistance to Needy Families (TANF) for any 9 month period during the 18-month period ending on the hiring date.

B. Qualified veterans.

- Veterans who are a member of a family that is receiving or recently received food stamps OR veterans with a service connected disability.
- Must be hired within one year of discharge, or hired within one year of a period when the veteran had aggregate periods of unemployment of at least 6 months.

C. Qualified ex-felons

- An ex-felon who has been convicted of a felony and has a hiring date which is not more than one year after the last date on which he was convicted or released from prison.

D. Designated Community Residents.

- Individuals between the ages of 18 and 39 on the hiring date, who reside in an Empowerment Zone, Renewal Community, or Rural Renewable County.

E. Vocational rehabilitation referrals.

- Individuals certified as an individual who has a physical or mental disability that constitutes a substantial handicap to employment and has been referred to an employer as part of a vocational rehabilitation plan.

F. Qualified summer youth.

- Individuals 16 or 17 years of age on hiring date, who work between May 1 and September 15 and live within an Empowerment Zone, Renewal Community, or Rural Renewable County.

G. Qualified food stamp recipients.

- Individuals 18 – 39 years of age certified as being a member of a family receiving assistance under the food stamp program for a period of at least six months ending on the hiring date.

H. Qualified recipients of SSI.

- An individual who received supplemental social security income (SSI) for any month ending within the 60-day period ending on the hiring date.

I. Long-term family assistance recipients.

- A member of a family that is receiving or recently received Temporary Assistance to Needy Families (TANF) for at least 18 consecutive months ending on the hiring date.

Specific Exclusions

Tax credit can not be claimed for wages paid to:

- Relatives of employer.
- Employees that have been rehired.
- Replacement workers hired during strikes or lockouts.
- Shareholders.
- Nonprofit employees.

Certification

- Individuals are certified by a designated local agency as a member of a targeted group.
- If not supplied by the certifying agency, employer must complete certification form before offering employment and must submit certification within 28 days of start of employment.

Amount of Credit

The credit for groups A, C, D, E, G, and H (all groups except for veterans, summer youth and long-term family assistance recipients):

- 40% of qualified first year wages up to $6,000 for individuals retained for at least 400 hours, maximum credit of $2,400 per employee.
- 25% of qualified first year wages up to $6,000 for individuals retained for at least 120 but less than 400 hours, maximum credit of $1,500 per employee.

Amount of Credit

Veterans:

- 40% of qualified first year wages up to $12,000 for individuals retained for at least 400 hours, maximum credit of $4,800 per employee.
- 25% of qualified first year wages up to $6,000 for individuals retained for at least 120 but less than 400 hours, maximum credit of $3,000 per employee

Amount of Credit

Summer Youth:

- The maximum amount of wages to which the credit may be applied is $3,000, maximum credit of $1,200 per employee.

Long-term family assistance recipients:

- 40% of qualified first year wages up to $10,000 and 50% of qualified second year wages up to $10,000 for individuals retained for at least 400 hours, maximum credit of $9,000 per employee.

Applicable tax years

- Employers who do not take the full tax credit due to tax liability limitation may carryback the unused credit 1 year and carry forward the unused credit 20 years, or until all of the credit is used.

Other States – Stand Alone Credits

California

- Target groups: veterans, dislocated workers, TANF recipients, SSI recipients, ex-felons, among others who work for qualified employers in a "local agency military base recovery area."
- Limitations
  - Dollar amount cap per employee.
  - Credit is based on percentage of wages paid.
  - Employer must have net increase in number of jobs.
  - Cap on total cap of credit equal to tax liability of business located in the local agency military base recovery area.

Other States – Stand Alone Credits

Maryland

- Target Group: Ex-felons
- Limitations
  - Dollar amount cap per employee.
  - Credit is based on percentage of wages paid.
  - Generally must be employed for at least 1 year.

Other States – Stand Alone Credits

Hawaii

- Target Group: Qualified vocational rehabilitation referrals
- Limitations:
  - Dollar amount cap per employee.
  - Credit is based on percentage of wages paid.
  - Employee must work 90 days or 120 hours.

Other States – Stand Alone Credits

Pennsylvania

- Target Group: TANF Recipients
- Limitations:
  - Dollar amount cap per employee.
  - Credit is based on percentage of wages paid.
  - Additional credit allowed fro payment of child care and transportation costs

Other States – Stand Alone Credits

South Carolina

- Target Group: TANF Recipients
- Limitations:
  - Dollar amount cap per employee.
  - Credit is based on percentage of wages paid.
  - Must also offer health care coverage if such coverage is offered to other similar employees.

Other States - "Piggyback" Credit

New Mexico

- Credit is tied to the Federal WOTC; equal to 50% of the federal credit.
- Limitations:
  - Only for the targeted group of former TANF recipients
  - Dollar amount cap per employee: $1,750 for first year of employment, $2,500 for second year.
  - Employment must increase employer's total number of jobs, or employee must replace previous qualified worker.
  - Employee must live in a high unemployment county, as determined by the Department of Labor.

North Carolina – Piggyback credit

- 6% of Federal Tax Credit taken in that year.
- Can include credits from previous tax years due to carryforward provisions.
- Can include credits for employees of other states.
- No dollar amount cap per employee.

North Carolina: Three Options

- Keep current "piggyback" credit
- Keep current "piggyback" credit with limitations
- Restructure credit to create a stand alone North Carolina tax credit

North Carolina: Considerations

- Limit credit to percentage of wages *paid* in that taxable year
- Limit credit to jobs located in North Carolina.
- Limit credit amount:
  - Dollar amount cap per employee
  - Dollar amount cap per employer
  - Percentage cap of employer's tax liability
- Limit credit to jobs held by a member of a specific target group.

North Carolina: Considerations

3rd Option: Restructure credit to create stand alone NC credit.

- Target groups.
- Minimum number of hours or days worked by employee.
- Dollar amount of credit:
  - Total amount cap per employee.
  - Percentage of wages of qualified employees.
  - Cap on total amount of credit per employer.
- Administration.

IRC Update 2008

Revenue Laws Study Committee
Trina Griffin, Staff Attorney
Research Division, NCGA
March 5, 2008

IRC Update

- Reference to the Internal Revenue Code is updated annually to incorporate changes to the Code.
- Constitutional prohibition against updating automatically.
- Generally, the update occurs in the year following the federal changes.
- Current reference date is ***January 1, 2007***.

Federal Changes

- Economic Stimulus Act of 2008
- Small Business and Work Opportunity Tax Act of 2007
- Energy Independence and Security Act of 2007
- Mortgage Forgiveness Debt Relief Act of 2007

Economic Stimulus Act of 2008

- Enacted February 13, 2008
- Total federal cost: $152 billion
- Key Provisions
  - Rebates
  - Temporary bonus depreciation
  - Enhanced small business expensing

Rebates

- Based on 2007 returns
- Up to $600 for individuals
- Up to $1,200 for married couples
- An additional $300 for each qualifying child.
- May not be used to offset 2007 tax liability.

Phase-out

- Rebate is reduced by 5% of the amount exceeding the applicable AGI threshold.
- AGI threshold:
  - $75,000 for individuals
  - $150,000 of AGI for joint filers
- No rebates for individuals with AGI over $87,000 or joint filers with AGI over $174,000.

Business Incentives

- 50% bonus depreciation allowance
- Enhanced small business expensing to highest level ever - $250,000.

"Small Business" Expensing

- What is it?
  - Prior to this act, IRC § 179 allowed a business to deduct up to $128,000 of the cost of depreciable tangible personal property used in the active conduct of a trade or business.
  - Phase-out: If the cost of the property exceeds $510,000, the ceiling is reduced by the amount over the applicable limit.
  - Taxable income required
  - Carry forward

§179 Enhancement

- ESA increases expensing limit to $250,000.
- ESA increases to $800,000 the threshold for reducing the deduction.
- Expensing phases out completely if qualifying purchases exceed $1,050,000 during the tax year.

Bonus Depreciation

- 50% first-year bonus depreciation of the adjusted basis of qualifying property.
- Property must be purchased and placed in service in 2008.

History

- ***Jobs Creation and Worker Assistance Act of 2002***
  - Provided 30% bonus depreciation allowance
  - Extended carryback period for NOL from 2 to 5 years
- Over 30 states decoupled.

North Carolina Response

- Add back to federal taxable income a percentage of the amount allowed as bonus depreciation:

  2001 = 100%
  2002 = 100%
  2003 = 70%
- Beg. 1/1/2005, a taxpayer could deduct total amount of add-backs in 5 equal installments.
- Conformed to the extension of the carryback period.

History

- ***Jobs and Growth Tax Relief Reconciliation Act of 2003***
  - Increased bonus depreciation allowance from 30% to 50%.
  - Increased § 179 expensing limit from $25,000 to $100,000.

North Carolina Response

- Required add-back to federal taxable income the amount allowed as bonus depreciation.
- Conformed to increased expensing limit.

Federal Changes

- Economic Stimulus Act of 2008
- Small Business and Work Opportunity Tax Act of 2007
- Energy Independence and Security Act of 2007
- Mortgage Forgiveness Debt Relief Act of 2007

Small Business and Work Opportunity Tax Act of 2007

- Enacted May 25, 2007.
- Key provisions:
  - Subchapter S provisions
  - Extension of WOTC
  - Increased § 179 expensing limits

Federal Changes

- Economic Stimulus Act of 2008
- Small Business and Work Opportunity Tax Act of 2007
- Energy Independence and Security Act of 2007
- Mortgage Forgiveness Debt Relief Act of 2007

Energy Independence and Security Act of 2007

- Enacted December 19, 2007.
- Key Provisions
  - Extends the additional 0.2% FUTA surtax through 2008
  - Gives certain major oil companies 7-year, rather than 5-year, amortization of geological and geophysical expenditures.

Federal Changes

- Economic Stimulus Act of 2008
- Small Business and Work Opportunity Tax Act of 2007
- Energy Independence and Security Act of 2007
- Mortgage Forgiveness Debt Relief Act of 2007

Mortgage Forgiveness Debt Relief Act of 2007

- Enacted December 20, 2007.
- Key provisions
  - 3-year exclusion from gross income of mortgage debt forgiveness.
  - 3-year extension of mortgage insurance premium deduction.
  - Exclusion from income certain state and local tax breaks for firefighters and EMTs.

To Conform or Not Conform? (or somewhere in between)

- Conform to all changes?
- Decouple from ESA?
- Delay impact of bonus depreciation provisions but conform to enhanced expensing limits?

North Carolina Gift Tax

Cindy Avrette
Research Division, NCGA
March 5, 2008

North Carolina Gift Tax

- Gift tax imposed on gifts exceeding the annual exclusion amount
  - $12,000 annual exclusion amount
  - Equal to the federal inflation-adjusted exclusion amount
- Gift tax generates an average of $18,000,000/year
- Gifts taxed at varying graduated rates based on the relationship between the donor and the donee
  - Favors transfers to children and parents
  - Prefers transfers to other close family members over others

Beneficiary Classes

- Class A Beneficiaries
  - Lineal descendent, lineal ancestors, adopted children, step children
  - Lowest rates
  - Lifetime cumulative exemption of $100,000
- Class B Beneficiaries
  - Sibling, descendant of a sibling, aunt, or uncle
  - Higher rate; no exemption
- Class C Beneficiaries
  - Anyone else
  - Highest rate; no exemption

NC Gift Tax v. Federal Gift Tax

- NC Gift Tax
  - Annual exclusion amount of $12,000
  - Excludes certain gifts
    - Spouses
    - Medical & educational
    - Charitable contributions
  - Tax rate varies based on the relationship between the donor and donee
  - Valuation differences
- Federal Gift Tax
  - Annual exclusion amount of $12,000
  - Excludes certain gifts
    - Spouses
    - Medical & educational
    - Charitable contributions
  - Tax rate does not vary
  - Unified gift-estate tax structure
  - Lifetime exemption amount of $1,000,000

2007 Revenue Laws Proposal

- Repeal gift tax
- Replace with unified estate and gift tax
- More closely conform to the federal gift tax
- Easier to administer
- Easier for taxpayers to plan their estate & transfer assets
- NC one of only four states with a gift tax
  - Tennessee and Louisiana do not conform to the federal gift tax system
  - Connecticut repealed gift tax in 2005 and replaced with unified estate and gift tax

House Bill 235

- Impose State gift tax only if federal gift tax imposed
  - Effectively incorporates the $1,000,000 lifetime exclusion amount
  - Single rate structure for all taxable gifts
  - Conform valuation of gifts
  - Conform the rate schedule for the State gift tax to rate schedule for State estate tax
- Resides in House Finance
- Fiscal impact uncertain
  - Lower revenues
  - Impact would be less than $18,000,000
- Gift Tax Subcommittee of NCBA
  - Calculation of the tax
  - Effect of prior gifts or prior gift tax payments
  - Jurisdiction of tax

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H 1

HOUSE BILL 235

Short Title: Simplify Gift Tax. (Public)

Sponsors: Representatives Brubaker; Blackwood, Carney, Church, Dockham, Folwell, Gulley, Hill, Luebke, McGee, Starnes, Thomas, Wainwright, and Wilkins.

Referred to: Finance.

February 19, 2007

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 $40,000	0%
Over $40,000 up to $90,000	0.8%

Over $90,000 up to $140,000	1.6%
Over $140,000 up to $240,000	2.4%
Over $240,000 up to $440,000	3.2%
Over $440,000 up to $640,000	4.0%
Over $640,000 up to $840,000	4.8%
Over $840,000 up to $1,040,000	5.6%
Over $1,040,000 up to $1,540,000	6.4%
Over $1,540,000 up to $2,040,000	7.2%
Over $2,040,000 up to $2,540,000	8.0%
Over $2,540,000 up to $3,040,000	8.8%
Over $3,040,000 up to $3,540,000	9.6%
Over $3,540,000 up to $4,040,000	10.4%
Over $4,040,000 up to $5,040,000	11.2%
Over $5,040,000 up to $6,040,000	12.0%
Over $6,040,000 up to $7,040,000	12.8%
Over $7,040,000 up to $8,040,000	13.6%
Over $8,040,000 up to $9,040,000	14.4%
Over $9,040,000 up to $10,040,000	15.2%
Over $10,040,000	16.0%

(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.

HOUSE BILL 235: Simplify Gift Tax

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	January 24, 2007
Introduced by:		**Summary by:**	Canaan Huie
Version:	First Edition		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 to greatly increase the lifetime exemption amount. A federal tax is only due once the taxpayer's lifetime taxable gifts have exceeded $1

[1] The annual exclusion amount does not apply to gifts of a future interest.

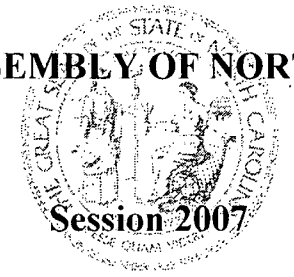
million; by imposing a State gift tax only when a federal tax imposed, the State effectively incorporates the $1 million lifetime exclusion amount.

- 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 would conform the rate schedule for the State gift tax to the rate schedule for the State estate tax. In most cases, this would result in the taxpayer paying tax at a significantly lower rate.

EFFECTIVE DATE: This bill would become effective for gifts made on or after January 1, 2008.

2007-LYxz-6B-SMLY

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 25, 2007

TO: Revenue Laws Study Committee

FROM: Barry Boardman
Fiscal Research Division

RE: House Bill 235

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 and Methodology"				
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

EFFECTIVE DATE:

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 more closely tying the State gift tax to the State estate tax. This bill would become effective for gifts made on or after January 1, 2008.

ASSUMPTIONS AND METHODOLOGY: The gift tax generates on average $18 million per year. The impact of this bill would be to lower the amount of revenues generated, but the impact would be less than the full $18 million generated on average by the current gift tax.

The estate tax rates and taxable amounts are significantly different from the current gift tax. For example, the tax rate on the taxable amount of $90,000 would be 0.8 percent using the estate tax rate schedule, and would generate $720 in tax revenue. However, a $90,000 taxable gift would be taxed at a rate of 4.0 percent when the donee is the lineal issue under the current gift tax, and would generate $3,600 (the rate could be as high as 11 percent depending on the relationship with the donor).

Accurately assessing the fiscal impact from applying the State's estate tax rate schedule to gifts would require, at the minimum, historical data on the number and size of gifts taxed under the current North Carolina gift tax. Discussions with the Department of Revenue indicate this level of detailed, historical data on the gift tax is not compiled. Because that level of detailed data is not available, it is not possible to determine the impact from conforming the State gift tax to the estate tax.

SOURCES OF DATA: None

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-RBxz-30 [v.3] (03/04)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
3/4/2008 5:05:03 PM

Short Title: Simplify Gift Tax. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT AN ACT TO REFORM THE STATE GIFT TAX SO THAT IT IS BASED ON THE FEDERAL GIFT TAX.

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 tax.**

(a) Definition. – As used in this Article, the term 'taxable gift' means the transfer by gift which is included in taxable gifts for federal gift tax purposes under Section 2503 and Sections 2511 to 2514, inclusive, and Sections 2516 to 2519, inclusive, of the Code, less the deductions allowed in Sections 2522 to 2524, inclusive, of the Code. In the administration of the tax under this Article, the Secretary of Revenue shall apply the provisions of Sections 2701 to 2704, inclusive, of the Code.

(b) Imposition of 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 apply:

(1) The donor was a resident of this State at the time the gift was made and the gift consisted of one or more of the following:

a. Real property located in this State.

b. Tangible personal property that was located in this State at the time the gift was made.

c. All intangible personal property.

(2) The donor was not a resident of this State at the time the gift was made and the gift consisted of one or more of the following:

a. Real property located in this State.

b. Tangible personal property that was located in this State at the time the gift was made.

(c) Computation of tax. – The tax imposed by this Article is an amount equal to the excess of a tentative tax, computed at the rates contained in subsection (d) of this section, on the aggregate sum of the taxable gifts for such calendar year and for each of the preceding calendar periods, over a tentative tax, computed at the rates contained in subsection (d) of this section, on the aggregate sum of the taxable gifts for each of the preceding taxable periods. Sections 2503 and 2504 of the Code shall apply in computing the tax. In determining taxable gifts for any preceding calendar period and in computing the gift tax imposed under this section, transfers excepted from tax under former G.S. 105-188(g) shall not be considered.

(d) Rate. – The tax imposed by this Article shall be at the rates of tax, based on the value of the taxable gifts made by the donor for the calendar year, as follows:

Amount With Respect to Which Tentative Tax is Computed:	**Rate**
0 to $1,000,000	0%
$1,000,001 but not over $1,040,000	5.6% of the excess over $1,000,000
Over $1,040,000 but not over $1,540,000	$2,240 plus 6.4% of the excess over $1,040,000
Over $1,540,000 but not over $2,040,000	$34,240 plus 7.2% of the excess over $1,540,000
Over $2,040,000 but not over $2,540,000	$70,240 plus 8% of the excess Over $2,040,000
Over $2,540,000 but not over $3,040,000	$110,240 plus 8.8% of the excess over $2,540,000
Over $3,040,000 but not over $3,540,000	$154,240 plus 9.6% of the excess over $3,040,000
Over $3,540,000 but not over $4,040,000	$202,240 plus 10.4% of the excess over $3,540,000
Over $4,040,000 but not over $5,040,000	$254,240 plus 11.2% of the excess over $4,040,000
Over $5,040,000 but not over $6,040,000	$366,240 plus 12% of the excess Over $5,040,000

Over $6,040,000 but not over $7,040,000	$486,240 plus 12.8% of the excess over $6,040,000
Over $7,040,000 but not over $8,040,000	$614,240 plus 13.6% of the excess over $7,040,000
Over $8,040,000 but not over $9,040,000	$750,240 plus 14.4% of the excess over $8,040,000
Over $9,040,000 but not over $10,040,000	$894,240 plus 15.2% of the excess over $9,040,000
Over $10,040,000	$1,046,240 plus 16% of the excess over $10,040,000.

(e) 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.

(f) In computing the tax under subsection (c) of this section with respect to any transfer made prior to the effective date of this Article, the tentative tax shall be computed on the taxable gifts as reported on the taxpayer's federal gift tax return for the taxable period in question and the value of such taxable gifts shall be the value as finally determined for federal gift tax purposes.

(g) Whenever used in this section in computing the gift tax imposed or the allowable credit against gift tax, the term "preceding calendar period" means all calendar years since January 1, 1948.

"§ 105-32.21. When return required; due date of tax and return.

(a) When Return Required. – Any individual, whether resident or nonresident, who makes a gift in the calendar year to which G.S. 105-32.20 applies shall file a gift tax return under this Article if a federal gift tax return is required with respect to such gift. The return must be filed on a form provided by the Secretary.

(b) Due Date. – The gift tax imposed by this Article is due with 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.

"§ 105-32.22. 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 such 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 of the property of the donee (including after-acquired property) except any part sold to the 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 for other taxes to enforce the payment of taxes assessed under this Article.

If 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.

"§ 105-32.23. 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.

"§ 105-32.24. Federal corrections.

If the amount of a taxpayer's taxable gifts, for federal gift tax purposes, reported on such taxpayer's federal gift tax return for any calendar year, is changed or corrected by the United States Internal Revenue Service or other competent authority, the taxpayer shall, within six months after being notified of the correction or final determination by the Internal Revenue Service, 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 on or after January 1, 2008, and applies to gifts made on or after that date.

MEMORANDUM

From: Gift Tax Subcommittee of Legislative Committee of Estate Planning and Fiduciary Law Section of NCBA
Re: Reasons for Conforming NC Gift Tax to Federal Gift Tax
Date: February 28, 2008

Reasons to Conform North Carolina Gift Tax to Federal Gift Tax

1. The North Carolina estate tax is conformed to federal estate tax in that North Carolina provides its citizens with same unified credit (currently $2,000,000.00) as provided by the federal system.

2. North Carolina citizens are handicapped in that they cannot plan their estates and transfer assets to other family members as easily as citizens of other states due to the existence of the unusual, punitive North Carolina gift tax.

3. The experiences of many accountants and estate planning attorneys show that the North Carolina gift tax is especially harsh on middle class citizens who are discouraged by the gift tax from transferring a farm or an interest in a small business to their natural heirs. There is no logical reason why a North Carolina citizen can transfer a $500,000.00 asset to his or her children at death with no tax but cannot transfer that same asset to the same persons during life without a significant gift tax.

4. It is often the case that the truly rich just pay the gift tax, with little financial pain, when they desire to transfer an asset to a family member.

5. The theory of the gift tax has traditionally been that it is a "back stop" to the estate tax; the estate tax would have no teeth if citizens could make lifetime gifts to avoid the estate tax. This rationale for the gift tax does not apply with gifts of $1,000,000.00 or less.

6. There are only three states that have a gift tax of any kind. North Carolina and Tennessee have gift tax systems that are not conformed to the federal gift tax system. Connecticut has a gift tax that is partially conformed to the federal gift tax system-it defines gifts in the same manner as the federal system, but it does not recognize the $1,000,000.00 lifetime gift tax exemption. HB 235 would not put North Carolina in step with the forty-seven states that have no gift tax; it would give North Carolina citizens the benefit of the $1,000,000.00 lifetime exemption but we would remain in the tiny minority of three states that have a gift tax of some type.

7. Maintaining the current antiquated gift tax system will contribute to North Carolina continuing to be labeled as a "high tax state" with its negative effect on economic development.

8. The experience of many accountants and estate planning attorneys is that the North Carolina gift tax is one of the factors that cause many wealthy citizens to change their residences to South Carolina, Florida and other states to escape what they view as a negative tax environment in North Carolina. It is possible that any revenue loss from the adoption of HB 235 would be offset by the retention of income tax collections from some of these North Carolina citizens who may be enticed to stop moving their residences from North Carolina to other states.

MEMORANDUM

From: Gift Tax Subcommittee of Legislative Committee of Estate Planning and Fiduciary Law Section of NCBA
Re: Questions Regarding HB 235/Proposed Revised Bill
Date: February 28, 2008

A. Basic Changes Contained in HB 235. House Bill 235 contains the Revenue Laws Study Committee recommendation to the 2007 General Assembly. It would make the following key changes to North Carolina's gift tax laws:

1. Bill would closely conform North Carolina's gift tax system to the federal gift tax system.

2. Currently, North Carolina gift tax is imposed after allowing for the Annual Exclusion (currently $12,000.00) and the $100,000.00 lifetime specific exemption. HB 235 would impose a North Carolina gift tax only when a federal gift tax is due, when taxable gifts exceed $1,000,000.00.

3. HB 235 would eliminate the current difference in gift tax treatment based on the donor's relationship to the donee. There would be a single rate structure for all taxable gifts.

4. Under HB 235, valuation of taxable gifts for North Carolina purposes would be the same as valuation for federal gift tax purposes.

5. The gift tax rates under HB 235 are the same rates applicable to estates in North Carolina.

B. Questions Regarding HB 235; Bill to Conform NC Gift Tax to Federal Gift Tax.

1. HB 235 does not accurately coordinate the imposition of state gift tax with federal gift tax law.

(a) Sec.105-32.20(b) of the Bill says that "a gift tax is imposed on a gift when a federal gift tax is imposed on the gift under Section 2501 of the Code . . ." Then Sec. 105-32.20(c) provides the rates of tax on the gift.

(b) Under federal law, Sec. 2501 imposes a gift tax and Sec. 2502 sets out the rates of tax and directs that a tentative tax be computed. The tentative tax is computed on the cumulative value of all taxable gifts made during the donor's lifetime, reduced by a tentative tax on the cumulative value of taxable gifts made in prior calendar periods in order to arrive at a tentative tax imposed on cumulative gifts in the current calendar period. Then Sec.

2505 allows a credit against the gift tax imposed, which credit is equal to the tentative tax on the first $1,000,000.00 of gifts.

(c) Mechanically, a federal gift tax is "imposed" on the first dollar of gifts after the annual exclusion and then a credit is allowed. To say that a NC gift tax will be "imposed" when a federal gift tax is "imposed" does not make a provision for the credit on the first $1,000,000.00 of NC gifts.

2. Sec. 105-32.20(c) says that the rates of tax are based on the value of "the taxable gift". This indicates that the gift tax rate is applied to each taxable gift as opposed to being computed on the basis of cumulative taxable gifts. It is in the interest of the State that the gift tax be applied to gifts on a cumulative basis in a manner similar to the federal gift tax.

3. Sec. 105-32.20(b)(1) appears to impose a gift tax on a NC resident with respect to a gift of real estate or tangible personal property having a tax situs outside of NC. It is questionable whether NC can constitutionally impose a gift tax on property with no situs in NC. In addition, current G.S. Sec. 105-188(a) imposes as gift tax on "all property within the jurisdiction of the State". Is it intended that the Bill would expand the scope of NC law regarding taxation of property outside of NC?

4. Under Sec. 105-32.20(b)(2)b, NC would impose a gift tax on intangible personal property of a non-resident. This is problematic in that the tax situs of intangible personal property normally follows the residence of the taxpayer.

5. There is no provision for gift-splitting.

6. HB 235 provides no guidance as to the effect of prior gifts or prior gifts tax payments:

(a) Does each taxpayer start fresh on the effective date of the statute, with the new system applying to gifts made after that date or does the system take into account gifts made prior to enactment?

(b) Does a taxpayer get a credit for NC gift taxes paid prior to the date of enactment?

(c) Do NC gifts made prior to date of enactment but covered by the $100,000.00 specific exemption count as prior gifts made under the new system?

C. Explanation of Revised HB 235 (As Proposed by the Gift Tax Subcommittee of the Legislative Committee on Estate Planning and Fiduciary Law Section of the NC Bar Association).

1. Revised HB 235 (Proposed) is based in large part on the Connecticut gift tax statute that specifically incorporates the methodology used in the federal gift tax system to define taxable gifts and to impose a gift tax based on cumulative gifts after allowing for the Annual Exclusion and the Unified Credit.

2. The provisions of HB 235 dealing with what types of property are subject to the gift tax for a resident and for a non-resident were amended to avoid constitutional issues. The revised bill does not attempt to impose a gift tax on the transfer by gift by a resident of real property located in another state. With respect to gifts my nonresidents, the revised bill does not attempt to tax a gift of intangible property because intangible property is viewed as having a situs at the residence of the taxpayer.

3. The provisions of original HB 235 relating to the following subjects were retained in the revised HB 235: rate of tax, valuation, collection of tax, death of donor within three years, due date of return and payment of tax and effect of federal corrections.

4. Original HB 235 did not address the effect of prior gifts or the prior use of the $100,000.00 specific gift tax exemption. Since the federal gift tax system and the current North Carolina gift tax system compute the gift tax on the basis of cumulative gifts and takes into account prior gifts, Revised HB 235 provides that the new system will compute gift tax by taking into account gifts made and gift taxes paid since January 1, 1948, that being the date currently used in our gift tax statute. Revised HB 235 provides that gifts made after January 1, 1948 will be taken into account except for gifts that were not taxed due to the application of the $100,000.00 specific exemption.

5. Revised HB 235 provides that it will apply to gifts made on or after January 1, 2008.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U D

BILL DRAFT 2007-SVz-17 [v.5] (01/28)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
3/4/2008 7:54:58 PM

Short Title: Revenue Laws Technical & Admin. Changes. (Public)

Sponsors: Unknown.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE TAX LAWS.

The General Assembly of North Carolina enacts:

REFORM TAX APPEALS CHANGES

SECTION 1.(a) Section 10 of S.L. 2007-491 is repealed.

SECTION 1.(b) G.S. 105-122(a) reads as rewritten:

"(a) An annual franchise or privilege tax is imposed on a corporation doing business in this State. The tax is determined on the basis of the books and records of the corporation as of the close of its income year. A corporation subject to the tax must file a return under affirmation with the Secretary at the place and in the manner prescribed by the Secretary. The return must be signed by the president, vice-president, treasurer, or chief financial officer of the corporation. The return is due on or before the fifteenth day of the fourth month following the end of the corporation's income year. ~~Every corporation, domestic and foreign, incorporated, or, by an act, domesticated under the laws of this State or doing business in this State, except as otherwise provided in this Article, shall, on or before the fifteenth day of the third month following the end of its income year, annually make and deliver to the Secretary in the form prescribed by the Secretary a full, accurate, and complete report and statement signed by either its president, vice-president, treasurer, assistant treasurer, secretary or assistant secretary, containing the facts and information required by the Secretary as shown by the books and records of the corporation at the close of the income year.~~

~~There shall be annexed to the return required by this subsection the affirmation of the officer signing the return.~~"

SECTION 1.(c) Subsections (a) and (c) of this section are effective January 1, 2008. Subsection (b) of this section is effective for taxable years beginning on or after January 1, 2009.

SECTION 2.(a) G.S. 105-130.16(a) reads as rewritten:

"(a) Return. – Every corporation doing business in this State must file with the Secretary an income tax return showing specifically the items of gross income and the

deductions allowed by this Part and any other facts the Secretary requires to make any computation required by this Part. The return of a corporation must be signed by its president, vice-president, treasurer, ~~assistant treasurer, secretary, or assistant secretary.~~ or chief financial officer. The officer signing the return must furnish an affirmation verifying the return. The affirmation must be in the form required by the Secretary."

SECTION 2.(b) This section is effective for taxable years beginning on or after January 1, 2009.

SECTION 3.(a) G.S. 105-241.7(c) reads as rewritten:

"(c) Action on Request. – When a taxpayer files an amended return or a claim for refund, the Department must take one of the actions listed in this subsection within six months after the date the amended return or claim for refund is filed. If the Department does not take one of these actions within this time limit, ~~the inaction is considered a proposed denial of the requested refund.~~ the taxpayer has the option of considering the inaction a proposed denial of the requested refund or waiting until the Department takes one of the listed actions.

(1) Send the taxpayer a refund of the amount shown due on the amended return or claim for refund.

(2) Adjust the amount of the requested refund by increasing or decreasing the amount shown due on the amended return or claim for refund and send the taxpayer a refund of the adjusted amount. If the adjusted amount is less than the amount shown due on the amended return or claim for refund, the adjusted refund must include a reason for the adjustment. The adjusted refund is considered a notice of proposed denial for the amount of the requested refund that is not included in the adjusted refund.

(3) Deny the refund and send the taxpayer a notice of proposed denial.

(4) Send the taxpayer a letter requesting additional information concerning the requested refund. If a taxpayer does not respond to a request for information, the Department may deny the refund and send the taxpayer a notice of proposed denial. If a taxpayer provides the requested information, the Department must take one of the actions listed in this subsection within the later of the following:

a. The remainder of the six-month period.

b. 30 days after receiving the information.

c. A time period mutually agreed upon by the Department and the taxpayer."

SECTION 3.(b) G.S. 105-241.11(a) reads as rewritten:

"(a) Procedure. – A taxpayer who objects to a proposed denial of a refund or a proposed assessment of tax may request a Departmental review of the proposed action by filing a request for review. The request must be filed with the Department within 45 days after the following:

...

(3) The date that inaction by the Department on a request for refund was considered a proposed denial of the refund. This subdivision does not

apply to a taxpayer who opts to wait to receive a notice of proposed denial of the refund rather than consider inaction a proposed denial of the refund."

SECTION 3.(c) This section is effective for taxable years beginning on or after January 1, 2008.

SECTION 4.(a) G.S. 105-241.14(c) reads as rewritten:

"(c) Time Limit. – The process set out in G.S. 105-241.13 for reviewing and attempting to resolve a proposed denial of a refund or a proposed assessment must conclude, and a final determination must be issued within nine months after the date the taxpayer files a request for review. The Department and the taxpayer may extend this time limit by mutual agreement. Failure to issue a notice of final determination within the required time does not affect the validity of a proposed denial of a refund or proposed assessment."

SECTION 4.(b) This section is effective for taxable years beginning on or after January 1, 2008.

SECTION 5.(a) G.S. 105-241.22 reads as rewritten:

"**§ 105-241.22. Collection of tax.**

The Department may collect a tax in the following circumstances:

(1) When a taxpayer files a return showing ~~tax~~ an amount due with the return and does not pay the amount shown due.

..."

SECTION 5.(b) This section is effective for taxable years beginning on or after January 1, 2008.

MEDICAID TECHNICAL CHANGES

SECTION 6.(a) G.S. 105-522(b), as enacted by Section 31.16.3(f) of S.L. 2007-323, reads as rewritten:

"(b) Requirement. – A county is required to hold the eligible municipalities in the county harmless from the repeal of the local sales and use taxes formerly imposed under this Article. The Secretary must add an eligible municipality's hold harmless amount to the amount ~~distributed to the~~ otherwise allocated to the municipality for distribution under this Subchapter. To obtain the revenue for the hold harmless distribution, the Secretary must reduce ~~each county's monthly allocation under G.S. 105-472(b)~~ the amount otherwise allocated to a county for distribution under this Subchapter or under Chapter 1096 of the 1967 Session Laws by the hold harmless amounts for the municipalities in that county."

SECTION 6.(b) Section 31.16.3(d) of S.L. 2007-323 is repealed.

SECTION 6.(c) Section 31.16.3(e) of S.L. 2007-323 is repealed.

SECTION 6.(d) Subsection (a) of this section becomes effective October 1, 2008. The remainder of this section is effective when it becomes law.

SECTION 7.(a) G.S. 105-523, as enacted by Section 31.16.3(f) of S.L. 2007-323, reads as rewritten:

"**§ 105-523. County hold harmless for repealed local taxes.**

(a) Intent. – It is the intent of the General Assembly that each county benefit by at least five hundred thousand dollars ($500,000) annually from the exchange of a

portion of the local sales and use taxes for the State's agreement to assume the responsibility for the non-administrative costs of Medicaid.

(b) Definitions. – The following definitions apply in this section:

(1) City hold harmless amount. – The hold harmless amount determined under G.S. 105-522 for the eligible municipalities in a county.

~~(1)~~(2) Hold harmless threshold. – The amount of a county's Medicaid service costs and Medicare Part D clawback payments assumed by the State under G.S. 108A-54 for the fiscal year, plus five hundred thousand dollars ($500,000).

~~(2)~~(3) Repealed sales tax amount. – The sum of the following:

a. Fifty percent (50%) of the amount of sales and use tax revenue distributed to a county under Article 40 of this Chapter, other than revenue from the sale of food that is subject to local tax but is exempt from State tax under G.S. 105-164.13B.

b. Twenty-five percent (25%) of the amount of sales and use tax revenue distributed under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, other than revenue from the sale of food that is subject to local tax but is exempt from State tax under G.S. 105-164.13B.

c. The amount determined under sub-subdivision a. of this subdivision subtracted from the amount determined under sub-subdivision b. of this subdivision. This calculation determines the effect of distributing a one-quarter percent (.25%) tax on the basis of point of origin instead of on a per capita basis. If the difference is negative, the result increases the hold harmless amount.

(c) Requirement. – If a county's repealed sales tax amount plus its city hold harmless amount for a fiscal year exceeds the county's hold harmless threshold for that fiscal year, the State is required to hold the county harmless for the difference by paying the amount of the difference to the county. The Secretary must withhold from sales and use tax collections under Article 5 of this Chapter the amount needed to make the county hold harmless payments required by this section.

(d) Method. – The Secretary must estimate a county's repealed sales tax ~~amount~~ amount, city hold harmless amount, and hold harmless threshold for a fiscal year to determine if the county is eligible for a hold harmless payment. The Secretary must send to an eligible county with the distribution made under G.S. 105-472 for March of that year an amount equal to ninety percent (90%) of its estimated hold harmless payment. At the end of each fiscal year, the Secretary must determine ~~the difference between a county's repealed sales tax amount and its~~ each county's hold harmless ~~threshold~~ payment for that year. The Secretary must send by August 15 the remainder of the county's hold harmless payment for the fiscal year that ended on June 30. The Secretary of the Department of Human Resources must give the Secretary of Revenue the data needed to determine a county's hold harmless threshold."

SECTION 7.(b) Section 31.16.4(d) of S.L. 2007-323 is repealed.

SECTION 7.(c) Section 14.4(b) of S.L. 2007-345 is repealed.

SECTION 7.(d) G.S. 105-523, as enacted by Section 31.16.3(f) of S.L. 2007-323 and as amended by Section 6 of this act, reads as rewritten:

"**§ 105-523. County hold harmless for repealed local taxes.**

(a) Intent. – It is the intent of the General Assembly that each county benefit by at least five hundred thousand dollars ($500,000) annually from the exchange of a portion of the local sales and use taxes for the State's agreement to assume the responsibility for the non-administrative costs of Medicaid.

(b) Definitions. – The following definitions apply in this section:

(1) City hold harmless amount. – The hold harmless amount determined under G.S. 105-522 for the eligible municipalities in a county.

(2) Hold harmless threshold. – The amount of a county's Medicaid service costs and Medicare Part D clawback payments assumed by the State under G.S. 108A-54 for the fiscal year, less five hundred thousand dollars ($500,000).

(3) Repealed sales tax amount. – The sum of the following distributed to a county for the month:

a. Fifty percent (50%) of the amount of sales and use tax revenue distributed ~~to a county~~ under Article 40 of this Chapter, other than revenue from the sale of food that is subject to local tax but is exempt from State tax under G.S. 105-164.13B.

b. Twenty-five percent (25%) of the amount of sales and use tax revenue distributed under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, other than revenue from the sale of food that is subject to local tax but is exempt from State tax under G.S. 105-164.13B.

c. The amount determined by subtracting twenty-five percent (25%) of the amount of sales and use tax revenue distributed under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws from fifty percent (50%) of the amount distributed under Article 40 of this Chapter. This calculation determines the effect of distributing a one-quarter percent (.25%) tax on the basis of point of origin instead of on a per capita basis.

(c) Requirement. – If a county's repealed sales tax amount plus its city hold harmless amount for a fiscal year exceeds the county's hold harmless threshold for that fiscal year, the State is required to hold the county harmless for the difference by paying the amount of the difference to the county. The Secretary must withhold from sales and use tax collections under Article 5 of this Chapter the amount needed to make the county hold harmless payments required by this section.

(d) Method. – The Secretary must estimate a county's repealed sales tax amount, city hold harmless amount, and hold harmless threshold for a fiscal year to determine if the county is eligible for a hold harmless payment. The Secretary must send to an eligible county with the distribution made under G.S. 105-472 for March of that year an amount equal to ninety percent (90%) of its estimated hold harmless payment. At the

end of each fiscal year, the Secretary must determine each county's hold harmless payment for that year. The Secretary must send by August 15 the remainder of the county's hold harmless payment for the fiscal year that ended on June 30. The Secretary of the Department of Human Resources must give the Secretary of Revenue the data needed to determine a county's hold harmless threshold."

SECTION 7.(e) Subsection (a) of this section becomes effective October 1, 2008, and applies to distributions for months beginning on or after that date. Subsection (d) of this section becomes effective October 1, 2009, and applies to distributions for months beginning on or after that date. The remainder of this section is effective when it becomes law.

OTHER CHANGES

SECTION 8.(a) G.S. 105-113.112 reads as rewritten:

"**§ 105-113.112. Confidentiality of information.**

Information obtained by the Department in the course of administering the tax imposed by this Article, including information on whether the Department has issued a revenue stamp to a person, is confidential tax information and is subject to the following restrictions on disclosure:

(1) G.S. 105-259 prohibits the disclosure of the information, except in the limited circumstances provided in that statute.

(2) The information may not be used as evidence, as defined in G.S. 15A-971, in a criminal prosecution for an offense other than an offense under this Article or under Article 9 of this Chapter. Under this prohibition, no officer, employee, or agent of the Department may testify about the information in a criminal prosecution for an offense other than an offense under this Article or under Article 9 of this Chapter. This subdivision implements the protections against double jeopardy and self-incrimination set out in Amendment V of the United States Constitution and the restrictions in it apply regardless of whether information may be disclosed under G.S. 105-259. This subdivision does not apply to information obtained from a source other than an employee, officer, or agent of the Department. This subdivision does not prohibit testimony by an officer, employee, or agent of the Department concerning an offense committed against that individual in the course of administering this Article. An officer, employee, or agent of the Department who provides evidence or testifies in violation of this subdivision is guilty of a Class 1 misdemeanor."

SECTION 8.(b) This section becomes effective December 1, 2008, and applies to offenses committed on or after that date.

SECTION 9.(a) Part 2D of Article 10 of Chapter 143B of the General Statutes is repealed.

SECTION 9.(b) G.S. 66-58(b)(21) is repealed.

SECTION 9.(c) G.S. 120-123(72) is repealed.

SECTION 9.(d) G.S. 126-5(c1)(20) is repealed.

SECTION 9.(e) G.S. 143B-437.45 reads as rewritten:

"**§ 143B-437.45. Definitions.**

The following definitions apply in this Part:

...

(5) Regional ~~Partnerships. As defined in G.S. 143B-437.21(6).~~ partnership. – Any of the following:

a. The Western North Carolina Regional Economic Development Commission created in G.S. 158-8.1.

b. The North Carolina's Northeast Commission created in G.S. 158-8.2.

c. The Southeastern North Carolina Regional Economic Development Commission created in G.S. 158-8.3.

d. The North Carolina's Eastern Region Development Commission created in G.S. 158-35.

e. The Charlotte Regional Partnership, Inc.

f. The Research Triangle Regional Partnership.

g. The Piedmont Triad Partnership.

..."

SECTION 10. G.S. 105-538 reads as rewritten:

"**§ 105-538. Administration of taxes.**

Except as provided in this Article, the adoption, levy, collection, administration, and repeal of these additional taxes must be in accordance with Article 39 of this Chapter. G.S. 105-468.1 is an administrative provision that applies to this Article. A tax levied under this Article does not apply to the sales price of food that is exempt from tax pursuant to G.S. 105-164.13B. The Secretary shall not divide the amount allocated to a county between the county and the municipalities within the county. Notwithstanding the provisions of G.S. ~~105-467(c),~~ 105-466(c), during the 2008 calendar year a tax levied under this Article may become effective on the first day of any calendar quarter so long as the county gives the Secretary at least 60 days' advance notice of the new tax levy."

SECTION 11.(a) G.S. 105-277.1(a2) reads as rewritten:

"(a2) Income Eligibility Limit. ~~Until~~ For the tax year beginning July 1, 2008, the income eligibility limit is twenty-five thousand dollars ($25,000). For taxable years beginning on or after ~~July 1, 2008,~~ July 1, 2009, the income eligibility limit is the amount for the preceding year, adjusted by the same percentage of this amount as the percentage of any cost-of-living adjustment made to the benefits under Titles II and XVI of the Social Security Act for the preceding calendar year, rounded to the nearest one hundred dollars ($100.00). On or before July 1 of each year, the Department of Revenue must determine the income eligibility amount to be in effect for the taxable year beginning the following July 1 and must notify the assessor of each county of the amount to be in effect for that taxable year."

SECTION 11.(b) This section becomes effective for taxable years beginning on or after January 1, 2008.

SECTION 12. G.S. 158-12.1 reads as rewritten:

"§ 158-12.1. Commission funds secured.

The Western North Carolina Regional Economic Development Commission, Research Triangle Regional ~~Commission,~~ Partnership, Southeastern North Carolina Regional Economic Development Commission, Piedmont Triad Partnership, North Carolina's Northeast Commission, North Carolina's Eastern Region Development Commission, and Carolinas Partnership, Inc., may deposit money at interest in any bank, savings and loan association, or trust company in this State in the form of savings accounts, certificates of deposit, or such other forms of time deposits as may be approved for county governments. Investment deposits and money deposited in an official depository or deposited at interest shall be secured in the manner prescribed in G.S. 159-31(b). When deposits are secured in accordance with this section, no public officer or employee may be held liable for any losses sustained by an institution because of the default or insolvency of the depository. This section applies to the regional economic development commissions listed in this section only for as long as the commissions are receiving State funds."

EFFECTIVE DATE

SECTION 13. Except as otherwise provided, this act is effective when it becomes law.

LEGISLATIVE PROPOSAL: Revenue Laws Technical, Clarifying, & Administrative Changes

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	March 5, 2008
Introduced by:		**Summary by:**	Trina Griffin
Version:	2007-SVz-17		Committee Counsel

SUMMARY: This legislative proposal makes several technical, clarifying, and administrative changes to the revenue laws and related statutes.

BILL ANALYSIS: This draft proposal makes the following technical, clarifying, and administrative changes:

Section	Explanation
Reform Tax Appeals Changes	
1	Section 10 of SB 242 (S.L. 2007-491) extended by one month the due date for filing a franchise tax return. Section 14 of that act made a corresponding change for corporate income tax returns. Since franchise tax and corporate income tax are reported on the same form, the effective dates must conform. However, the way the act was drafted, the one-month extension for franchise tax would occur in 2008 while the one-month extension for corporate income would take place in 2009. Section 1 of this proposal corrects the inconsistency by repealing Section 10 of SB 242, effective retroactively to January 1, 2008, and by reenacting the provision, effective January 1, 2009. With this change, the one-month extension will take effect for both taxes beginning in 2009. Section 10 of SB 242 also rewrote for clarity the subsection imposing the franchise tax. The rewrite inadvertently omitted existing language requiring a corporation to determine its tax liability based on "the books and records of the corporation at the close of the income year." Section 1 puts this language back in the statute.
2	Section 10 of SB 242 added chief financial officers to the list of corporate officers authorized to sign franchise tax returns and deleted the secretary, the assistant secretary, and the assistant treasurer. However, similar changes were not made in the corresponding corporate income tax statute. Since the franchise tax return and the corporate income tax return are on the same form, the statutes need to match. This section makes that conforming change.
3	Under the new administrative review process, the Department is required to take action on a request for a refund within six months after the request has been filed. If the Department denies the request, it must send a notice to the taxpayer, and the taxpayer has 45 days to request a review of the proposed denial. However, if the Department fails to take any action within six months, the request is considered denied, and the taxpayer has 45 days from that point to request review. The purpose of this provision is to allow the taxpayer to move forward in the administrative review process despite inaction by the Department. However, concerns have been raised that the running of this 45-day period without actual notice from the Department may create a potential trap that bars taxpayers from appealing the denial. Section 3 of the proposal gives the taxpayer two options when there is no action by the

	Department within six months after filing a claim for refund. The first option would allow the taxpayer to consider the inaction a proposed denial of the refund and to file a request for review within 45 days of the date that the inaction was considered a proposed denial. This option maintains the current law. The second option would allow the taxpayer to wait until the taxpayer receives actual notice from the Department. If the taxpayer chooses the second option, the 45-day time limit begins to run once the taxpayer receives actual notice of the proposed denial.
4	The Department must issue a final determination within nine months after the taxpayer requests a review of a proposed denial of a refund or a proposed assessment of tax. The relevant statute specifically provides that failure to timely issue a notice of final determination does not affect the validity of a proposed assessment but is silent as to the impact on a proposed denial of refund. This section would clarify that the validity of a proposed denial of refund is not affected by failure to timely issue a notice of final determination.
5	This section replaces the word "tax," which is a defined term, with the word "amount" for consistency.
Medicaid Technical Changes	
6	This section eliminates a potentially circular calculation of the amount of local sales and use tax revenue to be distributed. It does not change the amount of any tax or hold harmless payment. Currently, the law could be construed to calculate the amount of various hold harmless payments on the basis of an amount that includes a deduction for the payment that is attempted to be calculated, which is circular. The hold harmless payments are now both pegged, in part, on amounts distributed under Article 39 of Chapter 105 of the General Statutes and deducted from those amounts. Section 6 resolves this problem by making it clear that the hold harmless payments are calculated on the basis of amounts allocated for distribution before any subtraction for the hold harmless payments. References in Article 39 and Chapter 1096 of the 1967 Session Laws are replaced with a direction in G.S. 105-522 to deduct the city hold harmless payment from the total amount of local sales and use tax revenue otherwise allocated for distribution to a county. Subsection (a) adds an instruction in G.S. 105-522 to deduct the payment. Subsection (b) removes the instruction from Article 39 of Chapter 105. Subsection (c) removes the instruction from Chapter 1096.
7	This section inserts the city hold harmless amount into the calculation of the county hold harmless payment, thereby ensuring that the intent of the General Assembly is fulfilled. G.S. 105-523(a) states that each county is to benefit from the "Medicaid swap" by at least $500,000. The current calculation for determining a county's hold harmless payment, however, does not include the amount a county is required to give to its cities in order to hold them harmless from the repealed local sales taxes. Subsection (a) adds the cost of the city hold harmless to the calculation of the county hold harmless payment. Subsections (b) and (c) repeal changes to G.S. 105-523 that were to take effect in 2009, and subsection (d) reinserts those same changes into the amended G.S. 105-523 while preserving the amendments added by subsection (a).
Other Technical Changes	
8	Currently, information obtained under Article 2D (Unauthorized Substance Taxes) is confidential and may not be disclosed, unless the disclosure is made to exchange information with certain law enforcement agencies concerning a tax imposed by the

	Article. The information may also not be used in a criminal prosecution, other than for a prosecution for a violation of the Article or unless the information is independently obtained. Section 8 would allow an unauthorized substance tax officer to testify in court concerning an offense committed against that individual in the course of administering the Article. The Department has requested this change due to a specific incident involving an officer who was assaulted but was prohibited from testifying about the incident.
9	This section would repeal the North Carolina Rural Redevelopment Authority (NCRRA). The NCRRA is an inactive entity. It was created by S.L. 2000-148 but was never appointed or funded. Creation of the Authority was a recommendation of the 1999 North Carolina Rural Prosperity Task Force, which was established by Governor Jim Hunt and chaired by Erskine Bowles. As envisioned by the Task Force, the Authority would administer a revolving loan fund, the Rural Investment Fund, as well as an investment fund, the Long-Term Rural Development Fund. No money was ever appropriated to these funds. Subsection (a) repeals the statutes that create the Authority and set out its duties. Subsections (b) through (e) make conforming changes. Specifically, subsection (b) repeals the Authority's exemption from the general prohibition against a State agency competing with private enterprise. Subsection (c) deletes the Authority from the list of boards and commissions on which legislators may not serve. Subsection (d) repeals the Authority's exemption from the State Personnel Act. Subsection (e) changes a cross-reference to a definition of "regional partnership" that is now set out in a statute that is repealed in subsection (a); it replaces the cross-reference with the substance of the definition and updates the definition to reflect the accurate names of the regional economic development partnerships. The Department of Commerce has no objections to this provision.
10-12	These sections make other technical changes.

2007-SVz-17-SMSV

REVENUE LAWS STUDY COMMITTEE
Wednesday, April 2, 2008
Room 544, Legislative Office Building
9:30 a.m.

MINUTES

The Revenue Laws Study Committee met at 9:30 a.m. on Wednesday, April 2, 2008, in room 544 of the Legislative Office Building. Eleven members of the committee were present. Representative Luebke presided as chair.

Approval of Minute from the March 5 Meeting

Senator Hoyle moved that the minutes be approved and the motion carried.

Sales Tax Exemption for Disaster Assistance

Cindy Avrette, a staff attorney with the Research Division, was recognized to explain the legislative proposal. Barry Porter, Triangle Area American Red Cross Executive Director, was recognized to speak in favor of the proposal. Senator Clodfelter moved for the proposal to be included in the Committee's recommendations to the Session and the motion carried. A copy of the proposal and its summary is attached.

Modify Estate Tax Law

Cindy Avrette was recognized to explain federal government's phase out of the estate tax and how it affects the state tax. Barry Boardman, a fiscal analyst with the Fiscal Research Division, was recognized to explain the fiscal impact of the changes. Representative Weiss moved to include the proposal in the committee's recommendations to the Session and the motion carried. A copy of the proposal and its summary is attached.

Refunds of Unconstitutional Taxes

Trina Griffin, a staff attorney with the Research Division, was recognized to explain the current state of class actions and the refund of unconstitutional taxes. A copy of her power point presentation is attached.

Property Tax Issues

Dan Ettefagh, a staff attorney with the Bill Drafting Division, was recognized to summarize the Property Tax Work Group's recommendations to the Revenue Laws Committee. A copy of his power point presentation is attached.

Mr. Ettefagh explained the legislative proposal for circuit breaker tax modifications. Pete Rodda, a member of the Property Tax Work Group, requested a delay in implantation until 2010, but no action was taken on this request. Senator Clodfelter moved to include the legislative proposal in the committee's recommendations to the Session and the motion carried. A copy of the proposal and its summary is attached.

Mr. Ettefagh and Martha Walston, a staff attorney with the Fiscal Research Division, were recognized to explain the legislative proposal on quadrennial evaluations and mobile home liens. A copy of the proposal, its summary and a Q&A sheet on mobile home liens is attached.

Ms. Walston was recognized to explain the legislative proposal for simplifying ownership of present-use value property. Representative Brubaker requested that the proposal be held and the motion carried.

Review of Tax Credits that Expire in 2008-2009

Trina Griffin was recognized to give an overview of expiring tax credits. The North Carolina Ports sent an information sheet and a letter requesting an extension of the credit to 2014. Ed Turlington, a lobbyist for the NC Technology Association, and Sam Taylor, a lobbyist for the NC Biosciences Organization, spoke in favor of extending the NC research and development tax credit. Greg Thompson, the state director of

the National Federation of Independent Businesses, was recognized to speak in favor of the small business employee health benefits tax credit. Rep. McComas moved to forward the three represented credits as a legislative proposal to the Session, but wanted to wait on recommending the reinvestment tax credit until the committee hears from a Nucor representative. The motion carried. A copy of Ms. Griffin's handout and the State Ports' letter is attached.

Video Programming Legislation (S.L. 2006-151)

Cindy Avrette was recognized to present an overview of the 2006 legislation. Sandra Johnson, a fiscal analyst with the Fiscal Research Division, was recognized to explain its revenue implications. Karl Knapp, NC League of Municipalities' Research & Policy manager, was recognized to speak briefly on PEG channel clarifications. Lee Mandell, NC League of Municipalities' Director of Research and Information Technology, was recognized. He pointed out that there were currently several unique, individual franchise agreements that have lead to various amounts of money being charged for services. Angie Bailey, Assistant Director of the e-NC Authority, was recognized. She stated that there were more PEG channels than anticipated so funding was short of original estimates needed. Gary R. Govert, Acting Senior Deputy Attorney General, Consumer Protection Division, NC Department of Justice, was recognized for the Attorney General's report. A copy of the handout is attached. Michael Williams, Cable Administrator, Raleigh Public Affairs Department, was recognized. He was disappointed that the legislation did not lead to an increase in cable competition and thinks changes are needed. Dwight Allen, AT&T lobbyist, was recognized and said that AT&T was continuing to work towards providing video services to North Carolina. Mark Prak, Time Warner Cable lobbyist, was recognized. He said that Time Warner continued to watch the affects of the legislation.

IRC Update

Due to the meeting running longer than expected, this issue was not addressed.

Motor Fuel Tax Issues

Due to the meeting running longer than expected, this issue was not addressed.

The meeting adjourned at 12:47 p.m.

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

Wednesday, April 2, 2008
Room 544, Legislative Office Building
9:30 a.m.

I. **Approval of the Minutes from the March 5 Meeting**

II. **Sales Tax Exemption for Disaster Assistance** - *Legislative Proposal*

Cindy Avrette, Research Division

III. **Modify Estate Tax Law** – *Legislative Proposal*

- Cindy Avrette, Research Division
- Barry Boardman, Fiscal Research Division

IV. **Refunds of Unconstitutional Taxes**

- Trina Griffin, Research Division

V. **Property Tax Issues**

- *Circuit Breaker Tax Modifications* - Dan Ettefagh, Bill Drafting Division
- *Quadrennial Revaluations and Mobile Home Liens* – Dan Ettefagh, Bill Drafting Division, and Martha Walston, Fiscal Research Division
- *Simplify Ownership of PUV Property* – Martha Walston, Fiscal Research Division

VI. **Review of Tax Credits that Expire in 2008-2009**

- Trina Griffin, Research Division

VII. **Video Programming Legislation (S.L. 2006-151)**

- Overview of 2006 Legislation and Revenue Implications
  Cindy Avrette, Research Division
  Rodney Bizzell & Sandra Johnson, Fiscal Research Division
- Comments from the League of Municipalities
  Karl Knapp, Research & Policy Manager, NC League of Municipalities
- Report from Attorney General's Office, Consumer Protection Division
  Gary R. Govert, Acting Senior Deputy Attorney General, Consumer Protection Division, North Carolina Department of Justice
- Comments from the Southeast Association of Local Government Telecommunications Officers & Advisors (SEATOA)
  Michael Williams, Cable Administrator, Public Affairs Department, City of Raleigh

Next Meeting Date: April 30, 2008
LOB Room 544 at 9:30 a.m.

VII. Video Programming Legislation (S.L. 2006-151), continued

- Comments from the Video Programming Industry
  Dwight Allen, Allen Law Offices, AT&T
  Mark Prak, Brooks Pierce, Time Warner Cable

VIII. IRC Update

- Trina Griffin, Research Division
- Barry Boardman, Fiscal Research Division

IX. Motor Fuel Tax Issues – *Legislative Proposal*

- Cindy Avrette, Research Division

X. Adjournment

Next Meeting Date: April 30, 2008
LOB Room 544 at 9:30 a.m.

Rm. 544

House Pages

Name Of Committee: REVENUE LAWS STUDY COMMITTEE Date: 4-2-08

1. Name:

County:

Sponsor:

2. Name:

County:

Sponsor:

3. Name:

County:

Sponsor:

4. Name:

County:

Sponsor:

5. Name:

County:

Sponsor:

HOUSE Sgt-At-Arms

1. Name: MARVIN LEE
2. Name: FRED HINES
3. Name: BOB ROSSI
4. Name: CHARLES WILLIAMS
5. Name: FRANK PREVO

SENATE

ERNIE SHERRELL
CHARLES HARPER
RONALD SPANN
LESLIE WRIGHT
CHARLES MARSALIS

VISITOR REGISTRATION SHEET

Revenue Laws
~~Senate Finance~~ Committee — April 2, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Dana Simpson	SA
Amy McConkey	SA
Chaz Johnston	The People's Channel
Michael Williams	City of Raleigh
Bob Wells	N.C. Telephone Alliance
[illegible]	QD, AL, PA
James Roy	NCCTA / charter
Randy Fraser	TWC
Joan Myers	SAS.
Steve Brewer	EMBARQ
[illegible]	[illegible] of Assoc

Revenue Laws

VISITOR REGISTRATION SHEET

~~Senate Finance~~ Committee — April 2, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Dan Taylor	NCBIO
Cam Cover	BPMPL
[illegible]	TWC
[illegible]	Brooks Pierce
John W. Stanly	TWC
Ed Turlington	BP
Peter Hermann	NCTA
Steve Wood	NCFB
Doug Miskew	Capstrat
Andy Romont	NCLM
Ken Melton	Ken Melton & Assoc.

VISITOR REGISTRATION SHEET

Revenue Laws
~~Senate Finance~~ Committee — April 2, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Steph McGarrah	Commerce
J. L. McMillan	MF&S
Joe Stewart	IFNG
George Teague	Nelson Mullins
Mark Benoos	
Debra Dew	AT&T
Catherine Davis	ElectriCities
Karen Johnson	ElectriCities
Lori Ann Harris	LHHA
Kathy Hawkins	Progress Energy
Rita Harris	NC Pats

VISITOR REGISTRATION SHEET

Revenue Laws
Name of Committee

April 2, 2008
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	WM
Robert Wilson	SOS
[illegible]	NFIB
[illegible]	Pyrum + Spruill
[illegible]	ITW
[illegible]	Bar Assn.
Jim Blackburn	N.C. Association of County Commissioners

VISITOR REGISTRATION SHEET

Revenue Laws

~~Senate Finance~~ Committee — April 2, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	Nelson Mullins
Patrick Buffkin	" "
[illegible]	nursing / Stevens
[illegible]	WCSR
FRANK W. FOLGER	SZD WICKER
Bob Slocum	NC FORESTRY ASSOC.
DOUG HERON	WILLIAMS MULLEN
Karl Knapp	NC League of Municipalities
Michael Haley	NC Dept. of Commerce
Dwight Allen	Allen Law Offices
Britton Allen	Allen Law Offices

VISITOR REGISTRATION SHEET

Revenue Laws
~~Senate Finance~~ Committee — April 2, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
W. Timothy Holmes	DOR
Lennie Collins	DOR
Kay Hobart	AGO
Michael Youth	AGO
Bill Wilkes	DOR
Michael Brown	DOR
Lee Harris	DOR
Janice W. Davidson	DOR
Bill Spencer	DOR
Steve Gerlo	MVA
Nancy Thompson	Weyerhaeuser

REVENUE LAWS STUDY COMMITTEE
Wednesday, March 5, 2008
Room 544, Legislative Office Building
9:30 a.m.

MINUTES

The Revenue Laws Study Committee met at 9:30 a.m. on Wednesday, March 5, 2008, in Room 1228 of the Legislative Building. Ten members of the committee were present. Representative Luebke presided as chair.

Approval of Minute from the December 14, 2007 Meeting

Representative Hill moved that the minutes be approved and the motion carried.

Work Opportunity Tax Credit

Heather Fennell, a staff attorney with the Research Division, was recognized to explain the Work Opportunity Tax Credit; changes to the federal law and its effects to the North Carolina law; and update option for the State credit. Andy Ellen, a lobbyist for the Retail Merchants Association, was recognized to speak in favor of the credit. A copy of Ms. Fennell's power point is attached.

IRC Update

Trina Griffin, a staff attorney with the Research Division, was recognized to review why the State updates the Internal Revenue Code, outlined what the federal government did last year and what the State will need to do to update its Internal Revenue Code. A copy of her power point is attached. Barry Boardman, a fiscal analyst with the Fiscal Research Division, was recognized to explain the fiscal impact of the federal general provisions. The committee recommended further study of possible decoupling from the federal Economic Stimulus Act.

Recognitions

Representative Luebke recognized longtime staff member, Dave Crotts, a fiscal analyst with the Fiscal Research Division, in appreciation of his efforts and hard work for the committee and the legislature prior to his retirement in April. He also introduced new members of the staff; Sandra Johnson, a fiscal analyst with the Fiscal Research Division, and Jeff Cherry, a staff attorney with the Bill Drafting Division.

Gift Tax

Cindy Avrette, a staff attorney with the Research Division, was recognized to give an overview of the gift tax, explain the 2007 committee proposals, and H235 (Simplify Gift Tax) which is in the House Finance Committee. A copy of her power point, H235, the H235 summary, the H235 fiscal note, and a bill draft are attached. Bill Kratt, Chair of the Estate Planning and Fiduciary Law Section for the NC Bar Association was recognized to explain the Bar's constructive changes to be considered in last year's legislative gift tax proposals. A copy of the Bar's two memorandums is attached.

Revenue Laws Technical & Administrative Changes

Trina Griffin was recognized to offer an overview of the current bill draft for review and discussion. It currently has Department of Revenue recommendations to the new tax appeals process and the Medicaid technical changes. The Department of Revenue requested changes to the employee confidentiality law, repeal of the Rural Redevelopment Authority and true technical changes. Chuck Neely, a lobbyist for the Council on State Taxation, was recognized to speak in favor of the tax appeals sections. A copy of the bill draft and its summary is attached.

The meeting adjourned at 11:28 a.m.

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
~~Senate Finan~~ce Committee — April 2, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
John McAlister	NC Chamber
Jason Goodman	"
Josh Mabry	Gov Office
Michael Kelly	NCGA

VISITOR REGISTRATION SHEET

Revenue Laws
~~Senate Finance~~ Committee — April 2, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Michael Houser	NC DOR
Gene Ainsworth	A & A
Angie Bailey	The e-NC Authority
Fiona Morgan	Staff Writer, Independent Weekly
Elaine Mejia	NC BTC
Gart Gouvert	NC AGO
Greg McLeod	NC AGO
Kevin Anderson	NC AGO
Jim Ahler	NCACPA
[illegible]	[illegible]
Carol Snowden	E&Y

VISITOR REGISTRATION SHEET

Revenue Laws
~~Senate Finan~~ce Committee — April 2, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
David Baker	NC DOR
Donna Taylor	Freedom Works
Kathy Hartkopf	Freedom Works
Ray Loflin	Freedom Works
Jonathan TART	NC DOR
Reggie Hinton	NC DOR
Greg Radford	NC DOR
Pete Roddy	Forsyth County Tax Assessor/Collector
Jim Duncan	Henderson County Assessor
Michael Sutton	Henderson County Assessor's office
Pat Goddard	Johnston County Tax Administrator

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U D

BILL DRAFT 2007-RBz-32 [v.4] (03/25)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
3/27/2008 8:59:52 AM

Short Title: Exempt Disaster Assistance Debit Sales. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A SALES TAX EXEMPTION FOR TANGIBLE PERSONAL PROPERTY PURCHASED WITH A CLIENT ASSISTANCE DEBIT CARD ISSUED FOR DISASTER ASSISTANCE RELIEF BY A STATE AGENCY OR A FEDERAL AGENCY OR INSTRUMENTALITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(58) Tangible personal property purchased with a client assistance debit card issued for disaster assistance relief by a State agency or a federal agency or instrumentality."

SECTION 2. This act becomes effective July 1, 2008, and applies to purchases made on or after that date.

BILL DRAFT 2007-RBz-32: Exempt Disaster Assistance Debit Sales

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	April 2, 2008
Introduced by:		**Summary by:**	Cindy Avrette
Version:	Bill Draft		Committee Staff

SUMMARY: This bill draft would exempt from sales tax tangible personal property purchased with a client assistance debit card issued for disaster assistance relief by a State agency or a federal agency or instrumentality. The American Red Cross is an instrumentality of a federal agency. The bill would become effective July 1, 2008, and apply to purchases made on or after that date.

CURRENT LAW: The State may not impose its sales tax on purchases made by the federal government or an instrumentality of the federal government. G.S. 105-164.13(17) specifically exempts 'sales which a state would be without power to tax under the limitations of the Constitution or laws of the United States or under the Constitution of this State.' The American Red Cross (ARC) is an instrumentality of a federal agency. Therefore, sales made pursuant to a disbursing order issued by the ARC are considered a sale to the ARC that is exempt from taxation.

In the past, the ARC provided disaster assistance relief by giving disaster victims a disbursing order to purchase items that the victim needed. Over the last few years, the ARC has begun giving disaster victims debit cards to use to purchase these same items. The ARC began using debit cards because it believes they are more efficient, effective, and less bureaucratic for the victim and less administrative effort and expense for the organization. However, for purposes of the sales tax exemption, there is a significant difference between a debit card and a disbursing order: the purchaser, for purposes of the sales tax exemption, is the disaster victim when a debit card is used and it is the ARC when the disbursing order is used. Therefore, purchases made with a disaster assistance debit card are subject to sales tax.

BILL ANALYSIS: This bill draft would exempt from sales tax tangible personal property purchased with a client assistant debit card issued for disaster assistance relief by a State agency or a federal agency or instrumentality. The ARC is an instrumentality of a federal agency. Another example of a federal agency or instrumentality that may utilize this exemption would be FEMA.

This bill draft would extend the sales tax exemption that exists for purchases made through a disbursing order issued by a State or federal agency or instrumentality to purchases made with a client assistance debit card issued by it. It is my understanding that in 2007, the total disaster victim assistance purchases were $3 million across all North Carolina chapters of the ARC.

BACKGROUND: The ARC client assistance card clearly identifies itself as one issued by the ARC. The ARC has the ability to see from its reports of the card's use the amount purchased and the store from which the goods were purchased. Unlike the old disbursing order system, the ARC does not have a cash register receipt describing the specific items purchased. The client assistance card authorization form is a contract between the ARC and the disaster victim. The contract stipulates the types of items the card may be used to purchase. In the event of inappropriate purchases, the card can be suspended.

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: April 30, 2008

TO: Revenue Laws

FROM: Sandra Johnson
Fiscal Research Division

RE: Senate Bill (Unknown Edition)

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13
REVENUES: (in thousands)					
State and Local Impact	(196)	(200)	(204)	(208)	(213)
State Impact	(129)	(139)	(136)	(139)	(142)
Local Impact	(67)	(61)	(68)	(69)	(71)
EXPENDITURES:					
POSITIONS (cumulative):	-	-	-	-	-

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
See Assumptions and Methodology

EFFECTIVE DATE: July 1, 2008

BILL SUMMARY: This bill draft would exempt from sales tax tangible personal property purchased with a client assistance card (debit card) issued for disaster assistance relief by a State agency or a federal agency or instrumentality. The American Red Cross is an instrumentality of a federal agency. The bill would become effective July 1, 2008, and apply to purchases made on or after that date.

CURRENT LAW: The State may not impose its sales tax on purchases made by the federal government or an instrumentality of the federal government. G.S. 105-164.13(17) specifically exempts sales which a state would be without power to tax under the limitations of the Constitution or laws of the United States or under the Constitution of this State. The American Red Cross (ARC) is an instrumentality of a federal agency. Therefore, sales made pursuant to a disbursing order issued by the ARC are considered a sale to the ARC and is exempt from taxation.

In the past, the ARC provided disaster assistance relief by giving disaster victims a disbursing order reimbursement form to purchase items, but in recent years began giving disaster victims client assistance cards to make these purchases. Debit cards prove more efficient, effective, and less bureaucratic for the victim and require less administrative effort and expense from ARC. However, for purposes of the sales tax exemption, there is a significant difference between a debit card and a disbursing order. The purchaser, for purposes of the sales tax exemption, is the disaster victim when a debit card is used. The ARC is the purchaser when the disbursing order is used. Therefore, purchases made with a disaster assistance debit card are subject to sales tax.

ASSUMPTIONS AND METHODOLOGY:

The fiscal impact of exempting client assistance debit cards from state and local sales and use taxes is based on data provided by the Triangle ARC. During the 2006-07 fiscal year, North Carolina American Red Cross chapters provided an estimated $3.9 million dollars in disaster relief assistance with approximately 70 percent of the $3.9 million ($2.8 million) provided via client assistance cards.

Based on Moody's Economy.com inflation rates, Fiscal Research estimates that ARC will provide roughly three million dollars in disaster relief assistance via debit cards in FY2008-09. Should client assistance cards receive a tax exemption, state and local sales tax revenues would decline by approximately $196,000 during this same period (Table1).

Table 1 provides information on the projected sales tax revenue forgone by exempting disaster relief assistance debit cards from state and local sales and use taxes. The table also accounts for state and local sales and use tax changes occurring in October 2008 and October 2009.

Table 1: Revenue Impact of Exempting Disaster Relief Client Assistance Card Disbursements from Sales Tax, by Fiscal Year (in thousands)					
	*FY 2008-09	**FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13
State and Local Impact (6.75% sales tax)	(196)	(200)	(204)	(208)	(213)
State Impact	(129)	(139)	(136)	(139)	(142)
Local Impact	(67)	(61)	(68)	(69)	(71)
* FY2008-09 estimates incorporate local and state sales tax rate changes occurring on October 1, 2008; Assumes local sales tax rate of 2.5% for three months and 2.25% for nine months; Also assumes state sales tax rate of 4.25% for three months and 4.5% for nine months					
* *FY2009-10 estimates incorporate local and state sales tax rate changes occurring on October 1, 2009; Assumes local sales tax rate of 2.25% for three months and 2% for nine months; Also assumes state sales tax rate of 4.5% for three months and 4.75% for nine months					
Source: Triangle American Red Cross Documentation of FY07 Financial & Material Assistance					

SOURCES OF DATA:

Triangle American Red Cross, Moody's Economy.com

TECHNICAL CONSIDERATIONS: None

The Video Programming Act
SL 2006-151

Revenue Laws Study Committee
April 2, 2008

Cindy Avrette, Research Division
Rodney Bizzell and Sandra Johnson – Fiscal Research

Goals of SL 2006-151

- Equal taxation of the same service
- Tax system that is easy to administer
- Preserve local government revenue stream
- Promote competition in marketplace
- Promote deployment of broadband as a basic communication tool
- Financial support and viability of PEG channels

Goals of SL 2006-151

- Equal taxation of the same service
- Tax system that is easy to administer
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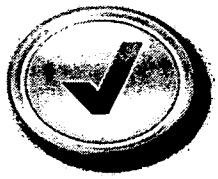


- Promote competition in marketplace
- Promote deployment of broadband as a basic communication tool
- Financial support and viability of PEG channels

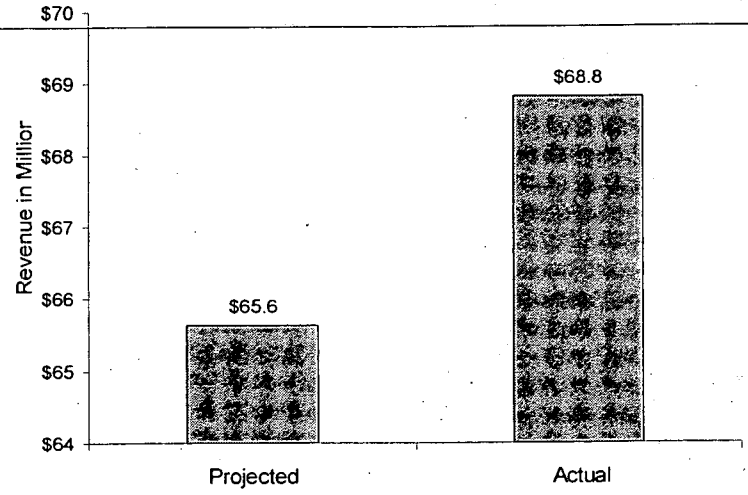
Taxation of Video Programming

- Apply combined general sales tax rate to video programming service, regardless of the provider
  - Cable
  - Telecommunications
  - Direct-to-home satellite
- Repeal authority to impose local franchise tax

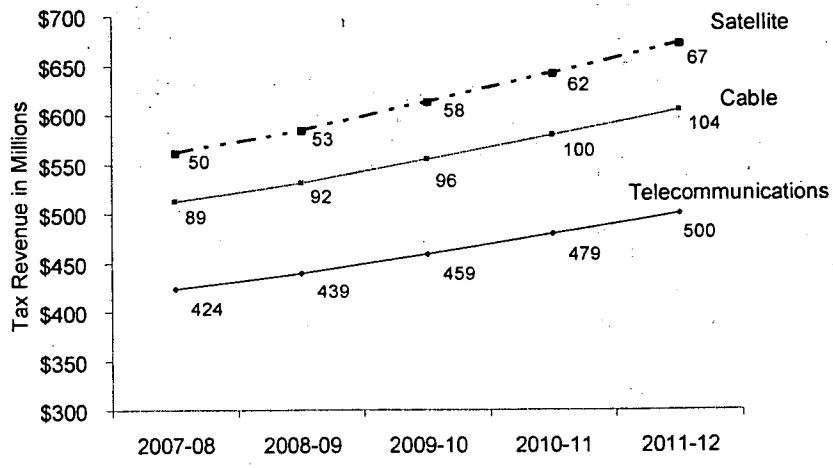
Local Government Distribution

- Shared tax revenue from all providers:
  - Telecommunications
  - Video programming
  - Direct-to-home satellite
- Distribution of video programming revenues based on the amount of cable franchise tax received in 2005-06 PLUS any subscriber fees received in 2005-06
- Annual distribution adjusted for pop. growth

Local Distribution, Projected FY05-06 & Actual CY2007

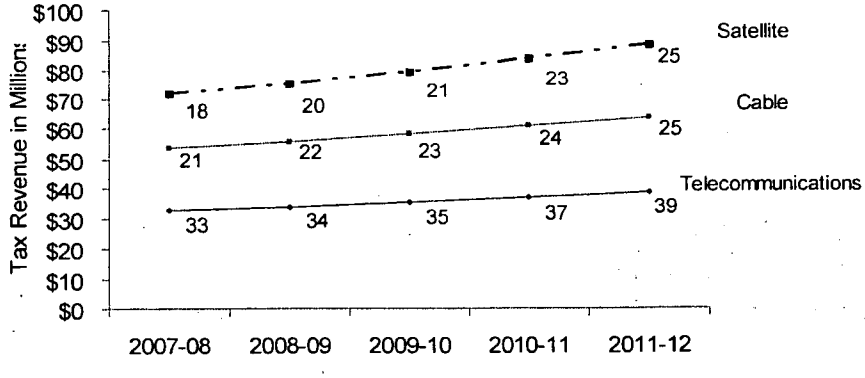


Total Video Programming Tax Revenue, FY07-08 thru FY11-12



North Carolina General Assembly 2007-2008 Session

Local Video Programming Tax Revenue, FY07-08 thru FY11-12



North Carolina General Assembly 2007-2008 Session

Goals of SL 2006-151

- Equal taxation of the same service
- Tax system that is easy to administer
- Preserve local government revenue stream

- Promote competition in marketplace
- Promote deployment of broadband as a basic communication tool
- Financial support and viability of PEG channels

North Carolina General Assembly 2007-2008 Session

Promote Competition and Expansion of Broadband

- Federal law requires franchising of cable service
- Effective January 1, 2007, NC moved from locally negotiated franchises to a State issued franchise
  - Local franchises cannot be renewed
  - State franchise process is one of notice, not regulation

North Carolina General Assembly 2007-2008 Session

State Issued Franchises

- 118 State Franchises approved since January 1, 2007
- 457 Local governments still operating under existing agreements
- State franchises generally represent the same service areas covered under old franchise agreements
- 2 new providers have entered the market
- 1 service area has more than one provider

Financial Support of PEG Channels

- Legislation provided three means of financial support:
  - $2 million allocation 'off the top' of the local tax-sharing distribution
  - Designated use of certain local tax-sharing revenues
  - PEG Channel grant program

1. Supplemental PEG Support

- $2 million of local distribution earmarked for supplemental PEG support
- $25,000 a year for each qualifying PEG channel
- Revenue distributed to county or city
- Revenue must be used by county or city for the operation and support of PEG channel

North Carolina General Assembly 2007-2008 Session

Number of Certified PEG channels

- Estimated 36 Channels
- 276 certified for March distribution
- Don't think all qualify
- Form not clear – some channels double counted
- Channels receiving $ that do not meet standard as a qualifying channel
- Way to solve

North Carolina General Assembly 2007-2008 Session

2. Earmarked Use of Revenues

- Subscriber Fees
  - Distribution formula includes per subscriber revenue in distribution base
  - Must use for PEG channel operation and support
- Franchise Tax Revenues
  - Must maintain same level of PEG channel operation and support as budgeted in FY05-06

3. PEG Channel Grant Program

- PEG Channel Fund:
  - $1 million appropriation in FY07-08
  - Any unused amount of the $2 million allocation for PEG channel support
- Administered by e-NC
- Provide matching grants to counties and cities for PEG channel support
- Grants available for capital expenditures only
- Grant may not exceed $25,000

PEG Channels Awarded State Grants

- $572,000 in grants awarded – Dec 2007
- 30 PEG channels – At least one in each of the seven economic development regions
- Use of grant funds
  - Designed to boost programming efforts through capital improvements
  - Equipment and software to aid in the federally mandated transition to digital broadcasting by February 17, 2009

North Carolina General Assembly 2007-2008 Session

Reports

- Attorney General's Office – CPD
  - The number of customer complaints
  - The types of customer complaints
  - The different means of resolving customer complaints
- Revenue Laws Study Committee
  - Competition in video programming services
  - The number of cable service subscribers, the price of cable service, and the technology used to deliver the service
  - The deployment of broadband in the State

North Carolina General Assembly 2007-2008 Session

ROY COOPER
ATTORNEY GENERAL

State of North Carolina

Department of Justice
PO Box 629
Raleigh, North Carolina
27602

Phone: (919) 716-6400
Fax: (919) 716-6750

March 31, 2008

The Honorable John H. Kerr, III
The Honorable Paul Luebke
Co-Chairs, Revenue Laws Study Commisison
North Carolina General Assembly
Raleigh, North Carolina 27601-1096

RE: Video Services Competition Act

Dear Members:

Pursuant to Section 18 of the Video Services Competition Act, please find the enclosed report regarding cable complaints.

If you have any questions or I can be of further assistance, please feel free to contact me at (919) 716-6400.

Very truly yours,

Kristi Hyman
Chief of Staff

KH:ml

cc: Denise Thomas, NCGA Fiscal Research Division
Jean Sandaire, NCGA Fiscal Research Division
Greg McLeod, NCDOJ, Legislative Counsel

NORTH CAROLINA DEPARTMENT OF JUSTICE
CONSUMER PROTECTION DIVISION REPORT REGARDING CABLE COMPLAINTS

The Video Services Competition Act (Session Law 2006-151) enacted a number of changes that impact cable television companies, video service providers, and consumers. Among other things, the law allows such companies and providers to obtain State-issued franchises from the Secretary of State's office to provide cable TV service, rather than local franchises from local units of government, under certain circumstances. Section 17 of the law designates the Consumer Protection Division of the Attorney General's Office (CPD) as the agency to "receive and respond to unresolved customer complaints about cable service provided by the holder of a State-issued franchise."

Section 18 requires the CPD to report to the Revenue Laws Study Committee on the following information regarding complaints about cable service received by the CPD: Number of complaints, types of complaints, and the means for resolving them. Pursuant to Section 18, the Attorney General's Office makes the following report.

As of March 26, 2008, one hundred and eighteen (118) State-issued franchises have been accepted by the Secretary of State's office, according to that office's website.

For the time period of January 1, 2007 (the effective date of the statute) to March 26, 2008, the CPD received sixty (60) written complaints against companies with a State-issued franchise. Out of those sixty (60) complaints:

- Twenty-one (21) involved allegations of unsatisfactory service or repair;
- Eleven (11) involved alleged billing errors;
- Six (6) involved an alleged failure to perform or complete a service installation or upgrade in a timely manner;

- Five (5) involved a refund that was allegedly not properly provided;
- The remaining complaints involved discrete or miscellaneous issues.

For the same time period, the CPD received one hundred and twenty (120) written complaints against companies with a local franchise from consumers who incorrectly believed that the new law directed the CPD to handle all consumer complaints against all cable companies as of January 1, 2007. CPD attempted to refer these companies to the locality still holding local franchise agreements with the company. Some of these localities were willing to handle the complaints while the rest were not. For those that were not, the CPD handled the complaint for the consumer. Out of the one hundred and twenty (120) complaints against companies with local franchises:

- Twenty-eight (28) involved alleged unsatisfactory service or repair;
- Fifteen (15) involved alleged billing errors;
- Eleven (11) involved the pricing of the service;
- Eleven (11) involved a refund that was allegedly not provided;
- Eight (8) involved programming options;
- The remaining complaints involved discrete or miscellaneous issues.

The CPD treats cable complaints like other consumer complaints it receives and attempts to mediate resolutions by sending the complaints to the cable company for a response. The CPD tracks responses to see if consumers are satisfied and to determine if the complaints show patterns that may warrant further investigation.

2007-08 EXECUTIVE TEAM
OFFICERS:
BECH MARTIN – PRESIDENT
TOM SERRIN – VICE PRESIDENT
CATHARINE RICE – SECRETARY
DORIS BORIS – PAST PRESIDENT
BOARD MEMBERS:
LOU COMER
RANDY DAVIS
ELLIOTT MITCHELL
MICHAEL CROWELL

SOUTHEAST ASSOCIATION OF LOCAL GOVERNMENT TELECOMMUNICATIONS OFFICERS & ADVISORS
GEORGIA – NORTH CAROLINA – SOUTH CAROLINA – TENNESSEE
A REGIONAL CHAPTER OF NATOA

HOW THE VIDEO SERVICE COMPETITION ACT HAS FAILED...

The Video Service Competition Act (S.L. 2006-151) took effect January 1, 2007, after heavy lobbying by the cable and telephone industries. The bill was characterized as a sure-fire way to increase competition, provide consumer choice, lower rates, promote PEG channels and improve customer service and accountability. It would keep local communities "whole" by replacing local cable franchise fees with a redistributed state video programming tax. It has not succeeded.

IT HAS NOT CREATED VIDEO COMPETITION

- 114 state franchises in effect; all but one filed by incumbent cable operators, none facing any competition, non filed by AT&T; Effect – deregulation of cable monopolies.

CABLE RATES HAVE INCREASED

Cable rates increased around the state (*e.g.*, Raleigh, Cary, Benson, Charlotte, Greenville (@5%), except not raised where cable operator expects competition from municipally-owned cable operator (Wilson, Davidson/Mooresville [MI-CONECTION]).

IT HAS LED TO LESS CONSUMER CHOICE

- Some cable operators are reducing the size of service areas previously served under local cable franchises (eliminating obligation to serve lower density, lower income, and potentially competitive areas); (*e.g.*, Nash County). These consumers have less video choice.

IT IS DISMANTLING LOCAL PUBLIC, EDUCATIONAL, & GOVERNMENT CHANNELS

- State financing is proving insufficient for development or maintenance of PEG channels; PEG channels will not develop or will shut down from lack of financing;
- Promise of financing for PEG was $25K per channel; reality of $6K (cost of one digital camera);
- Local governments not using PEG Supplemental Funds and PEG Subscriber fee-comparables for public or educational channels; (*e.g.*, Greenville, Pitt County, Orange County)
- Cable operators refusing to provide PEG channels requested by local government as required under the law (*e.g.*, Nash County, Henderson, Durham County, Surry County Community College, Wayne County, Goldsboro); Withdrawing State Franchises and resubmitting with redesigned service area so won't have to provide PEG channels (*e.g.*, Nash County), turning off live channels (Surry County) or terminating PEG support & studios (Durham).
- Cable operators attempting to place PEG on non-basic tiers (enhanced or digital with a box) despite language in local franchise.
- At the same time, State franchised cable operators will save $millions over next 60 year term of state cable franchises due to relief from their role as traditional source of PEG funding and will repossess PEG channels for commercial gain.

LESS ACCOUNTABILITY TO THE CONSUMER

- Four state franchises filed although local cable franchises in effect (Mecklenburg, Mt. Holly, Pitt County, Rowan County); SOS still granted state franchise. No enforcement.
- Customer Service, discrimination and overall enforcement of law based on service area; service areas distinguished by color coded maps; SOS only providing black and white depictions of service areas; Not making Franchise Applications public (non posted on Web site); Annual service reports not being filed; No enforcement.
- No enforcement mechanism for failure to meet terms of law (*e.g.* PEG)(except to sue).

4/1/08

SEATOA – c/o C-M OFFICE OF CABLE FRANCHISE MANAGEMENT - 600 EAST FOURTH STREET – CHARLOTTE, NC 28202
PHONE: 704.336.CATV – FAX: 704.632.8271 – E-MAIL: seatoa@ci.charlotte.nc.us – WEBSITE: www.seatoa.org

Debra Derr
Director
External & Legislative Affairs

AT&T North Carolina
128 West Hargett Street
1st. Floor
Raleigh, NC 27601

T: 919-821-6089
F: 919-821-6013
Debra.Derr@att.com
www.att.com

April 2, 2008

Chairs – Revenue Laws Study Committee
NC General Assembly
Legislative Office Building
Raleigh, NC 27603

Dear Chairs:

It is with great pleasure that I write to provide the information you requested regarding AT&T's work related to implementation of the Video Service Competition Act (HB2047).

As you know, this forward-looking legislation not only addressed consumer desires, but encouraged investment in the communications infrastructure of the state. We have made significant progress toward fulfilling the promise of HB2047, though our accomplishments to date have generally been out of the limelight.

We continue to be excited about the benefits for consumers and opportunities for economic growth and competition resulting from this bill. We will continue to work diligently to assure that they come to full fruition for North Carolinians.

If you have questions or need additional information, please do not hesitate to contact me.

Sincerely,

Debra Derr

Attachment

USA Proud Sponsor of the U.S. Olympic Team

Implementation of *The Video Services Competition Act* (HB2047)
<u>AT&T Milestones</u>

- HB 2047 is ratified by the General Assembly and signed by Governor Easley with a future effective date. *(July 2006)*

- BellSouth begins developing specific business and engineering plans in accord with opportunities presented by the legislation.

- AT&T concludes merger with BellSouth, leading to creation of the new AT&T. *(December 29, 2006)*

- HB2047 becomes effective. *(January 1, 2007)*

- AT&T begins integration of the nine-state BellSouth region into new 22-state nation-wide company. This work requires reprioritization of deployment strategies, as well as realignment of BellSouth technology strategy.
    - Cynthia G. Marshall, President-North Carolina, works to position the state within the highest levels of the corporation to assure priority for capital investment reflecting opportunity presented through HB2047.

- AT&T announces $350 million investment in fiber network upgrades, further broadband deployment and internet-based technologies to bring new services, including cutting-edge television, to the state. *(July 2007)*

- Engineering and construction work begins to condition AT&T's network for enhanced services. Design work begins for additional technology deployment.

- Local External Affairs directors, accompanied by network managers, begin meeting with local government officials across the state to discuss implementation of HB2047. *(October 2007)*
    - At the discretion of the local governments, attendees include mayors, county commissioners, city and county managers, attorneys, planning director, public works director, and various support staff.
    - The meetings' purpose is to generally discuss AT&T's video deployment efforts and any issues regarding the process for issuance of permits for working in the public right-of-way. The objective is to assure that the work may be done with minimal disruption or inconvenience to the public or to government operations. In addition, the company begins describing the types of video and other services which will be possible due to the network enhancements.
    - <u>As of March 19, 2008, meetings have been held with 27 municipalities and five counties</u>.

- AT&T begins limited offering of U-Verse video service in Atlanta, the first market in the Southeast. *(December 2007)*

"Quick Facts"
About the Provision of Cable Television Service
In North Carolina

- There are 148 total cable systems in North Carolina serving a total of 966 communities. There are approximately 1.9 million cable subscribers in North Carolina. The North Carolina Cable Telecommunications Association represents companies serving approximately 98% of all cable customers in the state.[1]

- The largest operators in North Carolina are Time Warner Cable, Charter, Suddenlink, and Mediacom. These companies account for the bulk of subscribers served in North Carolina.

- Satellite companies (DishNetwork and DirecTV) serve approximately 28% of all multi-channel video customers in North Carolina.

- The cable industry, nationally, has spent over $100 billion in private risk capital in upgrading its networks to provide broadband and other advanced fiber services to its customers. Per the FCC, as of June 30, 2007, in North Carolina: (a) there were 1.1 million total cable modem (i.e., broadband) lines, including both residential and business, and (b) 96% of residential premises with access to cable TV service also had access to broadband service.[2]

- Both nationally and in North Carolina, cable has the largest installed base of broadband customers. Competitors include telephone companies, wireless providers, satellite companies, and local governments. Potential competitors include wireless companies and electric power companies.

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[1] Source: 2008 Television and Cable Factbook. Per US Census Bureau, 2000 census, there are 3.1 million households in North Carolina.

[2] Source: High-Speed Services for Internet Access: Status as of June 30, 2007, FCC Industry Analysis and Technology Division, Wireline Competition Bureau, March 2008 (available at www.fcc.gov/wcb/stats).

IRC Update[1]

Revenue Laws Study Committee
April 2, 2008

Given the tremendous cost of conforming to recent changes to the Internal Revenue Code under the Economic Stimulus Act of 2008 (ESA), the Revenue Laws Study Committee recommends that the State "decouple" in some way. There are several ways in which to accomplish this result, some of which could actually result in a first-year revenue gain. However, the following are two revenue neutral options for the Committee's consideration:

Option #1:
Under this option, the depreciation rules and expensing deduction limits would be as if the Economic Stimulus Act had not passed.

Option #2:
Under this option, the State would not conform to the accelerated bonus depreciation schedule under the ESA, but it would conform to the increased expensing limits. To achieve revenue neutrality, the proposal would require taxpayers to add back to their State taxable income 85% of the amount the taxpayer deducted as bonus depreciation for federal purposes. Over the next five years, the taxpayer would be allowed to deduct the entire amount added back in five equal installments. This option is similar to the approach taken by North Carolina in 2002-2004 when Congress enacted bonus depreciation and increased expensing provisions following the September 11, 2001 attacks.

Code Provision	Option #1	Option #2	Full Conformity with ESA
Sec. 168(k) depreciation ("bonus depreciation")	•Taxpayer must add back the amount taken as bonus depreciation. •Taxpayer may deduct the difference between what the regular depreciation would have been without the bonus depreciation less the actual regular depreciation taken on the federal return.	•Taxpayer must add back 85% of the amount taken as bonus depreciation. •For succeeding 5 years, taxpayer may deduct addback amount in 5 equal installments.	Taxpayer may deduct 50% of the cost of property placed in service during 2008, the impact of which flows through to State net income.
Sec. 179 expensing	•$128,000 deduction. •Deduction begins to phase out when property reaches $510,000. •Deduction phases out completely when property >$638,000.	•$250,000 deduction. •Deduction begins to phase out when property reaches $800,000. •Deduction phases out completely when property >$1.05 million.	•$250,000 deduction. • Deduction begins to phase out when property reaches $800,000. •Deduction phases out completely when property >$1.05 million.
Estimated Impact:	- 0 -	- 0 -	($300 million)

[1] This proposal addresses conformity to and the fiscal impact of the Economic Stimulus Act only given its cost. Conformity to the other federal tax changes enacted since January 1, 2007 are estimated to cost $1 million in FY0809 and $2.3 million in FY0910.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U D

BILL DRAFT 2007-RBxz-34 [v.5] (03/31)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/2/2008 8:24:47 AM

Short Title: Motor Fuel Tax Law Changes. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE MOTOR FUEL TAX LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-449.37 reads as rewritten:

"**§ 105-449.37. Definitions; tax liability.**

(a) Definitions. – The following definitions apply in this Article:

(1) Decal. – An identification marker issued by the Secretary under G.S. 105-449.47 for a qualified motor vehicle.

(2) Reserved.

~~(1)~~(3) Motor carrier. – A person who operates or causes to be operated on any highway in this State a motor vehicle that is a qualified motor ~~vehicle under the International Fuel Tax Agreement.~~ vehicle. The term does not include the United States, ~~the State,~~ a state, or a political subdivision of ~~the State.~~ a state.

~~(1a)~~(4) Motor vehicle. – A motor vehicle as defined in G.S. 105-164.3 other than special mobile equipment as defined in G.S. 105-164.3.

~~(2)~~(5) Operations. ~~– Operations of all motor vehicles described in subdivision (1).~~ The movement of any motor vehicle by a motor carrier, whether loaded or empty and whether or not operated for compensation.

~~(2a)~~(6) Person. – Defined in G.S. 105-228.90.

(7) Qualified motor vehicle. – A motor vehicle used, designed, or maintained for transportation of persons or property that meets one or more of the following conditions:

a. Has two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds.

b. Has three or more axles, regardless of weight.

c. Has a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds when it is combined with another motor vehicle. The term does not include a recreational vehicle.

(8) Recreational vehicle. – Defined in G.S. 20-4.01.

~~(3)~~(9) Secretary. – ~~The Secretary of Revenue.~~Defined in G.S. 105-228.90.

(b) Liability. – A motor carrier who operates on one or more days of a reporting period is liable for the tax imposed by this Article for that reporting period and is entitled to the credits allowed for that reporting period."

SECTION 2. G.S. 105-449.37(a), as amended by Section 1 of this act, reads as rewritten:

"(a) Definitions. – The following definitions apply in this Article:

(1) Decal. – An identification marker issued by the Secretary under G.S. 105-449.47 for a qualified motor vehicle.

(2) Moped. – Defined in G.S. 105-164.3.

(3) Motor carrier. – A person who operates or causes to be operated on any highway in this State a motor vehicle that is a qualified motor vehicle. The term does not include the United States, a state, or a political subdivision of a state.

(4) Motor vehicle. – A self-propelled motor vehicle ~~as defined in G.S. 105-164.3 other than special mobile equipment as defined in G.S. 105-164.3.~~that is designed primarily for use upon the highways, but does not include:

a. A moped, as defined in G.S. 105-164.3.

b. A farm tractor or other implement of husbandry.

c. Road construction or road maintenance machinery or equipment.

(5) Operations. –The movement of any motor vehicle by a motor carrier, whether loaded or empty and whether or not operated for compensation.

(6) Person. – Defined in G.S. 105-228.90.

(7) Qualified motor vehicle. – A motor vehicle used, designed, or maintained for transportation of persons or property that meets one or more of the following conditions:

a. Has two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds.

b. Has three or more axles, regardless of weight.

c. Has a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds when it is combined with another motor vehicle. The term does not include a recreational vehicle.

(8) Recreational vehicle. – Defined in G.S. 20-4.01.(9) Secretary. – Defined in G.S. 105-228.90."

SECTION 3. G.S. 105-449.38 reads as rewritten:

"**§ 105-449.38. Tax levied.**

A road tax for the privilege of using the streets and highways of this State is imposed upon every motor carrier on the amount of motor fuel or alternative fuel used by the carrier in its operations within this State. The tax shall be at the rate established by the Secretary pursuant to G.S. 105-449.80 or G.S. 105-449.136, as appropriate. This tax is in addition to any other taxes imposed on motor ~~carriers~~carriers."

SECTION 4. G.S. 105-449.44 reads as rewritten:

"§ 105-449.44. How to determine the amount of fuel used in the State; presumption of amount used.

(a) Calculation. – The amount of motor fuel or alternative fuel a motor carrier uses in its operations in this State for a reporting period is the number of miles the motor carrier travels in this State during that period divided by the calculated miles per gallon for the motor carrier for all qualified vehicles during that period.

(b) Presumption. – The Secretary must check reports filed under this Article against the weigh station records and other records of the Division of Motor Vehicles of the Department of Transportation and the State Highway Patrol of the Department of Crime Control and Public Safety concerning motor carriers to determine if motor carriers that are operating in this State are filing the reports required by this Article. The Department may assess a motor carrier for the amount payable based on the presumed ~~mileage.~~ mileage of a motor carrier that meets one or more of the two requirements of this subsection. The presumed mileage of the motor carrier is equal to 10 trips of 450 miles for each of the motor carrier's vehicles and the presumed fuel usage of each vehicle is four miles per gallon. A motor carrier that does either of the following for a quarter is presumed to have traveled in this State during that ~~quarter the number of miles equal to 10 trips of 450 miles each for each of the motor carrier's vehicles:~~quarter:

(1) Fails to file a report for the quarter and the records of the Division indicate the carrier operated in this State during the quarter.

(2) Files a report for the quarter that, based on the records of the Division, understates by at least twenty-five percent (25%) the carrier's mileage in this State for the quarter.

(c) Vehicles. – The number of vehicles of a motor carrier that is registered under this Article is the number of ~~identification markers~~ decals issued to the carrier. The number of vehicles of a carrier that is not registered under this Article is the number of vehicles registered by the motor carrier in the carrier's base state under the International Registration Plan."

SECTION 5. G.S. 105-449.46 reads as rewritten:

"§ 105-449.46. Inspection of books and records.

The Secretary and his authorized agents and representatives shall have the right at any reasonable time to inspect the books and records of any motor carrier subject to the tax imposed by this Article or to the registration fee imposed by Article 3 of Chapter 20 of the General Statutes. In the event a motor carrier fails to maintain adequate records from which the licensee's true liability may be determined, the Secretary may conduct an examination based on the best information available."

SECTION 6. G.S. 105-449.47 reads as rewritten:

"§ 105-449.47. Registration of vehicles.

(a) Requirement. – A motor carrier that is subject to the International Fuel Tax Agreement may not operate or cause to be operated in this State any vehicle listed in the definition of motor vehicle unless both the motor carrier and ~~the~~ at least one motor vehicle are registered with the motor carrier's base state jurisdiction. A motor carrier that is not subject to the International Fuel Tax Agreement may not operate or cause to be operated in this State any vehicle listed in the definition of motor vehicle unless both the motor carrier and ~~the~~ at least one motor vehicle are registered with the Secretary for purposes of the tax imposed by this Article.

(a1) Registration and ~~Identification Marker.~~ Decal.– When the Secretary registers a motor carrier, the Secretary must issue at least one ~~identification marker~~ set of decals for each motor vehicle operated by the motor carrier. The Secretary may charge a fee to cover the costs of the decals. A motor carrier must keep records of ~~identification markers~~ decals issued to it and must be able to account for all ~~identification markers~~ decals it receives from the Secretary. Registrations and ~~identification markers~~ decals issued by the Secretary are for a calendar year. All ~~identification markers~~ decals issued by the Secretary remain the property of the State. The Secretary may revoke a registration or ~~an identification marker~~ a decal when a motor carrier fails to comply with this Article or Article 36C or 36D of this Subchapter.

A motor carrier must carry a copy of its registration in each motor vehicle operated by the motor carrier when the vehicle is in this State. A motor vehicle must clearly display ~~an identification marker~~ one decal on each side of the motor vehicle at all times. The ~~identification marker~~ decals must be affixed to the vehicle for which it was issued in the place and manner designated by the authority that issued it. The decals must be in the form and content as prescribed by the Secretary.

(b) Exemption. – This section does not apply to the operation of a vehicle that is registered in another state and is operated temporarily in this State by a public utility, a governmental or cooperative provider of utility services, or a contractor for one of these entities for the purpose of restoring utility services in an emergency outage."

SECTION 7. G.S. 105-449.47A reads as rewritten:

"**§ 105-449.47A. Reasons why the Secretary can deny an application for a registration and ~~identification marker.~~decals.**

The Secretary may refuse to register and issue ~~an identification marker~~ a decal to an applicant that has done any of the following:

(1) Had a registration issued under Chapter 105 or Chapter 119 of the General Statutes cancelled by the Secretary for cause.

(2) Had a registration issued by another jurisdiction, pursuant to G.S. 105-449.57, cancelled for cause.

(3) Been convicted of fraud or misrepresentation.

(4) Been convicted of any other offense that indicates that the applicant may not comply with this Article if registered and issued ~~an identification marker.~~ a decal.

(5) Failed to remit payment for a tax debt under Chapter 105 or Chapter 119 of the General Statutes. The term "tax debt" has the same meaning as defined in G.S. 105-243.1.

(6) Failed to file a return due under Chapter 105 or Chapter 119 of the General Statutes."

SECTION 8. G.S. 105-449.50 reads as rewritten:

"**§ 105-449.50. Application ~~blanks.~~forms.**

The Secretary shall prepare forms to be used in making applications in accordance with this Article and the applicant shall furnish all information required by such forms. "

SECTION 9. G.S. 105-449.51 reads as rewritten:

"**§ 105-449.51. Violations declared to be misdemeanors.**

Any person who operates or causes to be operated on a highway in this State a motor vehicle that does not carry a registration card as required by this Article, does not properly display ~~an identification marker~~ a decal as required by this Article, or is not registered in accordance with this Article is guilty of a Class 3 misdemeanor and, upon conviction thereof, shall be fined two hundred dollars ($200.00). Each day's operation in violation of any provision of this section shall constitute a separate offense."

SECTION 10. 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~~ a decal in accordance with this Article. The amount of the penalty is one hundred dollars ($100.00).

(2) Is unable to account for ~~identification markers~~ decals 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~~ decal the carrier is unable to account for.

(3) Displays ~~an identification marker~~ a decal 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~~ decal 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~~ decal are jointly and severally liable for the penalty under this subdivision.

(a1) Payment. – A penalty imposed under this section is payable to the agency that assessed the penalty. When a motor vehicle is found to be operating without a registration card or ~~an identification marker~~ a decal or with ~~an identification marker~~ a decal 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 11. G.S. 105-449.60 reads as rewritten:

"**§ 105-449.60. Definitions.**

The following definitions apply in this Article:

(1) Additive. – A product, other than motor fuel or dye, that is added or mixed in very small concentration with motor fuel, including fuel system detergent, oxidation inhibitor, gasoline antifreeze, or octane enhancers. Additives become part of the motor fuel.

(2) Aviation gasoline. –Motor fuel blended or produced specifically for use in aircraft, which has been dyed in accordance with federal regulations, and placed in the supply tank of an aircraft.

(3) Billed gallons. – Gallons of motor fuel, either gross or net, that are invoiced for payment.

~~(1)~~(4) Biodiesel. – Any fuel or mixture of fuels derived in whole or in part from agricultural products or animal fats or wastes from these products or fats.

~~(1a)~~(5) Biodiesel provider. – A person who does any of the following:

a. Produces an average of no more than 500,000 gallons of biodiesel per month during a calendar year. A person who produces more than this amount is a refiner.

b. Imports biodiesel outside the terminal transfer system by means of a marine vessel, a transport truck, a railroad tank car, or a tank wagon.

~~(1b) to (1d) Reserved for future codification purposes.~~

(6) Blend stock. – A product or products, other than additives or dye, that is added, mixed, or blended with fuel, regardless of its classification or use. Blend stock becomes part of the taxable volume of the fuel.

~~(1e)~~(7) Blended fuel. – A mixture composed of gasoline or diesel fuel and another liquid, other than a de minimus amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a fuel in a highway vehicle.

~~(2)~~(8) Blender. – A person who produces blended fuel outside the terminal transfer system.

(9) Bonded importer. – A person, other than a supplier, who imports by transport truck or another means of transfer outside the terminal transfer system motor fuel removed from a terminal located in another state in one or more of the following circumstances:

a. The state from which the fuel is imported does not require the seller of the fuel to collect motor fuel tax on the removal of the fuel at that state's rate or the rate of the destination state.

b. The supplier of the fuel is not an elective supplier.

c. The supplier of the fuel is not a permissive supplier.

(10) Bulk. – Motor fuel stored in tanks or containers that are not part of the fuel tank of a motor vehicle, engine, machine, or equipment.

~~(3)~~(11) ~~Bulk end-user.~~ Bulk end-user. – A person who maintains storage facilities for motor fuel and uses part or all of the stored fuel to operate a highway ~~vehicle.~~vehicle, engine, machinery, or equipment.

~~(4)~~(12) Bulk plant. – A motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

~~(5)~~(13) Code. – Defined in G.S. 105-228.90.

(14) Consignee. – The person to whom motor fuel is shipped or delivered.

(15) Consignor. – The person who ships or delivers motor fuel.

~~(6)~~(16) Destination state. – The state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the purpose of resale or use.

~~(7)~~(17) Diesel fuel. – Any liquid, other than gasoline, that is suitable for use as a fuel in a diesel-powered highway vehicle. The term includes biodiesel, fuel oil, heating oil, high-sulfur dyed diesel fuel, and kerosene. The term does not include jet fuel sold to a buyer who is certified to purchase jet fuel under the Code.

~~(8)~~(18) Distributor. – A person who ~~acquires motor fuel from a supplier or from another distributor for subsequent sale.~~operates a bulk plant where the person has active motor fuel bulk storage and does one or more of the following:

a. Produces, refines, blends, compounds, or manufactures motor fuel.

b. Transports motor fuel into a state or exports motor fuel out of a state.

c. Engages in the distribution of motor fuel primarily by tank car or tank truck or both.

(19) Diversion. – Motor fuel shipped from a terminal to a state other than the destination state as indicated o the original bill of lading.

(20) Diversion number. – The tracking number assigned by a state to a single transport truck delivery of motor fuel diverted from the original destination state.

~~(9)~~(21) Dyed diesel fuel. – Diesel fuel that meets the dyeing and marking requirements ~~of § 4082 of the Code.~~as described by Federal Regulation 26 CFR 48.4082.1.

~~(10)~~(22) Elective supplier. – A supplier that is required to be licensed in this State and that elects to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.

(23) End-user. – A person who purchases and uses motor fuel to operate a motor vehicle, engine, machine, or equipment.

~~(10a)~~(24) Exempt card or code. – A credit card or an access code that enables the person to whom the card or code is issued to buy motor fuel at retail without paying the motor fuel excise tax on the fuel.

~~(11)~~(25) Export. – To obtain motor fuel in this State for sale or other distribution in another state. In applying this definition, motor fuel delivered out-of-state by or for the seller constitutes an export by the seller and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the purchaser.

~~(12)~~(26) Fuel alcohol. – Alcohol, methanol, or fuel grade ethanol.

~~(13)~~(27) Fuel alcohol provider. – A person who does any of the following:

a. Produces an average of no more than 500,000 gallons of fuel alcohol per month during a calendar year. A person who produces more than this amount is a refiner.

b. Imports fuel alcohol outside the terminal transfer system by means of ~~a marine vessel,~~ a transport truck, a railroad tank car, or a tank wagon.

~~(14)~~(28) Gasohol. – A blended fuel composed of gasoline and fuel grade ethanol.

~~(15)~~(29) Gasoline. – Any of the following:

a. All products that are commonly or commercially known or sold as gasoline and are suitable for use as a fuel in a highway vehicle, other than products that have an American Society for Testing Materials octane number of less than 75 as determined by the motor method.

b. A petroleum product component of gasoline, such as naptha, reformate, or toluene.

c. Gasohol.

d. Fuel alcohol.

The term does not include aviation gasoline sold for use in an aircraft motor. "Aviation gasoline" is gasoline that is designed for use in an aircraft motor and is not adapted for use in an ordinary highway vehicle.

~~(16)~~(30) Gross gallons. – The total amount of motor fuel measured in gallons, exclusive of any temperature, pressure, or other adjustments.

~~(17)~~(31) Highway. – ~~Defined in G.S. 20-4.01(13).~~ Every way or place, of whatever nature is generally open to the use of the public as a matter of right, for the purpose of vehicular travel. The term includes a highway that has been temporarily closed for the purpose of construction, reconstruction, maintenance, or repair.

~~(18)~~(32) Highway vehicle. – A self-propelled vehicle that is designed for use on a highway.

~~(19)~~(33) Import. – To bring motor fuel into this State by any means of conveyance other than in the fuel supply tank of a highway vehicle. In applying this definition, motor fuel delivered into this State from

out-of-state by or for the seller constitutes an import by the seller, and motor fuel delivered into this State from out-of-state by or for the purchaser constitutes an import by the purchaser.

~~(19a)~~(34) ~~In-State only~~ In-State supplier. – Either of the following:

a. A supplier that is required to have a license and elects not to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.

b. A supplier that does business only in this State.

(35) Jet fuel. – A kerosene-based product used for commercial and military turbojet and turboprop aircraft engines that meets the following conditions:

a. Has a maximum distillation temperature of 400 degrees Fahrenheit at the ten percent (10%) recovery point and a final maximum boiling point of 572 degrees Fahrenheit .

b. Meets ASTM Specification D 1655 and Military Specifications MIL-T-5624P and MIL-T-83133D, Grades JP-5 and JP-8.

(36) Kerosene. – Petroleum oil that is free from water, glue, and suspended matter and that meets the specifications and standards adopted by the Gasoline and Oil Inspection Board.

(37) Marine vessel. – A ship, boat, or other watercraft used or capable of being usedb to move in or through the waterways of the State.

~~(20)~~(38) Motor fuel. – Gasoline, diesel fuel, and blended fuel.

~~(21)~~(39) Motor fuel rate. – The rate of tax set in G.S. 105-449.80.

~~(22)~~(40) Motor fuel transporter. – A person who transports motor fuel by ~~pipeline or who transports motor fuel outside the terminal transfer system by means of a transport truck, a railroad tank car, or a marine vessel.~~pipeline, marine vessel, railroad tank car, or transport truck.

~~(23)~~(41) Net gallons. – The amount of motor fuel measured in gallons when corrected to a temperature of 60 degrees Fahrenheit and a pressure of 14 7/10 pounds per square inch.

(42) Occasional importer. – One or more of the following that imports motor fuel by any means outside the terminal transfer system:

a. A distributor that imports motor fuel on an average basis of no more than once a month during a calendar year.

b. A bulk user that acquires motor fuel for import from a bulk plant and is not required to be licensed as a bonded importer.

c. A distributor that imports motor fuel for use in a race car.

~~(24)~~(43) Permissive supplier. – An out-of-state supplier that elects, but is not required, to have a supplier's license under this Article.

~~(25)~~(44) Person. – Defined in G.S. 105-228.90.

(45) Pipeline. – A fuel distribution system that moves motor fuel, in bulk, through a pipe either from a refinery to a terminal or from a terminal to another terminal.

~~(26)~~(46) Position holder. – The person who holds the inventory position ~~in~~ on the motor fuel ~~in a terminal,~~ as reflected on the records of the terminal operator. A person holds the inventory position ~~in~~ on the motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminaling services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.

~~(27)~~(47) Rack. – A mechanism for delivering motor fuel from a refinery, a terminal, or a bulk plant into a transport truck, a railroad tank car, or another means of transfer that is outside the terminal transfer system.

~~(27a)~~(48) Refiner. – A person who owns, operates, or controls a refinery. The term includes a person who produces an average of more than 500,000 gallons of fuel alcohol or biodiesel a month during a calendar year.

~~(27b)~~(49) Refinery. – A facility used to process crude oil, unfinished oils, natural gas liquids, or other hydrocarbons into motor fuel and from which fuel may be removed by pipeline or vessel or at a rack. The term does not include a facility that produces only blended fuel or gasohol.

~~(28)~~(50) Removal. – A physical transfer other than by evaporation, loss, or destruction. A physical transfer to a transport truck or another means of conveyance outside the terminal transfer system is complete upon delivery into the means of conveyance.

~~(29)~~(51) Retailer. – A person who maintains storage facilities for motor fuel and who sells or dispenses the fuel ~~at retail or dispenses the fuel~~ at a retail location.

~~(30)~~(52) Secretary. – Defined in G.S. 105-228.90.

(53) Shipping document. – A document that identifies the name and address of the consignor, consignee, and carrier, date of deliver, product type, quantity, and document number. The term is commonly referred to as a manifest, a bill of lading, or a delivery ticket.

(54) Shipping document number. – The identifying number from the shipping document issued when motor fuel is loaded or removed at a refiner, terminal, marine vessel, railroad, or bulk plant.

(55) Special mobile equipment. – Defined in G.S. 105-164.3.

~~(31)~~(56) Supplier. – Any person required to collect and remit tax on motor fuel removed from a refinery or terminal rack. The term includes an elective supplier, a permissive supplier, and an in-State supplier, as well as all of the following:

a. A position holder or a person who receives motor fuel pursuant to a two-party exchange.
b. A fuel alcohol provider.
c. A biodiesel provider.
d. A refiner.

~~(32)~~(57) System transfer. – Either of the following:

a. A transfer of motor fuel within the terminal transfer system.

b. A transfer, by transport truck or railroad tank car, of fuel grade ethanol.

~~(33)~~(58) Tank wagon. – A truck that is not a transport truck and is designed or used to carry at least 1,000 gallons of motor fuel.

(59) Tank wagon importer. – A person who imports only by means of a tank wagon motor fuel that is removed from a terminal or a bulk plant located in another state.

~~(33a)~~(60) Tax. – An inspection or other excise tax on motor fuel and any other fee or charge imposed on motor fuel on a per-gallon basis.

~~(34)~~(61) Terminal. – A motor fuel storage and distribution facility that has been assigned a terminal control number by the Internal Revenue Service, is supplied by pipeline or marine vessel, and from which motor fuel may be removed at a rack.

~~(35)~~(62) Terminal operator. – A person who owns, operates, or otherwise controls a terminal.

~~(36)~~(63) Terminal transfer system. – The motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals. The term has the same meaning as "bulk transfer/terminal system" under 26 C.F.R. § 48.4081-1.

~~(37)~~(64) Transmix. – Either of the following:

a. The buffer or interface between two different products in a pipeline shipment.

b. A mix of two different products within a refinery or terminal that results in an off-grade mixture.

~~(38)~~(65) Transport truck. – A ~~semitrailer~~ tractor trailer combination ~~rig~~ designed or used to transport ~~loads of~~ motor ~~fuel over a highway.~~ fuel.

~~(39)~~(66) Trustee. – A person who is licensed as a ~~supplier, an elective supplier, or a permissive~~ supplier and who receives tax payments from and on behalf of a licensed ~~distributor.~~ distributor or licensed importer for remittance to the Secretary.

~~(40)~~(67) Two-party exchange. – A transaction in which motor fuel is transferred from one licensed supplier to another licensed supplier pursuant to an exchange agreement under which the supplier that is the position holder agrees to deliver motor fuel to the other supplier or the other supplier's customer at the rack of the terminal at which the delivering supplier is the position holder.

~~(41)~~(68) User. – A person who owns or operates a licensed highway vehicle that has a registered gross vehicle weight of at least 10,001 ~~pounds and who does not maintain storage facilities for motor fuel.~~ pounds."

SECTION 12. G.S. 105-449.65 reads as rewritten:

"**§ 105-449.65. List of persons who must have a license.**

(a) License. – A person may not engage in business in this State as any of the following unless the person has a license issued by the Secretary authorizing the person to engage in that business:

(1) A refiner.
(2) A supplier.
(3) A terminal operator.
(4) An importer.
(5) An exporter.
(6) A blender.
(7) A motor fuel transporter.
(8) Repealed by Session Laws 1999-438, s. 20, effective August 10, 1999.
(9) Repealed by Session Laws 1999-438, s. 21, effective August 10, 1999.
(10) A distributor who purchases motor fuel from an elective or permissive supplier at an out-of-state terminal for import into this State.

(b) Multiple Activity. – A person who is engaged in more than one activity for which a license is required must have a separate license for each activity, unless this subsection provides otherwise. A person who is licensed as a supplier is considered to have a license as a distributor. A person who is licensed as an occasional importer or a tank wagon importer is not required to obtain a separate license as a distributor unless the importer is also purchasing motor fuel, at the terminal rack, from an elective or permissive supplier who is authorized to collect and remit the tax to the State. A person who is licensed as a distributor is not required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or a permissive supplier and is not required to obtain a separate license as an exporter. A person who is licensed as a ~~distributor or a blender~~ refiner, supplier, distributor, importer, exporter or blender and who transports fuel is considered to be licensed as a motor fuel transporter.

(c) Restrictions. – A person who is licensed as a supplier may not transfer motor fuel from a terminal to a marine vessel unless the receiver of the motor fuel is licensed as a supplier."

SECTION 13. G.S. 105-449.66 reads as rewritten:

"**§ 105-449.66. ~~Types of importers; restrictions on who can get a license as an importer.~~Importer licensing.**

~~(a) Types.~~ An applicant for a license as an importer must indicate on the application the type of importer license sought. ~~The types of importers are as follows:~~

~~(1) Bonded importer. A bonded importer is a person, other than a supplier, who imports, by transport truck or another means of transfer outside the terminal transfer system, motor fuel removed from a terminal located in another state in any of the following circumstances:~~

~~a. The state from which the fuel is imported does not require the seller of the fuel to collect motor fuel tax on the removal either at that state's rate or the rate of the destination state.~~

~~b. The supplier of the fuel is not an elective supplier.~~

~~c. The supplier of the fuel is not a permissive supplier.~~

~~(2) Occasional importer. An occasional importer is any of the following that imports motor fuel by any means outside the terminal transfer system:~~

~~a. A distributor that imports motor fuel on an average basis of no more than once a month during a calendar year.~~

~~b. A bulk-end user that acquires motor fuel for import from a bulk plant and is not required to be licensed as a bonded importer.~~

~~c. A distributor that imports motor fuel for use in a race car.~~

~~(3) Tank wagon importer. A tank wagon importer is a person who imports, only by means of a tank wagon, motor fuel that is removed from a terminal or a bulk plant located in another state.~~

~~(b) Restrictions.~~ A person may not be licensed as more than one type of importer. A ~~bulk-end user~~ bulk end-user that imports motor fuel from a terminal of a supplier that is not an elective or a permissive supplier must be licensed as a bonded importer. A ~~bulk-end user~~ bulk end-user that imports motor fuel from a bulk plant and is not required to be licensed as a bonded importer must be licensed as an occasional importer. A ~~bulk-end user~~bulk end-user that imports motor fuel only from a terminal of an elective or a permissive supplier is not required to be licensed as an importer."

SECTION 14. G.S. 105-449.68 reads as rewritten:

"**§ 105-449.68. Restrictions on who can get a license as a distributor.**

A ~~bulk-end user~~ bulk end-user of motor fuel may not be licensed as a distributor unless the ~~bulk-end user~~ bulk end-user also acquires motor fuel from a supplier or from another distributor for subsequent sale. This restriction does not apply to a ~~bulk-end user~~ bulk end-user that was licensed as a distributor on January 1, 1996. If a distributor license held by a ~~bulk-end user~~ bulk end-user on January 1, 1996, is subsequently cancelled, the ~~bulk-end user~~ bulk end-user is subject to the restriction set in this section."

SECTION 15. G.S. 105-449.69(c) reads as rewritten:

"(c) Federal Certificate. – An applicant for a license as a refiner, a supplier, a terminal operator, or a ~~blender, or a permissive supplier~~ blender, must have a federal Certificate of Registry that is issued under § 4101 of the Code and authorizes the applicant to enter into federal tax-free transactions in taxable motor fuel in the terminal transfer system. An applicant that is required to have a federal Certificate of Registry must include the registration number of the certificate on the application for a license under this section.

An applicant for a license as an importer, an exporter, or a distributor that has a federal Certificate of Registry issued under § 4101 of the Code must include the registration number of the certificate on the application for a license under this section."

SECTION 16 . G.S. 105-449.70(a) reads as rewritten:

"(a) Election. – An applicant for a license as a supplier may elect on the application to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state. The Secretary must provide for this election on the application form. A supplier that makes the election allowed by this section is an elective supplier. A supplier that does not make the election allowed by this section is an ~~in-State-only~~ in-State supplier.

A supplier that does not make the election on the application for a supplier's license may make the election later by completing an election form provided by the Secretary.

A supplier that does not make the election may not act as an elective supplier for motor fuel that is removed at a terminal in another state and has this State as its destination state."

SECTION 17. G.S. 105-449.74 reads as rewritten:

"**§ 105-449.74. Issuance of license.**

Upon approval of an application, the Secretary must issue a license to the applicant. A supplier's license must indicate the category of the supplier. An importer's license must indicate the category of the importer. A license holder must maintain and display a copy of the license issued under this Part in a conspicuous place at each place of business of the license holder. A license is not transferable and remains in effect until surrendered or cancelled."

SECTION 18. G.S. 105-449.75 reads as rewritten:

"**§ 105-449.75. License holder must notify the Secretary of discontinuance of business.**

A license holder that stops engaging in this State in the business for which the license was issued must give the Secretary written notice of the change and must surrender the license to the Secretary. The notice must give the date the change takes effect and, if the license holder has transferred the business to another by sale or otherwise, the date of the transfer and the name and address of the person to whom the business is transferred.

~~If the~~ The license holder is ~~a supplier,~~ responsible for all taxes for which the ~~supplier~~ license holder is liable under this Article but are not yet ~~due become due on the date of the change.~~ due. If the ~~supplier~~ license holder has transferred the business to another and does not give the notice required by this section, the person to whom the ~~supplier~~ license holder has transferred the business is liable for the amount of any tax the ~~supplier~~ license holder owed the State on the date the business was transferred. The liability of the person to whom the business is transferred is limited to the value of the property acquired from the ~~supplier.~~ license holder."

SECTION 19. G.S. 105-449.81 reads as rewritten:

"**§ 105-449.81. Excise tax on motor fuel.**

An excise tax at the motor fuel rate is imposed on motor fuel that is:

(1) Removed from a refinery or a terminal and, upon removal, is subject to the federal excise tax imposed by § 4081 of the Code.

(2) Imported by a system transfer to a refinery or a terminal and, upon importation, is subject to the federal excise tax imposed by § 4081 of the Code.

(3) Imported by a means of transfer outside the terminal transfer system for sale, use, or storage in this State and would have been subject to the federal excise tax imposed by § 4081 of the Code if it had been removed at a terminal or bulk plant rack in this State instead of imported.

(3a) Repealed by Session Laws 2007-527, s. 38(a), effective January 1, 2008.

(4) Blended fuel made in this State or imported to this State.

(5) Transferred within the terminal transfer system and, upon transfer, is subject to the federal excise tax imposed by section 4081 of the ~~Code.~~ Code or is not registered as a supplier with the State.

(6) Fuel alcohol or biodiesel, if it meets either of the following descriptions:

a. Is removed from a terminal or another storage and distribution facility.

b. Is imported to this State outside the terminal transfer system."

SECTION 20. G. S. 105-449.82 reads as rewritten:

"§ 105-449.82. Liability for tax on removals from a refinery or terminal.

(a) Refinery Removal. – The excise tax imposed by G.S. 105-449.81(1) on motor fuel removed from a refinery in this State is payable by the refiner.

(b) Terminal System Removal. – The excise tax imposed by G.S. 105-449.81(1) on motor fuel removed by a system transfer from a terminal in this State is payable by the position holder for the fuel. If the position holder is not the terminal operator, the terminal operator is jointly and severally liable for the tax.

(c) Terminal Rack Removal. – The excise tax imposed by G.S. 105-449.81(1) on motor fuel removed at a terminal rack in this State is payable by the person that first receives the fuel upon its removal from the terminal. If the motor fuel is removed by an unlicensed distributor, the supplier of the fuel is jointly and severally liable for the tax due on the fuel. If the motor fuel is sold by a person who is not licensed as a supplier, as required by this Article, the terminal operator, the person selling the fuel, and the person removing the fuel are jointly and severally liable for the tax due on the fuel. If the motor fuel removed is not dyed diesel fuel but the shipping document issued for the fuel states that the fuel is dyed diesel fuel, the terminal operator, the supplier, and the person removing the fuel are jointly and severally liable for the tax due on the fuel.

If the motor fuel is removed for export by an unlicensed exporter, the exporter is liable for tax on the fuel at the motor fuel rate and at the rate of the destination state. The supplier is ~~liability~~ liable for the tax at the motor fuel rate ~~applies~~ when the ~~Department assesses the unlicensed exporter for the tax.~~ supplier sells the motor fuel to the unlicensed exporter."

SECTION 21. G.S. 105-449.83A reads as rewritten:

"§ 105-449.83A. Liability for tax on fuel grade ethanol.

The excise tax imposed by ~~G.S. 105-449.81(3a)~~ G.S. 105-449.81 on fuel grade ethanol removed from a storage facility located within this State or imported into the State is payable by the fuel alcohol provider. ~~The excise tax imposed by that subdivision on fuel grade ethanol imported to this State is payable by the importer.~~ The excise tax imposed by G.S. 105-449.81 on biodiesel removed from a storage facility located within the State or imported into the State is payable by the biodiesel provider."

SECTION 22. G.S. 105-449.85 reads as rewritten:

"§ 105-449.85. Compensating tax on and liability for unaccounted for motor fuel losses at a terminal.

(a) Tax. – An excise tax at the motor fuel rate is imposed annually on unaccounted for motor fuel losses at a terminal that exceed one-half of one percent

(0.5%) of the number of net gallons removed from the terminal during the year by a system transfer or at a terminal rack. To determine if this tax applies, the terminal operator of the terminal must determine the difference between the following:

(1) The amount of motor fuel in inventory at the terminal at the beginning of the year plus the amount of motor fuel received by the terminal during the year.

(2) The amount of motor fuel in inventory at the terminal at the end of the year plus the amount of motor fuel removed from the terminal during the year.

(b) Liability. – The terminal operator whose motor fuel is unaccounted for is liable for the tax imposed by this section and is liable for a penalty equal to the amount of tax payable. Motor fuel received by a terminal operator and not shown on an informational return filed by the terminal operator with the Secretary as having been removed from the terminal is presumed to be unaccounted ~~for.~~ for product. A terminal operator may establish that motor fuel received at a terminal but not shown on an informational return as having been removed from the terminal was lost or part of a transmix and ~~is therefore not unaccounted for.~~ for which an accounting can be made."

SECTION 23. G.S. 105-449.86(b) reads as rewritten:

(b) Liability. – If the distributor of dyed diesel fuel that is taxable under this section is not liable for the tax imposed by this section, the person that acquires the fuel is liable for the tax. The distributor of dyed diesel fuel that is taxable under this section is liable for the tax imposed by this section in the following circumstances:

(1) When the person acquiring the dyed diesel fuel has storage facilities for the fuel and is therefore a ~~bulk-end user~~ bulk end-user of the fuel.

(2) When the person acquired the dyed diesel fuel from a retail outlet of the distributor by using an access card or code indicating that the person's use of the fuel is taxable under this section."

SECTION 24. G.S. 105-449.87(b) reads as rewritten:

"(b) General Liability. – The ~~operator~~ owner of a highway vehicle that uses motor fuel that is taxable under subdivisions (a)(1) through (a)(3) of this section is liable for the tax. If the highway vehicle that uses the fuel is owned by or leased to a motor carrier, the motor carrier is jointly and severally liable for the tax. If the end seller of motor fuel taxable under this section knew or had reason to know that the motor fuel would be used for a purpose that is taxable under this section, the end seller is jointly and severally liable for the tax. If the Secretary determines that a ~~bulk-end user~~ bulk end-user or retailer used or sold untaxed dyed diesel fuel to operate a highway vehicle when the fuel is dispensed from a storage facility or through a meter marked for nonhighway use, all fuel delivered into that storage facility is presumed to have been used to operate a highway vehicle. An end seller of dyed diesel fuel is considered to have known or had reason to know that the fuel would be used for a purpose that is taxable under this section if the end seller delivered the fuel into a storage facility that was not marked as required by G.S. 105-449.123."

SECTION 25. G.S. 105-449.89 reads as rewritten:

"**§ 105-449.89. Removals by out-of-state bulk-end user.**

An out-of-state ~~bulk end-user~~ bulk end-user may not remove motor fuel from a terminal in this State for use in the state in which the ~~bulk end-user~~ bulk end-user is located unless the ~~bulk end-user~~ bulk end-user is licensed under this Article as an exporter. An out-of-state ~~bulk end-user~~ bulk end-user that is not licensed under this Article may remove motor fuel from a bulk plant in this ~~State.~~State. The out-of-state bulk end-user must be registered as an exporter before a refund may be issued on the exports from the bulk plant."

SECTION 26. G.S. 105-449.91 reads as rewritten:

"**§ 105-449.91. Remittance of tax to supplier.**

(a) Distributor. – A distributor must remit tax due on motor fuel removed at a terminal rack to the supplier of the fuel. A licensed distributor has the right to defer the remittance of tax to the supplier, as trustee, until the date the trustee must pay the tax to this State or to another state. The time when an unlicensed distributor must remit tax to a supplier is governed by the terms of the contract between the supplier and the unlicensed distributor.

(b) Exporter. ~~An~~ A licensed exporter must remit tax due on motor fuel removed at a terminal rack to the supplier of the fuel. The time when an exporter must remit tax to a supplier is governed by the law of the destination state of the exported motor fuel.

(c) Importer. – A licensed importer must remit tax due on motor fuel removed at a terminal rack of a permissive or an elective supplier to the supplier of the fuel. A licensed importer that removes fuel from a terminal rack of a permissive or an elective supplier has the right to defer the remittance of tax to the supplier until the date the supplier must pay the tax to this State.

(d) ~~General.~~ Retailer. – A retailer must remit tax due on motor fuel removed at a terminal rack to the supplier of the fuel. The time when a retailer must tax to a supplier is governed by the terms of the contract between the supplier and the retailer.

(e) Bulk End-User. – A bulk end-user must remit tax due on motor fuel removed at a terminal rack to the supplier of the fuel. The time when a bulk end-user must remit tax to a supplier is governed by the terms of the contract between the supplier and the bulk end-user.

(f) End-User. – An end-user must remit tax due on motor fuel removed at a terminal rack to the supplier of the fuel. The time when a user must remit tax to a supplier is governed by the terms of the contract between the supplier and the user.

(g) General. – The method by which a distributor, ~~a~~ licensed exporter, ~~or a~~ licensed ~~importer~~ importer, retailer, bulk end-user, or end-user must remit tax to a supplier is governed by the terms of the contract between the supplier and the distributor, licensed exporter, ~~or~~ licensed ~~importer~~importer, retailer, bulk end-user, and end-user. ~~and the supplier.~~ G.S. 105-449.76 governs the cancellation of a license of a distributor, an exporter, and an importer."

SECTION 27. G.S. 105-449.96 reads as rewritten:

"**§ 105-449.96. Information required on return filed by supplier.**

A return of a supplier must list all of the following information and any other information required by the Secretary:

(1) The number of gallons of tax-paid motor fuel received by the supplier during the month, sorted by type of ~~fuel, seller, point of origin, destination state, and carrier.~~fuel.

(2) The number of gallons of motor fuel removed at a terminal rack during the month from the account of the supplier, sorted by type of ~~fuel, person receiving the fuel, terminal code, and carrier.~~fuel.

(3) The number of gallons of motor fuel removed during the month for export, sorted by type of ~~fuel, person receiving the fuel, terminal code, destination state, and carrier.~~fuel.

(4) The number of gallons of motor fuel removed during the month at a terminal located in another state for destination to this State, as indicated on the shipping document for the fuel, sorted by type of ~~fuel, person receiving the fuel, terminal code, and carrier.~~fuel.

(5) The number of gallons of motor fuel the supplier sold during the month to a governmental unit whose use of fuel is exempt from the tax, ~~any of the following,~~ sorted by type of ~~fuel, exempt entity, person receiving the fuel, terminal code, and carrier:~~fuel.

~~a. A governmental unit whose use of fuel is exempt from the tax.~~

~~b. A licensed distributor or importer that resold the motor fuel to a governmental unit whose use of fuel is exempt from the tax, as indicated by the distributor or importer.~~

~~c. A licensed exporter that resold the motor fuel to a person whose use of fuel is exempt from tax in the destination state, as indicated by the exporter.~~

(6) The amount of discounts allowed under G.S. 105-449.93(b) on motor fuel sold during the month to licensed distributors or licensed importers.

(7) The number of gallons of motor fuel the supplier exchanged during the month with another licensed supplier pursuant to a two-party exchange agreement, sorted by type of ~~fuel, licensed supplier receiving the fuel, and terminal code.~~fuel."

SECTION 28. G.S. 105-449.97(c) reads as rewritten:

"(c) Percentage Discount. – A supplier that sells motor fuel directly to an unlicensed distributor or to the ~~bulk end user,~~ bulk end-user, the retailer, or the user of the fuel may take the same percentage discount on the fuel that a licensed distributor may take under G.S. 105-449.93(b) when making deferred payments of tax to the supplier."

SECTION 29. G.S. 105-449.100 reads as rewritten:

"**§ 105-449.100. Terminal operator to file informational return showing changes in amount of motor fuel at the terminal.**

(a) Requirement. -- A terminal operator must file a monthly informational return with the Secretary that shows the amount of motor fuel received or removed from the terminal during the month. A terminal operator that is required to be licensed in this

State must report all motor fuel removed from out-of-state terminals that has this State as its destination state.

(b) Content. -- The return is due on the same date as a monthly return due under G.S. 105-449.90. The return must contain the following information and any other information required by the Secretary:

(1) The number of gallons of motor fuel received in inventory at the terminal during the month and each position holder for the ~~fuel.~~fuel, sorted by type of fuel.

(2) The number of gallons of motor fuel removed from inventory at the terminal during the month and, for each removal, the position holder for the fuel and the destination state of the ~~fuel.~~fuel, sorted by type of fuel.

(3) The number of gallons of motor fuel gained or lost at the terminal during the month.

(4) The number of gallons of motor fuel in inventory at the beginning of each month and at the end of each month.

(c) Due Date. – The return is due on the same date as a monthly retun due under G.S. 105-449.90."

SECTION 30. G.S. 105-449.102 reads as rewritten:

"**§ 105-449.102. Distributor to file return showing exports from a bulk plant.**

(a) ~~Return.~~ Requirement. – A distributor that exports motor fuel from a bulk plant located in this State must file a monthly return with the Secretary that shows the exports. ~~The return is due on the same date as a monthly return due under G.S. 105-449.90.~~ The return serves as a claim for refund by the distributor for tax paid to this State on the exported motor fuel.

(b) Content. – The return must contain the following information and any other information required by the Secretary:

(1) The number of gallons of motor fuel exported during the month.

(2) The destination state of the motor fuel exported during the month.

(3) A certification that the distributor has paid to the destination state of the motor fuel exported during the month, or will pay on a timely basis, the amount of tax due that state on the fuel.

(c) Due Date. – The return is due on the same date as a monthly return due under G.S. 105-449.90."

SECTION 31. The prefatory language of G.S. 105-449.105 reads as rewritten:

"**§ 105-449.105. ~~Refunds upon application~~ Refunds for tax paid on exempt fuel, lost fuel, and accidental mixes that result in fuel ~~unsalable~~ unsuitable for highway use.**"

SECTION 32. G.S. 105-449.105A(a)(1) reads as rewritten:

"(1) The ~~end-user~~ end-user of the kerosene, if the distributor dispenses the kerosene into a storage facility of the ~~end-user~~ end-user that contains fuel used only for one of the following purposes and the storage

facility is installed in a manner that makes use of the fuel for any other purpose improbable:

a. Heating.

b. Drying crops.

c. A manufacturing process."

SECTION 33. G.S. 105-449.108(a) reads as rewritten:

"(a) Due Dates. – The due dates of applications for refunds are as follows:

Refund Period	Due Date
Annual	April 15 after the end of the year
Quarterly	Last day of the month after the end of the quarter
Monthly	22nd day after the end of the month
~~Upon Application~~	~~Last day of the month after the month in which tax was paid or the event occurred that is the basis of the refund.~~"

SECTION 34. G.S. 105-449.117(a) reads as rewritten:

"(a) Violation. – It is unlawful to use dyed diesel fuel or other non-tax-paid fuel in a highway vehicle that is licensed or required to be licensed under Chapter 20 of the General Statutes unless that use is allowed under section 4082 of the Code. It is unlawful to use ~~undyed diesel~~ motor fuel or alternative fuel in a highway vehicle that is licensed or required to be licensed under Chapter 20 of the General Statutes unless the tax imposed by this ~~Article~~ Article, Article 36D, or Chapter 119, Article 3 has been paid. A person who violates this section is guilty of a Class 1 misdemeanor and is liable for a civil penalty."

SECTION 35. G.S. 105-449.121(b) reads as rewritten:

"(b) Inspection. – The Secretary or a person designated by the Secretary may do any of the following to determine tax liability under this Article:

(1) Audit ~~a distributor or~~ a person who is required to have or elects to have a license under this Article.

(2) Audit a distributor, a retailer, a bulk-end user, or a motor fuel user that is not licensed under this Article.

(3) Examine a tank or other equipment used to make, store, or transport motor fuel, diesel dyes, or diesel markers.

(4) Take a sample of a product from a vehicle, a tank, or another container in a quantity sufficient to determine the composition of the product.

(5) Stop a vehicle for the purpose of taking a sample of motor fuel from the vehicle."

SECTION 36. G.S. 105-449.130 reads as rewritten:

"**§ 105-449.130. Definitions.**

The following definitions apply in this Article:

(1) Alternative fuel. – A combustible gas or liquid that can be used to generate power to operate a highway vehicle and that is not subject to tax under Article 36C of this Chapter.

(1a) ~~Bulk end-user.~~ Bulk end-user. – A person who maintains storage facilities for alternative fuel and uses part or all of the stored fuel to operate a highway vehicle.

(2) Highway. – Defined in ~~G.S. 20-4.01(13).~~G.S. 105-449.60.

(3) Highway vehicle. – Defined in G.S. 105-449.60.

(4) Motor fuel. – Defined in G.S. 105-449.60.

(5) Motor fuel rate. – Defined in G.S. 105-449.60.

(6) Provider of alternative fuel. – A person who does one or more of the following:

a. Acquires alternative fuel for sale or delivery to a ~~bulk end-user~~ bulk end-user or a retailer.

b. Maintains storage facilities for alternative fuel, part or all of which the person uses or sells to someone other than a ~~bulk end user~~ bulk end-user or a retailer to operate a highway vehicle.

c. Sells alternative fuel and uses part of the fuel acquired for sale to operate a highway vehicle by means of a fuel supply line from the cargo tank of the vehicle to the engine of the vehicle.

d. Imports alternative fuel to this State, by a means other than the usual tank or receptacle connected with the engine of a highway vehicle, for use by that person to operate a highway vehicle.

(7) Retailer. – A person who maintains storage facilities for alternative fuel and who sells the fuel at retail or dispenses the fuel at a retail location to operate a highway vehicle."

SECTION 37. G.S. 105-449.131 reads as rewritten:

"§ 105-449.131. List of persons who must have a license.

A person may not engage in business in this State as any of the following unless the person has a license issued by the Secretary authorizing the person to engage in that business:

(1) A provider of alternative fuel.

(2) A ~~bulk end-user.~~bulk end-user.

(3) A retailer."

SECTION 38. G.S. 105-449.133(a) reads as rewritten:

"(a) Who Must Have Bond. – The following applicants for a license must file with the Secretary a bond or an irrevocable letter of credit:

(1) An alternative fuel provider.

(2) A retailer or a ~~bulk end-user~~ bulk end-user that intends to store highway and nonhighway alternative fuel in the same storage facility."

SECTION 39. G.S. 105-449.137(a) reads as rewritten:

"(a) Liability. – A ~~bulk end-user~~ bulk end-user or retailer that stores highway and nonhighway alternative fuel in the same storage facility is liable for the tax imposed by this Article. The tax payable by a ~~bulk end-user~~ bulk end-user or retailer applies when fuel is withdrawn from the storage facility. The alternative fuel provider that sells or delivers alternative fuel is liable for the tax imposed by this Article on all other alternative fuel."

SECTION 40. G.S. 105-449.138 reads as rewritten:

"§ 105-449.138. Requirements for ~~bulk-end users~~ bulk end-users and retailers.

(a) Informational Return. – A ~~bulk-end user~~ bulk end-user and a retailer must file a quarterly informational return with the Secretary. A quarterly return covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the return.

The return must give the following information and any other information required by the Secretary:

(1) The amount of alternative fuel received during the quarter.

(2) The amount of alternative fuel sold or used during the quarter.

(b) Storage. – A ~~bulk-end user~~ bulk end-user or a retailer may store highway and nonhighway alternative fuel in separate storage facilities or in the same storage facility. If highway and nonhighway alternative fuel are stored in separate storage facilities, the facility for the nonhighway fuel must be marked in accordance with the requirements set by G.S. 105-449.123 for dyed diesel storage facilities. If highway and nonhighway alternative fuel are stored in the same storage facility, the storage facility must be equipped with separate metering devices for the highway fuel and the nonhighway fuel. If the Secretary determines that a ~~bulk-end user~~ bulk end-user or retailer used or sold alternative fuel to operate a highway vehicle when the fuel was dispensed from a storage facility or through a meter marked for nonhighway use, all fuel delivered into that storage facility is presumed to have been used to operate a highway vehicle."

SECTION 41. G.S. 105-449.139(c) reads as rewritten:

"(c) Lists. – The Secretary must give a list of licensed alternative fuel providers to each licensed ~~bulk-end user~~ bulk end-user and licensed retailer. The Secretary must also give a list of licensed ~~bulk-end users~~ bulk end-users and licensed retailers to each licensed alternative fuel provider. A list must state the name, account number, and business address of each license holder on the list. The Secretary must send an annual update of a list to each license holder, as appropriate."

SECTION 42. G.S. 119-15 reads as rewritten:

"§ 119-15. Definitions that apply to Article.

The following definitions apply in this Article:

(1) Alternative fuel. – Defined in G.S. 105-449.130.

(1a) Dyed diesel fuel. – Defined in G.S. 105-449.60.

(1b) Dyed diesel fuel distributor. – A person who acquires dyed diesel fuel from either of the following:

a. A person who is not required to be licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and who maintains storage facilities for dyed diesel fuel to be used for nonhighway purposes.

b. Another dyed diesel fuel distributor.

(2) Gasoline. – Defined in G.S. 105-449.60.

(2a) Jet fuel. – Defined in G.S. 105-449.60.

(3) Kerosene. – Defined in G.S. 105-449.60. ~~Petroleum oil that is free from water, glue, and suspended matter and that meets the~~

~~specifications and standards adopted by the Gasoline and Oil Inspection Board.~~

(3a) Kerosene distributor. –A person who acquires kerosene from any of the following for subsequent sale:

a. A supplier licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes.

b. A kerosene supplier.

c. Another kerosene distributor.

(3b) Kerosene supplier. – Either of the following:

a. A person who supplies both kerosene and motor fuel and, consequently, is required to be licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes.

b. A person who is not required to be licensed as a supplier under Part 2 of Article 36C of Chapter 105 of the General Statutes and who maintains storage facilities for kerosene to be used to fuel an airplane.

(4) Motor fuel. – Defined in G.S. 105-449.60.

(5) Person. – Defined in G.S. 105-229.90.

(6) Terminal. – Defined in G.S. 105-449.60.

(7) Terminal operator. – Defined in G.S. 105-449.60."

SECTION 43. Section 2 and Section 20 of this act become effective January 1, 2009. The remainder of this act is effective when it become law.

BILL DRAFT 2007-RBz-33: Modify Estate Tax Law

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	April 2, 2008
Introduced by:		**Summary by:**	Cindy Avrette
Version:	Bill Draft		Committee Staff

SUMMARY: This bill draft would modify the formula for calculating North Carolina estate tax on estates that include property located in another state by excluding the value of that property from the estate tax payable to North Carolina. The bill would become effective when it becomes law and apply retroactively to the estates of decedents for which the statute of limitations for claiming a refund had not expired as of December 28, 2007.

CURRENT LAW: For estates with property only in North Carolina, the North Carolina estate tax equals the amount of the credit for state estate tax allowed on the federal estate tax return, as the federal law provided in 2001. If an estate has property in more than one state, the federal credit amount must be prorated between North Carolina and the other states in which the estate has property. In 2002, the Estate Tax Section of the North Carolina Bar Association recommended a change in the calculation formula from a net value ratio to a gross value ratio. The recommended change also provided that when the estate of a North Carolina decedent included out-of-state property, the North Carolina estate tax would be calculated as the amount of the 2001 tax credit reduced by *the lesser of* the amount of estate tax paid to the other state or the amount of the 2001 tax credit times the value of the out-of-state property divided by the value of the gross estate.[1]

In 2001, Congress phased out the state estate tax credit over four years by reducing it 25% in 2002, 50% in 2003, 75% in 2004,and by repealing it entirely in 2005.[2] In calculating the estate tax payable in North Carolina for an estate that includes property located in a state that does not impose an estate tax, the current formula provides that the North Carolina estate tax would be reduced by zero, because that is the lesser of the amount paid to the state that does not impose an estate tax. This calculation results in North Carolina's estate tax being imposed on property that is not located within its taxing jurisdiction.[3]

BILL ANALYSIS: This bill draft would modify the formula for calculating North Carolina estate tax on estates that include property located in another state by prorating the federal credit amount between North Carolina and the other states in which the estate has property; it would eliminate the '*lesser of*' language that sometimes results in North Carolina's estate tax being imposed on property located in another state.

A case has been filed in Mecklenburg County, ***Stowe v. Department of Revenue***, to recover North Carolina estate taxes imposed on property located in South Carolina. The plaintiffs argue in their

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[1] This provision mirrored the Virginia law as it existed prior to July 1, 2007.

[2] The provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 made a number of changes to the estate tax rates and to the applicable exclusion amounts. The top marginal tax rates were gradually reduced and the exclusion amounts were gradually increased, with a full repeal of the estate tax for 2010. For 2007 through 2009, the top marginal tax rate is 45%; for 2007 and 2008, the applicable exclusion amount is $2,000,000; for 2009, the applicable exclusion amount is $3,500,000. The provisions for these changes are currently set to expire for estates of decedents dying on or after December 31, 2010. Therefore, in 2011, the exclusion amount goes back to $1,000,000, the top marginal rate returns to 55%, and the state estate tax credit is reinstated.

[3] Virginia repealed its estate tax in 2006. South Carolina, Georgia, and Tennessee do not require the payment of an estate tax for estates on which the federal estate tax law doe not allow a credit for state estate tax (2005-through 2010).

complaint that the formula for calculating North Carolina estate tax due when property is located in more than one state is unconstitutional because it provides less than a full reduction of the tax attributable to the out-of-state property when the other state does not impose an estate tax, or imposes an estate tax less than the prorated federal credit amount. The plaintiffs filed the complaint on December 27, 2007.

The bill draft provides that the change proposed in the bill would become effective when it becomes law and would apply retroactively to the estates of decedents for which the statute of limitations for claiming a refund had not expired on December 27, 2007. A personal representative of an estate for which the statute of limitations had not expired may file a claim for refund under G.S. 105-241.6.

G.S. 105-241.6 provides that the general statute of limitations for obtaining a refund of an overpayment of tax is the later of the following:

- Three years after the due date of the return. – A North Carolina estate tax return is due on the date a federal estate tax return is due. A federal estate tax return is due nine months from the date of death. An extension of time to file a federal estate tax return is an automatic extension of the time to file a State tax return.
- Two years after payment of the tax.

BILL DRAFT 2007-RBxz-34: Motor Fuel Tax Law Changes

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	April 2, 2008
Introduced by:		**Summary by:**	Cindy Avrette
Version:	Bill Draft		Committee Staff

SUMMARY: This bill draft would make technical, clarifying, conforming, administrative, and substantive changes to the motor fuel tax laws. The substantive changes become effective January 1, 2009; the remaining changes become effective when the act becomes law.

BILL ANALYSIS: The bill draft makes the following changes to the motor fuel tax laws:

Section	Explanation
1	Makes clarifying and conforming changes and numbers the definitions sequentially. . Adds the definition of words commonly used, such as 'decal' and 'qualified motor vehicle'.
2	Amends the definition of motor vehicle to include special mobile equipment. This change means that motor carriers with special mobile equipment would need to file quarterly returns reporting their mileage and fuel usage. A motor carrier may claim a refund of motor fuel tax paid for fuel used for non-highway purposes. Currently, there is no way to audit the refund claims; the reporting requirements would enable the Department to better audit these claims. This provision would become effective January 1, 2009.
3	Corrects a punctuation error.
4	Conforms the statute to current practice. Provides that the Department may include information received from the State Highway Patrol when determining the potential liability of a motor carrier. The SHP use to be located within the DMV.
5	It provides that the Department may perform 'best information audits' when a motor carrier fails to maintain adequate records. The Department currently uses this audit method when necessary.
6	Provides that the Department may charge a fee to cover the cost of the decals. The decals currently cost approximately $26,000 a year. Motor carriers have experienced problems with the decals not adhering to the vehicle. A better grade decal is needed; the cost of these decals will be $90,000 a year. Some other states charge for decals and the cost of the decals range from 50 cents to $20. The statute limits the cost of North Carolina's decals to the cost of the decal. The fee amount would need to be set through rule.
7	Conforming change. Changes the term 'identification marker' to the defined term 'decal'.
8	Corrects the catchline of the statute.
9	Conforming change. Changes the term 'identification marker' to the defined term 'decal'.
10	Conforming change. Changes the term 'identification marker' to the defined term 'decal'.
11	Revises the definitional statute to add definitions of commonly used terms, to incorporate definitions from other statutes, and to refer to federal regulations. It numbers the definitions sequentially.
12	Clarifying change; it identifies all license types that transport motor fuel. It also restricts a supplier from transferring fuel to a marine vessel unless the receiver of the fuel is licensed as a supplier. There is currently little control over who can bring a ship or barge to the North Carolina coastline and load fuel.

Section	Explanation
13	Conforming and grammatical change. It removes definitions that have been incorporated into the definitional statute and it corrects the spelling of the term 'bulk end-user'.
14	Corrects the spelling of the term 'bulk end-user'.
15	Conforming change. It incorporates the defined term 'supplier'.
16	Conforming change. It incorporates the defined term 'in-State supplier'.
17	Conforming change. Provides that an importer's license must indicate the category of the importer, just like a supplier's license must indicate the category of the supplier.
18	Clarifying change. It identifies the payment responsibilities of all license holders.
19	Clarifying change. It identifies the point of taxation for fuel that is not taxed by the Code.
20	This section would impose the North Carolina motor fuel tax on unlicensed exporters. Currently, the supplier charges the destination state's tax and the Department must bill the unlicensed exporter. This change would become effective January 1, 2009.
21	Conforming change. It conforms the tax liability on biodiesel imports or sales in North Carolina to the tax liability for fuel grade ethanol.
22	Corrects a grammatical error.
23	Corrects the spelling of the term 'bulk end-user'.
24	Corrects the spelling of the term 'bulk end-user'.
25	Corrects the spelling of the term 'bulk end-user'. It also provides that an out-of-state bulk end-user must be registered as an exporter if requesting a refund for exports from a North Carolina bulk plant.
26	Conforming change to administrative practice. It identifies the tax responsibility of purchasers to the supplier.
27	Conforming change to administrative practice. It removes the sorting reporting requirements because they are no longer needed due to electronic filing.
28	Corrects the spelling of the term 'bulk end-user'.
29	Conforming change to administrative practice. It provides that terminal operators who are required to be licensed in this State must report transactions from out-of-state terminals with this State as its destination. It also changes the structure of the statute for uniformity purposes.
30	Conforming change. It changes the structure of the statute for uniformity purposes.
31	Clarifying change. It changes the catchline of the statute to more accurately reflect the contents of the statute.
32	Corrects the spelling of the term 'end-user'.
33	Conforming change to administrative practice. Applications for refunds are filed monthly.
34	Conforming change to administrative practice and terminology.
35	Technical change. It uses the defined term 'person' rather than identifying the different classes that may be audited.
36	Corrects the spelling of the term 'bulk end-user'. Conforms the definition of highway with the defined term in the definitional statute.
37-41	Corrects the spelling of the term 'bulk end-user'.
42	Conforming change. It cross references the defined terms in the definitional statute.
43	Effective date section.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-RBz-33 [v.4] (03/26)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/1/2008 6:46:06 PM

Short Title: Modify Estate Tax Law. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE FORMULA FOR CALCULATING NORTH CAROLINA ESTATE TAX ON ESTATES WITH PROPERTY IN MORE THAN ONE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-32.2(b) reads as rewritten:

"(b) Amount. – The amount of the estate tax imposed by this section is the amount of the state death tax credit that, as of December 31, 2001, would have been allowed under section 2011 of the Code against the federal taxable estate. The tax may not exceed the amount of federal estate tax due under the Code. The federal taxable estate and the amount of the federal estate tax due are determined without taking into account the deduction for state death taxes allowed under Section 2058 of the Code and the credits allowed under sections 2011 through 2015 of the Code.

If any property in the estate is located in a state other than North Carolina, the amount of tax payable depends on whether the decedent was a resident of this State at death. If the decedent was a resident of this State at death, the amount of tax due under this section is reduced by ~~the lesser of the amount of the death tax paid the other state or~~ an amount computed by multiplying the credit by a fraction, the numerator of which is the gross value of the estate that has a tax situs in another state and the denominator of which is the value of the decedent's gross estate. If the decedent was not a resident of this State at death, the amount of tax due under this section is an amount computed by multiplying the credit by a fraction, the numerator of which is the gross value of real property that is located in North Carolina plus the gross value of any personal property that has a tax situs in North Carolina and the denominator of which is the value of the decedent's gross estate. For purposes of this section, the gross value of property is its gross value as finally determined in the federal estate tax proceedings."

SECTION 2. This act is effective when it becomes law and applies retroactively to the estates of decedents for which the statute of limitations for claiming a refund had not expired as of December 28, 2007. A personal representative of an estate for which the statute of limitations had not expired as of December 28, 2007, may file a claim for refund under G.S. 105-241.6.

BILL DRAFT 2007-RBz-33: Modify Estate Tax Law

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	April 2, 2008
Introduced by:		**Summary by:**	Cindy Avrette
Version:	Bill Draft		Committee Staff

SUMMARY: This bill draft would modify the formula for calculating North Carolina estate tax on estates that include property located in another state by excluding the value of that property from the estate tax payable to North Carolina. The bill would become effective when it becomes law and apply retroactively to the estates of decedents for which the statute of limitations for claiming a refund had not expired as of December 28, 2007.

CURRENT LAW: For estates with property only in North Carolina, the North Carolina estate tax equals the amount of the credit for state estate tax allowed on the federal estate tax return, as the federal law provided in 2001. If an estate has property in more than one state, the federal credit amount must be prorated between North Carolina and the other states in which the estate has property. In 2002, the Estate Tax Section of the North Carolina Bar Association recommended a change in the calculation formula from a net value ratio to a gross value ratio. The recommended change also provided that when the estate of a North Carolina decedent included out-of-state property, the North Carolina estate tax would be calculated as the amount of the 2001 tax credit reduced by *the lesser of* the amount of estate tax paid to the other state or the amount of the 2001 tax credit times the value of the out-of-state property divided by the value of the gross estate.[1]

In 2001, Congress phased out the state estate tax credit over four years by reducing it 25% in 2002, 50% in 2003, 75% in 2004,and by repealing it entirely in 2005.[2] In calculating the estate tax payable in North Carolina for an estate that includes property located in a state that does not impose an estate tax, the current formula provides that the North Carolina estate tax would be reduced by zero, because that is the lesser of the amount paid to the state that does not impose an estate tax. This calculation results in North Carolina's estate tax being imposed on property that is not located within its taxing jurisdiction.[3]

BILL ANALYSIS: This bill draft would modify the formula for calculating North Carolina estate tax on estates that include property located in another state by prorating the federal credit amount between North Carolina and the other states in which the estate has property; it would eliminate the '*lesser of*' language that sometimes results in North Carolina's estate tax being imposed on property located in another state.

A case has been filed in Mecklenburg County, ***Stowe v. Department of Revenue***, to recover North Carolina estate taxes imposed on property located in South Carolina. The plaintiffs argue in their

[1] This provision mirrored the Virginia law as it existed prior to July 1, 2007.

[2] The provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 made a number of changes to the estate tax rates and to the applicable exclusion amounts. The top marginal tax rates were gradually reduced and the exclusion amounts were gradually increased, with a full repeal of the estate tax for 2010. For 2007 through 2009, the top marginal tax rate is 45%; for 2007 and 2008, the applicable exclusion amount is $2,000,000; for 2009, the applicable exclusion amount is $3,500,000. The provisions for these changes are currently set to expire for estates of decedents dying on or after December 31, 2010. Therefore, in 2011, the exclusion amount goes back to $1,000,000, the top marginal rate returns to 55%, and the state estate tax credit is reinstated.

[3] Virginia repealed its estate tax in 2006. South Carolina, Georgia, and Tennessee do not require the payment of an estate tax for estates on which the federal estate tax law doe not allow a credit for state estate tax (2005-through 2010).

complaint that the formula for calculating North Carolina estate tax due when property is located in more than one state is unconstitutional because it provides less than a full reduction of the tax attributable to the out-of-state property when the other state does not impose an estate tax, or imposes an estate tax less than the prorated federal credit amount. The plaintiffs filed the complaint on December 27, 2007.

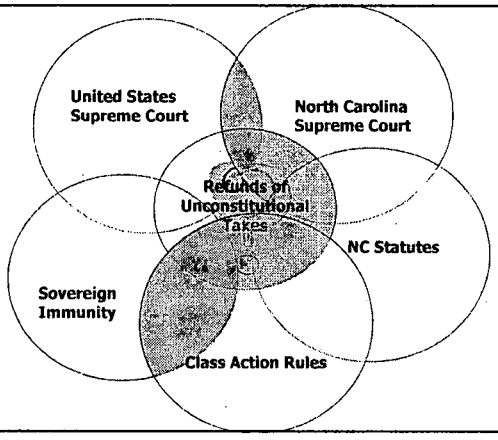
The bill draft provides that the change proposed in the bill would become effective when it becomes law and would apply retroactively to the estates of decedents for which the statute of limitations for claiming a refund had not expired on December 27, 2007. A personal representative of an estate for which the statute of limitations had not expired may file a claim for refund under G.S. 105-241.6.

G.S. 105-241.6 provides that the general statute of limitations for obtaining a refund of an overpayment of tax is the later of the following:

- Three years after the due date of the return. – A North Carolina estate tax return is due on the date a federal estate tax return is due. A federal estate tax return is due nine months from the date of death. An extension of time to file a federal estate tax return is an automatic extension of the time to file a State tax return.
- Two years after payment of the tax.

Class Actions and the Refund of Unconstitutional Taxes

Revenue Laws Study Committee
Trina Griffin, Research Division
April 2, 2008



U.S. Supreme Court

- Leading case: *McKesson Corp* (1990)
- Held: State must provide "meaningful backward-looking relief to rectify any unconstitutional deprivation."
- States have been given wide latitude in the manner in which they may provide a remedy.
- No bright-line test.

Sovereign Immunity

- The State is immune from suit unless it expressly consents to be sued.
- It is for the General Assembly to determine when and under what circumstances the State may be sued.

NC Statute (Pre-2008)

- "Protest" statute (G.S. 105-267) required taxpayers to:
  - Pay the tax first.
  - File a claim for a refund.
  - Wait 90 days before filing suit.

Rule of civil Procedure

Class Actions (NCRCP 23)

- The requirements for a class action are:
  1. The existence of a class
  2. Adequacy of representation
  3. Numerosity
- *Durham Land Owners* (2006) - NC Court of Appeals held that failure of Rule 23 to specifically mention the State does not mean that all class actions are barred by sovereign immunity.

NC Judicial Interpretation
Prior to 1998

Bailey I

- None of the plaintiffs had complied with G.S. 105-267.

Swanson

- Plaintiffs filed a "class demand letter."

- Both cases were dismissed.
- The NC Supreme Court upheld both dismissals because the procedural requirements of G.S. 105-267 had not been met.

NC Judicial Interpretation
After 1998

- Bailey II – Class consisted of protesters, but Court extended refunds to all State and local retirees who had vested as of Aug. 12, 1989, even for those who had not filed a claim.
- Smith – Court held that nonprotesters were entitled to relief, but under the uniformity provision of the NC Constitution.
- Dunn – Court upheld class certification where class includes nonprotesters of a different tax type and for different tax years than the named plaintiffs.

Reform Tax Appeals (Eff. 1/1/08)

- SB 242 completely revised administrative and judicial review of disputed tax matters.
- Taxpayers must exhaust administrative remedy before going to court.
- Specific statute authorizing civil action for constitutional challenges.
- Silent on class actions?

The Problem

- Lack of clarity
- No procedures or guidelines
- Unpredictability
- Vulnerability to lawsuits
  - Of the 40 states that have an exemption for interest income derived from in-state municipal bonds, NC was one of only 3 states targeted with a class action lawsuit.

What Do the Feds Do?

Tax Class Actions PERMITTED

- Court of Federal Claims
- U.S. District Court
- Every taxpayer in the class MUST file a claim for refund prior to bringing suit.

Tax Class Actions PROHIBITED

- United States Tax Court

What Do Other States Do?

By Statute

Few states specifically address tax class actions by statute.

PERMITTED by statute:

- Indiana
- Oregon
- Texas
- Montana
- Utah

PROHIBITED by statute:

- Georgia
- South Carolina

What Do Other States Do?
By Judicial Interpretation

Question #1: Are tax class actions permissible generally?

- 2 schools of thought:
  1. YES - General class action rules apply. If common legal questions are involved and the relief sought is appropriate for all members of the class, a class action is appropriate.
  2. NO: Omission of specific authorization for tax class actions means they're not available under principles of sovereign immunity. Also, each taxpayer's right to refund is independent of the refund rights of other taxpayers.

What Do Other States Do?
By Judicial Interpretation

Question #2: If class actions are permissible, how is class membership determined?

- 2 schools of thought:
  1. "Class demand" – The filing of a claim by one taxpayer on behalf of other members of the class is sufficient as long as information is provided sufficient to ascertain other class members.
  2. Individual demands: - Each individual taxpayer must file a claim for refund in order to become a member of the class.

Tax Class Actions Permitted
By Judicial Interpretation

YES: Alabama, Florida, Kentucky, North Carolina, Arizona, Arkansas, Colorado, California, Idaho, Alaska, D.C., Kansas, New York, Vermont

NO : Nebraska, Ohio, Pennsylvania, Maryland, Missouri, South Dakota, Massachusetts, Washington

Unclear?

- 22 states: Connecticut, Delaware, Hawaii, Illinois, Iowa, Louisiana, Maine, Michigan, Minnesota, Mississippi, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Rhode Island, Tennessee, Virginia, West Virginia, Wisconsin, Wyoming
- In many states, attempted class actions have been dismissed for failure to exhaust administrative remedies.
- Probably permitted if statutory procedures followed.

Options

#1
Status quo; law by judicial decree

#3
Expressly allow tax class actions with certain procedures

#2
Prohibit tax class actions.

- **Eligible to join class if return filed and SOL has not expired**
- **Must file some notice/claim with Dept.**
- **Expedited review procedures**
- **No unnecessary hearing**
- **Filing of a complaint tolls SOL for other potential class members**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-MCxz-195C [v.5] (2/4)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
3/27/2008 1:22:46 PM

Short Title: Circuit Breaker Tax Benefit Modifications. (Public)

Sponsors: Senator.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE CIRCUIT BREAKER TAX BENEFIT.

The General Assembly of North Carolina enacts:

PART I: CIRCUIT BREAKER MODIFICATIONS

SECTION 1.1. G.S. 105-273 reads as rewritten:

"**§ 105-273. Definitions.**

~~When used in this Subchapter (unless the context requires a different meaning):~~The following definitions apply in this Subchapter:

(1) ~~"Abstract" means the~~Abstract. – The document on which the property of a taxpayer is listed for ad valorem taxation and on which the appraised and assessed values of the property are recorded.

(2) ~~"Appraisal" means both the~~Appraisal. – The true value of property ~~and~~ or the process by which true value is ascertained.

(3) ~~"Assessment" means both the~~Assessment. – The tax value of property ~~and~~ or the process by which the assessment is determined.

(4) Repealed by Session Laws 1973, c. 695, s. 15, effective January 1, 1974.

(4a) ~~"Code" [is] defined~~Code. – Defined in G.S. 105-228.90.

(5) ~~"Collector" or "tax collector" means any~~Collector or tax collector. – A person charged with the duty of collecting taxes for a county or municipality.

(5a) ~~"Contractor" means a~~Construction contractor. – A taxpayer who is regularly engaged in building, installing, repairing, or improving real property.

(6) ~~"Corporation" includes nonprofit corporation and every type of~~ Corporation. – An organization having capital stock represented by ~~shares.~~ or an incorporated, non-profit organization.

(6a) ~~"Discovered property" includes all~~ Discovered property. – Any of the following:

a. Property that was not listed during a listing period.

b. Property that was listed but the listing included a substantial understatement.

c. Property that has been granted an exemption or exclusion and does not qualify for the exemption or exclusion.

(6b) ~~"To discover property" means to~~Discover property. – ~~determine~~Determine any of the following:

a. Property has not been listed during a listing period.

b. A taxpayer made a substantial understatement of listed property.

c. Property was granted an exemption or exclusion and the property does not qualify for an exemption or exclusion.

(7) ~~"Document" includes book,~~Document. – A book, paper, record, statement, account, map, plat, film, picture, tape, object, instrument, ~~and~~ or any other thing conveying information.

(7a) ~~"Failure to list property" includes all~~Failure to list property. – Any of the following:

a. Failure to list property during a listing period.

b. A substantial understatement of listed property.

c. Failure to notify the assessor that property granted an exemption or exclusion under an application for exemption or exclusion does not qualify for the exemption or exclusion.

(8) ~~"Intangible personal property" means patents,~~Intangible personal property. – Patents, copyrights, secret processes, formulae, good will, trademarks, trade brands, franchises, stocks, bonds, cash, bank deposits, notes, evidences of debt, leasehold interests in exempted real property, bills and accounts receivable, ~~and~~ or other like property.

(8a) ~~"Inventories" means~~Inventories. – Any of the following:

a. ~~(i) goods~~Goods held for sale in the regular course of business by manufacturers, retail and wholesale merchants, and ~~contractors, and (ii)~~construction contractors. As to retail and wholesale merchants and construction contractors, the term includes packaging materials that accompany and become a part of the goods sold.

b. ~~goods~~Goods held by construction contractors to be furnished in the course of building, installing, repairing, or improving real property.

c. As to manufacturers, ~~the term includes raw~~ raw materials, goods in process, ~~and~~ finished goods, ~~as well as~~or other

materials or supplies that are consumed in manufacturing or ~~processing,~~processing or that accompany and become a part of the sale of the property being sold. The term does not include fuel used in manufacturing or processing and materials or supplies not used directly in manufacturing or processing.

d. ~~The term also includes a~~A modular home as defined in G.S. 105-164.3(21b) that is used exclusively as a display model and held for eventual sale at the retail merchant's place of business.

e. ~~The term also includes crops.~~Crops, livestock, poultry, feed used in the production of livestock and poultry, ~~and~~ or other agricultural or horticultural products held for sale, whether in process or ready for sale. ~~The term does not include fuel used in manufacturing or processing, nor does it include materials or supplies not used directly in manufacturing or processing. As to retail and wholesale merchants and contractors, the term includes, in addition to articles held for sale, packaging materials that accompany and become a part of the sale of the property being sold.~~

(9) ~~"List" or "listing," when used as a noun, means abstract.~~List or listing. – An abstract, when the term is used as a noun.

(10) Repealed by Session Laws 1987, c. 43, s. 1.

(10a) ~~"Local tax official" includes a~~Local tax official. – A county assessor, an assistant county assessor, a member of a county board of commissioners, a member of a county board of equalization and review, a county tax collector, ~~and~~ or the municipal ~~equivalents~~ equivalent of one of these officials.

(10b) ~~"Manufacturer" means a~~Manufacturer. – A taxpayer who is regularly engaged in the mechanical or chemical conversion or transformation of materials or substances into new products for sale or in the growth, breeding, raising, or other production of new products for sale. The term does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.

(11) ~~"Municipal corporation" and "municipality" mean city.~~Municipal corporation or municipality. – A city, town, incorporated village, sanitary district, rural fire protection district, rural recreation district, mosquito control district, hospital district, metropolitan sewerage district, watershed improvement district, a consolidated city-county as defined by G.S. 160B-2, or ~~other~~ another district or unit of local government by or for which ad valorem taxes are levied. ~~The terms also include a consolidated city-county as defined by G.S. 160B-2(1).~~

(12) ~~"Person" and "he" include any~~Person. – An individual, a trustee, an executor, an administrator, ~~other~~ another fiduciary, a corporation, a

limited liability company, an unincorporated association, a partnership, a sole proprietorship, a company, a firm, or ~~other~~ another legal entity.

(13) ~~"Real property," "real estate," and "land" mean not only the~~Real property, real estate, or land. – Any of the following:

a. The land ~~itself,~~itself.

b. ~~but also buildings.~~Buildings, structures, improvements, ~~and~~ or permanent fixtures on ~~the land,~~land.

c. ~~and all~~All rights and privileges belonging or in any way appertaining to the property.

d. ~~These terms also mean a~~A manufactured home as defined in ~~G.S. 143-143.9(6)~~G.S. 143-143.9(6), unless it is considered tangible personal property for failure to meet all of the following requirements:

1. ~~if it~~It is a residential ~~structure;~~structure.

2. It has the moving hitch, wheels, and axles ~~removed;~~removed.

3. ~~and~~It is placed upon a permanent foundation either on land owned by the owner of the manufactured home or on land in which the owner of the manufactured home has a leasehold interest pursuant to a lease with a primary term of at least 20 years ~~for the real property on which the manufactured home is affixed~~ and ~~where~~ the lease expressly provides for disposition of the manufactured home upon termination of the lease. ~~A manufactured home as defined in G.S. 143-143.9(6) that does not meet all of these conditions is considered tangible personal property.~~

(13a) ~~"Retail Merchant" means a~~Retail merchant. – A taxpayer who is regularly engaged in the sale of tangible personal property, acquired by a means other than manufacture, processing, or producing by the merchant, to users or consumers.

(13b) ~~"Substantial understatement" means the~~Substantial understatement. – The omission of a material portion of the value, quantity, or other measurement of taxable property. The determination of materiality in each case shall be made by the assessor, subject to the taxpayer's right to review of the determination by the county board of equalization and review or board of commissioners and appeal to the Property Tax Commission.

(14) ~~"Tangible personal property" means all~~Tangible personal property. – All personal property that is not intangible and that is not permanently affixed to real property.

(15) ~~"Tax" and "taxes" include the~~Tax or taxes. – The principal amount of any ~~tax, costs, penalties, and interest imposed upon property tax or dog~~

~~license tax.~~property tax or dog license tax and costs, penalties, and interest.

(16) ~~"Taxing unit" means a~~Taxing unit. – A county or municipality authorized to levy ad valorem property taxes.

(17) ~~"Taxpayer" means any~~Taxpayer. – A 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.~~

(18) ~~"Valuation" means appraisal~~Valuation. – Appraisal and assessment.

(19) ~~"Wholesale Merchant" means a~~Wholesale merchant. – A taxpayer who is regularly engaged in the sale of tangible personal property, acquired by a means other than manufacture, processing, or producing by the merchant, to other retail or wholesale merchants for resale or to manufacturers for use as ingredient or component parts of articles being manufactured for sale."

SECTION 1.2. G.S. 105-277.1B reads as rewritten:

"**§ 105-277.1B. Property tax homestead circuit breaker.**

(a) Classification. – A permanent residence owned and occupied by a qualifying owner is designated a special class of property under Article V, Section 2(2) of the North Carolina Constitution and is taxable in accordance with this section.

(b) Definitions. – The definitions provided in G.S. 105-277.1 apply to this section.

(c) Income Eligibility Limit. – The income eligibility limit provided in G.S. 105-277.1(a2) applies to this section.

(d) Qualifying Owner. – For the purpose of qualifying for the property tax homestead circuit breaker under this section, a qualifying owner is an owner who meets all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

(1) The owner has an income for the preceding calendar year of not more than one hundred fifty percent (150%) of the income eligibility limit specified in subsection (c) of this section.

(2) The owner has owned and occupied the property as a permanent residence for at least five years.

(3) The owner is at least 65 years of age or totally and permanently disabled.

(4) The owner is a North Carolina resident.

(e) Multiple Owners. – A permanent residence owned and occupied by husband and wife as tenants by the entirety is entitled to the full benefit of the property tax homestead circuit breaker notwithstanding that only one of them meets the occupation requirement and the age or disability requirement of this section. When a permanent

residence is owned and occupied by two or more persons other than husband and wife, no property tax homestead circuit breaker is allowed unless all of the owners qualify and elect to defer taxes under this section.

(f) Tax Limitation. – A qualifying owner may defer the portion of tax imposed on his or her permanent residence if it exceeds ~~a~~ the percentage of the qualifying owner's income ~~as provided in this section.~~set out in the table in this subsection. If a permanent residence is subject to tax by more than one taxing unit and the total tax liability exceeds the tax limit imposed by this section, then both the taxes due under this section and the taxes deferred under this section must be apportioned among the taxing units based upon the ratio each taxing unit's tax rate bears to the total tax rate of all units.

~~Income~~	~~Percentage~~
~~Less than the income eligibility limit~~	~~4.0%~~
~~100% to 150% of the income eligibility limit~~	~~5.0%~~

Income Over	Income Up To	Percentage
-0-	Income Eligibility Limit	4.0%
Income Eligibility Limit	150% of Income Eligibility Limit	5.0%

(g) Temporary Absence. – An otherwise qualifying owner does not lose the benefit of this circuit breaker because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

(h) Deferred Taxes. – The difference between the taxes due under this section and the taxes that would have been payable in the absence of this section are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes for the three fiscal years preceding the current tax year shall be carried forward in the records of the taxing unit or units as deferred taxes. ~~Interest accrues on the deferred taxes due as if they had been payable on the dates on which they originally became due.~~ The deferred taxes are due and payable in accordance with G.S. 105-277.1C when the property loses its eligibility for deferral because of the occurrence of a disqualifying event as provided in subsection (i) of this section. On or before September 1 of each year, the ~~assessor~~ collector shall notify each residence owner to whom a tax deferral has previously been granted of the accumulated sum of deferred taxes and interest.

(i) Disqualifying Events. – ~~Taxes deferred under this section are payable within nine months after a disqualifying event. The tax for the fiscal year that opens in a calendar year in which deferred taxes become due is computed as if the property was not eligible for property tax relief under this section.~~ Each of the following constitutes a disqualifying event:

(1) The owner transfers the residence. Transfer of the residence ~~under this subdivision~~ is not a disqualifying event if (i) the owner transfers the residence ~~as part of a divorce proceeding~~ to a co-owner of the residence or, as part of a divorce proceeding, to ~~either~~ his or her spouse ~~who qualifies for tax deferral under this section or to a co-owner of the residence.~~and (ii) that individual occupies or continues to occupy the

property as his or her permanent ~~residence, and (iii) that individual elects to continue deferring payment of the tax.~~residence.

(2) The owner dies. Death of the owner ~~under this subdivision~~ is not a disqualifying event if (i) the owner's share passes to ~~either~~a co-owner of the residence or to his or her spouse ~~who qualifies for tax deferral under this section or to a co-owner of the residence,~~residence and (ii) that individual occupies or continues to occupy the property as his or her permanent ~~residence, and (iii) that individual elects to continue deferring payment of the tax.~~residence.

(3) The owner ceases to use the property as a permanent residence.

(j) ~~Interruption of Qualification. – If the owner of a tax-deferred residence does not qualify under this section for deferral as of January 1 preceding a taxable year for reasons other than a disqualifying event or if the owner of a tax-deferred residence revokes an application for deferral by notifying the assessor in writing, the owner may not defer any additional property taxes under this section without submitting a new application. Deferred taxes from earlier years do not become due because of an interruption of qualification; however, deferred taxes existing at the time of an interruption of qualification shall be carried forward until the occurrence of a disqualifying event. If the owner qualifies for tax deferral under this section following an interruption of qualification, the taxing unit or units shall disregard the years during which there was an interruption of qualification for purposes of determining the three fiscal years preceding the current tax year under subsection (g) of this section.~~Gap in Deferral. – If an owner of a residence on which taxes have been deferred under this section is not eligible for continued deferral for a tax year, the taxes deferred from the prior tax years are not due and payable but are carried forward until a disqualifying event occurs. If the owner of the residence qualifies for deferral after one or more years in which he or she did not qualify for deferral, the years in which the owner did not qualify are disregarded in determining the three years for which the deferred taxes are carried forward.

~~(k) Prepayment. – All or part of the deferred taxes and accrued interest may be paid to the tax collector at any time. Any partial payment is applied first to accrued interest. A residence owner to whom a tax deferral has previously been granted may revoke the application for deferral at any time by notifying the assessor in writing.~~

(l) Creditor Limitations. – A mortgagee or trustee that elects to pay any tax deferred by the owner of a residence subject to a mortgage or deed of trust does not acquire a right to foreclose as a result of the election. Except for requirements dictated by federal law or regulation, any provision in a mortgage, deed of trust, or other agreement that prohibits the owner from deferring taxes on property under this section is void.

(m) Construction. – This section does not affect the attachment of a lien for personal property taxes against a tax-deferred residence.

(n) Application. – An application for property tax relief provided by this section should be filed during the regular listing period, but may be filed and must be accepted at any time up to and through June 1 preceding the tax year for which the relief is

claimed. Persons may apply for this property tax relief by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1."

SECTION 1.3. G.S. 105-282.1(a)(2)(e) is repealed.

SECTION 1.4. G.S. 153A-148.1(a) is amended by adding a new subdivision to read:

"(a) Disclosure Prohibited. – Notwithstanding Chapter 132 of the General Statutes or any other law regarding access to public records, local tax records that contain information about a taxpayer's income or receipts are not public records. A current or former officer, employee, or agent of a county who in the course of service to or employment by the county has access to information about the amount of a taxpayer's income or receipts may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(6) To include on a property tax receipt the amount of property taxes due and the amount of property taxes deferred on a residence classified under G.S. 105-277.1B, the property tax homestead circuit breaker."

SECTION 1.5. G.S. 160A-208.1(a) is amended by adding a new subdivision to read:

"(a) Disclosure Prohibited. – Notwithstanding Chapter 132 of the General Statutes or any other law regarding access to public records, local tax records that contain information about a taxpayer's income or receipts are not public records. A current or former officer, employee, or agent of a city who in the course of service to or employment by the city has access to information about the amount of a taxpayer's income or receipts may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(4) To include on a property tax receipt the amount of property taxes due and the amount of property taxes deferred on a residence classified under G.S. 105-277.1B, the property tax homestead circuit breaker."

PART II: DEFERRAL PROGRAM MODIFICATIONS

SECTION 2.1. G.S. 105-275(29a) reads as rewritten:

"**§ 105-275. Property classified and excluded from the tax base.**

The following classes of property are hereby designated special classes under authority of Article V, Sec. 2(2), of the North Carolina Constitution and shall not be listed, appraised, assessed, or taxed:

...

(29a) Land that is within an historic district ~~held.~~and is held by a nonprofit corporation organized for historic preservation ~~purposes.~~purposes for use as a future site for an historic structure that is to be moved to the site from another location. Property may be classified under this subdivision for no more than five years. The taxes that would otherwise be due on land classified under this subdivision shall be a lien on the real property of the taxpayer as provided in

G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit or units as deferred ~~taxes and shall be payable five years from the fiscal year the exclusion is first claimed unless an historic structure is moved onto the site during that time. If an historic structure has not been moved to the site within five years, then deferred taxes for the preceding five fiscal years shall immediately be payable, together with interest as provided in G.S. 105-360 for unpaid taxes that shall accrue on the deferred taxes as if they had been payable on the dates on which they would originally become due. All liens arising under this subdivision are extinguished upon either the payment of any deferred taxes under this subdivision or the location of an historic structure on the site within the five-year period allowed under this subdivision.~~taxes. The deferred taxes are due and payable in accordance with G.S. 105-277.1C when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when an historic structure is not moved to the property within five years from the first day of the fiscal year the property was classified under this subdivision."

SECTION 2.2. Chapter 105 of the North Carolina General Statutes is amended by adding a new section to read:

"**105-277.1C. Uniform provisions for payment of deferred taxes.**

(a) Scope. – This section applies to the following deferred tax programs:

(1) G.S. 105-275(29a), historic district property held as future site of historic structure.

(2) G.S. 105-277.1B, the property tax homestead circuit breaker.

(3) G.S. 105-277.4(c), present-use value property.

(4) G.S. 105-277.14, working waterfront property.

(5) G.S. 105-278(b), historic property.

(6) G.S. 105-278.6(e), nonprofit property held as future site of low- or moderate-income housing.

(b) Payment. – Taxes deferred on property under a deferral program listed in subsection (a) of this section are due and payable on the day the property loses its eligibility for the deferral program as a result of a disqualifying event. If only a part of property for which taxes are deferred loses its eligibility for deferral, the assessor must determine the amount of deferred taxes that apply to that part and that amount is due and payable. Interest accrues on deferred taxes as if they had been payable on the dates on which they would have originally become due.

The tax for the fiscal year that begins in the calendar year in which the deferred taxes are due and payable is computed as if the property had not been classified for that year. A lien for deferred taxes is extinguished when the taxes are paid.

All or part of the deferred taxes that are not due and payable may be paid to the tax collector at any time without affecting the property's eligibility for deferral. A partial payment is applied first to accrued interest."

SECTION 2.3. G.S. 105-277.4(c) reads as rewritten:

"(c) Deferred Taxes. – Land meeting the conditions for classification under G.S. 105-277.3 must be taxed on the basis of the value of the land for its present use. The difference between the taxes due on the present-use basis and the taxes that would have been payable in the absence of this classification, together with any interest, penalties, or costs that may accrue thereon, are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes must be carried forward in the records of the taxing unit or units as deferred taxes. The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1C when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when the land fails to meet any condition or requirement for classification or when an application is not approved. ~~The taxes become due and payable when the land fails to meet any condition or requirement for classification. Failure to have an application approved is ground for disqualification. The tax for the fiscal year that opens in the calendar year in which deferred taxes become due is computed as if the land had not been classified for that year, and taxes for the preceding three fiscal years that have been deferred are immediately payable, together with interest as provided in G.S. 105-360 for unpaid taxes. Interest accrues on the deferred taxes due as if they had been payable on the dates on which they originally became due. If only a part of the qualifying tract of land fails to meet a condition or requirement for classification, the assessor must determine the amount of deferred taxes applicable to that part and that amount becomes payable with interest as provided above. Upon the payment of any taxes deferred in accordance with this section for the three years immediately preceding a disqualification, all liens arising under this subsection are extinguished. The deferred taxes for any given year may be paid in that year without the qualifying tract of land becoming ineligible for deferred status.~~"

SECTION 2.4. G.S. 105-277.14(c) reads as rewritten:

"(c) Deferred Taxes. – The difference between the taxes that are due on working waterfront property taxed on the basis of its present use and that would be due if the property were taxed on the basis of its true value is a lien on the property. The difference in taxes must be carried forward in the records of each taxing unit as deferred taxes. The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1C when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when the property no longer qualifies as working waterfront property. ~~The deferred taxes become due when the property no longer qualifies as working waterfront property. The tax for the fiscal year that opens in the calendar year in which deferred taxes become due is computed as if the property had not been classified for that year, and taxes for the preceding three fiscal years that have been deferred are immediately payable, together with interest, as provided in G.S. 105-360 for unpaid taxes. Interest accrues on the deferred taxes due as if they had been payable on the dates on which they originally became due. If only a part of the property no longer qualifies as working waterfront property, the assessor must determine the amount of deferred taxes applicable to that part and that amount becomes payable with interest. Upon the payment of any taxes deferred under this~~

~~section for the three years immediately preceding a disqualification, all liens arising under this subsection are extinguished.~~"

SECTION 2.5. G.S. 105-278(b) reads as rewritten:

"(b) The difference between the taxes due on the basis of fifty percent (50%) of the true value of the property and the taxes that would have been payable in the absence of the classification provided for in subsection (a) shall be a lien on the property of the taxpayer as provided in ~~G.S. 105-355(a) and~~G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit or units as deferred ~~taxes, but shall not be payable until the property loses its eligibility for the benefit of this classification because of a change in an ordinance designating a historic property or a change in the property, except by fire or other natural disaster, which causes its historical significance to be lost or substantially impaired.~~taxes. The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1C when the property loses the benefit of this classification as a result of a disqualifying event. A disqualifying event occurs when there is a change in an ordinance designating a historic property or a change in the property, other than by fire or other natural disaster, that causes the property's historical significance to be lost or substantially impaired. ~~The tax for the fiscal year that opens in the calendar year in which a disqualification occurs shall be computed as if the property had not been classified for that year, and taxes for the preceding three fiscal years that have been deferred as provided herein shall be payable immediately, together with interest thereon as provided in G.S. 105-360 for unpaid taxes, which shall accrue on the deferred taxes as if they had been payable on the dates on which they originally became due. If only a part of the historic property loses its eligibility for the classification, a determination shall be made of the amount of deferred taxes applicable to that part, and the amount shall be payable with interest as provided above.~~"

SECTION 2.6. G.S. 105-278.6(e) reads as rewritten:

"(e) Real property held by an organization described in subdivision (a)(8) ~~is held~~ for a charitable purpose under this section ~~if it is held for no more than five years~~ as a future site for housing for individuals or families with low or moderate ~~incomes.~~incomes may be classified under this section for no more than five years. The taxes that would otherwise be due on real property exempt under this subsection shall be a lien on the property as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit as deferred ~~taxes and shall be payable five years after the tax year the exemption is first claimed unless the organization has constructed low- or moderate-income housing on the site. If this condition has not been met, the deferred taxes for the preceding five fiscal years shall be payable immediately, together with interest as provided in G.S. 105-360 for unpaid taxes that accrues on the deferred taxes as if they had been payable on the dates they would have originally become due. All liens arising under this subsection are extinguished upon one of the following:~~

~~(1) Payment of all deferred taxes under this subsection.~~

~~(2) Construction by the organization of low- or moderate-income housing on the site within five years after the tax year the exemption is first claimed.~~taxes. The deferred taxes are due and payable in accordance

with G.S. 105-277.1C when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when the organization fails to construct low- or moderate-income housing on the site within five years from the first day of the fiscal year the property was classified under this subsection."

SECTION 2.7. G.S. 105-360(a) reads as rewritten:

"(a) Taxes levied under this Subchapter by a taxing unit are due and payable on September 1 of the fiscal year for which the taxes are levied. Taxes are payable at par or face amount if paid before January 6 following the due date. Taxes paid on or after January 6 following the due date ~~are delinquent and~~ are subject to interest charges. Interest accrues on taxes paid on or after January 6 as follows:

(1) For the period January 6 to February 1, interest accrues at the rate of two percent ~~(2%); and~~(2%).

(2) For the period February 1 until the principal amount of the taxes, the accrued interest, and any penalties are paid, interest accrues at the rate of three-fourths of one percent (3/4%) a month or fraction thereof."

SECTION 2.8. Article 26 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-365.1. When and against whom collection remedies may be used.**

(a) Date of Delinquency. – A tax collector may collect a tax using the remedies provided in G.S. 105-366 through G.S. 105-375 on or after the date the tax is delinquent. A tax is delinquent on the following date:

(1) For a tax that is not a deferred tax, the date the tax accrues interest.

(2) For a deferred tax, other than a tax described in subdivision (3) of this section, the date a disqualifying event occurs.

(3) For a deferred tax under G.S. 105-277.1B that lost its eligibility for deferral due to the death of the owner, the first day of the sixth month following the date of death."

(b) Enforced Collection. – For purposes of using the collection remedies provided in G.S. 105-366 through G.S. 105-375 to collect delinquent taxes, the taxing unit shall proceed against property of the following taxpayer:

(1) To collect delinquent taxes assessed on real property, the owner of record of property on which tax is due as of the date of delinquency and any subsequent owner of record of the property.

(2) To collect delinquent taxes assessed on personal property, the owner of record as of January 1 of the calendar year in which the fiscal year of taxation begins.

(3) To collect delinquent taxes assessed on a registered motor vehicle, the owner of record as of the date on which the current vehicle registration is renewed or the date on which a new registration is applied for."

PART III: TECHNICAL CORRECTION

SECTION 3. G.S. 105-277.1(a2) reads as rewritten:

"(a2) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2008)** Income Eligibility Limit. – ~~Until~~ For the taxable year beginning on July 1, 2008, the income eligibility limit is twenty-five thousand dollars ($25,000). For taxable years beginning on or after July 1, ~~2008.~~2009, the income eligibility limit is the amount for the preceding year, adjusted by the same percentage of this amount as the percentage of any cost-of-living adjustment made to the benefits under Titles II and XVI of the Social Security Act for the preceding calendar year, rounded to the nearest one hundred dollars ($100.00). On or before July 1 of each year, the Department of Revenue must determine the income eligibility amount to be in effect for the taxable year beginning the following July 1 and must notify the assessor of each county of the amount to be in effect for that taxable year."

PART IV: EFFECTIVE DATE

SECTION 4. This act is effective for taxes imposed for taxable years beginning on or after July 1, ~~2008.~~ 2009

SENATE BILL 1442:
Senior Circuit Breaker Tax Benefit

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	July 30, 2007
Introduced by:	Sen. Snow	**Summary by:**	Dan Ettefagh
Version:	PCS to First Edition S1442-CSMC		Committee Counsel

SUMMARY: The PCS for Senate Bill 1442 would create a senior property tax homestead deferral system based on certain qualifications and income requirements of owners of permanent residences located in North Carolina.

CURRENT LAW: Under current law, the only homestead property tax benefit is found in G.S. 105-277.1, the property tax homestead exclusion. Under the homestead exclusion, North Carolina residents who are at least 65 years of age or totally and permanently disabled and who meet the income eligibility limit[1] may exclude from taxation the greater of twenty thousand dollars ($20,000) or fifty percent (50%) of the appraised value of the permanent residence.

BILL ANALYSIS: Senate Bill 1442 proposes a property tax deferral benefit for North Carolina residents who have owned and occupied property located in the State as a permanent residence for at least five years and are either 65 years of age or older or totally and permanently disabled. The amount of taxes deferred would be based upon the income eligibility limit of the property tax homestead exclusion. Under this system, an owner who met the requirements of the circuit breaker benefit and made less than the income eligibility limit could elect to defer the portion of taxes imposed on the permanent residence that exceeds four percent (4%) of the owner's income. An owner who met the requirements of the circuit breaker benefit and made between the income eligibility limit and one and one-half times the income eligibility limit could elect to defer the portion of taxes imposed on the permanent residence that exceeds five percent (5%) of the owner's income.

Taxes deferred via the circuit breaker benefit would accrue interest and become a lien on the real property of the taxpayer. The general rule is that these deferred taxes would be carried forward until the death of the owner or until the owner transfers the property, at which time the amount of taxes for that year with no circuit breaker benefit plus those taxes deferred for the preceding three fiscal years, together with interest would become due and must be paid within nine months after the date of death or transfer. An exception to this rule exists, allowing the deferral to continue where the residence is transferred to the former owner's spouse, if the spouse qualifies for the circuit breaker benefit, occupies the property has a permanent residence, and elects to continue deferral.

If the owner ceases to use the residence as a permanent residence for a reason other than a temporary absence for reasons of health or an extended absence while confined to a rest home or nursing home while the residence remains either unoccupied or occupied by the owner's spouse or other dependent, the owner loses the benefit of the circuit breaker, and the deferred taxes become due and payable at the same time the tax levied on the residence in that year is due. If the owner fails to qualify for the circuit

[1] The income eligibility limit until July 1, 2003 was $18,000. For taxable years beginning on or after July 1, 2003, the income eligibility limit is the amount for the preceding year, adjusted by the same percentage of this amount as the percentage of any cost-of-living adjustment made to Social Security benefits, rounded to the nearest $100. In 2006, the income eligibility limit was $19,700.

breaker benefit for a taxable year but continues using the property as a permanent residence, no deferral is allowed for that year but deferred taxes from earlier years do not become due.

Other provisions in the bill include:

- The assessor must annually notify each owner electing this tax benefit of the accumulated sum of deferred taxes and interest.
- Prepayment of all or part of taxes deferred to the tax collector is allowed at any time, with partial payments applied first to accrued interest.
- A qualifying owner may revoke a tax deferral application at any time by written notification to the assessor.
- Mortgagees or trustees electing to pay taxes deferred by a qualifying owner do not acquire a right to foreclose as a result.
- Provisions in mortgages, deeds of trust, or other agreements prohibiting a qualifying owner from electing the circuit breaker benefit are void.
- Where property is owned by two or more persons other than husband and wife, all owners must qualify and elect the circuit breaker benefit for it to be available to any of the qualifying owners.
- The tax benefit under this section may not be combined with the property tax homestead exclusion. Owners qualifying for both types of property tax benefit must elect which to utilize.

EFFECTIVE DATE: This act is effective for taxes imposed for taxable years beginning on or after July 1, 2008.

S1442e1-SMMC-CSMC

Property Tax Workgroup Recommendations

Daniel A. Ettefagh
Legislative Drafting Division
Revenue Laws Study Committee
April 2, 2008

Overview

- Proposal #1:
  - Circuit Breaker Modifications
  - Uniform Administrative Provisions for Deferred Tax Programs and Enforced Collection Remedies
- Proposal #2:
  - Real Property Revaluation Schedule Modifications
  - Mobile Home Liens
- Proposal #3: PUV Program Changes

Circuit Breaker Program

- Enacted in 2007; effective 2009 fiscal year
- Alternative to homestead exclusion
- Tax deferral program permitting deferral of taxes exceeding a certain percentage of the qualifying owner's income
- Deferred taxes become lien and accrue interest until a disqualifying event

In 2007, the General Assembly enacted a new property tax benefit, as an alternative to the homestead exclusion, for qualifying elderly and disabled individuals, to go into effect for the 2009-2010 fiscal year. The circuit breaker permits North Carolina residents who have owned and occupied their permanent residence for at least five years and who are either at least 65 years of age or totally and permanently disabled to defer the portion of taxes imposed on their permanent residence that exceeds 4% of their income (if their income is less than the income eligibility limit of the homestead exclusion) or that exceeds 5% of their income (if their income is equal to or greater than the income eligibility limit but less than 150% of the income eligibility limit). Deferred taxes accrue interest and become a lien on the real property of the taxpayer until the occurrence of a disqualifying event.

Circuit Breaker Program Modifications: Substantive Changes

- Synchronizing the income eligibility limit with the homestead exclusion
- Transferring responsibility from assessor to collector to notify owners of cumulative deferred taxes
- Changing date on which deferred taxes become due and payable
- Converting one-time application to annual application
- Modifying public records disclosure provisions

There are 5 substantive changes relevant to the Circuit Breaker program:

Synchronizing the income eligibility limit: Under current law, there will always be a one penny difference between the income eligibility limit for the homestead exclusion and the circuit breaker.

The proposal sets the income eligibility limit break for the homestead exclusion and the 4% circuit breaker tax benefit at the same point.

Transfer responsibility for notification of accumulated sum of deferred taxes and interest from assessor to collector: Under current law, in towns with separate town collectors, county assessors lack the information necessary to make the notification required under current law for those situations.

The proposal would transfer the responsibility directly to the collectors with the required information and saves money as the collector, who sends the bill in July and August, can simply add this information to the bill when it is sent to qualifying owners.

Changing the date on which taxes deferred under the circuit breaker following a disqualifying event become due and payable: Under current law, a qualifying owner may defer taxes until the occurrence of a disqualifying event. With certain exceptions related to co-owners and spouses, the three disqualifying events are (i) death of the owner, (ii) transfer of the residence by the owner, and (iii) cessation of use of the residence as a permanent residence by the owner. Once a disqualifying event occurs, no more taxes can be deferred, but enforced collection remedies may not be utilized against the property for 9 months (unique for NC's deferral programs; designed to delay collection remedies until after administrator had chance to close estate).

The proposal truncates the delay by: (1) treating enforced collection remedies for taxes deferred under the circuit breaker and taxes deferred under other programs for all disqualifying events other than the owner's death the same and (2) narrowing the delay when the disqualifying event for the circuit breaker is the owner's death to the first day of the sixth month following the date of the owner's death.

Change from one-time application to annual application: The circuit breaker was designed to mirror the homestead exclusion with respect to terminology and many aspects of eligibility, including income. The same one-time application system for the exclusion was adopted for the circuit breaker. However, the exclusion's tax benefit is dependent on property value while the circuit breaker's benefit is dependent on the taxpayer's income amount for each year, thus requiring annual reporting of the income of the taxpayer for the county to prepare the tax bill.

The proposal creates an annual reporting requirement to ease computation of the tax bill and provides a greater protection against intentional or accidental misuse of the program.

Public records (sec. 1.4 and 1.5 of the bill): Currently, G.S. 132-1.1 prohibits the disclosure of local tax records that contain information about a taxpayer's income. Because counties make property tax records public and because the amount of taxes that may be deferred under the circuit breaker is a function of a taxpayer's income, it is possible to use the amount of the tax deferred to calculate the owner's income. The proposal adds an exception to the general prohibition that allows agents of a county to disclose information for the purpose of including on a property tax receipt the amount of property taxes due and the amount of property taxes deferred.

Uniform System of Administration for Deferred Tax Programs

- North Carolina has six tax deferral programs:
  - The circuit breaker property tax benefit (105-277.1B)
  - Historic property held as future site for historic structure (105-275(29a))
  - Nonprofit property held as future site of low- or moderate-income housing (105-278.6(e))
  - Present-use value property (105-277.4(c))
  - Working waterfront property (105-277.14)
  - Historic property (105-278(b))

Tax Deferral Provisions

- Current law: similar administrative provisions but...
  - Variances in statutory language
  - Inconsistency in certain administrative provisions
  - Extensive cross-referencing required for enforced collection remedies
- Proposal: create 2 new statutory sections:
  - G.S. 105-277.1C synchronizes statutory language and terminology and creates a comprehensive set of administrative provisions applicable to all deferral programs
  - G.S. 105-365.1 collects administrative provisions for enforced collection remedies

Current law: North Carolina's deferral programs share a number of similar administrative provisions, but with differences in specific wording and specific terminology. Some programs have provisions that others do not share. Regarding terminology, some programs have due dates; some have payable dates, and yet others have dates of delinquency. Gathering information regarding enforced collection remedies requires reference to multiple statutes.

Proposed system: Part II of the bill creates a set of administrative provisions in one new statutory section applicable to all deferral programs to reduce redundancy and eliminate disparity and creates a second new statutory section to compile the various provisions relating to when and against whom enforced collection remedies may be used.

Proposed Uniform Provisions

- No substantive change
  - Deferred taxes are due and payable on the day the property loses its eligibility for deferral
  - Interest accrues as of the date the taxes would originally have become due and payable
  - Tax for year in which disqualifying event occurs is computed without the tax benefit
  - Liens resulting from deferred taxes are extinguished when taxes are paid
- Substantive change for some programs: If part of a property loses eligibility, deferred taxes on that part only are due and payable
- Substantive change for all programs: All or part of deferred taxes may be paid at any time without affecting deferral eligibility and partial payments apply first to interest

Partial loss of eligibility for deferral represents a change for the following deferral programs:

1. Future site of historic property.
2. Future site of low- or moderate-income housing.

The circuit breaker tax benefit does not expressly address the issue, but the program, like the future site programs, did not expressly permit partial loss of eligibility.

Enforced Collection Remedies: Current Law

- G.S. 105-273(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.
- G.S. 105-330.4(c): Unpaid taxes on classified motor vehicles may be collected by levying on the motor vehicle taxed or on any other personal property of the taxpayer pursuant to G.S. 105-366 and G.S. 105-367, or by garnishment of the taxpayer's property pursuant to G.S. 105-368. . . .
- G.S. 105-360(a): Taxes levied under this Subchapter by a taxing unit are due and payable on September 1 of the fiscal year for which the taxes are levied. Taxes are payable at par or face amount if paid before January 6 following the due date. Taxes paid on or after January 6 following the due date are delinquent and are subject to interest charges.
- G.S. 105-366 through -375 describe remedies against personal property and procedural issues, settlements, and foreclosures.

Current law: statutory provisions regarding enforced collection remedies of a taxing entity require cross-referencing between numerous statutory provisions

Proposal: creation of a single, new statutory provision that collects into one place when and against whom enforced collection remedies may be utilized

Enforced Collection Remedies: Proposed G.S. 105-365.1

§ 105-365.1. When and against whom collection remedies may be used.

(a) Date of Delinquency. – A tax collector may collect a tax using the remedies provided in G.S. 105-366 through G.S. 105-375 on or after the date the tax is delinquent. A tax is delinquent on the following date:

(1) For a tax that is not a deferred tax, the date the tax accrues interest.

(2) For a deferred tax, other than a tax described in subdivision (3) of this section, the date a disqualifying event occurs.

(3) For a deferred tax under G.S. 105-277.1B that lost its eligibility for deferral due to the death of the owner, the first day of the sixth month following the date of death."

(b) Enforced Collection. – For purposes of using the collection remedies provided in G.S. 105-366 through G.S. 105-375 to collect delinquent taxes, the taxing unit shall proceed against property of the following taxpayer:

(1) To collect delinquent taxes assessed on real property, the owner of record of property on which tax is due as of the date of delinquency and any subsequent owner of record of the property.

(2) To collect delinquent taxes assessed on personal property, the owner of record as of January 1 of the calendar year in which the fiscal year of taxation begins.

(3) To collect delinquent taxes assessed on a registered motor vehicle, the owner of record as of the date on which the current vehicle registration is renewed or the date on which a new registration is applied for.

TECHNICAL CORRECTIONS:

Finally, the proposal makes a number of technical corrections. The most important of these technical corrections can be found in Part III of the proposal, which corrects the taxable year the income eligibility limit for the homestead exclusion is raised to $25,000. Summarizing the remaining conforming and technical changes:

Section 1.1 makes conforming changes to current drafting practices for definitional sections, although it should be noted that it does have the one substantive change of eliminating the portion of the definition of taxpayer that deals solely with enforced collection remedies, so that provision can be centralized into the new G.S. 105-365.1

Section 1.2 makes a number of technical changes:

1. In subdivision (d)(2), the requirement that an owner "own and" occupy the property for 5 years make qualification language parallel with the classification language in subsection (a).

2. In subsection (e), language regarding multiple ownership between a wife and husband, substantively identical to what is found in the homestead exclusion, has been added at the Department's request for clarification.

3. In subsection (f), clarifying language has been added to more explicitly require pro ration between taxing units based on the ratio each unit's tax rate bears to the total tax rate.

4. In subdivisions (i)(1) and (i)(2), the language has been restructured to clarify that references to a divorce proceeding apply only to the spouse and not a co-owner. Additionally, these provisions, along with subsection (j), have been modified to supply statutory language conforming to the proposed annual application system instead of the existing one-time application system.

5. The remaining \changes in section 1.2 are deletions or modifications to synchronize the circuit breaker tax deferral program with North Carolina's other tax deferral programs. Any substantive changes have already been addressed.

Questions

General Reappraisals

- Current law:
  - Default: staggered, octennial schedule
  - Adoption of shorter cycles
  - Horizontal adjustments
- Proposed system:
  - Default: staggered, quadrennial schedule
  - Adoption of shorter cycles
  - No horizontal adjustment
  - Conforming and technical changes

Converting the general reappraisal schedule from octennial to quadrennial required the following conforming changes:

1. Sec. 1.1: Under current law, the value of public service company system property is appraised by the Department of Revenue annually rather than at the time of the general reappraisal for the county. Under certain circumstances, an adjustment to public service company system property value may be made in counties observing an octennial schedule in the fifth and eighth years. Under the proposed system, there will be no fifth or eighth year, eliminating the need for this provision.

2. Sec. 1.2, 1.5, and 1.6: Under current law, the county assessor must annually review at least one-eighth of the parcels in the county to verify their eligibility for tax exemption, tax exclusion, or classification in the PUV program. The purpose of this is to ensure that every parcel's eligibility for these tax benefits is verified at least once every 8 years. In order to keep this same level of oversight, the proposed system requires the same verification but increases the number of parcels in the county that must be verified annually to one-fourth. This maintains the status quo of having every parcel in the county eligible for tax exemption, tax exclusion, or classification in the PUV program verified one time between general reappraisals.

3. Sec. 1.7: Under current law, the county budget officer and board of commissioners create a budget that includes a special reserve fund for the next reappraisal. It is required that the county, as far as possible, raise the money necessary for the next reappraisal in equal annual installments during the intervening period between reappraisals. The proposed system eliminates references to an eight-year cycle and, instead, largely substitutes the term "general reappraisal" for "octennial reappraisal." Practically, this results in the same requirement to raise the money necessary for the next reappraisal in equal annual installments during the intervening period between reappraisals but permits the statutory language to directly apply to all counties regardless of whether they advanced the newly installed quadrennial cycle.

Questions

Property Tax Workgroup Recommendations

- Mobile Home Liens
- PUV Program Changes
- Questions

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-MCxz-196 [v.9] (2/13)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
3/28/2008 10:07:23 AM

Short Title:	Change Real Property Revaluation Schedule.	(Public)
Sponsors:	Representative.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE SCHEDULE FOR GENERAL REAPPRAISALS OF REAL PROPERTY IN THE STATE TO REDUCE THE DISCREPANCY BETWEEN THE PROPERTY TAX VALUE OF PROPERTY AND ITS MARKET VALUE AND TO TREAT MOBILE HOMES THE SAME AS OTHER HOMES WITH RESPECT TO PROPERTY TAX LIENS.

The General Assembly of North Carolina enacts:

PART I: REAPPRAISAL SCHEDULE

SECTION 1.1. G.S. 105-282.1(e) reads as rewritten:

"(e) Annual Review of Exempted or Excluded Property. – Pursuant to G.S. 105-296(l), the assessor must annually review at least ~~one-eighth~~one-fourth of the parcels in the county exempted or excluded from taxation to verify that the parcels qualify for the exemption or exclusion."

SECTION 1.2. G.S. 105-284(b) reads as rewritten:

"(b) The assessed value of public service company system property subject to appraisal by the Department of Revenue under G.S. 105-335(b)(1) shall be determined by applying to the allocation of such value to each county a percentage to be established by the Department of Revenue. The percentage to be applied shall be either:

(1) The median ratio established in sales assessment ratio studies of real property conducted by the Department of Revenue in the county in the year the county conducts a reappraisal of real ~~property and in the fourth and seventh years thereafter; or~~ property.

(2) A weighted average percentage based on the median ratio for real property established by the Department of Revenue as provided in subdivision (1) and a one hundred percent (100%) ratio for personal

property. No percentage shall be applied in a year in which the median ratio for real property is ninety percent (90%) or greater.

If the median ratio for real property in any county is below ninety percent (90%) and if the county assessor has provided information satisfactory to the Department of Revenue that the county follows accepted guidelines and practices in the assessment of business personal property, the weighted average percentage shall be applied to public service company property. In calculating the weighted average percentage, the Department shall use the assessed value figures for real and personal property reported by the county to the Local Government Commission for the preceding year. In any county which fails to demonstrate that it follows accepted guidelines and practices, the percentage to be applied shall be the median ratio for real property. The percentage established in a year in which a sales assessment ratio study is conducted shall continue to be applied until another study is conducted by the Department of Revenue."

SECTION 1.3. G.S. 105-286 reads as rewritten:

"**§ 105-286. Time for general reappraisal of real property.**

~~(a) Octennial Plan. — Unless the date shall be advanced as provided in subdivision (a)(2), below, each county of the State, as of January 1 of the year prescribed in the schedule set out in subdivision (a)(1), below, and every eighth year thereafter, shall reappraise all real property in accordance with the provisions of G.S. 105-283 and 105-317.~~

~~(1) Schedule of Initial Reappraisals.—~~

~~Division One — 1972: Avery, Camden, Cherokee, Cleveland, Cumberland, Guilford, Harnett, Haywood, Lee, Montgomery, Northampton, and Robeson.~~

~~Division Two — 1973: Caldwell, Carteret, Columbus, Currituck, Davidson, Gaston, Greene, Hyde, Lenoir, Madison, Orange, Pamlico, Pitt, Richmond, Swain, Transylvania, and Washington. Division Three — 1974: Ashe, Buncombe, Chowan, Franklin, Henderson, Hoke, Jones, Pasquotank, Rowan, and Stokes. Division Four — 1975: Alleghany, Bladen, Brunswick, Cabarrus, Catawba, Dare, Halifax, Macon, New Hanover, Surry, Tyrrell, and Yadkin. Division Five — 1976: Bertie, Caswell, Forsyth, Iredell, Jackson, Lincoln, Onslow, Person, Perquimans, Rutherford, Union, Vance, Wake, Wilson, and Yancey.~~

~~Division Six — 1977: Alamance, Durham, Edgecombe, Gates, Martin, Mitchell, Nash, Polk, Randolph, Stanly, Warren, and Wilkes.~~

~~Division Seven — 1978: Alexander, Anson, Beaufort, Clay, Craven, Davie, Duplin, and Granville.~~

~~Division Eight — 1979: Burke, Chatham, Graham, Hertford, Johnston, McDowell, Mecklenburg, Moore, Pender, Rockingham, Sampson, Scotland, Watauga, and Wayne.~~

~~(2) Advancing Scheduled Octennial Reappraisal. — Any county desiring to conduct a reappraisal of real property earlier than required by this subsection (a) may do so upon adoption by the board of county commissioners of a resolution so providing. A copy of any such~~

~~resolution shall be forwarded promptly to the Department of Revenue. If the scheduled date for reappraisal for any county is advanced as provided herein, real property in that county shall thereafter be reappraised every eighth year following the advanced date unless, in accordance with the provisions of this subdivision (a)(2), an earlier date shall be adopted by resolution of the board of county commissioners, in which event a new schedule of octennial reappraisals shall thereby be established for that county.~~

~~(b) Fourth-Year Horizontal Adjustments. — As of January 1 of the fourth year following a reappraisal of real property conducted under the provisions of subsection (a), above, each county shall review the appraised values of all real property and determine whether changes should be made to bring those values into line with then current true value. If it is determined that the appraised value of all real property or of defined types or categories of real property require such adjustment, the assessor shall revise the values accordingly by horizontal adjustments rather than by actual appraisal of individual properties. That is, by uniform application of percentages of increase or reduction to the appraised values of properties within defined types or categories or within defined geographic areas of the county.~~

~~(c) Value to Be Assigned Real Property When Not Subject to Appraisal. — In years in which real property within a county is not subject to appraisal or reappraisal under subsections (a) or (b), above, or under G.S. 105-287, it shall be listed at the value assigned when last appraised under this section or under G.S. 105-287.~~

(a) Quadrennial Plan. – Each county must reappraise all real property in accordance with the provisions of G.S. 105-283 and G.S. 105-317 as of January 1 of the year set out in the following schedule and every fourth year thereafter, unless the county advances the date as provided in subsection (b):

Year	Initial Reappraisal Schedule
2011	Alexander, Ashe, Brunswick, Burke, Carteret, Catawba, Cumberland, Gaston, Henderson, Hertford, Iredell, Johnston, Lee, Macon, McDowell, Moore, New Hanover, Northampton, Pender, Rowan, Rutherford, Sampson, Scotland, Wayne, and Wilkes.
2012	Bertie, Carbarrus, Caswell, Cherokee, Cleveland, Columbus, Currituck, Greene, Guilford, Jackson, Lincoln, Madison, Montgomery, Pamlico, Perquimans, Pitt, Randolph, Richmond, Surry, Union, Vance, Washington, Wilson, and Yancey.
2013	Alamance, Caldwell, Chatham, Davie, Duplin, Edgecombe, Forsyth, Gates, Harnett, Hyde, Lenoir, Martin,

	Mecklenburg, Mitchell, Nash, Orange, Person, Polk, Rockingham, Stanly, Stokes, Swain, Transylvania, Tyrell, Wake, Warren, and Yadkin.
2014	Alleghany, Anson, Avery, Beaufort, Bladen, Buncombe, Camden, Chowan, Clay, Craven, Dare, Davidson, Durham, Franklin, Graham, Granville, Halifax, Haywood, Hoke, Jones, Onslow, Pasquotank, Robeson, and Watauga.

(b) Advancing Scheduled Reappraisal. – A county may conduct a reappraisal of real property earlier than required by subsection (a) of this section if the board of county commissioners adopts a resolution providing for advancement of the scheduled reappraisal. The board of county commissioners must promptly forward a copy of any adopted resolution advancing the scheduled reappraisal to the Department of Revenue. If a county advances the scheduled reappraisal under this subsection, the county must conduct future reappraisals every fourth year following the advanced date unless, in accordance with this subsection, the county adopts an earlier date by resolution."

SECTION 1.4. G.S. 105-287 reads as rewritten:

"**§ 105-287. Changing appraised value of real property in years in which general reappraisal ~~or horizontal adjustment~~ is not made.**

(a) In a year in which a general reappraisal ~~or horizontal adjustment~~ of real property in the county is not ~~made.~~made under G.S. 105-286, the property shall be listed at the value assigned when last appraised unless the value is changed in accordance with this section. ~~the~~ The assessor shall increase or decrease the appraised value of real property, as determined under G.S. 105-286, to recognize a change in the property's value resulting from one or more of the ~~reasons listed in this subsection. The reason necessitating a change in the property's value need not be under the control of or at the request of the owner of the affected property.~~following reasons:

(1) Correct a clerical or mathematical error.

(2) Correct an appraisal error resulting from a misapplication of the schedules, standards, and rules used in the county's most recent general ~~reappraisal or horizontal adjustment.~~reappraisal.

(2a) Recognize an increase or decrease in the value of the property resulting from a conservation or preservation agreement subject to Article 4 of Chapter 121 of the General Statutes, the Conservation and Historic Preservation Agreements Act.

(2b) Recognize an increase or decrease in the value of the property resulting from a physical change to the land or to the improvements on the land, other than a change listed in subsection (b) of this section.

(2c) Recognize an increase or decrease in the value of the property resulting from a change in the legally permitted use of the property.

(3) Recognize an increase or decrease in the value of the property resulting from a factor other than one listed in subsection (b).

(b) In a year in which a general reappraisal ~~or horizontal adjustment~~ of real property in the county is not made, the assessor may not increase or decrease the appraised value of real property, as determined under G.S. 105-286, to recognize a change in value caused by:

(1) Normal, physical depreciation of improvements;

(2) Inflation, deflation, or other economic changes affecting the county in general; or

(3) Betterments to the property made by:

a. Repainting buildings or other structures;

b. Terracing or other methods of soil conservation;

c. Landscape gardening;

d. Protecting forests against fire; or

e. Impounding water on marshland for non-commercial purposes to preserve or enhance the natural habitat of wildlife.

(c) An increase or decrease in the appraised value of real property authorized by this section shall be made in accordance with the schedules, standards, and rules used in the county's most recent general ~~reappraisal or horizontal adjustment.~~reappraisal. An increase or decrease in appraised value made under this section is effective as of January 1 of the year in which it is made and is not retroactive. The reason for an increase or decrease in appraised value made under this section need not be under the control of or at the request of the owner of the affected property. This section does not modify or restrict the provisions of G.S. 105-312 concerning the appraisal of discovered property.

(d) Notwithstanding subsection (a), if a tract of land has been subdivided into lots and more than five acres of the tract remain unsold by the owner of the tract, the assessor may appraise the unsold portion as land acreage rather than as lots. A tract is considered subdivided into lots when the lots are located on streets laid out and open for travel and the lots have been sold or offered for sale as lots since the last appraisal of the property."

SECTION 1.5. G.S. 105-296(j) reads as rewritten:

"(j) The assessor must annually review at least ~~one-eighth~~ one-fourth of the parcels in the county classified for taxation at present-use value to verify that these parcels qualify for the classification. By this method, the assessor must review the eligibility of all parcels classified for taxation at present-use value in ~~an eight-year~~a four-year period. The period of the review process is based on the average of the preceding three years' data. The assessor may request assistance from the Farm Service Agency, the Cooperative Extension Service, the Division of Forest Resources of the Department of Environment and Natural Resources, or other similar organizations.

The assessor may require the owner of classified property to submit any information, including sound management plans for forestland, needed by the assessor to verify that the property continues to qualify for present-use value taxation. The owner has 60 days from the date a written request for the information is made to submit the information to

the assessor. If the assessor determines the owner failed to make the information requested available in the time required without good cause, the property loses its present-use value classification and the property's deferred taxes become due and payable as provided in G.S. 105-277.4(c). If the property loses its present-use value classification for failure to provide the requested information, the assessor must reinstate the property's present-use value classification when the owner submits the requested information within 60 days after the disqualification unless the information discloses that the property no longer qualifies for present-use value classification. When a property's present-use value classification is reinstated, it is reinstated retroactive to the date the classification was revoked and any deferred taxes that were paid as a result of the revocation must be refunded to the property owner. The owner may appeal the final decision of the assessor to the county board of equalization and review as provided in G.S. 105-277.4(b1).

In determining whether property is operating under a sound management program, the assessor must consider any weather conditions or other acts of nature that prevent the growing or harvesting of crops or the realization of income from cattle, swine, or poultry operations. The assessor must also allow the property owner to submit additional information before making this determination."

SECTION 1.6. G.S. 105-296(l) reads as rewritten:

"(l) The assessor shall annually review at least ~~one-eighth~~one-fourth of the parcels in the county exempted or excluded from taxation to verify that these parcels qualify for the exemption or exclusion. By this method, the assessor shall review the eligibility of all parcels exempted or excluded from taxation in ~~an eight-year~~a four-year period. The assessor may require the owner of exempt or excluded property to make available for inspection any information reasonably needed by the assessor to verify that the property continues to qualify for the exemption or exclusion. The owner has 60 days from the date a written request for the information is made to submit the information to the assessor. If the assessor determines that the owner failed to make the information requested available in the time required without good cause, then the property loses its exemption or exclusion. If the property loses its exemption or exclusion for failure to provide the requested information, the assessor must reinstate the property's exemption or exclusion when the owner makes the requested information available within 60 days after the disqualification unless the information discloses that the property is no longer eligible for the exemption or exclusion."

SECTION 1.7. G.S. 153A-150 reads as rewritten:

"§ 153A-150. Reserve for ~~octennial~~ general reappraisal.

Before the beginning of the fiscal year immediately following the effective date of ~~an octennial~~a general reappraisal of real property conducted as required by G.S. 105-286, the county budget officer shall present to the board of commissioners ~~an eight-year~~a budget for financing the cost of the next ~~octennial~~ general reappraisal. The budget shall estimate the cost of the reappraisal and shall propose a plan for raising the necessary funds in ~~eight~~ annual installments during the ~~next fiscal years.~~intervening years between general reappraisals, with all installments as nearly uniform as practicable. The board shall consider this budget, making any amendments to the budget

it deems advisable, and shall adopt a resolution establishing a special reserve fund for the next ~~octennial~~ general reappraisal. In the budget ordinance of the first fiscal year of the plan, the board of commissioners shall appropriate to the special reappraisal reserve fund the amount set out in the plan for the first year's installment. When the county budget for each succeeding fiscal year is in preparation, the board shall review the ~~eight-year~~ reappraisal budget with the budget officer and shall amend it, if necessary, so that it will reflect the probable cost at that time of the reappraisal and will produce the necessary funds at the end of the ~~eight-year~~ intervening period. In the budget ordinance for each succeeding fiscal year, the board shall appropriate to the special reappraisal reserve fund the amount set out in the plan as due in that year.

Moneys appropriated to the special reappraisal reserve fund shall not be available or expended for any purpose other than the reappraisal of real property required by G.S. 105-286, except that the funds may be deposited at interest or invested as permitted by G.S. 159-30. If there is a fund balance in the reserve fund following payment for the required reappraisal, it shall be retained in the fund for use in financing the next required reappraisal.

Within 10 days after the adoption of each annual budget ordinance, the county finance officer shall report to the Department of Revenue, on forms to be supplied by the Department, the terms of the county's ~~eight-year~~ reappraisal budget, the current condition of the special reappraisal reserve fund, and the amount appropriated to the reserve fund in the current fiscal year."

PART II: MOBILE HOME LIENS

SECTION 2. G.S. 105-355 reads as rewritten:

"**§ 105-355. Creation of tax lien; date as of which lien attaches.**

(a) Lien on Real Property. – Regardless of the time at which liability for a tax for a given fiscal year may arise or the exact amount thereof be determined, the lien for taxes levied on a parcel of real property shall attach to the parcel taxed on the date as of which property is to be listed under G.S. 105-285, and the lien for taxes levied on personal property shall attach to all real property of the taxpayer in the taxing unit on the same date. All penalties, interest, and costs allowed by law shall be added to the amount of the lien and shall be regarded as attaching at the same time as the lien for the principal amount of the taxes. For purposes of this subsection (a):

(1) Taxes levied on real property listed in the name of a life tenant under G.S. 105-302 (c)(8) shall be a lien on the fee as well as the life estate.

(2) Taxes levied on improvements on or separate rights in real property owned by one other than the owner of the land, whether or not listed separately from the land under G.S. 105-302 (c)(11), shall be a lien on both the improvements or rights and on the land.

(b) Lien on Mobile Home Listed as Personal Property. – The lien for taxes levied on a mobile home listed as personal property shall attach to the mobile home and to all real property of the taxpayer in the taxing unit on the date as of which property is to be listed under G.S. 105-285.

~~(b)~~(c) Lien on Personal Property. – Taxes levied on real and personal property (including penalties, interest, and costs allowed by law) shall be a lien on personal property from and after levy or attachment and garnishment of the personal property levied upon or attached."

PART III: EFFECTIVE DATES

SECTION 3. Part I of this act is effective July 1, 2011; sections 1.2-1.4 apply to taxes imposed for taxable years beginning on or after that date. Part II of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2009. The remainder of this act is effective when it becomes law.

PROPOSED LIEN ON MOBILE HOMES
Revenue Laws Study Committee
April 2, 2008[1]

Section 3 of Senate Bill 1309 provides for a tax lien on a mobile home listed as personal property and on all real property owned by the taxpayer in the taxing unit on the date the mobile home is listed. Senate Bill 1309 passed the House and is currently in Senate Finance. This same language is in Part II of Proposal #2.

Current Law

Definition of mobile home: For property tax purposes, a mobile home means a manufactured home as described in G.S. 105-273(13) or a structure designed, constructed, and intended for use as a dwelling house, office, place of business, or similar place of habitation and capable of being transported from place to place on wheels attached to its frame.[2] A mobile home can be considered real property or personal property.

When is a manufactured home real property?

Under G.S. 105-273(13), a manufactured home is considered real property if it satisfies all of the following requirements:

1. It is a residential structure;
2. The moving hitch, wheels, and axles have been removed;
3. It is placed on a permanent foundation; and
4. It is situated on land owned by the owner of the home or on land in which the owner of the home has a lease with a term of at least 20 years and that provides for disposition of the home upon termination of the lease.

When is a manufactured home personal property?

The manufactured home is considered personal property if does not meet all of the above real property requirements.

What happens when a mobile home is moved or sold in North Carolina?

Under current law, anyone other than a manufacturer, retailer, or licensed carrier of mobile homes, must obtain a permit from the county tax collector before moving a mobile home.[3] When applying for the permit, the applicant must do one of the following: (a) pay all taxes due to be paid by the owner of the mobile home, (b) show proof that no taxes are due, or (c) demonstrate that removal of the mobile home will not jeopardize the collection of taxes. The applicant must also provide his name and address, the current location of the mobile home, the future location of the mobile home, and the mover. There is no charge for the permit.

If a holder of a lien is repossessing a mobile home, the lienholder must apply for the permit and inform the tax collector of the location to which the home is to be taken. If

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[1] Prepared by Martha Walston, staff attorney, Fiscal Research Division

[2] Trailers and vehicles required to be registered annually fall outside the definition of mobile homes.

[3] It is a Class 3 misdemeanor for failure to obtain a permit. 200 permits were issued in 2006.

the lienholder is a North Carolina resident, the taxes must be paid within seven days of issuance of the permit. Nonresident lienholders must pay the taxes at the time of application for a permit.

What are the remedies for nonpayment of property tax?
If taxes are not paid on the mobile home, the tax collector may go against the taxpayer by garnishing wages, attaching bank accounts, and using debt setoff. The tax collector may levy on the home by taking possession and selling the home if the taxpayer owns the home. When the mobile home is considered real property, then the unpaid taxes are a lien on the mobile home and a subsequent purchaser of the mobile home is also liable for unpaid taxes.

What happens if there is nonpayment of property taxes on a mobile home considered personal property?
Counties have encountered frequent situations where a mobile home has been repossessed and sold on site or where the mobile home is sold and moved without a permit issued by the county tax collector. Often tax collectors are not aware of the sales until after they are completed and the former owner has disappeared. Once the mobile home is transferred to a new owner for value, the county's ability to collect taxes due by levy and sale expires. The county tax collector has no recourse against the present owner if the mobile home is listed as personal property. The county could garnish the former owner's wages, but usually the whereabouts of the former owner are unknown.

Proposal #2
The language in Proposal #2 would remedy the above problem by providing that a tax lien attaches to a mobile home listed as personal property and to all real property of the taxpayer in the taxing unit on the date the mobile home is listed (January 1). Once the lien has attached, its priority is not affected by transfer of title, by death, or by receivership of the property owner. In other words, the delinquent taxes follow the mobile home, and a subsequent buyer is liable for the unpaid taxes. The North Carolina Association of Commissioners and the North Carolina Tax Collectors Association support this proposal.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-LAz-19 [v.10] (3/26)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/1/2008 1:13:59 PM

Short Title:	Simplify Ownership of PUV Property.	(Public)
Sponsors:	Unknown.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY THE OWNERSHIP REQUIREMENTS OF PRESENT-USE VALUE PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-277.2 reads as rewritten:

"**§ 105-277.2. Agricultural, horticultural, and forestland – Definitions.**

The following definitions apply in G.S. 105-277.3 through G.S. 105-277.7:

(1) Agricultural land. – Land that is a part of a farm unit that is actively engaged in the commercial production or growing of crops, plants, or animals under a sound management program. Agricultural land includes woodland and wasteland that is a part of the farm unit, but the woodland and wasteland included in the unit must be appraised under the use-value schedules as woodland or wasteland. A farm unit may consist of more than one tract of agricultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(1), and each tract must be under a sound management program. If the agricultural land includes less than 20 acres of woodland, then the woodland portion is not required to be under a sound management program. Also, woodland is not required to be under a sound management program if it is determined that the highest and best use of the woodland is to diminish wind erosion of adjacent agricultural land, protect water quality of adjacent agricultural land, or serve as buffers for adjacent livestock or poultry operations.

(1a) Business entity. – A corporation, a general partnership, a limited partnership, or a limited liability company.

(1b) Farm group. – A group consisting of one or more individuals who are actively engaged in one of the activities described in subdivisions (1),

(2), or (3) of this section and their relatives. The term 'actively engaged' includes the leasing of land.

(2) Forestland. – Land that is a part of a forest unit that is actively engaged in the commercial growing of trees under a sound management program. Forestland includes wasteland that is a part of the forest unit, but the wasteland included in the unit must be appraised under the use-value schedules as wasteland. A forest unit may consist of more than one tract of forestland, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(3), and each tract must be under a sound management program.

(3) Horticultural land. – Land that is a part of a horticultural unit that is actively engaged in the commercial production or growing of fruits or vegetables or nursery or floral products under a sound management program. Horticultural land includes woodland and wasteland that is a part of the horticultural unit, but the woodland and wasteland included in the unit must be appraised under the use-value schedules as woodland or wasteland. A horticultural unit may consist of more than one tract of horticultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(2), and each tract must be under a sound management program. If the horticultural land includes less than 20 acres of woodland, then the woodland portion is not required to be under a sound management program. Also, woodland is not required to be under a sound management program if it is determined that the highest and best use of the woodland is to diminish wind erosion of adjacent horticultural land or protect water quality of adjacent horticultural land. Land used to grow horticultural and agricultural crops on a rotating basis or where the horticultural crop is set out or planted and harvested within one growing season, may be treated as agricultural land as described in subdivision (1) of this section when there is determined to be no significant difference in the cash rental rates for the land.

(4) Individually owned. – Owned by one of the following:

a. ~~A natural person. For the purpose of this section, a natural person who is an income beneficiary of a trust that owns land may elect to treat the person's beneficial share of the land as owned by that person. If the person's beneficial interest is not an identifiable share of land but can be established as a proportional interest in the trust income, the person's beneficial share of land is a percentage of the land owned by the trust that corresponds to the beneficiary's proportional interest in the trust income. For the purpose of this section, a natural person who is a member of a business entity, other than a corporation, that owns land may elect to treat the person's share of the land as owned by that person. The person's share is a percentage of the~~

~~land owned by the business entity that corresponds to the person's percentage of ownership in the entity.~~ An individual.

b. ~~A business entity having as its principal business one of the activities described in subdivisions (1), (2), and (3) and whose members are all natural persons who meet one or more of the conditions listed in this sub-subdivision. For the purpose of this sub-subdivision, the terms "having as its principal business" and "actively engaged in the business of the entity" include the leasing of the land for one of the activities described in subdivisions (1), (2), and (3) only if all members of the business entity are relatives.~~

~~1. The member is actively engaged in the business of the entity.~~

~~2. The member is a relative of a member who is actively engaged in the business of the entity.~~

~~3. The member is a relative of, and inherited the membership interest from, a decedent who met one or both of the preceding conditions after the land qualified for classification in the hands of the business entity.~~ Directly or indirectly by individuals in a farm group. An individual is an indirect owner if the individual is a beneficiary of a trust or a member of a business entity. The determination of ownership by an individual in a farm group does not affect the listing requirements in G.S. 105-302.

~~c. A trust that was created by a natural person who transferred the land to the trust and each of whose beneficiaries who is currently entitled to receive income or principal meets one of the following conditions:~~

~~1. Is the creator of the trust or the creator's relative.~~

~~2. Is a second trust whose beneficiaries who are currently entitled to receive income or principal are all either the creator of the first trust or the creator's relatives.~~

d. A testamentary trust that meets all of the following conditions:

1. It was created by ~~a natural person~~an individual who transferred to the trust land that qualified in that ~~person's~~ individual's hands for classification under G.S. 105-277.3.

2. At the ~~time~~ date of the creator's death, the creator had no ~~relatives as defined in this section as of the date of death.~~ relatives.

3. The trust income, less reasonable administrative expenses, is used exclusively for educational, scientific,

literary, cultural, charitable, or religious purposes as defined in G.S. 105-278.3(d).

~~e. Tenants in common, if each tenant is either a natural person or a business entity described in sub-subdivision b. of this subdivision. Tenants in common may elect to treat their individual shares as owned by them individually in accordance with G.S. 105-302(c)(9). The ownership requirements of G.S. 105-277.3(b) apply to each tenant in common who is a natural person, and the ownership requirements of G.S. 105-277.3(b1) apply to each tenant in common who is a business entity.~~

(4a) Member. – A shareholder of a corporation, a partner of a general or limited partnership, or a member of a limited liability company.

(5) Present-use value. – The value of land in its current use as agricultural land, horticultural land, or forestland, based solely on its ability to produce income and assuming an average level of management. A rate of nine percent (9%) shall be used to capitalize the expected net income of forestland. The capitalization rate for agricultural land and horticultural land is to be determined by the Use-Value Advisory Board as provided in G.S. 105-277.7.

(5a) Relative. – Any of the following:

a. A spouse or the spouse's lineal ancestor or descendant.

b. A lineal ancestor or a lineal descendant.

c. A brother or sister, or the lineal descendant of a brother or sister. For the purposes of this sub-subdivision, the term brother or sister includes stepbrother or stepsister.

d. An aunt or an uncle.

e. A spouse of a person listed in paragraphs a. through d. For the purpose of this subdivision, an adoptive or adopted relative is a relative and the term "spouse" includes a surviving spouse.

(6) Sound management program. – A program of production designed to obtain the greatest net return from the land consistent with its conservation and long-term improvement.

(7) Unit. – One or more tracts of agricultural land, horticultural land, or forestland. Multiple tracts must be under the same ownership and be of the same type of classification. If the multiple tracts are located within different counties, they must be within 50 miles of a tract qualifying under G.S. 105-277.3(a)."

SECTION 2. G.S. 105-277.3 reads as rewritten:

"**§ 105-277.3. Agricultural, horticultural, and forestland – Classifications.**

(a) Classes Defined. – The following classes of property are designated special classes of property under authority of Section 2(2) of Article V of the North Carolina Constitution and must be appraised, assessed, and taxed as provided in G.S. 105-277.2 through G.S. 105-277.7.

(1) Agricultural land. – Individually owned agricultural land consisting of one or more tracts, one of which satisfies the requirements of this subdivision. For agricultural land used as a farm for aquatic species, as defined in G.S. 106-758, the tract must meet the income requirement for agricultural land and must consist of at least five acres in actual production or produce at least 20,000 pounds of aquatic species for commercial sale annually, regardless of acreage. For all other agricultural land, the tract must meet the income requirement for agricultural land and must consist of at least 10 acres that are in actual production. Land in actual production includes land under improvements used in the commercial production or growing of crops, plants, or animals.

To meet the income requirement, agricultural land must, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have produced an average gross income of at least one thousand dollars ($1,000). Gross income includes income from the sale of the agricultural products produced from the land, any payments received under a governmental soil conservation or land retirement program, and the amount paid to the taxpayer during the taxable year pursuant to P.L. 108-357, Title VI, Fair and Equitable Tobacco Reform Act of 2004.

(2) Horticultural land. – Individually owned horticultural land consisting of one or more tracts, one of which consists of at least five acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have met the applicable minimum gross income requirement. Land in actual production includes land under improvements used in the commercial production or growing of fruits or vegetables or nursery or floral products. Land that has been used to produce evergreens intended for use as Christmas trees must have met the minimum gross income requirements established by the Department of Revenue for the land. All other horticultural land must have produced an average gross income of at least one thousand dollars ($1,000). Gross income includes income from the sale of the horticultural products produced from the land and any payments received under a governmental soil conservation or land retirement program.

(3) Forestland. – Individually owned forestland consisting of one or more tracts, one of which consists of at least 20 acres that are in actual production and are not included in a farm unit.

(b) ~~Natural Person~~Individual Ownership Requirements. – In order to come within a classification described in subsection (a) of this section, ~~the~~ land ~~must if~~ owned by ~~a natural person.~~an individual must also satisfy one of the following conditions:

(1) It is the owner's place of residence.

(2) It has been owned by the current owner or a relative of the current owner for the four years preceding January 1 of the year for which the benefit of this section is claimed.

(3) At the time of transfer to the current owner, it qualified for classification in the hands of a ~~business entity or trust~~farm group that transferred the land to the current owner who was ~~a member of the business entity or a beneficiary of the trust, as appropriate~~ part of the farm group.

(b1) ~~Entity~~ Farm Group Ownership Requirements. – In order to come within a classification described in subsection (a) of this section, ~~the~~ land ~~must, if~~ owned by a ~~business entity or trust~~ farm group must have been owned by the ~~business entity or trust~~farm group or by one ~~or more of its members or creators, respectively,~~ of the individuals in the farm group for the four years immediately preceding January 1 of the year for which the benefit of this section is claimed.

(b2) Exception to Ownership Requirements. – Notwithstanding the provisions of subsections (b) and (b1) of this section, land may qualify for classification in the hands of the new owner if all of the conditions listed in either subdivision of this subsection are met, even if the new owner does not meet all of the ownership requirements of subsections (b) and (b1) of this section with respect to the land.

(1) ~~Exception for assumption of deferred liability.~~ Continued use. – If the land qualifies for classification in the hands of the new owner under the provisions of this subdivision, then ~~the~~ any deferred taxes remain a lien on the land under G.S. 105-277.4(c), the new owner becomes liable for the deferred taxes, and the deferred taxes become payable if the land fails to meet any other condition or requirement for classification. Land qualifies for classification in the hands of the new owner if all of the following conditions are met:

a. The land was appraised at its present use value at the time title to the land passed to the new owner.

b. ~~At the time title to the land passed to the new owner, the~~ The new owner acquires the land ~~for the purposes of~~ and continues to use the land for the ~~purposes~~ purpose for which it was classified under subsection (a) of this section while under previous ownership.

c. The new owner has timely filed an application as required by G.S. 105-277.4(a) and has certified that the new owner accepts liability for ~~the~~ any deferred taxes and intends to continue the present use of the land.

(2) ~~Exception for expansion~~Expansion of existing unit. – ~~If deferred liability is not assumed under subdivision (1) of this subsection, the land~~ Land qualifies for classification in the hands of the new owner if, at the time title passed to the new owner, the land was not appraised at its present-use value but was being used for the same purpose and was eligible for appraisal at its present-use value as other land already

owned by the new owner and classified under subsection (a) of this section. The new owner must timely file an application as required by G.S. 105-277.4(a).

(c) Repealed by Session Laws 1995, c. 454, s. 2.

(d) Exception for Conservation Reserve Program. – Land enrolled in the federal Conservation Reserve Program authorized by 16 U.S.C. Chapter 58 is considered to be in actual production, and income derived from participation in the federal Conservation Reserve Program may be used in meeting the minimum gross income requirements of this section either separately or in combination with income from actual production. Land enrolled in the federal Conservation Reserve Program must be assessed as agricultural land if it is planted in vegetation other than trees, or as forestland if it is planted in trees.

(d1) Exception for Easements on Qualified Conservation Lands Previously Appraised at Use Value. – Property that is appraised at its present-use value under G.S. 105-277.4(b) shall continue to qualify for appraisal, assessment, and taxation as provided in G.S. 105-277.2 through G.S. 105-277.7 as long as the property is subject to an enforceable conservation easement that would qualify for the conservation tax credit provided in G.S. 105-130.34 and G.S. 105-151.12, without regard to actual production or income requirements of this section. Notwithstanding G.S. 105-277.3(b) and (b1), subsequent transfer of the property does not extinguish its present-use value eligibility as long as the property remains subject to an enforceable conservation easement that qualifies for the conservation tax credit provided in G.S. 105-130.34 and G.S. 105-151.12. The exception provided in this subsection applies only to that part of the property that is subject to the easement.

(e) Exception for Turkey Disease. – Agricultural land that meets all of the following conditions is considered to be in actual production and to meet the minimum gross income requirements:

(1) The land was in actual production in turkey growing within the preceding two years and qualified for present use value treatment while it was in actual production.

(2) The land was taken out of actual production in turkey growing solely for health and safety considerations due to the presence of Poult Enteritis Mortality Syndrome among turkeys in the same county or a neighboring county.

(3) The land is otherwise eligible for present use value treatment.

(f) Sound Management Program for Agricultural Land and Horticultural Land. – If the property owner demonstrates any one of the following factors with respect to agricultural land or horticultural land, then the land is operated under a sound management program:

(1) Enrollment in and compliance with an agency-administered and approved farm management plan.

(2) Compliance with a set of best management practices.

(3) Compliance with a minimum gross income per acre test.

(4) Evidence of net income from the farm operation.

(5) Evidence that farming is the farm operator's principal source of income.

(6) Certification by a recognized agricultural or horticultural agency within the county that the land is operated under a sound management program.

Operation under a sound management program may also be demonstrated by evidence of other similar factors. As long as a farm operator meets the sound management requirements, it is irrelevant whether the property owner received income or rent from the farm operator.

(g) Sound Management Program for Forestland. – If the owner of forestland demonstrates that the forestland complies with a written sound forest management plan for the production and sale of forest products, then the forestland is operated under a sound management program."

SECTION 3. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2008. Notwithstanding G.S. 105-282.1, an application submitted for the 2008-2009 tax year under G.S. 105-277.4 for the classification of land owned by a farm group is considered timely if it is filed on or before September 1, 2008.

Draft Proposal #3
Simplify Ownership of PUV Property

BILL ANALYSIS

Committee:	Revenue Laws	**Date:**	April 1, 2008
Introduced by:		**Summary by:**	Martha Walston
Version:	Draft		Committee Counsel

SUMMARY: The draft simplifies the ownership requirements of present-use value property and allows property to remain in present-use value if the owner pays deferred taxes at the time of transfer and the new owner continues to farm the land and files an application for present-use value status.

CURRENT LAW: Since 1973, the General Assembly has provided special property tax treatment for farmland that is classified and used for agricultural, horticultural, or forest purposes.[1] If the farmland meets certain ownership and size requirements and is engaged in the commercial production under a sound management program, the land may be appraised and taxed at its present-use value (PUV) as opposed to market value.[2] PUV is usually much less than market value. The difference between the taxes due on the PUV and taxes that would have been payable in the absence of the special tax treatment are known as deferred taxes. When the land becomes disqualified for PUV, the deferred taxes for the current year and the three previous years with interest will usually become due and payable.[3]

One of the most complex parts of the PUV program is determining the ownership requirements in order to qualify for the program. The law requires that PUV property be "individually owned". Any of the following categories satisfy this definition:

- Natural person.
- Business entity – This term applies to limited liability companies, general partnerships, limited partnerships, and corporations. To satisfy the definition of "business entity", the entity must have agriculture, horticulture, or forestry as its principal business; all members of the entity must be natural persons; and all members of the business entity must be actively engaged in the principal business of the entity or be related to a member who is actively engaged in the principal business of the entity. Alternately, a member can be a relative of a decedent who met one or both of the above two conditions after the business entity had already qualified for PUV classification and from whom the member inherited his interest.
- Tenancy in common – This is a form of ownership where multiple owners (natural persons or business entities) can own individual interests in property.
- Trusts – The trust must be created by a natural person who transferred the land to the trust. Each beneficiary who is entitled to receive income or principal must be one of the following:

[1] During the 2007 Session, the agricultural land classification was amended to include agricultural land used as an aquatic specifies farm, effective in the 2008-2009 tax year.

[2] Agricultural and horticultural land must also meet an income requirement: the land must have one tract that produces at least $1,000 average gross income over the three preceding years.

[3] No deferred taxes are due if the property loses its classification for one of the following purposes: (1) the land is enrolled in the federal Conservation Reserve Program and is no longer in production and therefore does not meet the income requirement, (2) the land is conveyed by gift to certain exempt organizations and governmental entities. This applies to conveyances by gift to nonprofit organizations where the property will qualify for exclusion from the tax base because it is real property that will be exclusively used for educational and scientific purposes as a protected natural area, or where the property will be exclusively used for nonprofit historic preservation purpose, or (3) the property is conveyed by gift to the State, political subdivisions of the State, or the United States.

(a) The creator of the trust or a relative of the creator of the trust, or
(b) A second trust whose beneficiaries (currently entitled to receive income or principal) are all either the creator of the trust or a relative of the creator of the trust.

- Testamentary trust – The trust must satisfy all of the following requirements:
  (a) Must be created by a natural person who transferred the land to the trust.
  (b) Land must have qualified for classification in the hands of the natural person prior to the transfer to the trust.
  (c) At the time of the creator's death, the creator had no relatives.
  (d) Trust income, less reasonable administrative expenses, is used exclusively for educational, scientific, literary, cultural, charitable, or religious purposes.

BILL ANALYSIS: In recent years, taxpayers have voiced concerns about the complexities and perceived unfairness of certain aspects of the ownership requirements for qualified farmland. In addition, county tax assessors, who must apply the PUV laws, have echoed concerns about the complexity of these requirements. Staff has met with representatives of county tax assessors, the North Carolina Association of County Commissioners, the School of Government, and the Department of Revenue to discuss these issues and to propose the following changes to the PUV ownership requirements:

- Add a definition for "farm group". A farm group is defined as a group consisting of one or more individuals who are actively engaged in agriculture, horticulture or forestry and their relatives. The term "actively engaged" includes the leasing of land.

- Change the definition of "individually owned" to mean owned by one of the following:
  (a) Owned by an "individual". This proposed language replaces the awkward reference to "natural person".

  (b) Owned "directly or indirectly by individuals in a farm group. An individual is considered an indirect owner if the individual is a beneficiary of a trust or a member of a business entity."[4] This proposed language replaces the business entity requirements.

- Deletes the definition for "tenants in common". This definition is no longer necessary because the term "directly or indirectly by individuals in a farm group" includes tenants in common.

The above changes to the definition of "individually owned" simplify the ownership requirements in the following ways:

- All members of a business entity will no longer be required to be natural persons. Instead an individual may be considered an indirect owner of the land if the individual is a beneficiary of a trust or a member of a business entity. A member is defined in current law as a shareholder of a corporation, a partner of a general or limited partnership, or a member of a limited liability company. As in current law an individual owner must still be actively engaged in the business or be a relative of an owner who is actively engaged.

- There is no longer a requirement that the business entity have its principal business in agriculture, horticulture, or forestry to qualify for PUV. However, farmland must continue to meet the requirement of commercial production, and agricultural land and horticultural land must continue to meet the income requirements. The term "principal business" is not defined in the statutes, and the deletion of this requirement will relieve the county from having to make a determination based on the weight of the evidence.

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[4] A "business entity" remains a corporation, a general partnership, a limited partnership, or a limited liability company.

- Tenants in common may be individuals, business entities, or trusts. Current law requires that all tenants be qualifying natural persons or business entities.

The following are examples of land that would qualify for PUV under the proposed changes:

- A business entity applies for PUV. Four members of the business entity are individuals and one member is a trust. The sole beneficiary of the trust is a member of the business entity. (Under current law, this business entity would not qualify because the trust is not an individual.)
- Tenancy in common applies for PUV, and one of the tenants is a trust. (Under current law, the property would not qualify, because all tenants must be individuals or qualifying business entities.)
- An LLC applies for PUV, and one of the members of the LLC is a trust. All beneficiaries of the trust are children of the individual members of the LLC who own the land. (Under current law, the LLC would not qualify because the trust is not an individual.)

The property tax working group also proposes clarifying language that will allow land to remain in the PUV system if land currently in PUV is transferred to a new owner, but the deferred taxes are paid at the time the transfer occurs.

Under current law, there are several standard ownership requirements that a natural person or business entity must meet in order for their property to be in the PUV system:

- If the property is owned by a natural person, the property must meet one of the following requirements:
  1. The property is the owner's place of residence.
  2. The property has been owned by the current owner or a relative of the current owner for the four full years preceding January 1 of the year for which application is made.
  3. If transferring from a business entity or trust to the current owner, the property must have been qualified for and receiving PUV.
- If the property is owned by a business entity, the property must have been owned by the business entity or by one or more members of the business entity for the four full years preceding January 1 for which application is made.

An exception to these standard ownership requirements exists when land appraised at its PUV value is transferred to a new owner and the new owner (i) continues to use the land for its current PUV classification, (ii) files an application for PUV, and (iii) assumes the deferred taxes. However, this exception has been interpreted not to apply when the seller pays more than the current year's taxes at the time of transfer. The seller is deemed to have voluntarily removed the property from the PUV program, and the new owner may have to wait four years to qualify for PUV. The draft would allow the land to remain in PUV when the seller pays the deferred taxes at time of transfer. The new owner will become liable for subsequent deferred taxes when the land becomes disqualified.

EFFECTIVE DATE: The draft is effective for taxes imposed for taxable years beginning on or after July 1, 2008. Notwithstanding G.S. 105-282.1, an application submitted for the 2008-2009 tax year for the classification of land owned by a farm group is considered timely if it is filed on or before September 1, 2008.

This summary quotes extensively from the "Present-Use Value Program" prepared by the Property Tax Division of the North Carolina Department of Revenue.

Draft-SMLA

Tax Credits Expiring in 2008-2009

Revenue Laws Study Committee
April 2, 2008

Tax Credit	Cite	Sunset	FY Revenue Loss ($ millions)
Credit for NC research & development	105-129.55 105-129.51(b)	1/1/2009	$1.0-$2.2
Credit for NC Ports Authority[1]	105-130.41 105-151.22	1/1/2009	$0.5 -$2.5
Credit for small business employee health benefits	105-129.16E	1/1/2009	No data available[2]
Credit for reinvestment	105-129.28	1/1/2008	$5.0

[1] The sunset for this credit has been extended six times.

[2] There is no data available because the credit did not become effective until tax years beginning on or after January 1, 2007. The credit would likely be claimed in 2008 when most taxpayers file their 2007 returns. However, when the bill was enacted, the estimated cost was $17.8 million for FY0809.

State Ports Tax Credit

§ 105-130.41; § 105-151.22

Eligibility. – The State Ports tax credit is allowed to a taxpayer who loads or unloads waterborne cargo from an ocean carrier at the State-owned port terminal at Wilmington or Morehead City. The credit is allowed against the taxpayer's income tax. The taxpayer may be either an individual or a corporation.

Credit Amount. – The amount of the tax credit is equal to the amount of wharfage, handling, and throughput charges paid to the North Carolina State Ports Authority in the taxable year that exceeds the average amount of charges paid to the Authority for the current tax year and the two previous tax years. The credit is limited to 50% of the tax imposed on the taxpayer for the taxable year. Any excess credit may be carried forward and applied to the taxpayer's income tax liability for the next five years. The maximum cumulative credit that one taxpayer may claim is $2 million.

Sunset. – The credit sunsets for taxable years beginning on or after January 1, 2009.

Definitions. – Although not defined by the relevant statutes, the various types of cargo differ as follows:

- Bulk cargo is a type of commodity that is loose and usually stockpiled. Examples of this type of commodity include coal, grain, salt, and wood chips.
- Break-bulk cargo consists of commodities that are packaged and stored on pallets or in cases that must be handled and stacked onto a ship by hand, crane, etc. Break-bulk cargo also includes machinery.
- Container cargo consists of commodities that are packaged in a metal trailer box that can be locked onto a tractor-trailer chassis and then detached and put on a ship without any other handling.

Legislative History. –

1992 The General Assembly enacted the State Ports tax credit to encourage exporters to use the two State-owned port terminals in Wilmington and Morehead City. When enacted, the credit applied to amounts paid by a taxpayer on any cargo exported at either port. When first enacted, this credit was effective for taxable years beginning on or after March 1, 1992, and ending on or before February 28, 1996.

1994 The General Assembly expanded the credit to include all amounts assessed on exported cargo, regardless of who paid the shipping costs.

1995 The General Assembly expanded the credit to include some imports by allowing a credit for break-bulk cargo and container cargo imported at either Wilmington or Morehead City and for bulk cargo imported at Morehead City. It did not allow a credit for bulk cargo imported at Wilmington. In addition, the credit for bulk exports was then limited to bulk exports at only the Morehead City terminal.

1996 The General Assembly expanded the State Ports tax credit to include the importing and exporting at either terminal of one specific type of bulk cargo: forest products. All imports and exports of bulk cargo at the Morehead City terminal were already covered, so the effect of this change was to allow a credit for forest product imports and exports at the Wilmington terminal.

1997 The General Assembly extended the sunset of the State ports income tax credit from February 28, 1998 to the taxable year ending on or before February 28, 2001, and increased the maximum cumulative credit from $1 million to $2 million per taxpayer.

2001 The sunset was extended to January 1, 2003.

2002 The sunset was extended to January 1, 2004.

2003 The sunset was extended to January 1, 2009.

2005 Effective January 1, 2007, the Department of Revenue is required to publish annually the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The number of taxpayers taking a credit allowed in this section.

(2) The total amount of charges with respect to which credits were taken.

(3) The total cost to the General Fund of the credits taken.

2007 The reporting requirement in (2) above was modified to state "the total amount of charges assessed for the taxable year" to better enable the Tax Research Division to report information for the General Assembly to use in determining the credit's effectiveness.

Credit for Research and Development

§ 105-129.55; §105-129.51(b)

Eligibility. – Effective for expenses on or after May 1, 2005, a taxpayer that has qualified North Carolina research expenses or North Carolina University research expenses is allowed a credit. The taxpayer must satisfy Bill Lee Act requirements related to employee wages, the provision of health insurance, the taxpayer's Occupational Safety and Health Act record, and the taxpayer's environmental record. The taxpayer is not required to have no overdue tax debts.

Credit Amount. – For North Carolina university research expenses, the credit amount is equal to 20% of the amount the taxpayer paid to the university for the research and development. For all other qualified research expenses, the credit is equal to a percentage of the expenses as follows:

- For small businesses[3], the rate is 3.25%.
- For research and development conducted in a development tier one area, the rate is 3.25%.
- For other research and development expenditures, the rate ranges from 1.25% to 3.25% as the amount of those expenditures increases.

Sunset. – The credit sunsets for taxable years beginning on or after January 1, 2009.

Reporting Requirement. – The Department of Revenue is required to make annual reports to the Revenue Laws Study Committee and the Fiscal Research Division.

Legislative History. –

2004 The General Assembly enacted this new research and development tax credit as an alternative to the Bill Lee research and development credit, which was set to expire along with the entire Bill Lee Act as of January 1, 2006.

2006 The General Assembly enacted a change to conform the credit to the new tier structure under Article 3J. With this change, research conducted in a development tier one area is eligible for a more generous credit.

2007 Effective for taxable years beginning on or after January 1, 2007, the credit amounts were increased by .25% for each of the categories and by 5% for university research expenses.

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[3] A small business is a business whose annual receipts, combined with the annual receipts of all related persons, does not exceed $1,000,000.

Small Business Employee Health Benefits

§ 105-129.16E

Eligibility. – Effective for taxable years beginning on or after January 1, 2007, a small business that provides health benefits to all of its full-time employees is eligible for a tax credit. Under the Internal Revenue Code, an employer may deduct premiums paid for health insurance cost of its employees as a business expense. The credit is in addition to any expense deduction the taxpayer claimed on its income tax return for the health insurance costs.

Credit Amount. – The credit amount is equal to $250 per employee for whom the taxpayer pays the health insurance premium, not to exceed the taxpayer's cost of providing the health insurance benefit. The taxpayer may use the credit against either its income tax or its franchise tax liability. The credit may not exceed 50% of the taxpayer's tax liability. Any unused portions of the credit may be carried forward for five years. The credit is effective for taxable years beginning on or after January 1, 2007.

Sunset. – It expires for taxable years beginning on or after January 1, 2009.

Definitions. –

- A small business is a taxpayer that employs no more than 25 full-time employees.
- An eligible employee is one that works a normal workweek of 30 or more hours and whose total wages or salary received from the business does not exceed $40,000 on annual basis.
- Providing health benefits means one or more of the following:
  - The taxpayer pays at least 50% of the premiums for health insurance coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee.
  - The employee has existing coverage under one or more of the following: Medicare; Medicaid; a government funded program; a health insurance or benefit arrangement that provides benefits similar to or in excess of benefits provided under the basic health care plan.

Legislative History. –

2006 The General Assembly enacted the credit.

2007 A technical change was made to the credit.

Credit for Reinvestment by Recycling Facility

§ 105-129.28

Eligibility. – Beginning with the 1998 tax year, a major recycling facility that is accessible by neither ocean barge nor ship and that and incurs additional expenses due to transporting its materials and products by alternative modes of transportation is allowed a refundable corporate income tax reinvestment credit. For the first ten years the reinvestment credit is in effect, a major recycling facility must use the amount received in credit to invest in rail and roads associated with the facility, in transportation infrastructure to reduce the expense of transporting materials and products to and from the facility, or in land and infrastructure for industrial sites, other than the facility itself, in the same county. If there are not enough reasonable opportunities for investments in those purposes in a given year, however, the major recycling facility may invest the amount of credit received in the facility itself, but only after it has made the minimum investment of $300 million required to qualify as a major recycling facility. The facility must document its compliance with this reinvestment requirement and it forfeits any part of the credit it spends for another purpose.

Credit Amount. – The reinvestment credit is equal to the amount of these additional expenses, which must be documented annually to the Secretary of Commerce. The credit is subject to a dollar cap each year, in increasing amounts. In 1999, the cap was $640,000. In 2004, the cap leveled off at $10.4 million a year.

Sunset. – The credit expired for taxable years beginning on or after January 1, 2008. According to S.L. 1998-55, the purpose of the ten-year sunset was to allow a determination as to whether any major recycling facility continues to experience additional transportation and transloading expenses due to its inability to use ocean barges or ships. The intent is to postpone the sunset if any major recycling facility can document that it is still experiencing additional expenses in 2008 due to its inability to use ocean barges or ships to transport materials and products.

Legislative History. – No changes have been made since its original enactment in 1998.

NORTH CAROLINA PORTS

Thomas J. Eagar
Chief Executive Officer

April 2, 2008

The Honorable John Kerr, III, Co-Chair
The Honorable Paul Luebke, Co-Chair
Revenue Laws Study Committee
NC General Assembly
Raleigh, NC 27601

Dear Chairs:

The Revenue Laws Study Committee will meet today to continue its review of the State's revenue laws and to also review the tax credits that expire in 2008-2009. The NC State Ports Tax Credit will expire January 2009. Please consider including in the committee's report to the General Assembly the recommendation to extend the Ports tax credit to 2014.

The NC Ports tax credit legislation, originally enacted in **1992,** encourages exporters and importers to use the two State-owned port terminals at Wilmington and Morehead City. This credit was extended in 1995, 1997, 2001, 2002 and 2003. It equals the amount of fees for wharfage, handling, and throughput paid to the North Carolina State Ports Authority in the taxable year that exceeds the average amount of charges paid to the Authority for the current tax year and the two previous tax years. The credit is limited to 50% of the tax imposed on the taxpayer for the taxable year and has a five-year carry forward on excess credit.

Your consideration to include a recommendation in the Revenue Laws Study Committee Report to extend the tax credit would allow the Ports to continue offering this business incentive to existing and potential customers and to stimulate economic growth for the State. Extending the NC Ports tax credit costs the State's general fund less than one million dollars each year, and allows companies such as CK International Lumber, QVC, Drexel Heritage Furniture, and Martin Marietta to be competitive in world markets. The NC Ports tax credit supports these and other industries and the thousands of jobs and millions of dollars in tax revenues that they contribute to our State.

Your favorable consideration of extending the NC State Ports tax credit to provide for consideration in the short session will enable North Carolina to continue to compete with neighboring states for a share of the global market as east coast ports prepare for anticipated growth.

Thanks for your consideration.

Sincerely,

Tom Eagar

Thomas J. Eagar
Chief Executive Officer

Carl J. Stewart

Carl J. Stewart, Jr.
Chairman, NCSPA

NORTH CAROLINA STATE PORTS AUTHORITY
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MOREHEAD CITY
NORTH CAROLINA PORTS
WILMINGTON

NC State Ports Tax Credit

Rationale:

The state ports tax credit encourages businesses to use the two State-owned port terminals at Wilmington and Morehead City. The extension of the Ports Tax Credit would allow the Ports to continue offering this business incentive to existing and potential customers and to stimulate economic growth for the State. Extending the NC Ports tax credit costs the State's general fund less than one million dollars each year, and allows companies such as Goodyear, CK International, JB International, Drexel Heritage Furniture, QVC, Martin Marietta, EN Beards Hardwoods Lumber, Edwards Wood Products, Culp, Inc., Broyhill, Kilop USA, Thomasville Furniture, Cormetech, Stein Fibers, Ltd., New South International, and Sonoco to be competitive in world markets. The NC Ports tax credit supports these and other industries and the thousands of jobs and millions of dollars in tax revenues that they contribute to our State.

The NC Ports tax credit makes a difference in whether customers can be profitable in their international trade initiatives. Success in world markets requires ports customers to be cost effective. Plus, they welcome the opportunity to support NC State Ports! As more North Carolina companies use the State Ports, international shipping companies are encouraged to serve these businesses through the Ports, and more NC companies will be able to reach more parts of the world. The NC Ports tax credit also can provide an additional advantage to new and existing businesses considering sites in North Carolina for manufacturing operations. Reducing shipping costs keeps customers competitive in the global marketplace and provides increased business opportunities that create more jobs and a stronger North Carolina

Background:

The state ports tax credit, originally enacted in 1992, encourages exporters and importers to use State-owned port terminals. This credit, extended in 1995, 1997, 2001, 2002 and 2003 expires January 2009. NC State Port Authority seeks legislative consideration of tax credit extension to 2014.

The tax credit equals the amount of wharfage, handling, and throughput charges paid to the North Carolina State Ports Authority in the taxable year that exceeds the average amount of charges paid to the Authority for the current tax year and the two previous tax years. The credit is limited to 50% of the tax imposed on the taxpayer for the taxable year and has a five-year carry forward on excess credit. The maximum cumulative credit that one taxpayer may claim is $2 million. The estimated cost to the General Fund is less than one million annually.

Rita Harris, Government Relations Director, NC State Ports Authority, 919 715 2785

REVENUE LAWS STUDY COMMITTEE
Wednesday, April 30, 2008
Room 544, Legislative Office Building
9:30 a.m.

MINUTES

The Revenue Laws Study Committee met at 9:30 a.m. on Wednesday, April 30, 2008, in room 544 of the Legislative Office Building. Thirteen members of the committee were present. Senator Kerr presided as chair.

Approval of Minute from the April 2 Meeting

Representative Wainwright moved that the minutes be approved and the motion carried.

Extension of Sunset for Credit for Reinvestment and Establishment of Sunset for Credit for Investing in Major Recycling Facility

Trina Griffin, a staff attorney with the Research Division, was recognized to explain the credits related to recycling facilities. Johnny Jacobs, Controller for Nucor Steel Corporation, was recognized to speak in favor of the credits and answer questions. Copies of Ms. Griffin's and Mr. Jacob's handouts are attached.

Franchise Tax Loophole Closings

Cindy Avrette, a staff attorney with the Research Division, was recognized to explain a legislative proposal that would conform current laws to decisions made in 2006-2007. They involved 1) LLCs that elect to be taxes as S corporations and 2) captive REITs. A copy of the proposal and its summary is attached.

Publicly Traded Partnerships

Cindy Avrette was recognized to explain the legislative proposal on publicly traded partnerships income reports. Lindsey Sander, representing the National Association of Publicly Traded Partnerships, was recognized to speak in favor of the proposal. Jonathan Tart, Department of Revenue, was recognized to answer any questions. A copy of proposal and the summary is attached.

Tax on Heavy Equipment Short-Term Rental Agreements

Martha Walston, a staff attorney with the Fiscal Research Division, was recognized to explain the proposal. The proposal would resolve problems with applying property tax to heavy equipment rented on a short-term basis by allowing taxpayers who are engaged in the short-term heavy equipment rental business to pay a local tax based on the gross receipts of the business in lieu of paying property taxes on the heavy equipment. Pete Rodda, Forsyth County Tax Assessor, was recognized to answer questions and request data to learn the impact of the proposal. Ed Newman, a United Rentals representative, was recognized to speak in favor of the proposal. A copy of the proposal and its summary is attached.

Class Actions

Trina Griffin was recognized to explain the establishment of a procedure for taxpayers to join a class action seeking a refund of an unconstitutional tax. A copy of the proposal and its summary is attached.

Motor Fuel Tax Changes

Cindy Avrette was recognized to explain a proposal that would make changes to the motor fuel tax laws. Donna Alderman, Department of Revenue's Motor Fuels Tax Division representative, was recognized to answer questions. A copy of the proposal and its summary is attached.

Simplify Ownership of PUV Property

Martha Walston was recognized to explain the legislative proposal. The proposal would modify the ownership requirements of present-use value property to reflect common forms of land ownership. A copy of the proposal and its summary is attached.

Due to Representative Luebke's illness and a prior commitment, Senator Kerr gave the chair's gavel to Senator Hoyle who presided over the rest of the meeting.

911 Technical Corrections

Heather Fennell, a staff attorney with the Research Division, was recognized to explain the proposal which would make technical corrections to the Emergency Telephone Service Act. A copy of the proposal and its summary is attached.

Video Programming

Cindy Avrette was recognized to present three legislation proposals.

The first, "Supplemental Peg Support," would clarify the distribution of supplemental Peg support funding as requested by the league of Municipalities and the Southeast Association of Telecommunications Officers and Advisors. Karl Knapp, NC League of Municipalities' Research & Policy manager, was recognized to speak in favor of the proposal. Mark Prak, a lobbyist for the NC Cable Telecommunications Association, was recognized to speak in opposition to the proposal. A copy of the proposal and its summary is attached.

The second proposal, "Modify PEG Channel Grant Program," would modify the PEG channel grant program as requested by the e-NC Authority. Mark Prak was recognized to speak in opposition to the proposal. A copy of the proposal and its summary is attached.

The third proposal, "PEG Channels and Video Programming Changes," would modify the laws relating to state franchise for cable service providers, the PEG channel grant fund and local government allocations for PEG channels from the distributions it receives from the sales tax on video programming. This was requested by the Southeastern Association of Telecommunications (SEATOA) officers and advisors. Mark Prak spoke in opposition to the proposal. Catherine Rice, SEATOA, and Angie

Bailey, e-NC Authority representative was recognized to speak in favor of the proposal. A copy of the proposal and its summary is attached.

IRC Update

Trina Griffin was recognized to explain the legislative proposal which would update the reference to the Internal Revenue Code used in defining and determining certain State tax provisions. A copy of the proposal, its summary and the fiscal memo is attached.

Work Opportunity Tax Credit

Heather Fennell was recognized to explain the legislative proposal which would limit the Work Opportunity Tax Credit to 6% of the federal credit for wages paid in the same taxable year for positions located in North Carolina. A copy of the proposal and its summary is attached.

Revenue Laws Technical Changes – Part II

Trina Griffin was recognized to explain the proposal which would make technical, clarifying and administrative changes to current tax laws. A copy of the proposal and its summary is attached.

The meeting adjourned at 11:50 a.m.

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

Paul Luebke
Representative Paul Luebke, Co-Chair
Revenue Laws Study Committee

DeAnne Mangum
DeAnne Mangum, Committee Clerk

REVENUE LAWS STUDY COMMITTEE AGENDA
PROPOSED DRAFT

Sen. John Kerr Rep. Paul Luebke

Wednesday, April 30, 2008
Room 544, Legislative Office Building
9:30 a.m.

I. **Approval of the Minutes from the April 2 Meeting**

II. **Extension of Sunset for Credit for Reinvestment and Establishment of Sunset for Credit for Investing in Major Recycling Facility**

- Johnny Jacobs, Controller for Nucor Steel Corp.

III. **Franchise Tax Loophole Closings – *Legislative Proposal***

- Cindy Avrette, Research Division
  - LLCs that elect to be taxed as S Corporations
  - Captive REITS

IV. **Publicly Traded Partnerships – *Legislative Proposal***

- Cindy Avrette, Research Division

V. **Tax on Heavy Equipment Short-Term Rental Agreements – *Legislative Proposal***

- Martha Walston, Fiscal Research Division

VI. **Class Actions – *Legislative Proposal***

- Trina Griffin, Research Division

VII. **Motor Fuel Tax Changes – *Legislative Proposal***

- Cindy Avrette, Research Division

VIII. **Simplify Ownership of PUV Property – *Revised Legislative Proposal***

- Martha Walston, Fiscal Research Division

IX. **911 Technical Corrections – *Legislative Proposal***

- Heather Fennell, Research Division

X. **Video Programming – *Legislative Proposal***

- Cindy Avrette, Research Division
- Sandra Johnson, Fiscal Research Division

XI. IRC Update – *Legislative Proposal*

- Trina Griffin, Research Division

XII. Work Opportunity Tax Credit – *Legislative Proposal*

- Heather Fennell, Research Division

XIII. Revenue Laws Technical Changes: Part II – *Legislative Proposal*

- Trina Griffin, Research Division

XIV. Review Proposals Tentatively Approved by Committee

- *Circuit Breaker Tax Modifications*
- *Quadrennial Revaluations & Mobile Home Liens*
- *Modify Estate Tax Law (Stowe case)*
- *Sales Tax Exemption for Disaster Assistance*
- *Extend Expiring Tax Credits*
  - *R&D credit*
  - *State Ports Tax Credit*
  - *Credit for Small Business Employee Health Benefits*

XV. Approval of Final Report

XVI. Adjournment

REVENUE LAWS STUDY COMMITTEE
Wednesday, April 2, 2008
Room 544, Legislative Office Building
9:30 a.m.

MINUTES

The Revenue Laws Study Committee met at 9:30 a.m. on Wednesday, April 2, 2008, in room 544 of the Legislative Office Building. Eleven members of the committee were present. Representative Luebke presided as chair.

Approval of Minute from the March 5 Meeting

Senator Hoyle moved that the minutes be approved and the motion carried.

Sales Tax Exemption for Disaster Assistance

Cindy Avrette, a staff attorney with the Research Division, was recognized to explain the legislative proposal. Barry Porter, Triangle Area American Red Cross Executive Director, was recognized to speak in favor of the proposal. Senator Clodfelter moved for the proposal to be included in the Committee's recommendations to the Session and the motion carried. A copy of the proposal and its summary is attached.

Modify Estate Tax Law

Cindy Avrette was recognized to explain federal government's phase out of the estate tax and how it affects the state tax. Barry Boardman, a fiscal analyst with the Fiscal Research Division, was recognized to explain the fiscal impact of the changes. Representative Weiss moved to include the proposal in the committee's recommendations to the Session and the motion carried. A copy of the proposal and its summary is attached.

Refunds of Unconstitutional Taxes

Trina Griffin, a staff attorney with the Research Division, was recognized to explain the current state of class actions and the refund of unconstitutional taxes. A copy of her power point presentation is attached.

Property Tax Issues

Dan Ettefagh, a staff attorney with the Bill Drafting Division, was recognized to summarize the Property Tax Work Group's recommendations to the Revenue Laws Committee. A copy of his power point presentation is attached.

Mr. Ettefagh explained the legislative proposal for circuit breaker tax modifications. Pete Rodda, a member of the Property Tax Work Group, requested a delay in implantation until 2010, but no action was taken on this request. Senator Clodfelter moved to include the legislative proposal in the committee's recommendations to the Session and the motion carried. A copy of the proposal and its summary is attached.

Mr. Ettefagh and Martha Walston, a staff attorney with the Fiscal Research Division, were recognized to explain the legislative proposal on quadrennial evaluations and mobile home liens. A copy of the proposal, its summary and a Q&A sheet on mobile home liens is attached.

Ms. Walston was recognized to explain the legislative proposal for simplifying ownership of present-use value property. Representative Brubaker requested that the proposal be held and the motion carried.

Review of Tax Credits that Expire in 2008-2009

Trina Griffin was recognized to give an overview of expiring tax credits. The North Carolina Ports sent an information sheet and a letter requesting an extension of the credit to 2014. Ed Turlington, a lobbyist for the NC Technology Association, and Sam Taylor, a lobbyist for the NC Biosciences Organization, spoke in favor of extending the NC research and development tax credit. Greg Thompson, the state director of

the National Federation of Independent Businesses, was recognized to speak in favor of the small business employee health benefits tax credit. Rep. McComas moved to forward the three represented credits as a legislative proposal to the Session, but wanted to wait on recommending the reinvestment tax credit until the committee hears from a Nucor representative. The motion carried. A copy of Ms. Griffin's handout and the State Ports' letter is attached.

Video Programming Legislation (S.L. 2006-151)

Cindy Avrette was recognized to present an overview of the 2006 legislation. Sandra Johnson, a fiscal analyst with the Fiscal Research Division, was recognized to explain its revenue implications. Karl Knapp, NC League of Municipalities' Research & Policy manager, was recognized to speak briefly on PEG channel clarifications. Lee Mandell, NC League of Municipalities' Director of Research and Information Technology, was recognized. He pointed out that there were currently several unique, individual franchise agreements that have lead to various amounts of money being charged for services. Angie Bailey, Assistant Director of the e-NC Authority, was recognized. She stated that there were more PEG channels than anticipated so funding was short of original estimates needed. Gary R. Govert, Acting Senior Deputy Attorney General, Consumer Protection Division, NC Department of Justice, was recognized for the Attorney General's report. A copy of the handout is attached. Michael Williams, Cable Administrator, Raleigh Public Affairs Department, was recognized. He was disappointed that the legislation did not lead to an increase in cable competition and thinks changes are needed. Dwight Allen, AT&T lobbyist, was recognized and said that AT&T was continuing to work towards providing video services to North Carolina. Mark Prak, Time Warner Cable lobbyist, was recognized. He said that Time Warner continued to watch the affects of the legislation.

IRC Update

Due to the meeting running longer than expected, this issue was not addressed.

Motor Fuel Tax Issues

Due to the meeting running longer than expected, this issue was not addressed.

The meeting adjourned at 12:47 p.m.

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 — April 30, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Steve Woodson	NCFB
Doug Heegan	Williams Mullen
Kim Crouch	NCBA
Deatrice Williams	CUCA
Marty Bocock	EMBARQ
Bob Wells	N.C. Telco Alliance
Brad Phillips	TWC
Colleen Kochanek	Smith Moore
David Barnes	Poyner + Spruill
Nancy Rendleman	Williams Mullen

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — April 30, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Ken Melton	Ken Melton & Assoc.
[illegible]	97, AL, PA
[illegible]	Nelson Mullins
D. McLaughlin	Time Warner Cable
[illegible]	SOS
Bill Scoggin	KCC
FRANK FOLGER	SZD WICKER
[illegible]	[illegible]
Edgar Miller	CTNC
[illegible]	NCDS & NCPTA

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — April 30, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jay Stem	NCAA
Roger Bone	Bone & Assoc.
Cam Cover	BPMHL
Amy McConkey	Smith Anderson
Gene Ainsworth	A&A
Ed Noonan	United Rentals
Richard Taylor	NC 911 Board
Thurston Kosty	CAA
Patrick Boff	NMRS
Kathy Hawkins	Progress Energy

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — April 30, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Rita Harris	NC State Ports Auth.
Lori Ann Harris	CAHA
Mark Deaton	AT&T
Scott Gardner	Duke Energy Carolinas
John Motley	Gov Office
Cady Thomas	NCAR
Drew Moretz	Raleigh Chamber
Daniel Baum	Kennedy Covington
Rebecca Tomlin	NCACC
Julian Philpott	NC Farm Bureau
Michael Haley	Dept of Commerce

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — April 30, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
	Bose & Assoc.
	Multi-Client

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — April 30, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Cam Brawley	E&Y
Ed TURLINGTON	BROOKS PIERCE
Jim Ahlse	NCACPA
John McAlister	NC Chamber
JOHN GOODMAN	NC CHAMBER
Elizabeth Dalton	NCRMA
Amy McConkey	Smith Anderson

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — April 30, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
BILL SPENCER	NCDOR
Jonathan TART	NCDOR
LENNIE COLLINS	DOR
Gray Ralford	DOR
Michael Houser	NC DOR
BILL WEATHERSPOON	NC-AOI
Lindsay Sander	National Association of Publicly Traded Partnerships
Will Culpepper	Moore + Van Allen
Billy Moore	Moore & Van Allen
Anna Mitchell	NCDOR
Katherine Coley	Moore + van allen

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — April 30, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Johnny Jacobs	Nucor Steel Hertford
Karl Knapp	NC League of Municipalities
Catharine Rice	Seaton
Chad Johnston	ACM/Peoples Channel
Mia Bailey	ElectriCities of NC, Inc
Cameron Henley	ElectriCities
Angie Bailey	e.NC Authority

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — April 30, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Donna Alderman	NCDOR
Linda Struyk Millsaps	NCDOR
Tenisha Jacobs	NCDOJ
Janice W. Davidson	NCDOR
Bill Willers	NCDOR
Mick Blom	NC DOR
Lee Norris	NC DOR
David Baker	NCDOR
Pete Roddie	Forsyth County Assessor/Collector
Liz Watson	NCDOR
Pat Goddard	Johnston Co Tax Administrator

House Pages

Name Of Committee: Revenue Laws Study Comm Date: 4-30-08

1. Name:

County:

Sponsor:

2. Name:

County:

Sponsor:

3. Name:

County:

Sponsor:

4. Name:

County:

Sponsor:

5. Name:

County:

Sponsor:

	Senate	Sgt-At-Arms	House
1. Name:	LESLIE WRIGHT		Bob Rossi
2. Name:	CHARLES MARSALIS		Dusty Rhodes
3. Name:	CHARLES HARPER		Toussant Auent
4. Name:			
5. Name:			

Credits Related to Recycling Facilities

Revenue Laws Study Committee
April 30, 2008

Issue #1: Whether to extend the January 1, 2008 sunset for the credit for reinvestment.

Issue #2: Whether to establish a sunset on the credit for investing in large or major recycling facilities.

Credit for Reinvestment by Recycling Facility
§ 105-129.28

Eligibility. – Beginning with the 1998 tax year, a major recycling facility that is accessible by neither ocean barge nor ship and that and incurs additional expenses due to transporting its materials and products by alternative modes of transportation is allowed a refundable corporate income tax reinvestment credit. For the first ten years the reinvestment credit is in effect, a major recycling facility must use the amount received in credit to invest in rail and roads associated with the facility, in transportation infrastructure to reduce the expense of transporting materials and products to and from the facility, or in land and infrastructure for industrial sites, other than the facility itself, in the same county. If there are not enough reasonable opportunities for investments in those purposes in a given year, however, the major recycling facility may invest the amount of credit received in the facility itself, but only after it has made the minimum investment of $300 million required to qualify as a major recycling facility. The facility must document its compliance with this reinvestment requirement and it forfeits any part of the credit it spends for another purpose.

Credit Amount. – The reinvestment credit is equal to the amount of these additional expenses, which must be documented annually to the Secretary of Commerce. The credit is subject to a dollar cap each year, in increasing amounts. In 1999, the cap was $640,000. In 2004, the cap leveled off at $10.4 million a year.

Sunset. – The credit expired for taxable years beginning on or after January 1, 2008. According to S.L. 1998-55, the purpose of the ten-year sunset was to allow a determination as to whether any major recycling facility continues to experience additional transportation and transloading expenses due to its inability to use ocean barges or ships. The intent is to postpone the sunset if any major recycling facility can document that it is still experiencing additional expenses in 2008 due to its inability to use ocean barges or ships to transport materials and products.

Legislative History. – No changes have been made since its original enactment in 1998.

Credit for Investing in Large or Major Recycling Facility
§ 105-129.27

Eligibility. – An owner that purchases or leases machinery and equipment for a major recycling facility in this State is allowed a credit. The credit is allowed against franchise or income tax.

Credit Amount. – The credit amount depends on the recycling facility.

- An owner who purchases or leases machinery and equipment for a **major** recycling facility is eligible for a credit equal to **50%** of the amount paid for the machinery and equipment.
- An owner who purchases or leases machinery and equipment for a **large** recycling facility is eligible for a credit equal to **20%** of the amount paid.

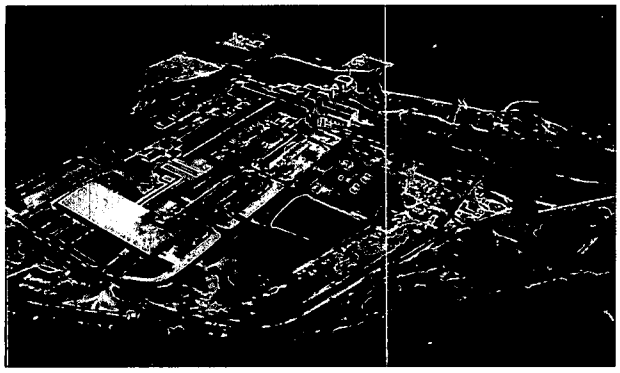
Carryforward Period. – 25 years

Change in Ownership. – The sale, merger, consolidation, conversion, acquisition, or bankruptcy of a recycling facility, or any transaction by which the facility is reformulated as another business, does not create new eligibility in a succeeding owner with respect to a credit for which the predecessor was not eligible under this section. A successor business may, however, take any carried-over portion of a credit that its predecessor could have taken if it had a tax liability.

Forfeiture. – If any machinery or equipment for which a credit is allowed is not placed in service within 30 months after the credit was allowed, the credit is forfeited. A taxpayer that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest.

Legislative History. – This credit was enacted in 1998 and was intended as an alternative to the machinery and equipment credit available under the Bill Lee Act.

Nucor Steel – Hertford



- **Open since October 2000**
- **$550 million invested**
- **400+ people employed**
- **$75,000 in average annual compensation**

Our History

In June 1998, Nucor Steel announced its intentions to build a carbon steel plate mill in Hertford County, North Carolina. Two years later, the plant began operations. Located on a 900-acre site on the Chowan River, near the towns of Winton and Cofield, it has a rated annual capacity of 1 million tons of steel.

In an agreement with the state, Nucor committed to investing $300 million in the facility; however, our success has allowed us to invest over $550 million in this plant, for the manufacture of steel plate for heavy equipment such as rail cars, ships, barges, and construction, among other uses.

Nucor also committed to employing 250 North Carolinians in Hertford County. Today Nucor employs over 400 team members, earning average annual compensation of $75,000 and rising.

In the last decade, five companies moved to Hertford County to provide support and transportation services for Nucor. Other customers of Nucor are currently seeking to move operations to the state.

Why Hertford County?

When Nucor was searching for a site for its plate mill in 1997, it looked at sites from Virginia to Texas. All of the sites except the Hertford County site had deep water access, and therefore were accessible by ocean-going ship or ocean-going barge. Because of the large amounts of scrap, material and finished product that an ocean-going vessel can carry in comparison to a river barge, a rail car or a truck, the additional freight costs were a huge disincentive for the Hertford County site. Therefore, North Carolina agreed to provide a tax credit to make the Hertford County site competitive with the deep water sites.

An annual cap of $10,400,000.00 was set on this portion of the credit. A sunset provision was added to allow for review of the transportation credit to determine if the credit should be extended.

Today, these transportation costs persist. In addition, future cost projections calculated ten years ago turned out to be extremely below actual costs. The chart below shows Nucor's additional costs incurred:

Taxable Year	Statutory Cap Amount	Actual Transportation Costs	Amount in Excess of Statutory Cap
2004	$10,400,000.00	$21,976,740.00	$11,576,740.00
2005	$10,400,000.00	$32,523,950.00	$22,123,950.00
2006	$10,400,000.00	$34,409,838.00	$24,009,838.00

In other words, Nucor's costs for just these 3 years exceeded the cap amount by more than $55 million. These numbers have been verified as required by an independent accounting firm and have been audited by the North Carolina Department of Revenue with no change through the 2005 taxable year.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U D

BILL DRAFT 2007-SVxz-21 [v.3] (04/21)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/29/2008 6:36:30 PM

Short Title: Close Franchise Tax Loopholes. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLOSE FRANCHISE TAX LOOPHOLES BY REQUIRING A LIMITED LIABILITY COMPANY THAT ELECTS TO BE TREATED AS A CORPORATION AND A CAPTIVE REIT TO PAY FRANCHISE TAX.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-114(b) reads as rewritten:

"(b) Definitions. – The following definitions apply in this Article:

...

(2) Corporation. – A domestic corporation, a foreign corporation, an electric membership corporation organized under Chapter 117 of the General Statutes or doing business in this State, or an association that is organized for pecuniary gain, has capital stock represented by shares, whether with or without par value, and has privileges not possessed by individuals or partnerships. The term includes a mutual or capital stock savings and loan association or building and loan association chartered under the laws of any state or of the United States. The term includes a limited liability company that elects to be taxed as a ~~C Corporation~~ corporation under the Code, but does not otherwise include a limited liability company.

..."

SECTION 2. G.S. 105-114.1(a)(5) reads as rewritten:

(5) Noncorporate limited liability company. – A limited liability company that does not elect to be taxed as a ~~C Corporation~~ corporation under the Code.

SECTION 3. G.S. 105-125(b) reads as rewritten:

"(b) Certain Investment Companies. ~~A corporation doing business in North Carolina that qualifies as a "regulated investment company" under section 851 of the~~

~~Code or as a "real estate investment trust" under section 856 of the Code and elects for federal income tax purposes to be treated as a "regulated investment company" or as a "real estate investment trust,"~~ A corporation doing business in North Carolina that meets one or more of the following conditions may, in determining its basis for franchise tax, deduct the aggregate market value of its investments in the stocks, bonds, debentures, or other securities or evidences of debt of other corporations, partnerships, individuals, municipalities, governmental agencies, or ~~governments.~~governments:

(1) A regulated investment company. A regulated investment company is an entity that qualifies as a regulated investment company under section 851 of the Code.

(2) A REIT, unless the REIT is a captive REIT. The terms 'REIT' and 'captive REIT' have the same meanings as defined in G.S. 105-130.12."

SECTION 4. This act is effective for taxable years beginning on or after January 1, 2008.

BILL DRAFT 2007-SVxz-21: Close Franchise Tax Loopholes

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	April 30, 2008
Introduced by:		**Summary by:**	Cindy Avrette
Version:	Bill Draft		Committee Staff

SUMMARY: This bill draft makes changes to the franchise tax laws that conform to changes the General Assembly made in 2006 and 2007 to the corporate income tax laws. The changes are recommended to the Revenue Laws Study Committee by the Department of Revenue. The bill would become effective for taxable years beginning on or after January 1, 2008.

BILL ANALYSIS: The bill draft provides that LLCs that elect to be taxed as S corporations are subject to the franchise tax in the same manner as other S corporations and that captive REITS are subject to the franchise tax in the same manner as a corporation.

In 2006, the General Assembly amended the definition of 'corporation', as it applies to the franchise tax statutes, to include a limited liability company that elects to be taxed as a C corporation for federal income tax purposes. The Department began to receive questions from S corporations as to whether they could convert to an LLC and elect to be treated as S corporations for income tax purposes, thereby being exempt from paying franchise tax. In 2005, S corporations paid more than $50 million in franchise tax. Section 1 of the bill draft provide that an LLC that elects to be treated as a corporation for income tax purposes, either a C corporation or a S corporation, is also considered a corporation for franchise tax purposes. Section 2 makes a conforming change to the definition of 'noncorporate limited liability company'.

In 2007, the General Assembly limited a corporation's ability to use captive real estate investment trusts (REITs) to avoid State taxes by disallowing the dividend paid deduction when a REIT is a captive REIT. The effect of this change is that a captive REIT is treated as a regular corporation for income tax purposes. A REIT is an organization that uses the pooled capital of many investors to purchase and mange real estate. [1] A REIT that is owned or controlled by a single entity is commonly referred to as a captive REIT.[2]

Section 3 of the bill draft would provide that a captive REIT is also treated as a regular corporation for franchise tax purposes. Under the current franchise tax law, a REIT may, in determining its value for franchise tax purposes, deduct the aggregate market value of its investments in the stocks, bonds, debentures, or other securities or evidences of debt of other corporations, partnerships, individuals, municipalities, governmental agencies or governments. Section 3 of the bill draft changes the statute to provide that this deduction may only be used by a REIT that is not a captive REIT.

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[1] Under federal and State law, a REIT is taxable only on income that is not distributed to shareholders. The amount of income a REIT distributes is not subject to tax because the REIT is allowed a deduction for the dividends it pays. The amounts received by the shareholders of the REIT are taxable.

[2] Two common types of captive REITs are rental REITs and mortgage REITs.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-RBz-39A [v.3] (04/28)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/29/2008 4:58:22 PM

Short Title: Reports by Publicly Traded Partnerships. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE PUBLICLY TRADED PARTNERSHIPS TO GIVE THE DEPARTMENT OF REVENUE A LIST OF THE PARTNERS WHO RECEIVED MORE THAN FIVE HUNDRED DOLLARS OF INCOME FROM THE PARTNERSHIP.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-154 reads as rewritten:

"**§ 105-154. Information at the source returns.**

(a) Repealed by Session Laws 1993, c. 354, s. 14.

(b) Information Returns of Payers. – A person who is a resident of this State, has a place of business in this State, or has an employee, an agent, or another representative in any capacity in this State shall file an information return as required by the Secretary if the person directly or indirectly pays or controls the payment of any income to any taxpayer. The return shall contain all information required by the Secretary. The filing of any return in compliance with this section by a foreign corporation is not evidence that the corporation is doing business in this State.

(c) Information Returns of Partnerships. – A partnership doing business in this State and required to file a return under the Code shall file an information return with the Secretary. A partnership that the Secretary believes to be doing business in this State and to be required to file a return under the Code shall file an information return when requested to do so by the Secretary. The information return shall contain all information required by the Secretary. It shall state specifically the items of the partnership's gross income, the deductions allowed under the Code, and the adjustments required by this Part. The information return shall also include the name and address of each person who would be entitled to share in the partnership's net income, if distributable, and the amount each person's distributive share would be. The information return shall specify the part of each person's distributive share of the net income that represents corporation

dividends. The information return shall be signed by one of the partners under affirmation in the form required by the Secretary.

A partnership that files an information return under this subsection shall furnish to each person who would be entitled to share in the partnership's net income, if distributable, any information necessary for that person to properly file a State income tax return. The information shall be in the form prescribed by the Secretary and must be furnished on or before the due date of the information return.

(d) Payment of Tax on Behalf of Nonresident Owner or Partner. – If a business conducted in this State is owned by a nonresident individual or by a partnership having one or more nonresident members, the manager of the business shall report the earnings of the business in this State, the distributive share of the income of each nonresident owner or partner, and any other information required by the Secretary. The manager of the business shall pay with the return the tax on each nonresident owner or partner's share of the income computed at the rate levied on individuals under G.S. 105-134.2(a)(3). The business may deduct the payment for each nonresident owner or partner from the owner or partner's distributive share of the profits of the business in this State. If the nonresident partner is not an individual and the partner has executed an affirmation that the partner will pay the tax with its corporate, partnership, trust, or estate income tax return, the manager of the business is not required to pay the tax on the partner's share. In this case, the manager shall include a copy of the affirmation with the report required by this subsection.

(e) Publicly Traded Partnership. – A partnership that qualifies as a publicly traded partnership under section 7704(c) of the Code is subject to this subsection and is not subject to subsection (d) of this section. The manager of a publicly traded partnership must file an annual information return with the Secretary. The return must be in the form prescribed by the Secretary, must list the name, address, and taxpayer identification number of each partner who received more than five hundred dollars ($500.00) of income from the partnership during the tax year, and must contain any other information required by the Secretary. The return is due by the date specified by the Secretary."

SECTION 2. This act is effective for taxable years beginning on or after January 1, 2008.

BILL DRAFT 2007-RBz-39A: Reports by Publicly Traded Partnerships

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	April 30, 2008
Introduced by:		**Summary by:**	Cindy Avrette
Version:	Bill Draft		Committee Staff

SUMMARY: ***This bill draft would require publicly traded partnerships to file an informational return with the Secretary of Revenue that lists the partners who received more than $500 of income from the partnership during the taxable year. This return would be in lieu of the current requirement for it them to report the distributive share of the income of each nonresident member and to pay the tax on the nonresident member's share of income. The bill would become effective for taxable years beginning on or after January 1, 2008.***

BILL ANALYSIS: A publicly traded partnership (PTP) is a limited partnership the interests in which are traded on public exchanges, just like corporate stock. However, under section 7704(c) of the Code, a PTP that receives more than 90% of its income from specified sources may be treated as a partnership rather than a corporation for tax purposes. The specified sources of income include mineral or natural resources activities like exploration, production, mining, and refining; marketing and transportation of oil and gas (pipelines); timber; and real estate. Most PTPs are in energy or real estate related businesses. I understand NC has a handful of PTPs (less than 10).

Because a PTP has thousands of unit-holders that are traded daily on the stock exchange, it is very difficult for a PTP to comply with the current requirements to identify its nonresident unit-holders, to report the distributive share of income of those unit-holders, and to pay tax on behalf of those unit-holders.

The Multi-State Tax Commission has adopted a model statute that exempts PTP from reporting and withholding requirements for non-resident members of pass-through entities. It is my understanding that more than 25 states have excluded PTPs from tax withholding requirements for nonresident partners.

This bill draft would exclude PTPs from tax withholding requirements for nonresident members; in its place, it would require PTPs to file an annual return with the Secretary identifying those unit-holders who received more than $500 of income from the partnership during the taxable year. PTPs, like other partnerships, issue Schedule K-1 to its unit-holders. The compilation of this information would be provided to the Department. This information would allow the Department to cross-check information to ensure that taxpayers who owe tax to the State are paying it.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-LAz-21 [v.3] (4/29)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/29/2008 2:11:14 PM

Short Title: Tax on Short-term Heavy Equipment Rentals. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO RESOLVE PROBLEMS WITH APPLYING PROPERTY TAX TO HEAVY EQUIPMENT RENTED ON A SHORT-TERM BASIS BY ALLOWING TAXPAYERS WHO ARE ENGAGED IN THE SHORT-TERM HEAVY EQUIPMENT RENTAL BUSINESS TO PAY A LOCAL TAX BASED ON THE GROSS RECEIPTS OF THE BUSINESS IN LIEU OF PAYING PROPERTY TAXES ON THE HEAVY EQUIPMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-275 is amended by adding a new subdivision to read:

"**§ 105-275. Property classified and excluded from the tax base.**

The following classes of property are hereby designated special classes under authority of Article V, Sec. 2(2), of the North Carolina Constitution and shall not be listed, appraised, assessed, or taxed:

...

(42a) Heavy equipment owned by a person who elects to pay a gross receipts tax under G.S. 153A-156.1 and G.S. 160A-215.2 on its receipts from the lease or rental of the equipment."

SECTION 2. Article 7 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-156.1. Election to pay gross receipts tax on heavy equipment.**

(a) Definitions. – The following definitions apply in this section:

(1) Heavy equipment. – Earthmoving or construction equipment that meets any of the following requirements:

a. It is a self-propelled vehicle that is not designed to be driven on a highway.

b. It is industrial lift equipment, industrial material handling equipment, industrial electrical generation equipment, or a similar piece of industrial equipment.

c. It is an attachment or an accessory for a vehicle or a piece of equipment described in this subdivision.

(2) Short-term lease or rental. – Defined in G.S. 105-187.1.

(b) Election. – A person whose principal business is the short-term lease or rental of heavy equipment at retail may elect to pay a tax under this section in lieu of a property tax on the heavy equipment. To make this election, a person must file a notice of election with the Department of Revenue. The notice must contain the information required by the Department. The Department must notify the counties and any city that collects its own property taxes of an election filed under this section.

A notice of election is effective for the first fiscal year that begins at least five months after it is filed. An election remains in effect until it is revoked.

(c) Tax. – The tax authorized by this section applies to a short-term lease or rental of heavy equipment by a person whose principal business is the short-term lease or rental of heavy equipment at retail. The tax rate is X percent (X %) of the gross receipts from the short-term lease or rental of the heavy equipment. The tax is payable by the person who leases or rents the heavy equipment.

(d) Payment. – The tax imposed by this section is payable quarterly and is due by the last day of the month following the end of the quarter. The tax must be paid to the tax collector of each county to which the tax is allocated under subsection (e) of this section and to the finance officer of each city to which the tax is allocated under subsection (e) of this section. The penalties and collection remedies that apply to the payment of sales and use taxes under Article 5 of Chapter 105 of the General Statutes apply to this tax. The county tax collector has the same authority as the Secretary of Revenue in imposing these penalties and remedies.

(e) Allocation. – The tax imposed by this section must be allocated among the counties and cities based on where heavy equipment that is subject to the tax is used. When a person who is required to pay the tax imposed by this section enters into a short-term lease or rental agreement for heavy equipment, the person must determine the county and city, if any, where the heavy equipment is to be used. If an agreement does not specify where heavy equipment is to be used, the heavy equipment is considered to be used at the location of the place of business from which the heavy equipment is leased or rented. The amount allocated to each county and city is the tax paid on the heavy equipment used in the county or city. When heavy equipment is used in a city, one-half of the tax paid on the equipment is allocated to the city and one-half is allocated to the county in which the city is located.

(f) Revocation. – A person who has filed an election under this section may revoke the election by filing a notice of revocation with the Department of Revenue. A notice of revocation is effective for the first fiscal year that begins at least five months after it is filed. When the Department receives a notice of revocation, it must notify the counties and any city that collects its own property taxes of the revocation.

SECTION 3. Article 9 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-215.2. – Election to pay gross receipts tax on heavy equipment.**

G.S. 153A-156.1 authorizes a person whose principal business is the short-term lease or rental of heavy equipment to elect to pay a tax on the gross receipts from the lease or rental of the heavy equipment in lieu of a property tax on the heavy equipment. An election filed under that section applies to a city. Heavy equipment owned by a person who makes an election under that section is excluded from property tax under G.S. 105-275."

SECTION 4. G.S. 105-259(b)(5) reads as rewritten:

"**§ 105-259. Secrecy required of officials; penalty for violation.**

(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(5) To furnish to the chair of a board of county commissioners or the tax collector of a county information on the county sales and use tax."

SECTION 5. This act is effective when it becomes law.

DRAFT 2007-LAz-21:
Tax on Short-term Heavy Equipment Rentals.

BILL ANALYSIS

Committee:	Revenue Laws	**Date:**	April 28, 2008
Introduced by:		**Summary by:**	Martha Walston
Version:			Committee Counsel

SUMMARY: The draft authorizes a person whose principal business is the short-term lease or rental of heavy equipment at retail to elect to pay a tax on the gross receipts from the rental or lease of the heavy equipment in lieu of property taxes on the heavy equipment.

CURRENT LAW: A business that rents out heavy equipment such as earthmoving and lifting equipment must pay property tax on the equipment. Like other personal property, the value of the heavy equipment is determined as of January 1 each year and is subject to property tax in the county or city where the equipment is located on that date. Some owners of heavy equipment rental businesses have expressed the following concerns about the unfairness and administrative inconsistencies of levying and collecting property tax on this heavy equipment:

- Some businesses do not know the location of their heavy equipment on January 1
- Some businesses, whose heavy equipment is not rented on January 1, move the equipment to a county with a lower property tax rate in order to pay lower property taxes.
- Some businesses erroneously claim their heavy equipment as inventory held for sale, and therefore, not subject to property taxes.

During the 2007 Session, House Bill 1895 was introduced in an attempt to alleviate some of these concerns and to provide a more level "playing field" for companies that rent out heavy equipment. HB 1895 was supported by several large companies whose principal business is the rental and leasing of heavy equipment. HB 1895, as introduced, authorized counties and cities to levy a privilege tax on certain businesses that rent out heavy equipment in lieu of paying property tax on the heavy equipment.[1] Under that version, the rate of the privilege tax could not exceed .0.75% and was applied to the gross receipts from the heavy equipment rentals. HB 1895 was given a favorable report in the House Committee on Commerce, Small Business and Entrepreneurship and re-referred to House Finance. During the final full week of the Session, the House Finance Committee gave a favorable report to an amended version of the bill that deleted all provisions of the first edition and replaced it with language authorizing the Revenue Laws Study Committee to study the issue of whether to impose a gross receipts tax on heavy equipment property rentals in lieu of a property tax on the equipment.

BILL ANALYSIS: The draft would allow a person whose principal business is the short-term[2] lease or rental of heavy equipment to elect to pay a tax on the gross receipts from the rental or lease of the heavy equipment in lieu of a property tax on the heavy equipment.

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[1] The businesses that were subject to the tax are businesses engaged in renting construction, mining, forestry, commercial and industrial equipment as defined in the North American Industry Classification System(NAICS) adopted by the US Office of Management and Budget.

[2] A short-term lease is a lease or rental is for a period of less than 365 days. (G.S. 105-187.1). Under current law, a long-term lease agreement generally requires the lessee to list and pay the property taxes due on the heavy equipment.

What type of heavy equipment is subject to the tax?

The tax applies to the gross receipts from the short-term rental or lease of the following heavy equipment:

- Earthmoving or construction equipment that meets any of the following requirements:
  a. It is a self-propelled vehicle that is not designed to be driven on a highway.
  b. It is industrial lift equipment, industrial material handling equipment, industrial electrical generation equipment, or similar piece of industrial equipment.
  c. It is an attachment or an accessory for a vehicle or piece of equipment described in a. or b.

What is the rate to be applied to the gross receipts from the short-term lease or rental of heavy equipment?

- The rate will be determined after comparing the property tax paid in prior years by eligible businesses to the gross receipts generated by the same businesses from the short-term rental of the heavy equipment.

How and when will the gross receipts tax be paid?

- The gross receipts tax will be paid quarterly and will be due on the last day of the month following the end of the quarter. The tax is paid to the city finance officer and the county tax collector in the county or city where the equipment is used.

How will the gross receipts tax be allocated among the counties and cities?

- The tax will be allocated among the counties and cities based on where the heavy equipment subject to the tax is used. The short-term lease or rental agreement should specify the county and city, if any, where the equipment is to be used. If the agreement is silent on this specification, then the heavy equipment is considered to be used at the location of the business from which it was leased or rented. The amount to be allocated to each county and city is the tax paid on the heavy equipment used in the county or city. When the heavy equipment is used in a city, one-half of the tax paid on the equipment is allocated to the city and one-half is allocated to the county in which the city is located.

How does a person revoke an election to pay gross receipts tax in lieu of property taxes?

- The person must file a notice of revocation with the Department of Revenue.

EFFECTIVE DATE: This act is effective when it becomes law.

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-SVz-22 [v.6] (04/23)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/29/2008 4:58:47 PM

Short Title: Procedure for Tax Class Actions. (Public)

Sponsors: Senator.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PROCEDURE FOR TAXPAYERS TO JOIN A CLASS ACTION SEEKING A REFUND OF AN UNCONSTITUTIONAL TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 105 is amended by adding a new section to read:

"**§ 105-241.18. Class actions.**

(a) Requirements. – To be included as a member in a class action seeking the refund of an unconstitutional tax, a taxpayer must file a claim for refund in accordance with G.S. 105-241.17. The claim must also state that the sole basis for the refund claim is the unconstitutionality of a statute and not the application of a statute and specify the pending class action of which the taxpayer seeks to become a member. This subsection does not apply to the class representative who must comply with G.S. 105-241.17 to commence a class action challenging a statute as unconstitutional.

(b) Notice. – The Department must send to the court in which the class action is pending a copy of any claim for refund filed in accordance with this section.

(c) Exemption. – The procedures for administrative and judicial review of a proposed denial of refund in G.S. 105-241.11 through G.S. 105-241.17 do not apply to a claim for refund made in accordance with this section.

(d) Separate Claim. – If a taxpayer's claim for refund includes a basis other than the basis set out in subsection (a) of this section, the taxpayer must file a separate claim for refund in accordance with G.S. 105-241.17.

(e) Statute of Limitations. – The statute of limitations for filing a claim for refund is tolled for any taxpayer who, at the time the class action was commenced, could timely file a claim for refund with the Secretary. The statute of limitations resumes running against the taxpayer upon any of the following:

(1) The entry of an order eliminating the taxpayer from the class.

(2) The entry of an order denying certification of the class.
(3) The dismissal of the action without an adjudication on the merits.
(4) The entry of a final judgment."

SECTION 2. G.S. 105-241.19 reads as rewritten:

"**§ 105-241.19. Declaratory judgments, injunctions, and other actions prohibited.**

The remedies in G.S. 105-241.11 through G.S. ~~105-241.17~~ 105-241.18 set out the exclusive remedies for disputing the denial of a requested refund, a taxpayer's liability for a tax, or the constitutionality of a tax statute. Any other action is barred. Neither an action for declaratory judgment, an action for an injunction to prevent the collection of a tax, nor any other action is allowed."

SECTION 3. This act is effective when it becomes law and applies to actions filed on or after that date.

DRAFT 2007-SVz-22: Procedure for Tax Class Actions

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	April 30, 2008
Introduced by:		**Summary by:**	Trina Griffin
Version:	Draft Proposal		Committee Counsel

SUMMARY: This proposal establishes a procedure for taxpayers seeking to join a class action in order to obtain a refund of an unconstitutional tax.

BILL ANALYSIS: This proposal does not change the current law with regard to a taxpayer who wishes to commence a class action challenging the constitutionality of a tax. That taxpayer must exhaust the administrative review procedures prior to filing suit. This proposal sets out the procedure for a taxpayer seeking to become a member of a class action once that lawsuit has already been filed. In order to join a class action, a taxpayer would be required to do the following:

- File a claim for refund with the Department of Revenue.
- Include a statement indicating that the sole basis for the claim for refund is the unconstitutionality of a statute and not the application of a statute.
- Specify the pending class action to which the taxpayer seeks to become a member.

These taxpayers would not be required to exhaust the administrative and judicial review process. Once a taxpayer has filed a claim for refund seeking to join a class, the Department would be required to notify the court in which the class action is pending by sending it a copy of the claim for refund.

If a taxpayer's claim for refund includes a basis other than the facial unconstitutionality of a statute, then the taxpayer must file a separate claim for refund.

The statute of limitations for filing a claim for refund is tolled for any taxpayer who, at the time the class action was commenced, could have filed a timely claim for refund. The statute of limitations resumes running upon any of the following:

1. The entry of an order eliminating the taxpayer from the class.
2. The entry of an order denying certification of the class.
3. The dismissal of the action without an adjudication on the merits.
4. The entry of a final judgment

EFFECTIVE DATE: This act is effective when it becomes law and applies to actions filed on or after that date.

CURRENT LAW & BACKGROUND: The current law regarding tax class actions is a complex amalgamation of conflicting common law legal principles, statutes, and judicial interpretation. The intersection of these principles and laws provide little guidance to the Department, taxpayers, or practitioners as to the proper procedure for seeking the refund of an unconstitutional tax.

Prior to the enactment of SB 242 in 2007, the "protest statute" was the relevant statute for class action purposes. For over 80 years, it provided the authority for and the procedural mechanism by which taxpayers could bring a lawsuit challenging the illegality of a tax. This statute required a taxpayer to pay the tax first, file a claim for a refund, and wait 90 days before filing suit. This statute was repealed

by SB 242. However, it is still relevant to understanding the current law because it is the centerpiece of State judicial opinions in this area.

Until 1998, the law in North Carolina was well-settled with regard to the protest rule. North Carolina courts had consistently upheld the application of the statute as a procedural bar to relief if the requirements had not been met. In the *Bailey I* case, a group of State and local employees filed suit alleging impairment of contract as the result of legislative changes made to the taxation of retiree income. None of the plaintiffs had filed a protest. The North Carolina Supreme Court upheld the dismissal of the case for failure to comply with the procedural requirements of G.S. 105-267. The *Swanson* case involved a similar issue. In that case, the plaintiffs filed a "class demand letter" attempting to have one claim for refund stand for all claims. The North Carolina Supreme Court also upheld the dismissal of the case.

After the decision in *Bailey I*, the plaintiffs refiled their case and, this time, all of the plaintiffs had individually complied with the protest requirement. The Court reversed itself. In *Bailey II*, the Court found that not only were the plaintiffs who had filed a protest entitled to a refund, but all nonprotesters were entitled to a refund as well. The Court seemed most persuaded by the fact that the State had sufficient notice of its liability where there was an identifiable class of affected taxpayers consisting of all those State and local employees who had vested in the State retirement system as of August 12, 1989.

The *Smith* case was another class action lawsuit comprised of both protesters and nonprotesters challenging the intangibles tax. In that case, the North Carolina Supreme Court also held that the nonprotesters were entitled to relief as well as the protesters. However, the Court based its reasoning, not on the protest statute, but on the uniformity provision of the State Constitution.

Dunn is an ongoing case that has to do with the taxation of interest earned on out-of-state municipal bonds. In December of 2007, the North Carolina Supreme Court upheld the certification of a class that includes plaintiffs who have not filed a refund claim, who are of a different tax type than the named plaintiffs, and for tax years other than the years the plaintiffs are seeking a refund.

In the tax class actions that have been decided since 1998, the North Carolina courts have demonstrated a willingness to effectively allow the claim or protest of one taxpayer stand for the claims of all similarly situated taxpayers despite the protest statute's requirement taxpayers must file a claim for refund as a prerequisite to becoming a party to a lawsuit challenging the legality of a tax.

With the passage of SB 242, the protest statute is repealed and a new statute is enacted setting out the conditions that must be met in order to file a lawsuit challenging the constitutionality of a tax statute, which includes obtaining a final determination from the Department and filing a contested case with the Office of Administrative Hearings. SB 242 did not make any express class action provision.

Given SB 242's silence and the trend over the last 10 years in our courts on this issue, this proposal is designed to provide clear guidance to the Department, taxpayers, and practitioners, consistent with the original intent of the protest statute, that each taxpayer seeking to become a member of a class action must file a claim for refund indicating that desire and identifying the specific class action.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-RBxz-34B [v.3] (03/31)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/30/2008 6:17:38 AM

Short Title: Motor Fuel Tax Law Changes. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE MOTOR FUEL TAX LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-449.37 reads as rewritten:

"**§ 105-449.37. Definitions; tax liability.**

(a) Definitions. – The following definitions apply in this Article:

(1) International Fuel Tax Agreement. – The Articles of Agreement adopted by the International Fuel Tax Association, Inc., as amended as of June 1, 2008.

(2) Motor carrier. – A person who operates or causes to be operated on any highway in this State a motor vehicle that is a qualified motor ~~vehicle under the International Fuel Tax Agreement.~~ vehicle. The term does not include the United States, ~~the State,~~ a state, or a political subdivision of ~~the State.~~a state.

~~(1a)~~(3) Motor vehicle. – ~~A motor vehicle as defined in G.S. 105-164.3 other than special mobile equipment as defined in G.S. 105-164.3.~~Defined in G.S. 20-4.01.

~~(2)~~(4) Operations. – ~~Operations of all motor vehicles described in subdivision (1),~~ The movement of a qualified motor vehicle by a motor carrier, whether loaded or empty and whether or not operated for compensation.

~~(2a)~~(5) Person. – Defined in G.S. 105-228.90.

(6) Qualified motor vehicle. – Defined in the International Fuel Tax Agreement.

~~(3)~~(7) Secretary. – ~~The Secretary of Revenue.~~Defined in G.S. 105-228.90.

(b) Liability. – A motor carrier who operates on one or more days of a reporting period is liable for the tax imposed by this Article for that reporting period and is entitled to the credits allowed for that reporting period."

SECTION 2. G.S. 105-449.38 reads as rewritten:

"**§ 105-449.38. Tax levied.**

A road tax for the privilege of using the streets and highways of this State is imposed upon every motor carrier on the amount of motor fuel or alternative fuel used by the carrier in its operations within this State. The tax shall be at the rate established by the Secretary pursuant to G.S. 105-449.80 or G.S. 105-449.136, as appropriate. This tax is in addition to any other taxes imposed on motor ~~carriers~~carriers."

SECTION 3. G.S. 105-449.44 reads as rewritten:

"**§ 105-449.44. How to determine the amount of fuel used in the State; presumption of amount used.**

(a) Calculation. – The amount of motor fuel or alternative fuel a motor carrier uses in its operations in this State for a reporting period is the number of miles the motor carrier travels in this State during that period divided by the calculated miles per gallon for the motor carrier for all qualified motor vehicles during that period.

(b) Presumption. – The Secretary must check reports filed under this Article against the weigh station records and other records of the Division of Motor Vehicles of the Department of Transportation and the State Highway Patrol of the Department of Crime Control and Public Safety concerning motor carriers to determine if motor carriers that are operating in this State are filing the reports required by this Article. ~~The Department may assess a motor carrier for the amount payable based on the presumed mileage. A motor carrier that does either of the following for a quarter is presumed to have traveled in this State during that quarter the number of miles equal to 10 trips of 450 miles each for each of the motor carrier's vehicles:~~ If the records indicate that a motor carrier operated in this State in a quarter for which the motor carrier did not file a report or that the motor carrier's report for a quarter understates the motor carrier's mileage in this State for that quarter by at least twenty-five percent (25%), the Secretary may assess the motor carrier for an amount based on the motor carrier's presumed operations. The motor carrier is presumed to have mileage in this State equal to 10 trips of 450 miles each for each of the motor carrier's qualified motor vehicles and to have fuel usage of four miles per gallon.

~~(1) Fails to file a report for the quarter and the records of the Division indicate the carrier operated in this State during the quarter.~~

~~(2) Files a report for the quarter that, based on the records of the Division, understates by at least twenty-five percent (25%) the carrier's mileage in this State for the quarter.~~

(c) Vehicles. – The number of qualified motor vehicles of a motor carrier that is registered under this Article is the number of ~~identification markers~~ sets of decals issued to the carrier. The number of qualified motor vehicles of a carrier that is not registered under this Article is the number of qualified motor vehicles registered by the motor carrier in the carrier's base state under the International Registration Plan."

SECTION 4. G.S. 105-449.47 reads as rewritten:

"§ 105-449.47. Registration of vehicles.

(a) Requirement. – A motor carrier that is subject to the International Fuel Tax Agreement may not operate or cause to be operated in this State ~~any vehicle listed in the definition of motor vehicle~~ a qualified motor vehicle unless both the motor carrier and ~~the~~ at least one qualified motor vehicle are registered with the motor carrier's base state jurisdiction. A motor carrier that is not subject to the International Fuel Tax Agreement may not operate or cause to be operated in this State ~~any vehicle listed in the definition of motor vehicle~~ a qualified motor vehicle unless both the motor carrier and ~~the~~ at least one qualified motor vehicle are registered with the Secretary for purposes of the tax imposed by this Article. This subsection applies to a recreational vehicle that is considered a qualified motor vehicle.

(a1) Registration and ~~Identification Marker.~~ Decal. – When the Secretary registers a qualified motor carrier, the Secretary must issue ~~at least~~ one ~~identification marker~~ set of decals for each qualified motor vehicle operated by the motor ~~carrier.~~ carrier. A motor carrier must keep records of ~~identification markers~~ decals issued to it and must be able to account for all ~~identification markers~~ decals it receives from the Secretary. Registrations and ~~identification markers~~ decals issued by the Secretary are for a calendar year. All ~~identification markers~~ decals issued by the Secretary remain the property of the State. The Secretary may revoke a registration or ~~an identification marker~~ a decal when a motor carrier fails to comply with this Article or Article 36C or 36D of this Subchapter.

A motor carrier must carry a copy of its registration in each motor vehicle operated by the motor carrier when the vehicle is in this State. A motor vehicle must clearly display ~~an identification marker~~ one decal on each side of the vehicle at all times. ~~The identification marker~~ A decal must be affixed to the qualified motor vehicle for which it was issued in the place and manner designated by the authority that issued it.

(b) Exemption. – This section does not apply to the operation of a qualified motor vehicle that is registered in another state and is operated temporarily in this State by a public utility, a governmental or cooperative provider of utility services, or a contractor for one of these entities for the purpose of restoring utility services in an emergency outage."

SECTION 5. G.S. 105-449.47A reads as rewritten:

"§ 105-449.47A. Reasons why the Secretary can deny an application for a registration and ~~identification marker.~~decals.

The Secretary may refuse to register and issue ~~an identification marker~~ a decal to an applicant that has done any of the following:

(1) Had a registration issued under Chapter 105 or Chapter 119 of the General Statutes cancelled by the Secretary for cause.

(2) Had a registration issued by another jurisdiction, pursuant to G.S. 105-449.57, cancelled for cause.

(3) Been convicted of fraud or misrepresentation.

(4) Been convicted of any other offense that indicates that the applicant may not comply with this Article if registered and issued ~~an identification marker.~~ a decal.

(5) Failed to remit payment for a tax debt under Chapter 105 or Chapter 119 of the General Statutes. The term "tax debt" has the same meaning as defined in G.S. 105-243.1.

(6) Failed to file a return due under Chapter 105 or Chapter 119 of the General Statutes."

SECTION 6. G.S. 105-449.50 is repealed.

SECTION 7. G.S. 105-449.51 reads as rewritten:

"§ 105-449.51. Violations declared to be misdemeanors.

Any person who operates or causes to be operated on a highway in this State a motor vehicle that does not carry a registration card as required by this Article, does not properly display ~~an identification marker~~ a decal as required by this Article, or is not registered in accordance with this Article ~~is guilty of~~ commits a Class 3 misdemeanor ~~and, upon conviction thereof, shall be fined~~ that is punishable by a fine of two hundred dollars ($200.00). Each day's operation in violation of any provision of this section ~~shall constitute~~ constitutes a separate offense."

SECTION 8. 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~~ a decal in accordance with this Article. The amount of the penalty is one hundred dollars ($100.00).

(2) Is unable to account for ~~identification markers~~ decals 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~~ decal for which the carrier is unable to account for.

(3) Displays ~~an identification marker~~ a decal 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~~ decal unlawfully obtained. Both the licensed motor carrier to whom the Secretary issued the ~~identification marker~~ decal and the motor carrier displaying the unlawfully obtained ~~identification marker~~ decal are jointly and severally liable for the penalty under this subdivision.

(a1) Payment. – A penalty imposed under this section is payable to the agency that assessed the penalty. When a motor vehicle is found to be operating without a registration card or ~~an identification marker~~ a decal or with ~~an identification marker~~ a decal 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 9. G.S. 105-449.60 reads as rewritten:

"**§ 105-449.60. Definitions.**

The following definitions apply in this Article:

(1) Additive. – A de minimus amount of product that is added or mixed with motor fuel. Examples of an additive include fuel system detergent, oxidation inhibitor, gasoline antifreeze, or octane enhancers.

(2) Aviation gasoline. – Motor fuel blended or produced specifically for use in aircraft, which has been dyed in accordance with federal regulations.

(3) Billed gallons. – Gallons of motor fuel, either gross or net, that are invoiced for payment.

~~(1)~~(4) Biodiesel. – Any fuel or mixture of fuels derived in whole or in part from agricultural products or animal fats or wastes from these products or fats.

~~(1a)~~(5) Biodiesel provider. – A person who does any of the following:

a. Produces an average of no more than 500,000 gallons of biodiesel per month during a calendar year. A person who produces more than this amount is a refiner.

b. Imports biodiesel outside the terminal transfer system by means of ~~a marine vessel,~~ a transport truck, a railroad tank car, or a tank wagon.

~~(1b) to (1d) Reserved for future codification purposes.~~

~~(1e)~~(6) Blended fuel. – A mixture composed of gasoline or diesel fuel and another liquid, other than ~~a de minimus amount of a product such as carburetor detergent or oxidation inhibitor,~~ an additive, that can be used as a fuel in a highway vehicle.

~~(2)~~(7) Blender. – A person who produces blended fuel outside the terminal transfer system.

(8) Bonded importer. – A person, other than a supplier, who imports by transport truck or another means of transfer outside the terminal transfer system motor fuel removed from a terminal located in another state in one or more of the following circumstances:

a. The state from which the fuel is imported does not require the seller of the fuel to collect motor fuel tax on the removal of the fuel at that state's rate or the rate of the destination state.

b. The supplier of the fuel is not an elective supplier.

c. The supplier of the fuel is not a permissive supplier.

~~(3)~~(9) ~~Bulk end user.~~ Bulk end-user. – A person who maintains storage facilities for motor fuel and uses part or all of the stored fuel to operate a highway vehicle.

~~(4)~~(10) Bulk plant. – A motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

~~(5)~~(11) Code. – Defined in G.S. 105-228.90.

(12) Consignee. – The person to whom motor fuel is shipped or delivered.

(13) Consignor. – The person who ships or delivers motor fuel.

~~(6)~~(14) Destination state. – The state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the purpose of resale or use.

~~(7)~~(15) Diesel fuel. – Any liquid, other than gasoline, that is suitable for use as a fuel in a diesel-powered highway vehicle. The term includes biodiesel, fuel oil, heating oil, high-sulfur dyed diesel fuel, and kerosene. The term does not include jet fuel sold to a buyer who is certified to purchase jet fuel under the Code.

~~(8)~~(16) Distributor. – A person who ~~acquires motor fuel from a supplier or from another distributor for subsequent sale.~~does one or more of the following:

a. Produces, refines, blends, compounds, or manufactures motor fuel.

b. Transports motor fuel into a state or exports motor fuel out of a state.

c. Engages in the distribution of motor fuel primarily by tank car or tank truck or both.

d. Operates a bulk plant where the person has active motor fuel bulk storage.

(17) Diversion. – Motor fuel shipped from a terminal to a state other than the destination state as indicated on the original bill of lading.

(18) Diversion number. – The tracking number assigned by a state to a single transport truck delivery of motor fuel diverted from the original destination state.

~~(9)~~(19) Dyed diesel fuel. – Diesel fuel that meets the dyeing and marking requirements ~~of § 4082 of the Code.~~as described by Federal Regulation 26 CFR 48.4082.1.

~~(10)~~(20) Elective supplier. – A supplier that is required to be licensed in this State and that elects to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.

~~(10a)~~(21) Exempt card or code. – A credit card or an access code that enables the person to whom the card or code is issued to buy motor fuel at retail without paying the motor fuel excise tax on the fuel.

~~(11)~~(22) Export. – To obtain motor fuel in this State for sale or other distribution in another state. In applying this definition, motor fuel delivered out-of-state by or for the seller constitutes an export by the

seller and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the purchaser.

~~(12)~~(23) Fuel alcohol. – Alcohol, methanol, or fuel grade ethanol.

~~(13)~~(24) Fuel alcohol provider. – A person who does any of the following:

a. Produces an average of no more than 500,000 gallons of fuel alcohol per month during a calendar year. A person who produces more than this amount is a refiner.

b. Imports fuel alcohol outside the terminal transfer system by means of ~~a marine vessel,~~ a transport truck, a railroad tank car, or a tank wagon.

~~(14)~~(25) Gasohol. – A blended fuel composed of gasoline and fuel grade ethanol.

~~(15)~~(26) Gasoline. – Any of the following:

a. All products that are commonly or commercially known or sold as gasoline and are suitable for use as a fuel in a highway vehicle, other than products that have an American Society for Testing Materials octane number of less than 75 as determined by the motor method. The term does not include aviation gasoline.

b. A petroleum product component of gasoline, such as naptha, reformate, or toluene.

c. Gasohol.

d. Fuel alcohol.

~~The term does not include aviation gasoline sold for use in an aircraft motor. "Aviation gasoline" is gasoline that is designed for use in an aircraft motor and is not adapted for use in an ordinary highway vehicle.~~

~~(16)~~(27) Gross gallons. – The total amount of motor fuel measured in gallons, exclusive of any temperature, pressure, or other adjustments.

~~(17)~~(28) Highway. – Defined in G.S. 20-4.01(13).

~~(18)~~(29) Highway vehicle. – A self-propelled vehicle that is designed for use on a highway.

~~(19)~~(30) Import. – To bring motor fuel into this State by any means of conveyance other than in the fuel supply tank of a highway vehicle. In applying this definition, motor fuel delivered into this State from out-of-state by or for the seller constitutes an import by the seller, and motor fuel delivered into this State from out-of-state by or for the purchaser constitutes an import by the purchaser.

~~(19a)~~(31) ~~In-State only~~ In-State supplier. – Either of the following:

a. A supplier that is required to have a license and elects not to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.

b. A supplier that does business only in this State.

(32) Jet fuel. – Kerosene that meets both of the following conditions:
a. Has a maximum distillation temperature of 400 degrees Fahrenheit at the ten percent (10%) recovery point and a final maximum boiling point of 572 degrees Fahrenheit .
b. Meets American Society Testing Materials Specification D 1655 and Military Specifications MIL-T-5624P and MIL-T-83133D, Grades JP-5 and JP-8.
(33) Kerosene. – Petroleum oil that is free from water, glue, and suspended matter and that meets the specifications and standards adopted by the Gasoline and Oil Inspection Board.
(34) Marine vessel. – A ship, boat, or other watercraft used or capable of being used to move in or through the waterways of the State.
~~(20)~~(35) Motor fuel. – Gasoline, diesel fuel, and blended fuel.
~~(21)~~(36) Motor fuel rate. – The rate of tax set in G.S. 105-449.80.
~~(22)~~(37) Motor fuel transporter. – A person who transports motor fuel by ~~pipeline or who transports motor fuel outside the terminal transfer system by means of a transport truck, a railroad tank car, or a marine vessel.~~pipeline, marine vessel, railroad tank car, or transport truck.
~~(23)~~(38) Net gallons. – The amount of motor fuel measured in gallons when corrected to a temperature of 60 degrees Fahrenheit and a pressure of 14 7/10 pounds per square inch.
(39) Occasional importer. – One or more of the following that imports motor fuel by any means outside the terminal transfer system:
a. A distributor that imports motor fuel on an average basis of no more than once a month during a calendar year.
b. A bulk user that acquires motor fuel for import from a bulk plant and is not required to be licensed as a bonded importer.
c. A distributor that imports motor fuel for use in a race car.
~~(24)~~(40) Permissive supplier. – An out-of-state supplier that elects, but is not required, to have a supplier's license under this Article.
~~(25)~~(41) Person. – Defined in G.S. 105-228.90.
(42) Pipeline. – A fuel distribution system that moves motor fuel, in bulk, through a pipe either from a refinery to a terminal or from a terminal to another terminal.
~~(26)~~(43) Position holder. – The person who holds the inventory position ~~in~~ on the motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds the inventory position ~~in~~ on the motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminaling services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.
~~(27)~~(44) Rack. – A mechanism for delivering motor fuel from a refinery, a terminal, or a bulk plant into a transport truck, a railroad tank car, or another means of transfer that is outside the terminal transfer system.

~~(27a)~~(45) Refiner. – A person who owns, operates, or controls a refinery. The term includes a person who produces an average of more than 500,000 gallons of fuel alcohol or biodiesel a month during a calendar year.

~~(27b)~~(46) Refinery. – A facility used to process crude oil, unfinished oils, natural gas liquids, or other hydrocarbons into motor fuel and from which fuel may be removed by pipeline or vessel or at a rack. The term does not include a facility that produces only blended fuel or gasohol.

~~(28)~~(47) Removal. – A physical transfer other than by evaporation, loss, or destruction. A physical transfer to a transport truck or another means of conveyance outside the terminal transfer system is complete upon delivery into the means of conveyance.

~~(29)~~(48) Retailer. – A person who maintains storage facilities for motor fuel and who sells or dispenses the fuel ~~at retail or dispenses the fuel~~ at a retail location.

~~(30)~~(49) Secretary. – Defined in G.S. 105-228.90.

(50) Shipping document. – A document that identifies the name and address of the consignor, consignee, and carrier, date of deliver, product type, quantity, and document number. The term is commonly referred to as a manifest, a bill of lading, or a delivery ticket.

(51) Shipping document number. – The identifying number from the shipping document issued when motor fuel is loaded or removed at a refiner, terminal, marine vessel, railroad, or bulk plant.

(52) Special mobile equipment. – Defined in G.S. 105-449.37.

~~(31)~~(53) Supplier. – Any of the following:

a. A position holder or a person who receives motor fuel pursuant to a two-party exchange.
b. A fuel alcohol provider.
c. A biodiesel provider.
d. A refiner.

~~(32)~~(54) System transfer. – Either of the following:

a. A transfer of motor fuel within the terminal transfer system.
b. A transfer, by transport truck or railroad tank car, of fuel grade ethanol.

~~(33)~~(55) Tank wagon. – A truck that is not a transport truck and is designed or used to carry at least 1,000 gallons of motor fuel.

(56) Tank wagon importer. – A person who imports only by means of a tank wagon motor fuel that is removed from a terminal or a bulk plant located in another state.

~~(33a)~~(57) Tax. – An inspection or other excise tax on motor fuel and any other fee or charge imposed on motor fuel on a per-gallon basis.

~~(34)~~(58) Terminal. – A motor fuel storage and distribution facility that has been assigned a terminal control number by the Internal Revenue Service, is supplied by pipeline or marine vessel, and from which motor ~~fuel~~ fuel, jet fuel, or aviation gasoline may be removed at a rack.

~~(35)~~(59) Terminal operator. – A person who owns, operates, or otherwise controls a terminal.

~~(36)~~(60) Terminal transfer system. – The motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals. The term has the same meaning as "bulk transfer/terminal system" under 26 C.F.R. § 48.4081-1.

~~(37)~~(61) Transmix. – Either of the following:

a. The buffer or interface between two different products in a pipeline shipment.

b. A mix of two different products within a refinery or terminal that results in an off-grade mixture.

~~(38)~~(62) Transport truck. – A ~~semitrailer~~ tractor trailer ~~combination rig~~ designed or used to transport ~~loads of~~ motor ~~fuel over a highway.~~fuel.

~~(39)~~(63) Trustee. – A person who is licensed as a ~~supplier, an elective supplier, or a permissive~~ supplier and who receives tax payments from and on behalf of a licensed ~~distributor.~~distributor or licensed importer for remittance to the Secretary.

~~(40)~~(64) Two-party exchange. – A transaction in which motor fuel is transferred from one licensed supplier to another licensed supplier pursuant to an exchange agreement under which the supplier that is the position holder agrees to deliver motor fuel to the other supplier or the other supplier's customer at the rack of the terminal at which the delivering supplier is the position holder.

~~(41)~~(65) User. – A person who owns or operates a licensed highway vehicle that has a registered gross vehicle weight of at least 10,001 ~~pounds and who does not maintain storage facilities for motor fuel.~~pounds."

SECTION 10. G.S. 105-449.65 reads as rewritten:

"**§ 105-449.65. List of persons who must have a license.**

(a) License. – A person may not engage in business in this State as any of the following unless the person has a license issued by the Secretary authorizing the person to engage in that business:

(1) A refiner.

(2) A supplier.

(3) A terminal operator.

(4) An importer.

(5) An exporter.

(6) A blender.

(7) A motor fuel transporter.

(8) Repealed by Session Laws 1999-438, s. 20, effective August 10, 1999.

(9) Repealed by Session Laws 1999-438, s. 21, effective August 10, 1999.

(10) A distributor who purchases motor fuel from an elective or permissive supplier at an out-of-state terminal for import into this State.

(b) Multiple Activity. – A person who is engaged in more than one activity for which a license is required must have a separate license for each activity, unless this

subsection provides otherwise. A person who is licensed as a supplier is considered to have a license as a distributor. A person who is licensed as an occasional importer or a tank wagon importer is not required to obtain a separate license as a distributor unless the importer is also purchasing motor fuel, at the terminal rack, from an elective or permissive supplier who is authorized to collect and remit the tax to the State. A person who is licensed as a distributor is not required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or a permissive supplier and is not required to obtain a separate license as an exporter. A person who is licensed as a ~~distributor or a blender~~ refiner, supplier, distributor, importer, exporter or blender and who transports fuel is considered to be licensed as a motor fuel transporter. A licensed supplier that is a biodiesel provider is considered to be licensed as a blender.

(c) Restrictions. – A supplier may not transfer motor fuel from a terminal to a marine vessel unless the person to whom the supplier transfers the motor fuel is licensed as a supplier."

SECTION 11. G.S. 105-449.66 reads as rewritten:

"**§ 105-449.66. ~~Types of importers; restrictions on who can get a license as an importer.~~Importer licensing.**

~~(a) Types.~~ An applicant for a license as an importer must indicate on the application the type of importer license sought. ~~The types of importers are as follows:~~

~~(1) Bonded importer. A bonded importer is a person, other than a supplier, who imports, by transport truck or another means of transfer outside the terminal transfer system, motor fuel removed from a terminal located in another state in any of the following circumstances:~~

~~a. The state from which the fuel is imported does not require the seller of the fuel to collect motor fuel tax on the removal either at that state's rate or the rate of the destination state.~~

~~b. The supplier of the fuel is not an elective supplier.~~

~~c. The supplier of the fuel is not a permissive supplier.~~

~~(2) Occasional importer. An occasional importer is any of the following that imports motor fuel by any means outside the terminal transfer system:~~

~~a. A distributor that imports motor fuel on an average basis of no more than once a month during a calendar year.~~

~~b. A bulk-end user that acquires motor fuel for import from a bulk plant and is not required to be licensed as a bonded importer.~~

~~c. A distributor that imports motor fuel for use in a race car.~~

~~(3) Tank wagon importer. A tank wagon importer is a person who imports, only by means of a tank wagon, motor fuel that is removed from a terminal or a bulk plant located in another state.~~

~~(b) Restrictions.~~ A person may not be licensed as more than one type of importer. A ~~bulk-end user~~ bulk end-user that imports motor fuel from a terminal of a supplier that is not an elective or a permissive supplier must be licensed as a bonded importer. A ~~bulk-end user~~ bulk end-user that imports motor fuel from a bulk plant and is not required to be licensed as a bonded importer must be licensed as an occasional

importer. A ~~bulk-end user~~bulk end-user that imports motor fuel only from a terminal of an elective or a permissive supplier is not required to be licensed as an importer."

SECTION 12. G.S. 105-449.68 reads as rewritten:

"**§ 105-449.68. Restrictions on who can get a license as a distributor.**

A ~~bulk-end user~~ bulk end-user of motor fuel may not be licensed as a distributor unless the ~~bulk-end user~~ bulk end-user also acquires motor fuel from a supplier or from another distributor for subsequent sale. This restriction does not apply to a ~~bulk-end user~~ bulk end-user that was licensed as a distributor on January 1, 1996. If a distributor license held by a ~~bulk-end user~~ bulk end-user on January 1, 1996, is subsequently cancelled, the ~~bulk-end user~~ bulk end-user is subject to the restriction set in this section."

SECTION 13. G.S. 105-449.69(c) reads as rewritten:

"(c) Federal Certificate. – An applicant for a license as a refiner, a supplier, a terminal operator, or a ~~blender, or a permissive supplier~~ blender, must have a federal Certificate of Registry that is issued under § 4101 of the Code and authorizes the applicant to enter into federal tax-free transactions in taxable motor fuel in the terminal transfer system. An applicant that is required to have a federal Certificate of Registry must include the registration number of the certificate on the application for a license under this section.

An applicant for a license as an importer, an exporter, or a distributor that has a federal Certificate of Registry issued under § 4101 of the Code must include the registration number of the certificate on the application for a license under this section."

SECTION 14 . G.S. 105-449.70(a) reads as rewritten:

"(a) Election. – An applicant for a license as a supplier may elect on the application to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state. The Secretary must provide for this election on the application form. A supplier that makes the election allowed by this section is an elective supplier. A supplier that does not make the election allowed by this section is an ~~in-State-only~~ in-State supplier.

A supplier that does not make the election on the application for a supplier's license may make the election later by completing an election form provided by the Secretary. A supplier that does not make the election may not act as an elective supplier for motor fuel that is removed at a terminal in another state and has this State as its destination state."

SECTION 15. G.S. 105-449.74 reads as rewritten:

"**§ 105-449.74. Issuance of license.**

Upon approval of an application, the Secretary must issue a license to the applicant. A supplier's license must indicate the category of the supplier. An importer's license must indicate the category of the importer. A license holder must maintain and display a copy of the license issued under this Part in a conspicuous place at each place of business of the license holder. A license is not transferable and remains in effect until surrendered or cancelled."

SECTION 16. G.S. 105-449.75 reads as rewritten:

"§ 105-449.75. License holder must notify the Secretary of discontinuance of business.

A license holder that stops engaging in this State in the business for which the license was issued must give the Secretary written notice of the change and must surrender the license to the Secretary. The notice must give the date the change takes effect and, if the license holder has transferred the business to another by sale or otherwise, the date of the transfer and the name and address of the person to whom the business is transferred.

~~If the~~ The license holder is ~~a supplier,~~ responsible for all taxes for which the ~~supplier~~ license holder is liable under this Article but are not yet ~~due become due on the date of the change.~~ due. If the ~~supplier~~ license holder has transferred the business to another and does not give the notice required by this section, the person to whom the ~~supplier~~ license holder has transferred the business is liable for the amount of any tax the ~~supplier~~ license holder owed the State on the date the business was transferred. The liability of the person to whom the business is transferred is limited to the value of the property acquired from the ~~supplier.~~ license holder."

SECTION 17. G.S. 105-449.81 reads as rewritten:

"§ 105-449.81. Excise tax on motor fuel.

An excise tax at the motor fuel rate is imposed on motor fuel that is:

(1) Removed from a refinery or a terminal and, upon removal, is subject to the federal excise tax imposed by § 4081 of the Code.

(2) Imported by a system transfer to a refinery or a terminal and, upon importation, is subject to the federal excise tax imposed by § 4081 of the Code.

(3) Imported by a means of transfer outside the terminal transfer system for sale, use, or storage in this State and would have been subject to the federal excise tax imposed by § 4081 of the Code if it had been removed at a terminal or bulk plant rack in this State instead of imported.

(3a) Repealed by Session Laws 2007-527, s. 38(a), effective January 1, 2008.

(4) Blended fuel made in this State or imported to this State.

(5) Transferred within the terminal transfer system and, upon transfer, is subject to the federal excise tax imposed by section 4081 of the Code.

(6) Transferred within the terminal transfer system to a person that is not licensed as a supplier with the State.

(7) Fuel grade ethanol that meets either of the following descriptions:

a. Is removed from a terminal or another storage and distribution facility.

b. Is imported to this State outside the terminal transfer system."

SECTION 18. G. S. 105-449.82(c) reads as rewritten:

"(c) Terminal Rack Removal. – The excise tax imposed by G.S. 105-449.81(1) on motor fuel removed at a terminal rack in this State is payable by the person that first receives the fuel upon its removal from the terminal. If the motor fuel is removed by an

unlicensed distributor, the supplier of the fuel is jointly and severally liable for the tax due on the fuel. If the motor fuel is sold by a person who is not licensed as a supplier, as required by this Article, the terminal operator, the person selling the fuel, and the person removing the fuel are jointly and severally liable for the tax due on the fuel. If the motor fuel removed is not dyed diesel fuel but the shipping document issued for the fuel states that the fuel is dyed diesel fuel, the terminal operator, the supplier, and the person removing the fuel are jointly and severally liable for the tax due on the fuel.

If the motor fuel is removed for export by an unlicensed exporter, the exporter is liable for tax on the fuel at the motor fuel rate and at the rate of the destination state. The ~~liability for the tax at the motor fuel rate applies when the Department assesses the unlicensed exporter for the tax.~~ supplier who sold the motor fuel to the unlicensed exporter is jointly and severally liable for the tax due on the fuel at the motor fuel tax rate."

SECTION 19. G.S. 105-449.83A reads as rewritten:

"**§ 105-449.83A. Liability for tax on fuel grade ethanol.**

The excise tax imposed by ~~G.S. 105-449.81(3a)~~ G.S. 105-449.81 on fuel grade ethanol removed from a storage facility located within this State or imported into the State is payable by the fuel alcohol provider. ~~The excise tax imposed by that subdivision on fuel grade ethanol imported to this State is payable by the importer.~~"

SECTION 20. G.S. 105-449.85 reads as rewritten:

"**§ 105-449.85. Compensating tax on and liability for unaccounted for motor fuel losses at a terminal.**

(a) Tax. – An excise tax at the motor fuel rate is imposed annually on unaccounted for motor fuel losses at a terminal that exceed one-half of one percent (0.5%) of the number of net gallons removed from the terminal during the year by a system transfer or at a terminal rack. To determine if this tax applies, the terminal operator of the terminal must determine the difference between the following:

(1) The amount of motor fuel in inventory at the terminal at the beginning of the year plus the amount of motor fuel received by the terminal during the year.

(2) The amount of motor fuel in inventory at the terminal at the end of the year plus the amount of motor fuel removed from the terminal during the year.

(b) Liability. – The terminal operator whose motor fuel is unaccounted for is liable for the tax imposed by this section and is liable for a penalty equal to the amount of tax payable. Motor fuel received by a terminal operator and not shown on an informational return filed by the terminal operator with the Secretary as having been removed from the terminal is presumed to be unaccounted ~~for.~~ for product. A terminal operator may establish that motor fuel received at a terminal but not shown on an informational return as having been removed from the terminal was lost or part of a transmix and ~~is therefore not unaccounted for.~~ for which an accounting can be made."

SECTION 21. G.S. 105-449.86(b) reads as rewritten:

(b) Liability. – If the distributor of dyed diesel fuel that is taxable under this section is not liable for the tax imposed by this section, the person that acquires the fuel

is liable for the tax. The distributor of dyed diesel fuel that is taxable under this section is liable for the tax imposed by this section in the following circumstances:

(1) When the person acquiring the dyed diesel fuel has storage facilities for the fuel and is therefore a ~~bulk end user~~ bulk end-user of the fuel.

(2) When the person acquired the dyed diesel fuel from a retail outlet of the distributor by using an access card or code indicating that the person's use of the fuel is taxable under this section."

SECTION 22. G.S. 105-449.87(b) reads as rewritten:

"(b) General Liability. – The operator of a highway vehicle that uses motor fuel that is taxable under subdivisions (a)(1) through (a)(3) of this section is liable for the tax. If the highway vehicle that uses the fuel is owned by or leased to a motor carrier, the motor carrier is jointly and severally liable for the tax. If the ~~end seller~~ end-seller of motor fuel taxable under this section knew or had reason to know that the motor fuel would be used for a purpose that is taxable under this section, the ~~end seller~~ end-seller is jointly and severally liable for the tax. If the Secretary determines that a ~~bulk end user~~ bulk end-user or retailer used or sold untaxed dyed diesel fuel to operate a highway vehicle when the fuel is dispensed from a storage facility or through a meter marked for nonhighway use, all fuel delivered into that storage facility is presumed to have been used to operate a highway vehicle. An ~~end seller~~ end-seller of dyed diesel fuel is considered to have known or had reason to know that the fuel would be used for a purpose that is taxable under this section if the ~~end seller~~ end-seller delivered the fuel into a storage facility that was not marked as required by G.S. 105-449.123."

SECTION 23. G.S. 105-449.89 reads as rewritten:

"**§ 105-449.89. Removals by out-of-state bulk-end user.**

An out-of-state ~~bulk end user~~ bulk end-user may not remove motor fuel from a terminal in this State for use in the state in which the ~~bulk end user~~ bulk end-user is located unless the ~~bulk end user~~ bulk end-user is licensed under this Article as an exporter. An out-of-state ~~bulk end user~~ bulk end-user that is not licensed under this Article may remove motor fuel from a bulk plant in this State."

SECTION 24. G.S. 105-449.91 reads as rewritten:

"**§ 105-449.91. Remittance of tax to supplier.**

(a) Distributor. – A distributor must remit tax due on motor fuel removed at a terminal rack to the supplier of the fuel. A licensed distributor has the right to defer the remittance of tax to the supplier, as trustee, until the date the trustee must pay the tax to this State or to another state. The time when an unlicensed distributor must remit tax to a supplier is governed by the terms of the contract between the supplier and the unlicensed distributor.

(b) Exporter. ~~An~~ A licensed exporter must remit tax due on motor fuel removed at a terminal rack to the supplier of the fuel. The time when an exporter must remit tax to a supplier is governed by the law of the destination state of the exported motor fuel.

(c) Importer. – A licensed importer must remit tax due on motor fuel removed at a terminal rack of a permissive or an elective supplier to the supplier of the fuel. A licensed importer that removes fuel from a terminal rack of a permissive or an elective

supplier has the right to defer the remittance of tax to the supplier until the date the supplier must pay the tax to this State.

(d) General. – Any other person who removes motor fuel at a terminal rack must remit tax due on the motor fuel to the supplier of the fuel. The time a person must remit tax to a supplier is governed by the terms of the contract between the supplier and the person. The method by which a ~~distributor, a licensed exporter, or a licensed importer~~ person must remit tax to a supplier under this section is governed by the terms of the contract between the supplier and ~~the distributor, exporter, or licensed importer and the supplier.~~ that person. G.S. 105-449.76 governs the cancellation of a license of a distributor, an exporter, and an importer."

SECTION 25. G.S. 105-449.96 reads as rewritten:

"**§ 105-449.96. Information required on return filed by supplier.**

A return of a supplier must list all of the following information and any other information required by the Secretary:

(1) The number of gallons of tax-paid motor fuel received by the supplier during the month, sorted by type of ~~fuel, seller, point of origin, destination state, and carrier.~~fuel.

(2) The number of gallons of motor fuel removed at a terminal rack during the month from the account of the supplier, sorted by type of ~~fuel, person receiving the fuel, terminal code, and carrier.~~fuel.

(3) The number of gallons of motor fuel removed during the month for export, sorted by type of ~~fuel, person receiving the fuel, terminal code, destination state, and carrier.~~fuel.

(4) The number of gallons of motor fuel removed during the month at a terminal located in another state for destination to this State, as indicated on the shipping document for the fuel, sorted by type of ~~fuel, person receiving the fuel, terminal code, and carrier.~~fuel.

(5) The number of gallons of motor fuel the supplier sold during the month to a governmental unit whose use of fuel is exempt from the tax, ~~any of the following,~~ sorted by type of ~~fuel, exempt entity, person receiving the fuel, terminal code, and carrier:~~fuel.

~~a. A governmental unit whose use of fuel is exempt from the tax.~~

~~b. A licensed distributor or importer that resold the motor fuel to a governmental unit whose use of fuel is exempt from the tax, as indicated by the distributor or importer.~~

~~c. A licensed exporter that resold the motor fuel to a person whose use of fuel is exempt from tax in the destination state, as indicated by the exporter.~~

(6) The amount of discounts allowed under G.S. 105-449.93(b) on motor fuel sold during the month to licensed distributors or licensed importers.

(7) The number of gallons of motor fuel the supplier exchanged during the month with another licensed supplier pursuant to a two-party exchange

agreement, sorted by type of ~~fuel, licensed supplier receiving the fuel, and terminal code.~~fuel."

SECTION 26. G.S. 105-449.97(c) reads as rewritten:

"(c) Percentage Discount. – A supplier that sells motor fuel directly to an unlicensed distributor or to the ~~bulk end-user,~~ bulk end-user, the retailer, or the user of the fuel may take the same percentage discount on the fuel that a licensed distributor may take under G.S. 105-449.93(b) when making deferred payments of tax to the supplier."

SECTION 27. G.S. 105-449.100 reads as rewritten:

"**§ 105-449.100. Terminal operator to file informational return showing changes in amount of motor fuel at the terminal.**

(a) Requirement. -- A terminal operator must file a monthly informational return with the Secretary that shows the amount of motor fuel received or removed from the terminal during the month. A terminal operator that is required to be licensed in this State must report all motor fuel removed from out-of-state terminals that has this State as its destination state.

(b) Content. -- The return is due on the same date as a monthly return due under G.S. 105-449.90. The return must contain the following information and any other information required by the Secretary:

(1) The number of gallons of motor fuel received in inventory at the terminal during the month and each position holder for the ~~fuel.~~fuel, sorted by type of fuel.

(2) The number of gallons of motor fuel removed from inventory at the terminal during the month and, for each removal, the position holder for the fuel and the destination state of the ~~fuel.~~fuel, sorted by type of fuel.

(3) The number of gallons of motor fuel gained or lost at the terminal during the month.

(4) The number of gallons of motor fuel in inventory at the beginning of each month and at the end of each month.

(c) Due Date. – The return is due on the same date as a monthly retun due under G.S. 105-449.90."

SECTION 28. G.S. 105-449.102 reads as rewritten:

"**§ 105-449.102. Distributor to file return showing exports from a bulk plant.**

(a) ~~Return.~~ Requirement. – A distributor that exports motor fuel from a bulk plant located in this State must file a monthly return with the Secretary that shows the exports. ~~The return is due on the same date as a monthly return due under G.S. 105-449.90.~~ The return serves as a claim for refund by the distributor for tax paid to this State on the exported motor fuel.

(b) Content. – The return must contain the following information and any other information required by the Secretary:

(1) The number of gallons of motor fuel exported during the month.

(2) The destination state of the motor fuel exported during the month.

(3) A certification that the distributor has paid to the destination state of the motor fuel exported during the month, or will pay on a timely basis, the amount of tax due that state on the fuel.

(c) Due Date. – The return is due on the same date as a monthly return due under G.S. 105-449.90."

SECTION 29. G.S. 105-449.105 reads as rewritten:

"**§ 105-449.105. ~~Refunds upon application~~ Monthly refunds for tax paid on exempt fuel, lost fuel, and accidental mixes that result in fuel ~~unsalable~~ unsuitable for highway use.**

(a) Exempt Fuel. – An entity whose use of motor fuel is exempt from tax may obtain a monthly refund of any motor fuel excise tax the entity pays on its motor fuel. A person who sells motor fuel to an entity whose use of motor fuel is exempt from tax may obtain a monthly refund of any motor fuel excise tax the person pays on motor fuel it sells to the entity. A credit card company that issues a credit card to an entity whose use of motor fuel is exempt from tax may obtain a monthly refund of any motor fuel excise tax the company pays on motor fuel the entity purchases using the credit card.

A person may obtain a monthly refund of tax paid by the person on exported fuel, including fuel whose shipping document shows this State as the destination state but was diverted to another state in accordance with the diversion procedures established by the Secretary. An out-of-state bulk end-user must be registered as an exporter before a refund may be issued on any exports from a bulk plant.

(b) Lost Fuel. – A supplier, an importer, or a distributor that loses tax-paid motor fuel due to damage to a conveyance transporting the motor fuel, fire, a natural disaster, an act of war, or an accident may obtain a monthly refund for the tax paid on the fuel.

(c) Accidental Mixes. – A person that accidentally combines any of the following may obtain a monthly refund for the amount of tax paid on the fuel:

(1) Dyed diesel fuel with tax-paid motor fuel.

(2) Gasoline with diesel fuel.

(3) Undyed diesel fuel with dyed kerosene.

(d) Repealed by Session Laws 1998-98, s. 29.

(e) Refund Amount. – The amount of a refund allowed under this section is the amount of excise tax paid, less the amount of any discount allowed on the fuel under G.S. 105-449.93."

SECTION 30. G.S. 105-449.105A(a) reads as rewritten:

"(a) Refund. – A distributor who sells kerosene to any of the following may obtain a monthly refund for the excise tax the distributor paid on the kerosene, less the amount of any discount allowed on the kerosene under G.S. 105-449.93:

..."

SECTION 31. G.S. 105-449.105A(a)(1) reads as rewritten:

"(1) The ~~end-user~~ end-user of the kerosene, if the distributor dispenses the kerosene into a storage facility of the ~~end-user~~ end-user that contains fuel used only for one of the following purposes and the storage facility is installed in a manner that makes use of the fuel for any other purpose improbable:

a. Heating.
b. Drying crops.
c. A manufacturing process."

SECTION 32. G.S. 105-449.108(a) reads as rewritten:

"(a) Due Dates. – The due dates of applications for refunds are as follows:

Refund Period	Due Date
Annual	April 15 after the end of the year
Quarterly	Last day of the month after the end of the quarter
Monthly	22nd day after the end of the month
~~Upon Application~~	~~Last day of the month after the month in which tax was paid or the event occurred that is the basis of the refund.~~"

SECTION 33. G.S. 105-449.117(a) reads as rewritten:

"(a) Violation. – It is unlawful to use dyed diesel fuel or other non-tax-paid fuel in a highway vehicle that is licensed or required to be licensed under Chapter 20 of the General Statutes unless that use is allowed under section 4082 of the Code. It is unlawful to use ~~undyed diesel~~ motor fuel or alternative fuel in a highway vehicle that is licensed or required to be licensed under Chapter 20 of the General Statutes unless the tax imposed by this ~~Article~~ Article, Article 36D, or Chapter 119, Article 3 has been paid. A person who violates this section is guilty of a Class 1 misdemeanor and is liable for a civil penalty."

SECTION 34. G.S. 105-449.121(b) reads as rewritten:

"(b) Inspection. – The Secretary or a person designated by the Secretary may do any of the following to determine tax liability under this Article:

(1) Audit ~~a distributor or~~ a person who is required to have or elects to have a license under this Article.
(2) Audit a distributor, a retailer, a bulk-end user, or a motor fuel user that is not licensed under this Article.
(3) Examine a tank or other equipment used to make, store, or transport motor fuel, diesel dyes, or diesel markers.
(4) Take a sample of a product from a vehicle, a tank, or another container in a quantity sufficient to determine the composition of the product.
(5) Stop a vehicle for the purpose of taking a sample of motor fuel from the vehicle."

SECTION 35. G.S. 105-449.130 reads as rewritten:

"**§ 105-449.130. Definitions.**

The following definitions apply in this Article:

(1) Alternative fuel. – A combustible gas or liquid that can be used to generate power to operate a highway vehicle and that is not subject to tax under Article 36C of this Chapter.

(1a) ~~Bulk end-user.~~ Bulk end-user. – A person who maintains storage facilities for alternative fuel and uses part or all of the stored fuel to operate a highway vehicle.

(2) Highway. – Defined in ~~G.S. 20-4.01(13).~~ G.S. 105-449.60.

(3) Highway vehicle. – Defined in G.S. 105-449.60.

(4) Motor fuel. – Defined in G.S. 105-449.60.

(5) Motor fuel rate. – Defined in G.S. 105-449.60.

(6) Provider of alternative fuel. – A person who does one or more of the following:

a. Acquires alternative fuel for sale or delivery to a ~~bulk end user~~ bulk end-user or a retailer.

b. Maintains storage facilities for alternative fuel, part or all of which the person uses or sells to someone other than a ~~bulk end user~~ bulk end-user or a retailer to operate a highway vehicle.

c. Sells alternative fuel and uses part of the fuel acquired for sale to operate a highway vehicle by means of a fuel supply line from the cargo tank of the vehicle to the engine of the vehicle.

d. Imports alternative fuel to this State, by a means other than the usual tank or receptacle connected with the engine of a highway vehicle, for use by that person to operate a highway vehicle.

(7) Retailer. – A person who maintains storage facilities for alternative fuel and who sells the fuel at retail or dispenses the fuel at a retail location to operate a highway vehicle."

SECTION 36. G.S. 105-449.131 reads as rewritten:

"§ 105-449.131. List of persons who must have a license.

A person may not engage in business in this State as any of the following unless the person has a license issued by the Secretary authorizing the person to engage in that business:

(1) A provider of alternative fuel.

(2) A ~~bulk end user.~~ bulk end-user.

(3) A retailer."

SECTION 37. G.S. 105-449.133(a) reads as rewritten:

"(a) Who Must Have Bond. – The following applicants for a license must file with the Secretary a bond or an irrevocable letter of credit:

(1) An alternative fuel provider.

(2) A retailer or a ~~bulk end user~~ bulk end-user that intends to store highway and nonhighway alternative fuel in the same storage facility."

SECTION 38. G.S. 105-449.137(a) reads as rewritten:

"(a) Liability. – A ~~bulk end user~~ bulk end-user or retailer that stores highway and nonhighway alternative fuel in the same storage facility is liable for the tax imposed by this Article. The tax payable by a ~~bulk end user~~ bulk end-user or retailer applies when fuel is withdrawn from the storage facility. The alternative fuel provider that sells or delivers alternative fuel is liable for the tax imposed by this Article on all other alternative fuel."

SECTION 39. G.S. 105-449.138 reads as rewritten:

"§ 105-449.138. Requirements for ~~bulk end users~~ bulk end-users and retailers.

(a) Informational Return. – A ~~bulk end user~~ bulk end-user and a retailer must file a quarterly informational return with the Secretary. A quarterly return covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the return.

The return must give the following information and any other information required by the Secretary:

(1) The amount of alternative fuel received during the quarter.

(2) The amount of alternative fuel sold or used during the quarter.

(b) Storage. – A ~~bulk end user~~ bulk end-user or a retailer may store highway and nonhighway alternative fuel in separate storage facilities or in the same storage facility. If highway and nonhighway alternative fuel are stored in separate storage facilities, the facility for the nonhighway fuel must be marked in accordance with the requirements set by G.S. 105-449.123 for dyed diesel storage facilities. If highway and nonhighway alternative fuel are stored in the same storage facility, the storage facility must be equipped with separate metering devices for the highway fuel and the nonhighway fuel. If the Secretary determines that a ~~bulk end user~~ bulk end-user or retailer used or sold alternative fuel to operate a highway vehicle when the fuel was dispensed from a storage facility or through a meter marked for nonhighway use, all fuel delivered into that storage facility is presumed to have been used to operate a highway vehicle."

SECTION 40. G.S. 105-449.139(c) reads as rewritten:

"(c) Lists. – The Secretary must give a list of licensed alternative fuel providers to each licensed ~~bulk end user~~ bulk end-user and licensed retailer. The Secretary must also give a list of licensed ~~bulk end users~~ bulk end-users and licensed retailers to each licensed alternative fuel provider. A list must state the name, account number, and business address of each license holder on the list. The Secretary must send an annual update of a list to each license holder, as appropriate."

SECTION 41. G.S. 119-15 reads as rewritten:

"§ 119-15. Definitions that apply to Article.

The following definitions apply in this Article:

(1) Alternative fuel. – Defined in G.S. 105-449.130.

(2) Aviation gasoline. – Defined in G.S. 105-449.60.

~~(1a)~~(3) Dyed diesel fuel. – Defined in G.S. 105-449.60.

~~(1b)~~(4) Dyed diesel fuel distributor. – A person who acquires dyed diesel fuel from either of the following:

a. A person who is not required to be licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and who maintains storage facilities for dyed diesel fuel to be used for nonhighway purposes.

b. Another dyed diesel fuel distributor.

~~(2)~~(5) Gasoline. – Defined in G.S. 105-449.60.

(6) Jet fuel. – Defined in G.S. 105-449.60.

~~(3)~~(7) Kerosene. – Defined in G.S. 105-449.60. ~~Petroleum oil that is free from water, glue, and suspended matter and that meets the specifications and standards adopted by the Gasoline and Oil Inspection Board.~~

~~(3a)~~(8) Kerosene distributor. –A person who acquires kerosene from any of the following for subsequent sale:

a. A supplier licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes.

b. A kerosene supplier.

c. Another kerosene distributor.

~~(3b)~~(9) Kerosene supplier. – Either of the following:

a. A person who supplies both kerosene and motor fuel and, consequently, is required to be licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes.

b. A person who is not required to be licensed as a supplier under Part 2 of Article 36C of Chapter 105 of the General Statutes and who maintains storage facilities for kerosene to be used to fuel an airplane.

~~(4)~~(10) Motor fuel. – Defined in G.S. 105-449.60.

~~(5)~~(11) Person. – Defined in G.S. 105-229.90.

~~(6)~~(12) Terminal. – Defined in G.S. 105-449.60.

~~(7)~~(13) Terminal operator. – Defined in G.S. 105-449.60."

SECTION 42. G.S. 119-18(a) reads as rewritten:

"(a) Tax. – An inspection tax of one fourth of one cent (1/4 of 1¢) per gallon is levied upon all of the fuel listed in this ~~subsection~~ Article regardless of whether the fuel is exempt from the per-gallon excise tax imposed by Article 36C or 36D of Chapter 105 of the General Statutes. The inspection tax on motor fuel is due and payable to the Secretary of Revenue at the same time that the per gallon excise tax on motor fuel is due and payable under Article 36C of Chapter 105 of the General Statutes. The inspection tax on alternative fuel is due and payable to the Secretary of Revenue at the same time that the excise tax on alternative fuel is due and payable under Article 36D of Chapter 105 of the General Statutes. The inspection tax on kerosene is payable monthly to the Secretary by a supplier that is licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and by a kerosene supplier. A monthly report is due on the same date as a monthly return due under G.S. 105-449.90 and applies to kerosene sold during the preceding month by a supplier licensed under that Part and to kerosene received during the preceding month by a kerosene supplier. A kerosene terminal operator must file a return in accordance with the provisions of G.S. 105-449.90.

~~(1) Motor fuel.~~

~~(2) Alternative fuel used to operate a highway vehicle.~~

~~(3) Kerosene.~~"

SECTION 43. This act becomes effective January 1, 2009.

BILL DRAFT 2007-RBxz-34B: Motor Fuel Tax Law Changes

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	April 30, 2008
Introduced by:		**Summary by:**	Cindy Avrette
Version:	Bill Draft		Committee Staff

SUMMARY: This bill draft would make technical, clarifying, conforming, administrative, and substantive changes to the motor fuel tax laws. The bill would become effective January 1, 2009.

BILL ANALYSIS: The bill draft makes the following changes to the motor fuel tax laws:

Section	Explanation
1	Makes clarifying and conforming changes and numbers the definitions sequentially. Adds the definition of words commonly used, such as 'International Fuel Tax Agreement' and 'qualified motor vehicle'. Under IFTA, a 'qualified motor vehicle' is one used, designed, or maintained for transportation of persons or property that meets one or more of the following conditions: has two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds; has three or more axles regardless of weight; or has a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds when it is combined with another vehicle.
2	Corrects a punctuation error.
3	Changes the statute to reflect current practice. Provides that the Department may include information received from the State Highway Patrol when determining the potential liability of a motor carrier. The SHP used to be located within the DMV. Incorporates the definition of defined terms.
4	Incorporates the definition of defined terms. Clarifies that recreational vehicles that are qualified motor vehicles under the IFTA would need to be registered. Also, the use of the defined term 'qualified motor vehicle' means that special mobile equipment would need to be registered. Although the current law's definition of 'motor vehicle' arguably includes special mobile equipment, the Department has not been requiring the registration of special mobile equipment. However, other IFTA states do require the registration of special mobile equipment.
5	Incorporates the commonly used term 'decal' for 'identification marker'.
6	Repeals an unnecessary statute. G.S. 105-252 and G.S. 105-254 give the Secretary the authority to prepare the appropriate forms and require the necessary information on those forms.
7	Incorporates the commonly used term 'decal' for 'identification marker'. Modernizes the language.
8	Incorporates the commonly used term 'decal' for 'identification marker'.
9	Revises the definitional statute to add definitions of commonly used terms, to incorporate definitions from other statutes, and to refer to federal regulations. It numbers the definitions sequentially.

Section	Explanation
10	Clarifying change; it identifies all license types that transport motor fuel. It also restricts a supplier from transferring fuel to a marine vessel unless the receiver of the fuel is licensed as a supplier. There is currently little control over who can bring a ship or barge to the North Carolina coastline and load fuel.
11	Conforming and grammatical change. It removes definitions that have been incorporated into the definitional statute and it corrects the spelling of the term 'bulk end-user'.
12	Corrects the spelling of the term 'bulk end-user'.
13	Conforming change. It incorporates the defined term 'supplier'.
14	Conforming change. It incorporates the defined term 'in-State supplier'.
15	Conforming change. Provides that an importer's license must indicate the category of the importer, just like a supplier's license must indicate the category of the supplier.
16	Clarifying change. It identifies the payment responsibilities of all license holders.
17	It identifies the point of taxation for fuel that is not taxed by the Code by adding a new subdivision (6). It provides that fuel grade ethanol would be taxed at the rack.
18	Provides that the supplier who sold motor fuel to an unlicensed exporter is jointly and severally liable for the tax imposed on that fuel. The statute provides similar joint and several liability for motor fuel sold to an unlicensed distributor; for motor fuel sold by an unlicensed supplier; and for dyed diesel fuel.
19	Conforming change. (See section 17)
20	Corrects a grammatical error.
21	Corrects the spelling of the term 'bulk end-user'.
22	Corrects the spelling of the term 'bulk end-user' and 'end-seller'.
23	Corrects the spelling of the term 'bulk end-user'.
24	It identifies the tax responsibility of purchasers to the supplier.
25	It removes the requirement to sort the fuel by type on the reporting form; the requirement is not longer necessary due to electronic filing – it provides the Department with the ability to sort.
26	Corrects the spelling of the term 'bulk end-user'.
27	Conforming change to administrative practice. It provides that terminal operators who are required to be licensed in this State must report transactions from out-of-state terminals with this State as its destination. It also changes the structure of the statute for uniformity purposes.
28	Conforming change. It changes the structure of the statute for uniformity purposes.
29	Clarifying change. It changes the catchline of the statute to more accurately reflect the contents of the statute. It specifies that the refunds are monthly refunds; this change reflects current practice. It also provides that an out-of-state bulk end-user must be registered as an exporter if requesting a refund for exports from a North Carolina bulk plant.
30	Specifies that the refund is a monthly refund; this change reflects current practice.
31	Corrects the spelling of the term 'end-user'.
32	Deletes the provisions for refunds filed upon application because all refunds are filed on an annual basis, a quarterly basis, or a monthly basis.
33	Conforming change to administrative practice and terminology.
34	Uses the defined term 'person'; that term incorporates a distributor.
35	Corrects the spelling of the term 'bulk end-user'. Cross-references the definition of highway to the defined term in the definitional statute.

Section	Explanation
36-40	Corrects the spelling of the term 'bulk end-user'.
41	Conforming change. It cross references the defined terms in the definitional statute and renumbers the subdivisions sequentially.
42	Provides that the inspection tax is imposed on the fuel listed in the Article. This change reflects administrative practice.
43	Effective date section.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U D

BILL DRAFT 2007-LAz-20 [v.4] (4/25)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/29/2008 3:14:37 PM

Short Title:	Modify Ownership of PUV Property.	(Public)
Sponsors:	Unknown.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE OWNERSHIP REQUIREMENTS OF PRESENT-USE VALUE PROPERTY TO REFLECT COMMON FORMS OF LAND OWNERSHIP.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-277.2 reads as rewritten:

"**§ 105-277.2. Agricultural, horticultural, and forestland – Definitions.**

The following definitions apply in G.S. 105-277.3 through G.S. 105-277.7:

(1) Agricultural land. – Land that is a part of a farm unit that is actively engaged in the commercial production or growing of crops, plants, or animals under a sound management program. Agricultural land includes woodland and wasteland that is a part of the farm unit, but the woodland and wasteland included in the unit must be appraised under the use-value schedules as woodland or wasteland. A farm unit may consist of more than one tract of agricultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(1), and each tract must be under a sound management program. If the agricultural land includes less than 20 acres of woodland, then the woodland portion is not required to be under a sound management program. Also, woodland is not required to be under a sound management program if it is determined that the highest and best use of the woodland is to diminish wind erosion of adjacent agricultural land, protect water quality of adjacent agricultural land, or serve as buffers for adjacent livestock or poultry operations.

(1a) Business entity. – A corporation, a general partnership, a limited partnership, or a limited liability company.

(2) Forestland. – Land that is a part of a forest unit that is actively engaged in the commercial growing of trees under a sound management program. Forestland includes wasteland that is a part of the forest unit, but the wasteland included in the unit must be appraised under the use-value schedules as wasteland. A forest unit may consist of more than one tract of forestland, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(3), and each tract must be under a sound management program.

(3) Horticultural land. – Land that is a part of a horticultural unit that is actively engaged in the commercial production or growing of fruits or vegetables or nursery or floral products under a sound management program. Horticultural land includes woodland and wasteland that is a part of the horticultural unit, but the woodland and wasteland included in the unit must be appraised under the use-value schedules as woodland or wasteland. A horticultural unit may consist of more than one tract of horticultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(2), and each tract must be under a sound management program. If the horticultural land includes less than 20 acres of woodland, then the woodland portion is not required to be under a sound management program. Also, woodland is not required to be under a sound management program if it is determined that the highest and best use of the woodland is to diminish wind erosion of adjacent horticultural land or protect water quality of adjacent horticultural land. Land used to grow horticultural and agricultural crops on a rotating basis or where the horticultural crop is set out or planted and harvested within one growing season, may be treated as agricultural land as described in subdivision (1) of this section when there is determined to be no significant difference in the cash rental rates for the land.

(4) Individually owned. – Owned by one of the following:

a. ~~A natural person. For the purpose of this section, a natural person who is an income beneficiary of a trust that owns land may elect to treat the person's beneficial share of the land as owned by that person. If the person's beneficial interest is not an identifiable share of land but can be established as a proportional interest in the trust income, the person's beneficial share of land is a percentage of the land owned by the trust that corresponds to the beneficiary's proportional interest in the trust income. For the purpose of this section, a natural person who is a member of a business entity, other than a corporation, that owns land may elect to treat the person's share of the land as owned by that person. The person's share is a percentage of the land owned by the business entity that corresponds to the person's percentage of ownership in the entity.~~An individual.

b. A business entity ~~having as its principal business one of the activities described in subdivisions (1), (2), and (3) and whose members are all natural persons who meet one or more of the conditions listed in this sub-subdivision. For the purpose of this sub-subdivision, the terms "having as its principal business" and "actively engaged in the business of the entity" include the leasing of the land for one of the activities described in subdivisions (1), (2), and (3) only if all members of the business entity are relatives.~~

~~1. The member is actively engaged in the business of the entity.~~

~~2. The member is a relative of a member who is actively engaged in the business of the entity.~~

~~3. The member is a relative of, and inherited the membership interest from, a decedent who met one or both of the preceding conditions after the land qualified for classification in the hands of the business entity.~~that meets all of the following conditions:

1. Its principal business is farming agricultural land, horticultural land, or forestland.
2. All of its members are, directly or indirectly, individuals who are actively engaged in farming agricultural land, horticultural land, or forestland or a relative of one of the individuals who is actively engaged. An individual is indirectly a member of a business entity if the members of the business entity include another business entity or a trust and the individual is a member of the other business entity or is a beneficiary of the trust.
3. It is not a corporation whose shares are publicly traded and none of its members are corporations whose shares are publicly traded.
4. If it leases the land, all of its members are individuals and are relatives. Under this condition, 'principal business' and 'actively engaged' include leasing.

c. A trust that ~~was created by a natural person who transferred the land to the trust and each of whose beneficiaries who is currently entitled to receive income or principal~~ meets ~~one~~ all of the following conditions:

1. ~~Is the creator of the trust or the creator's relative.~~It was created by an individual who owned the land and transferred the land to the trust.
2. ~~Is a second trust whose beneficiaries who are currently entitled to receive income or principal are all either the creator of the first trust or the creator's relatives.~~All of its

beneficiaries are, directly or indirectly, individuals who are the creator of the trust or a relative of the creator. An individual is indirectly a beneficiary of a trust if the beneficiaries of the trust include another trust or a business entity and the individual is a beneficiary of the other trust or a member of the business entity.

d. A testamentary trust that meets all of the following conditions:

1. It was created by ~~a natural person~~an individual who transferred to the trust land that qualified in that ~~person's~~ individual's hands for classification under G.S. 105-277.3.

2. At the ~~time~~ date of the creator's death, the creator had no ~~relatives as defined in this section as of the date of death.~~relatives.

3. The trust income, less reasonable administrative expenses, is used exclusively for educational, scientific, literary, cultural, charitable, or religious purposes as defined in G.S. 105-278.3(d).

e. Tenants in common, if each tenant ~~is either a natural person or a business entity described in sub-subdivision b. of this subdivision.~~ would qualify as an owner if the tenant were the sole owner. Tenants in common may elect to treat their individual shares as owned by them individually in accordance with G.S. 105-302(c)(9). The ownership requirements of G.S. 105-277.3(b) apply to each tenant in common who is ~~a natural person.~~an individual. and the ownership requirements of G.S. 105-277.3(b1) apply to each tenant in common who is a business ~~entity.~~entity or a trust.

(4a) Member. – A shareholder of a corporation, a partner of a general or limited partnership, or a member of a limited liability company.

(5) Present-use value. – The value of land in its current use as agricultural land, horticultural land, or forestland, based solely on its ability to produce income and assuming an average level of management. A rate of nine percent (9%) shall be used to capitalize the expected net income of forestland. The capitalization rate for agricultural land and horticultural land is to be determined by the Use-Value Advisory Board as provided in G.S. 105-277.7.

(5a) Relative. – Any of the following:

a. A spouse or the spouse's lineal ancestor or descendant.

b. A lineal ancestor or a lineal descendant.

c. A brother or sister, or the lineal descendant of a brother or sister. For the purposes of this sub-subdivision, the term brother or sister includes stepbrother or stepsister.

d. An aunt or an uncle.

e. A spouse of ~~a person~~an individual listed in paragraphs a. through d. For the purpose of this subdivision, an adoptive or adopted relative is a relative and the term "spouse" includes a surviving spouse.

(6) Sound management program. – A program of production designed to obtain the greatest net return from the land consistent with its conservation and long-term improvement.

(7) Unit. – One or more tracts of agricultural land, horticultural land, or forestland. Multiple tracts must be under the same ownership and be of the same type of classification. If the multiple tracts are located within different counties, they must be within 50 miles of a tract qualifying under G.S. 105-277.3(a). "

SECTION 2. G.S. 105-277.3 reads as rewritten:

"**§ 105-277.3. Agricultural, horticultural, and forestland – Classifications.**

(a) Classes Defined. – The following classes of property are designated special classes of property under authority of Section 2(2) of Article V of the North Carolina Constitution and must be appraised, assessed, and taxed as provided in G.S. 105-277.2 through G.S. 105-277.7.

(1) Agricultural land. – Individually owned agricultural land consisting of one or more tracts, one of which satisfies the requirements of this subdivision. For agricultural land used as a farm for aquatic species, as defined in G.S. 106-758, the tract must meet the income requirement for agricultural land and must consist of at least five acres in actual production or produce at least 20,000 pounds of aquatic species for commercial sale annually, regardless of acreage. For all other agricultural land, the tract must meet the income requirement for agricultural land and must consist of at least 10 acres that are in actual production. Land in actual production includes land under improvements used in the commercial production or growing of crops, plants, or animals.

To meet the income requirement, agricultural land must, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have produced an average gross income of at least one thousand dollars ($1,000). Gross income includes income from the sale of the agricultural products produced from the land, any payments received under a governmental soil conservation or land retirement program, and the amount paid to the taxpayer during the taxable year pursuant to P.L. 108-357, Title VI, Fair and Equitable Tobacco Reform Act of 2004.

(2) Horticultural land. – Individually owned horticultural land consisting of one or more tracts, one of which consists of at least five acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have met the applicable minimum gross income requirement. Land in actual

production includes land under improvements used in the commercial production or growing of fruits or vegetables or nursery or floral products. Land that has been used to produce evergreens intended for use as Christmas trees must have met the minimum gross income requirements established by the Department of Revenue for the land. All other horticultural land must have produced an average gross income of at least one thousand dollars ($1,000). Gross income includes income from the sale of the horticultural products produced from the land and any payments received under a governmental soil conservation or land retirement program.

(3) Forestland. – Individually owned forestland consisting of one or more tracts, one of which consists of at least 20 acres that are in actual production and are not included in a farm unit.

(b) ~~Natural Person~~Individual Ownership Requirements. – In order to come within a classification described in subsection (a) of this section, ~~the~~ land ~~must, if~~ owned by ~~a natural person,~~an individual must also satisfy one of the following conditions:

(1) It is the owner's place of residence.

(2) It has been owned by the current owner or a relative of the current owner for the four years preceding January 1 of the year for which the benefit of this section is claimed.

(3) At the time of transfer to the current owner, it qualified for classification in the hands of a business entity or trust that transferred the land to the current owner who was a member of the business entity or a beneficiary of the trust, as appropriate.

(b1) Entity Ownership Requirements. – In order to come within a classification described in subsection (a) of this section, ~~the~~ land ~~must, if~~ owned by a business entity or ~~trust,~~trust must have been owned by the business entity or trust or by one or more of its members or creators, respectively, for the four years immediately preceding January 1 of the year for which the benefit of this section is claimed.

(b2) ~~Exception~~ Exceptions to Ownership Requirements. – Notwithstanding the provisions of subsections (b) and (b1) of this section, land may qualify for classification in the hands of the new owner if all of the conditions listed in either subdivision of this subsection are met, even if the new owner does not meet all of the ownership requirements of subsections (b) and (b1) of this section with respect to the land.

(1) ~~Exception for assumption of deferred liability.~~Continued use. – If the land qualifies for classification in the hands of the new owner under the provisions of this subdivision, then ~~the~~ any deferred taxes remain a lien on the land under G.S. 105-277.4(c), the new owner becomes liable for the deferred taxes, and the deferred taxes become payable if the land fails to meet any other condition or requirement for classification. Land qualifies for classification in the hands of the new owner if all of the following conditions are met:

a. The land was appraised at its present use value at the time title to the land passed to the new owner.

b. ~~At the time title to the land passed to the new owner, the~~The new owner acquires the land ~~for the purposes of~~ and continues to use the land for the ~~purposes~~ purpose for which it was classified under subsection (a) of this section while under previous ownership.

c. The new owner has timely filed an application as required by G.S. 105-277.4(a) and has certified that the new owner accepts liability for ~~the~~ any deferred taxes and intends to continue the present use of the land.

(2) ~~Exception for expansion~~Expansion of existing unit. – ~~If deferred liability is not assumed under subdivision (1) of this subsection, the land~~Land qualifies for classification in the hands of the new owner if, at the time title passed to the new owner, the land was not appraised at its present-use value but was being used for the same purpose and was eligible for appraisal at its present-use value as other land already owned by the new owner and classified under subsection (a) of this section. The new owner must timely file an application as required by G.S. 105-277.4(a).

(c) Repealed by Session Laws 1995, c. 454, s. 2.

(d) Exception for Conservation Reserve Program. – Land enrolled in the federal Conservation Reserve Program authorized by 16 U.S.C. Chapter 58 is considered to be in actual production, and income derived from participation in the federal Conservation Reserve Program may be used in meeting the minimum gross income requirements of this section either separately or in combination with income from actual production. Land enrolled in the federal Conservation Reserve Program must be assessed as agricultural land if it is planted in vegetation other than trees, or as forestland if it is planted in trees.

(d1) Exception for Easements on Qualified Conservation Lands Previously Appraised at Use Value. – Property that is appraised at its present-use value under G.S. 105-277.4(b) shall continue to qualify for appraisal, assessment, and taxation as provided in G.S. 105-277.2 through G.S. 105-277.7 as long as the property is subject to an enforceable conservation easement that would qualify for the conservation tax credit provided in G.S. 105-130.34 and G.S. 105-151.12, without regard to actual production or income requirements of this section. Notwithstanding G.S. 105-277.3(b) and (b1), subsequent transfer of the property does not extinguish its present-use value eligibility as long as the property remains subject to an enforceable conservation easement that qualifies for the conservation tax credit provided in G.S. 105-130.34 and G.S. 105-151.12. The exception provided in this subsection applies only to that part of the property that is subject to the easement.

(e) Exception for Turkey Disease. – Agricultural land that meets all of the following conditions is considered to be in actual production and to meet the minimum gross income requirements:

(1) The land was in actual production in turkey growing within the preceding two years and qualified for present use value treatment while it was in actual production.

(2) The land was taken out of actual production in turkey growing solely for health and safety considerations due to the presence of Poult Enteritis Mortality Syndrome among turkeys in the same county or a neighboring county.

(3) The land is otherwise eligible for present use value treatment.

(f) Sound Management Program for Agricultural Land and Horticultural Land. – If the property owner demonstrates any one of the following factors with respect to agricultural land or horticultural land, then the land is operated under a sound management program:

(1) Enrollment in and compliance with an agency-administered and approved farm management plan.

(2) Compliance with a set of best management practices.

(3) Compliance with a minimum gross income per acre test.

(4) Evidence of net income from the farm operation.

(5) Evidence that farming is the farm operator's principal source of income.

(6) Certification by a recognized agricultural or horticultural agency within the county that the land is operated under a sound management program.

Operation under a sound management program may also be demonstrated by evidence of other similar factors. As long as a farm operator meets the sound management requirements, it is irrelevant whether the property owner received income or rent from the farm operator.

(g) Sound Management Program for Forestland. – If the owner of forestland demonstrates that the forestland complies with a written sound forest management plan for the production and sale of forest products, then the forestland is operated under a sound management program."

SECTION 3. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2008. Notwithstanding G.S. 105-277.4(a), an application submitted for the 2008-2009 tax year under G.S. 105-277.4 for the classification of land owned by a business entity or a trust is considered timely if it is filed on or before September 1, 2008.

DRAFT 2007-LAz-20:
Modify Ownership of PUV Property

BILL ANALYSIS

Committee:	Revenue Laws	**Date:**	April 29, 2008
Introduced by:		**Summary by:**	Martha Walston
Version:			Committee Counsel

SUMMARY: ***This draft modifies the present-use value property tax statutes as follows:***

1. ***It changes the ownership requirements for business entities and trusts as follows:***
   - ***It expands the membership of a qualified business entity to include trusts and other business entities. Current law allows only a natural person to be a member of a business entity.***
   - ***It expands the beneficiary of a qualified trust to include a business entity. Current law allows the following to be beneficiaries of a qualified trust: a natural person who created the trust, the creator's relatives, and a second trust whose beneficiaries are currently entitled to receive trust income or principal and who are either creator of the first trust or the creator's relatives.***
   - ***It expands tenants in common to include a trust. Current law allows only a natural person or business entity to be a tenant in common.***
   - ***It clarifies that an individual may be a direct or indirect member of a qualified business entity or a direct or indirect beneficiary of a qualified trust.***
   - ***It clarifies that a qualified business entity does not include a corporation whose shares are publicly traded or who has a member that is a corporation whose shares are publicly traded.***
2. ***It allows property to remain in present-use value if the owner pays deferred taxes at the time of transfer and the new owner continues to farm the land and files an application for present-use value status.***

CURRENT LAW: Since 1973, the General Assembly has provided special property tax treatment for farmland that is classified and used for agricultural, horticultural, or forest purposes.[1] If the farmland meets certain ownership and size requirements and is engaged in commercial production under a sound management program, the land may be appraised and taxed at its present-use value (PUV) as opposed to market value.[2] PUV is usually much less than market value. The difference between the taxes due on the PUV and taxes that would have been payable in the absence of the special tax treatment is known as deferred taxes. When the land becomes disqualified for PUV, the deferred taxes for the current year and the three previous years with interest will usually become due and payable.[3]

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[1] During the 2007 Session, the agricultural land classification was amended to include agricultural land used as an aquatic specifies farm, effective in the 2008-2009 tax year.

[2] Agricultural and horticultural land must also meet an income requirement: the land must have one tract that produces at least $1,000 average gross income over the three preceding years.

[3] No deferred taxes are due if the property loses its classification for one of the following purposes: (1) the land is enrolled in the federal Conservation Reserve Program and is no longer in production and therefore does not meet the income requirement, (2) the land is conveyed by gift to certain exempt organizations and governmental entities. This applies to

One of the most complex parts of the PUV program is determining the ownership requirements in order to qualify for the program, particularly when the property is owned by a business entity or trust. The law requires that PUV property be "individually owned". Any of the following categories satisfy this definition:

- Natural person.
- Business entity – This term applies to limited liability companies, general partnerships, limited partnerships, and corporations. To satisfy the definition of "business entity", the entity must have agriculture, horticulture, or forestry as its principal business; all members of the entity must be natural persons; and all members of the business entity must be actively engaged in the principal business of the entity or be related to a member who is actively engaged in the principal business of the entity. Alternately, a member can be a relative of a decedent who met one or both of the above two conditions after the business entity had already qualified for PUV classification and from whom the member inherited his interest.
- Tenancy in common – This is a form of ownership where multiple owners (natural persons or business entities) can own individual interests in property.
- Trusts – The trust must be created by a natural person who transferred the land to the trust. Each beneficiary who is entitled to receive income or principal must be one of the following:
  (a) The creator of the trust or a relative of the creator of the trust, or
  (b) A second trust whose beneficiaries (currently entitled to receive income or principal) are all either the creator of the trust or a relative of the creator of the trust.
- Testamentary trust – The trust must satisfy all of the following requirements:
  (a) Must be created by a natural person who transferred the land to the trust.
  (b) Land must have qualified for classification in the hands of the natural person prior to the transfer to the trust.
  (c) At the time of the creator's death, the creator had no relatives.
  (d) Trust income, less reasonable administrative expenses, is used exclusively for educational, scientific, literary, cultural, charitable, or religious purposes.

BILL ANALYSIS:

Ownership Modifications: In recent years, taxpayers have voiced concerns about the complexities and perceived unfairness of certain aspects of the ownership requirements for qualified farmland. In addition, county tax assessors, who must apply the PUV laws, have echoed concerns about the complexity of these requirements. Staff met with representatives of county tax assessors, the North Carolina Association of County Commissioners, the School of Government, the North Carolina Farm Bureau, and the Department of Revenue to discuss these issues. This group proposes the following changes to PUV ownership:

- Change the definition of "individually owned" as follows::
  (a) The awkward reference to ""owned by a natural person" is changed to "owned by an individual".

  (b) Members of a business entity are no longer restricted to individuals and will include trusts and other business entities. A qualified business entity, however, may not be a corporation whose shares are publicly traded and none of its members may be corporations whose shares

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conveyances by gift to nonprofit organizations where the property will qualify for exclusion from the tax base because it is real property that will be exclusively used for educational and scientific purposes as a protected natural area, or where the property will be exclusively used for nonprofit historic preservation purposes, or (3) the property is conveyed by gift to the State, political subdivisions of the State, or the United States.

are publicly traded. When the membership of a business entity includes a business entity or a trust, then all members of the business entity and all beneficiaries of the trust must be individuals. These individuals are deemed to be indirect members of the qualified business entity.[4] As in current law, the principal business of the business entity must be in agriculture, horticulture, or forestry, and each member must be actively engaged in one of these activities or related to a member who is actively engaged in one of these activities. Also if the land is leased, all members of the business entity must be individuals and relatives.

(c) Beneficiaries of a trust may be a business entity as long as the members of the business entity are individuals who either created the trust or who are relatives of the creator. These individuals are deemed to be indirect beneficiaries.

(d) A tenant in common may include a trust in addition to an individual and business entity.

The following are examples of land that would qualify for PUV under the proposed changes:

- A corporation applies for PUV. Four shareholders of the corporation are individuals who are actively engaged in farming the land and one shareholder is an LLC. The members of the LLC are all relatives of one of the individual shareholders. (Under current law, the corporation would not qualify because it has an LLC as a member.)
- Tenancy in common applies for PUV, and one of the tenants is a trust. (Under current law, the property would not qualify, because all tenants must be individuals or business entities.)
- An LLC applies for PUV, and one of the members of the LLC is a trust. All beneficiaries of the trust are children of the individual members of the LLC that owns the land. (Under current law, the LLC would not qualify because the trust is not an individual.)

Deferred Taxes Paid at Transfer: The property tax working group also proposes clarifying language that will allow land to remain in the PUV system if land currently in PUV is transferred to a new owner, but the deferred taxes are paid at the time the transfer occurs.

Under current law, there are several standard ownership requirements that a natural person or business entity must meet in order for their property to be in the PUV system:

- If the property is owned by a natural person, the property must meet one of the following requirements:
  1. The property is the owner's place of residence.
  2. The property has been owned by the current owner or a relative of the current owner for the four full years preceding January 1 of the year for which application is made.
  3. If transferring from a business entity or trust to the current owner, the property must have been qualified for and receiving PUV.
- If the property is owned by a business entity, the property must have been owned by the business entity or by one or more members of the business entity for the four full years preceding January 1 for which application is made.

An exception to these standard ownership requirements exists when land appraised at its PUV value is transferred to a new owner and the new owner (i) continues to use the land for its current PUV classification, (ii) files an application for PUV, and (iii) assumes the deferred taxes. However, this exception has been interpreted not to apply when the seller pays more than the current year's taxes at the

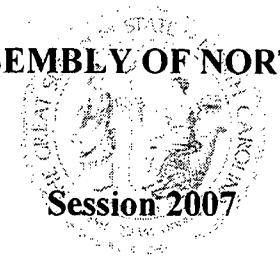
[4] The indirect ownership determination does not stop at the first tier of the business entity that owns farmland. For example, if a business entity has as one of its members an LLC and one of the members of the LLC is another LLC, then the indirect ownership will apply to any member of the second LLC if the member is an individual who is actively engaged in farming the land or a relative of an individual who is actively engaged in farming the land.

time of transfer. The seller is deemed to have voluntarily removed the property from the PUV program, and the new owner may have to wait four years to qualify for PUV. The draft would allow the land to remain in PUV when the seller pays the deferred taxes at time of transfer. The new owner will become liable for subsequent deferred taxes when the land becomes disqualified.

EFFECTIVE DATE: The draft is effective for taxes imposed for taxable years beginning on or after July 1, 2008. Notwithstanding G.S. 105-277.4(a), an application submitted for the 2008-2009 tax year for the classification of land owned by a business entity or trust is considered timely if it is filed on or before September 1, 2008.

This summary quotes extensively from the "Present-Use Value Program" prepared by the Property Tax Division of the North Carolina Department of Revenue.

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: April 17, 2008

TO: Revenue Laws Study Committee

FROM: Rodney Bizzell
Fiscal Research Division

RE: Simplify Ownership of PUV Property

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13
REVENUES:					
General Fund	***No General Fund Impact***				
Local Governments	***No significant impact – see assumptions and methodology***				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Local Governments; NC Department of Revenue

EFFECTIVE DATE: Effective for taxable years beginning on or after July 1, 2008.

BILL SUMMARY:
This bill simplifies the ownership requirements of present-use value property and allows property to remain in present-use value if the owner pays deferred taxes at the time of transfer and the new owner continues to farm the land and files an application for present-use value status.

ASSUMPTIONS AND METHODOLOGY:

Ownership Requirements
The General Assembly provides special tax treatment for farmland if the property is used for agricultural, horticultural or forestry purposes. If the farmland meets certain ownership and size requirements and is engaged in commercial production under a sound management plan, the land may be appraised and taxed at its present-use value (PUV), rather than market value. When the land becomes disqualified from PUV, the deferred taxes for the current year and the previous three years become due.

The bill makes several changes to simplify the PUV ownership requirements. Currently, PUV land must be individually owned. This requirement can be satisfied by the following categories: natural persons, business entities, tenancy in common and trusts. To satisfy the definition of business entity, the entity must be composed of natural persons, and the members must be actively engaged in the business or be related to a member who is actively engaged in the business.

The current ownership requirements do not allow for a business entity, such as an LLC, to qualify if one of the members of the business is a trust. For example, if an LLC applies for PUV, and one of the members of the LLC is a trust, the property would not satisfy the ownership requirements because all of the members are not "natural persons," even though the members of the trust may be children of the members of the LLC.

The bill simplifies the ownership requirements by eliminating the requirement that all members of the business entity be natural persons. The definition of "individually owned is changed to include "farms groups," directly or indirectly by individuals in the group. An indirect owner may be the beneficiary of a trust or a business entity. The definition of business entity specifically excludes publicly-traded corporations and clarifies that the business entity must have as its principal business one of the following: agriculture, horticulture, or forestry.

The proposed changes allow the tax assessor to consider the make-up of individual ownership without excluding beneficiaries of a trust who would otherwise be eligible. The changes are not expected to have any significant fiscal impact.

Payment of Deferred Taxes
The bill also allows land to remain in the PUV system if it is transferred to a new owner and the deferred taxes are paid at the time of the transfer. Current law requires the new owner to assume the deferred taxes. This section of the bill is also not expected to have any significant impact.

SOURCES OF DATA: NC Department of Revenue

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-TDf-15 [v.6] (04/21)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/25/2008 5:20:05 PM

Short Title: 911 Technical Correction Bill. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE EMERGENCY TELEPHONE SERVICE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62A-44 is amended to add a new subsection to read:

"(b1) Allocation Adjustment. – Once each fiscal year the Board may adjust the allocation of funds by distributing funds to primary PSAPs from funds originally allocated to CMRS providers if all of the following apply:

(1) The amount allocated to PSAPs under subsubsection (b)(2) of this section is insufficient to fund the distribution to PSAPs under G.S. 62A-46(a)(1).

(2) The reallocation is no greater than the amount the original allocation to PSAPs is insufficient to make the distributions required under G.S. 62A-46(a)(1).

(3) The funds available to reimburse CMRS providers after the adjustment is sufficient to provide reimbursements required under G.S. 62A-45."

SECTION 2. G.S. 62A-46(b) is rewritten to read:

"(b) Percentage Designations. – The 911 Board must determine how revenue that is allocated to the 911 Fund for distribution to primary PSAPs and is not needed to make the base amount distribution required by subdivision (a)(1) of this section is to be used. The 911 Board must designate a percentage of the remaining funds to be distributed to primary PSAPs on a per capita basis and a percentage to be allocated to the PSAP Grant Account established in G.S. 62A-47. If the 911 Board does not designate an amount to be allocated to the PSAP Grant Account, the 911 Board must distribute all of the remaining funds on a per capita basis. The 911 Board may not change the percentage designation more than once each ~~calendar~~ fiscal year."

SECTION 3. G.S. 62A-46 is amended to add a new subsection to read:

"(f) The Eastern Band of the Cherokee. – Notwithstanding GS 62A-46(e), the Eastern Band of the Cherokee shall be eligible for distributions from the 911 Fund. The base amount for the Eastern Band of the Cherokee shall be determined by the 911 Board upon receipt of satisfactory evidence of the amount of 911 funds the PSAP received in the fiscal year ending June 30, 2007."

SECTION 4. This act is effective when it becomes law.

DRAFT 2007-TDf-15:
911 Technical Correction Bill

BILL ANALYSIS

Committee:	Revenue Laws	**Date:**	April 30, 2008
Introduced by:		**Summary by:**	Heather Fennell
Version:			Committee Counsel

SUMMARY: This bill makes technical corrections to the Chapter 62A, the Emergency Telephone Service Act.

CURRENT LAW: S.L. 2007-383 created a new State-wide 911 system. Previously, the fee had been collected on a local level from local telephone providers, and on the State level from commercial mobile radio service(CMRS) providers. The act created a State-wide uniform fee for all types of phone service, including voice over internet protocol (VOIP). The funds collected are distributed by the 911 Emergency Locating Board to CMRS providers for reimbursement for actual costs incurred with complying with enhanced 911 service, and to public safety answering points (PSAPs) for certain approved costs of providing 911 services.

BILL ANALYSIS: This bill makes three technical corrections to the act as follows:

Section 1. Allows the 911 Board to adjust allocations to ensure local governments receive, at minimum, the same revenues the local government collected in 911 fees for the fiscal year ending June 30, 2007.

Section 2. Changes from calendar year to fiscal year, the time frame in which the Board can make changes in allocation percentages to conform to the Board's accounting practices.

Section 3. Clarifies that the Eastern Band of the Cherokee Nation can receive disbursements from the 911 Fund, even though the Nation is exempt from Chapter 159, the Local Government Finance Act.

EFFECTIVE DATE: This bill is effective when it becomes law.

-SMTD

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-RBz-40A [v.4] (04/26)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/30/2008 8:13:39 AM

Short Title: Supplemental PEG Support. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DISTRIBUTION OF SUPPLEMENTAL PEG SUPPORT FUNDING, AS REQUESTED BY THE LEAGUE OF MUNICIPALITIES AND THE SOUTHEAST ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-350 reads as rewritten:

"§ 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.

(6a) PEG channel operator. – An entity that does one or more of the following:

a. Produces programming for delivery on a PEG channel.

b. Provides facilities for the production of programming or playback of programming for delivery on a PEG channel.

(7) Secretary. – The Secretary of State.

(8) Video programming. – Defined in G.S. 105-164.3."

SECTION 2. G.S. 105-164.44I(b) reads as rewritten:

"(b) Supplemental PEG Support. – The Secretary must include the applicable amount of supplemental PEG channel support in each quarterly distribution to a county or city. The amount to include is one-fourth of twenty-five thousand dollars ($25,000) for each qualifying PEG channel operated by the county or city. The amount of money distributed under this subsection may not exceed two million dollars ($2,000,000) in a fiscal year. If the amount to be distributed for qualifying PEG channels in a fiscal year would otherwise exceed this maximum amount, the Secretary must proportionately reduce the applicable amount distributable for each PEG channel. If the amount to be distributed for qualifying PEG channels in a fiscal year is less than two million dollars ($2,000,000), the Secretary must credit the excess amount to the PEG Channel Fund established in G.S. 66-359.

A county or city must certify to the Secretary by July 15 of each ~~year~~ year, in the manner prescribed by the Secretary, the number of qualifying PEG channels ~~it operates.~~ provided for its use by a cable service provider under either G.S. 66-357 or an existing agreement. ~~A qualifying PEG channel is one that meets the programming requirements under G.S. 66-357(d).~~ A county or city must include the name of the PEG channel operator for each qualifying PEG channel it certifies. If a certified PEG channel has more than one PEG channel operator, then each operator of that channel must be included. A county or city may not receive PEG channel support under this subsection for more than three qualifying PEG channels.

The amount included under this subsection in a distribution to a county or city is intended to supplement the PEG channel support available in the amount distributed under this section. The money distributed to a county or city under this subsection must be used by it for the operation and support of each of the PEG ~~channels.~~ channels it certified and must be allocated equally among those certified PEG channels. A county or city must distribute the money received under this subsection to the PEG channel operator of the certified PEG channel within 30 days of its receipt of the supplemental PEG support funds from the Department, or as specified in an interlocal agreement. If a certified PEG channel has more than one PEG channel operator, then the amount allocated for that PEG channel must be distributed equally to each PEG channel operator, or as specified in an interlocal agreement. ~~For~~

If a county or city determines that it certified a PEG channel in error, the county or city must submit a revised certification to the Department and it must return all supplemental PEG support distributed to it as a result of the error. All funds returned shall be added to the total amount to be allocated under this subsection for the following fiscal year and the amount distributed under this subsection for that fiscal year may exceed the two million dollars ($2,000,000) limit by the amount of funds returned in the prior fiscal year.

For purposes of this subsection, the ~~term "PEG channel" has the same meaning as in G.S. 66-350.~~ following definitions apply:

(1) Existing agreement. – Defined in G.S. 66-350.

(2) PEG channel. – Defined in G.S. 66-350.

(3) PEG channel operator. – Defined in G.S. 66-350.

(4) Qualifying PEG channel. – A PEG channel that meets all of the following programming requirements:

a. The PEG channel must deliver at least 480 minutes of scheduled programming a day.

b. The PEG channel must deliver at least 408 minutes of scheduled, non-character-generated programming a day.

c. The programming content of the PEG channel must not repeat more than fifteen percent (15%) of the programming content on any other PEG channel provided to the certifying city or county."

SECTION 3. Notwithstanding G.S. 105-164.44I(b), certifications of qualifying PEG channels for use in distributing fiscal year 2008-2009 supplemental PEG channel support may be submitted to the Secretary on or before September 15, 2008. The distribution of supplemental PEG channel support that must be made within 75 days after June 30, 2008, shall be based on the qualifying PEG channel certification in effect for the prior distribution.

SECTION 4. This act is effective when it becomes law.

BILL DRAFT 2007-RBz-40A: Supplemental PEG Support

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	April 30, 2008
Introduced by:		**Summary by:**	Cindy Avrette
Version:	Bill Draft		Committee Staff

SUMMARY: This bill draft would clarify the distribution of supplemental PEG support funding. The League of Municipalities recommends the proposed changes to the Revenue Laws Study Committee. The bill would become effective when it becomes law. It would affect distributions made in the 2008-09 fiscal year.

CURRENT LAW: In 2006, the General Assembly established uniform taxes for video programming services by applying the combined general rate of sales tax to all video programming services and repealing the local authority to impose a local franchise tax. It preserved the local government revenue stream by distributing part of the sales tax revenues from telecommunications and video programming services to the counties and cities. The distribution formula is based upon the amount of cable franchise tax imposed during the first six months of fiscal year 2006-2007 plus any subscriber fees imposed during that same period.

Of the revenue distributable to local governments, two million dollars ($2,000,000) a year is allocated for supplemental PEG channel support. A PEG channel is a public, educational, or governmental access channel provided to a county or city. The $2,000,000 allocation is distributed to counties and cities with qualifying PEG channels. The annual amount per qualifying PEG channel is $25,000. A county or city can not receive supplemental PEG channel support for more than three PEG channels. The amount distributed to a county or city as supplemental PEG channel support must be used by it for the operation and support of PEG channels. If the amount to be distributed for qualifying PEG channels in a fiscal year is less than $2,000,000, the Secretary must credit the excess amount to the PEG Channel Fund to be used for matching local grants for PEG channel support.

At the time the General Assembly considered the legislation in 2006, the information the staff had collected indicated that there would be 36 qualifying PEG channels. There were 276 certified PEG channels in the March 2008 distribution. In working with the data, the Committee staff and the League of Municipalities believe that the form used by the Department of Revenue is not as clear as it could be. This confusion may have resulted in some channels being double counted and in some channels receiving a distribution although they did not qualify for one.

BILL ANALYSIS: This bill draft seeks to clarify the distribution requirements and to provide that all qualifying PEG channels receive supplemental PEG support funding. The bill may not drastically reduce the number of channels receiving a distribution, but it should result in the allocations being received by the qualifying PEG channels. The bill does the following:

- It defines in the distribution statute what constitutes a 'qualifying PEG channel'. The definition of a qualifying PEG channel does not differ substantially from the current law; it does clarify the amount and type of programming that must be delivered by the channel. This change should limit the number of qualifying channels.

- It gives the Secretary of Revenue the flexibility to devise a form that may require a joint certification and the submission of documentation needed to support certification. This change should limit the number of qualifying channels.
- It defines a PEG channel operator, requires a county or city to include the name of the PEG channel operator for each qualifying PEG channel it certifies, and requires the county or city to distribute the proceeds to the PEG channel operator. This change will better ensure that the money is distributed by the local government for the use of the PEG channels. Sometimes, a single PEG channel has more than one operator. This change will ensure that the funds go to the operator of the PEG channel, even if the PEG channel is claimed by more than one local government.
- It requires a county or city to certify all qualifying PEG channels and to allocate the proceeds it receives equally among all of its certified PEG channels, and it provides that the distribution must be made to the PEG channel within 30 days of the county or city's receipt of the supplemental PEG support revenue. Under current law, a county or city may only receive supplemental funding for three PEG channels. Some qualifying PEG channels believe the funds are not being distributed fairly among the channels. These changes ensure:
    - That each qualifying PEG channel receives supplemental funding, even if a county or city has more than three qualifying channels.
    - That each qualifying PEG channel receives an equal amount of funding.
    - That each qualifying PEG channel receives the funding in a timely manner.
- It provides a method to account for revenues that are distributed in error. If it is determined that a county or city received a distribution in error, the county or city must submit a revised certification and return all funds received in error. Any funds returned will be added to the amount to be distributed in the following year as supplemental PEG support funding.
- It extends the period of time a county and city has to make its certification in 2008 from July 15, 2008, to September 15, 2008. It provides that the Department may make the distribution of supplemental PEG channel support for the quarter ending June 30, 2008, based upon the qualifying PEG channel certifications in effect for the fiscal year 07-08 distributions.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-RBz-41 [v.1] (04/29)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/29/2008 10:30:57 AM

Short Title: Modify PEG Channel Grant Program. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE PEG CHANNEL GRANT PROGRAM, AS REQUESTED BY E-NC AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-359 reads as rewritten:

"**§ 66-359. PEG channel grants.**

(a) PEG Channel Fund. – The PEG Channel Fund is created as an interest-bearing special revenue fund. It consists of revenue allocated to it under G.S. 105-164.44I(b) and any other revenues appropriated to it. The e-NC Authority, created under G.S. 143B-437.46, administers the Fund. Up to three percent (3%) of the Fund may be used annually by e-NC Authority to cover its expenses in grant letting and monitoring, not to exceed sixty thousand dollars ($60,000) a year.

(b) Grants. – A county or city may apply to the e-NC Authority for a grant from the PEG Channel Fund. In awarding grants from the Fund, the e-NC Authority must, to the extent possible, select applicants from all parts of the State based upon need. Grants from the Fund are subject to the following limitations:

(1) The grant may not exceed twenty-five thousand dollars ($25,000).

(2) The applicant must provide a cash match for the ~~grant on a dollar-for-dollar basis.~~grant. The cash match required is a percentage of the grant amount and the applicable percentage varies based on the applicant's development tier designation:

Applicant Tier Designation	Required Match
Tier One	25%
Tier Two	50%
Tier Three	75%

(3) The grant may be used only for capital expenditures necessary to provide PEG channel programming. An applicant may provide in

writing that the capital expenditure vest directly with the PEG channel operator.

(4) An applicant may receive no more than one grant per PEG channel per fiscal year.

(c) Reports. – The e-NC Authority must publish an annual report on grants awarded under this section. The report must list each grant recipient, the amount of the grant, and the purpose of the grant."

SECTION 2. G.S. 66-350 reads as rewritten:

"§ 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.

(3a) Development tier. – Defined in G.S. 105-129.82.

(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.

(6a) PEG channel operator. – An entity that does one or more of the following:

a. Produces programming for delivery on a PEG channel.

b. Provides facilities for the production of programming or playback of programming for delivery on a PEG channel.

(7) Secretary. – The Secretary of State.

(8) Video programming. – Defined in G.S. 105-164.3."

SECTION 3. This act is effective when it becomes law and applies to grants made on or after July 1, 2008.

BILL DRAFT 2007-RBz-41: Modify PEG Channel Grant Program

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	April 30, 2008
Introduced by:		**Summary by:**	Cindy Avrette
Version:	Bill Draft		Committee Staff

SUMMARY: This bill draft would make several changes to the PEG Channel Grant Program. The e-NC Authority, which administers the Fund, recommends the proposed changes to the Revenue Laws Study Committee. The bill would become effective when it becomes law and apply to grants made on or after July 1, 2008.

CURRENT LAW: In 2006, the General Assembly created the PEG Channel Grant Fund. The purpose of the Fund is to provide matching grants to counties and cities for PEG channel support. The e-NC Authority administers the Fund.[1] A grant may only be used for capital expenditures necessary to provide PEG channels. The size of a grant may not exceed $25,000 and an applicant may receive no more than one grant per fiscal year. The applicant must match the grant on a dollar-for-dollar basis. The Authority must publish an annual report on the grants awarded from the Fund.

The revenue in the Fund consists of revenue allocated to it under G.S. 105-164.44I(b) and any other revenues appropriated to it. In 2007, the General Assembly appropriated $1,000,000 the Fund. G.S. 105-164.44I provides that of the revenue distributable to local governments under that statute, $2,000,000 a year is allocated for supplemental PEG channel support to qualifying PEG channels. If the amount to be distributed for qualifying PEG channels in a fiscal year is less than $2,000,000, the excess is credited to the PEG Channel Fund. At the time the General Assembly created the Fund, it believed there would be excess revenue to credit to the Fund. However, that has not proved to be the case.

BILL ANALYSIS: This bill draft comes as a recommendation from the e-NC Authority, which administers the PEG Channel Grant Program. The recommended changes are as follows:

- It would allow the e-NC Authority to use up to 3% of the Fund, not to exceed $60,000 annually, to cover its expenses in grant letting and monitoring.
- It would provide a different match amount. Current law requires a dollar for dollar match amount. The proposal would require a 25% match amount for applicants in development tier one areas, a 50% match amount of applicants in development tier two areas, and a 75% match amount for applicants in a development tier three area.
- It would provide that a county or city applying for a grant may vest ownership in the capital expenditure purchased with the grant monies with the PEG channel operator.

[1] The e-NC Authority is charged with managing and promoting high-speed broadband Internet access.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-RBz-42 [v.6] (04/29)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/30/2008 9:06:25 AM

Short Title: PEG Channels and Video Programming Changes. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE LAWS RELATING TO STATE FRANCHISE FOR CABLE SERVICE PROVIDERS, THE PEG CHANNEL GRANT FUND, AND LOCAL GOVERNMENT ALLOCATIONS FOR PEG CHANNELS FROM THE DISTRIBUTIONS IT RECEIVES FROM THE SALES TAX ON VIDEO PROGRAMMING, AS REQUESTED BY THE SOUTHEAST ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-350 is amended by adding a new subdivision to read:

"**§ 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.

(6a) PEG channel operator. – An entity that does one or more of the following:

a. Produces programming for delivery on a PEG channel.

b. Provides facilities for the production of programming or playback of programming for delivery on a PEG channel.

(7) Secretary. – The Secretary of State.

(8) Video programming. – Defined in G.S. 105-164.3."

SECTION 2. G.S. 66-352(a) is amended by adding a new subdivision to read:

"(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 providing the service. A person who files a notice of franchise must pay a fee in the amount set in G.S. 57C-1-22 for filing articles of organization.

A notice of franchise is effective when it is filed with the Secretary. The notice of franchise must include all of the following:

(1) The applicant's name, principal place of business, mailing address, physical address, telephone number, and e-mail address.

(2) A description and map of the area to be served.

(3) A list of each county and city in which the described service area is located, in whole or in part.

(4) A schedule indicating when service is expected to be offered in the service area.

(5) The circumstance under which the applicant terminated an existing agreement under G.S. 66-355."

SECTION 3. G.S. 66-357(c) reads as rewritten:

"(c) Initial PEG Channels. – This subsection establishes the minimum number of PEG channels a cable service provider is required to provide to a county or city. The provider will make each channel, up to the initial number of allowed channels, available to a county or city that makes a written request as provided in subsection (b) of this section. ~~A~~

A city with a population of at least 50,000 is allowed a minimum of three initial PEG channels plus any channels in excess of this minimum that are activated, as of July 1, 2006, under the terms of an existing franchise agreement whose franchise area includes any portion of the city. A city with a population of less than 50,000 is allowed a minimum of two initial PEG channels plus any channels in excess of this minimum that are activated, as of July 1, 2006, under the terms of an existing franchise agreement whose franchise area includes the city. For a city included in the franchise area of an existing agreement, the agreement determines the service tier placement and transmission quality of the initial PEG channels. For a city that is not included in the franchise area of an existing agreement, the initial PEG channels must be on a basic service tier, and the transmission quality of the channels must be equivalent to those of the closest city covered by an existing agreement.

A county is allowed a minimum of two initial PEG channels plus any channels in excess of this minimum that are activated, as of July 1, 2006, under the terms of an

existing franchise agreement whose franchise area includes any portion of the county. For a county included in the franchise area of an existing agreement, the agreement determines the service tier placement and transmission quality of the initial PEG channels. For a county that is not included in the franchise area of an existing agreement, the initial PEG channels must be on a basic service tier and the transmission quality of the channels must be equivalent to those of any city with PEG channels in the county.

The cable service provider must maintain the same channel designation for a PEG channel unless the service area of the State-issued franchise includes PEG channels that are operated by different counties or cities and those PEG channels have the same channel designation. Each county and city whose PEG channels are served by the same cable system headend must cooperate with each other and with the cable system provider in sharing the capacity needed to provide the PEG channels.

For purposes of this subsection, a basic service tier is the lowest priced tier available to a subscriber which includes the local broadcast signals."

SECTION 4. G.S. 66-357(d) reads as rewritten:

"(d) Additional PEG Channels. – A county or city that ~~does not have~~ has fewer than seven PEG channels, including the initial PEG channels, is eligible for an additional PEG channel if it meets the programming requirements in this subsection. A county or city that has seven or more PEG channels is not eligible for an additional channel.

A county or city that meets the programming requirements in this subsection may make a written request under subsection (b) of this section for an additional channel. The additional channel may be provided on any service tier. The transmission quality of the additional channel must be at least equivalent to the transmission quality of the other channels provided.

The PEG channels operated by a county or city must meet the following programming requirements for at least 120 continuous days in order for the county or city to obtain an additional channel:

(1) All of the PEG channels must have scheduled programming for at least eight hours a day.

(2) The programming content of each of the PEG channels must not repeat more than fifteen percent (15%) of the programming content on any of the other PEG channels.

(3) No more than fifteen percent (15%) of the programming content on any of the PEG channels may be character-generated programming."

SECTION 5. G.S. 66-358(a) reads as rewritten:

"(a) Service. – A cable service provider operating under a State-issued franchise must transmit a PEG channel by one of the following methods:

(1) Interconnection with another cable system operated in its service area. A cable service provider operating ~~in~~ within 125 feet of the same service area as a provider under a State-issued franchise must interconnect its cable system on reasonable and competitively neutral terms with the other provider's cable system within 120 days after it

receives a written request for interconnection and may not refuse to interconnect on these terms. The terms include compensation for costs incurred in interconnecting. Interconnection may be accomplished by direct cable, microwave link, satellite, or another method of connection. A cable service provider must make a written request for interconnection within 30 days of its receipt of a written request for a PEG channel by a county or city under G.S. 66-357.

(2) Transmission of the signal from each PEG channel programmer's origination site, if ~~the origination site is in the provider's service area.~~any part of any designated service area of the cable service provider includes any portion of the county or city in which the PEG channel origination site is located."

SECTION 6. G.S. 66-359 reads as rewritten:

"**§ 66-359. PEG channel grants.**

(a) PEG Channel Fund. – The PEG Channel Fund is created as an interest-bearing special revenue fund. It consists of revenue allocated to it under G.S. 105-164.44I(b) and any other revenues appropriated to it. The e-NC Authority, created under G.S. 143B-437.46, administers the Fund.

(b) ~~Grants.~~Grant Applications. ~~A county or city may apply to the~~ The e-NC Authority may accept applications for a grant from the PEG Channel ~~Fund.~~ Fund from one or more of the following:

(1) A county.

(2) A city.

(3) A PEG channel operator of a PEG channel certified by a county or city as a qualifying PEG channel under G.S. 105-164.44I.

(c) Grant Awards. – In awarding grants from the Fund, the e-NC Authority must, to the extent possible, select applicants from all parts of the State based upon need. Grants from the Fund are subject to the following limitations:

(1) The grant may not exceed twenty-five thousand dollars ($25,000).

(2) The applicant must match the grant on a dollar-for-dollar basis.

(3) The grant may be used only for capital expenditures necessary to provide PEG channel programming.

(4) An applicant may receive no more than one grant per fiscal year.

(c) Reports. – The e-NC Authority must publish an annual report on grants awarded under this section. The report must list each grant recipient, the amount of the grant, and the purpose of the grant."

SECTION 7. G.S. 105-164.44I(b) reads as rewritten:

"(b) Supplemental PEG Support. – The Secretary must include the applicable amount of supplemental PEG channel support in each quarterly distribution to a county or city. The amount to include is one-fourth of twenty-five thousand dollars ($25,000) for each qualifying PEG channel operated by the county or city. The amount of money distributed under this subsection may not exceed two million dollars ($2,000,000) in a fiscal year. If the amount to be distributed for qualifying PEG channels in a fiscal year would otherwise exceed this maximum amount, the Secretary must proportionately

reduce the applicable amount distributable for each PEG channel. If the amount to be distributed for qualifying PEG channels in a fiscal year is less than two million dollars ($2,000,000), the Secretary must credit the excess amount to the PEG Channel Fund established in G.S. 66-359.

A county or city must certify to the Secretary by July 15 of each year the number of qualifying PEG channels it operates. A qualifying PEG channel is one that meets the programming requirements under G.S. 66-357(d). A county or city may not receive PEG channel support under this subsection for more than ~~three~~ seven qualifying PEG channels.

The amount included under this subsection in a distribution to a county or city is intended to supplement the PEG channel support available in the amount distributed under this section. The money distributed to a county or city under this subsection must be used by it for the operation and support of PEG channels. For purposes of this subsection, the term "PEG channel" has the same meaning as in G.S. 66-350."

SECTION 8. G.S. 105-164.44I(e) reads as rewritten:

"(e) Use of Proceeds. – A county or city that imposed subscriber fees during the first six months of the 2006-2007 fiscal year must use a portion of the funds distributed to it under subsections (c) and (d) of this section for the operation and support of PEG channels. The amount of funds that must be used for PEG channel operation and support is the proportion of the total funds received under subsection (d) of this section that is the same as the proportion of two times the amount of subscriber fee revenue the county or city certified to the Secretary that it imposed during the first six months of the 2006-2007 fiscal ~~year.~~ year compared to two times the amount of cable franchise tax and subscriber fee revenue the county or city certified to the Secretary that it imposed during the first six months of the 2006-2007 fiscal year. A county or city that used part of its franchise tax revenue in fiscal year 2005-2006 for the operation and support of PEG channels or a publicly owned and operated television station must use the funds distributed to it under subsections (c) and (d) of this section to continue the same level of support for the PEG channels and public stations. The remainder of the distribution may be used for any public purpose."

SECTION 9. This act becomes effective January 1, 2009.

BILL DRAFT 2007-RBz-42: PEG Channels and Video Programming Changes

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	April 30, 2008
Introduced by:		**Summary by:**	Cindy Avrette
Version:	Bill Draft		Committee Staff

SUMMARY: This bill draft would modify the laws relating to the following, as recommended to the Revenue Laws Study Committee by the Southeast Association of Telecommunications Officers and Advisors:

- ***State franchises for cable service providers.***
- ***The PEG Channel Grant Program.***
- ***The local government allocations for PEG channel operation and support from the distributions it receives from the sales tax on video programming.***

The bill would become January 1, 2009.

CURRENT LAW: In 2006, the General Assembly established uniform taxes for video programming services by applying the combined general rate of sales tax to all video programming services and repealing the local authority to impose a local franchise tax. As part of that legislation, it provided a State franchise process for cable service providers, in lieu of the prior locally negotiated franchise agreements. It preserved the local government revenue stream by distributing part of the sales tax revenues from telecommunications and video programming services to the counties and cities. The distribution formula is based upon the amount of cable franchise tax imposed during the first six months of fiscal year 2006-2007 plus any subscriber fees imposed during that same period.

BILL ANALYSIS: This bill draft comes to the Revenue Laws Study Committee as a recommendation from the Southeast Association of Telecommunications Officers and Advisors. The recommended changes are as follows:

- It would create a new defined term: 'PEG channel operator'.
- It would require a State notice of franchise to include the basis on which a cable service provider is filing for a State franchise. A cable service provider may file for a State franchise because it is a new entrant in the market area or because it is terminating its existing agreement with a local government. A cable service provider may terminate its existing agreement for one of three reasons, all of which relate to competition in the service area by another provider who has a State franchise.
- It would define a basic service tier as the lowest priced tier available to a subscriber which includes the local broadcast stations. The current law requires the initial PEG channels to be provided on a basic service tier.
- It would clarify that a county or city that has fewer than seven PEG channels may request a seventh channel.
- It would require interconnection between cable service providers if the systems are within 125 feet of each other. Under current law, a cable service provider may not request interconnection with another cable system unless the systems are within the same service area.

- It would require a cable service provider to provide carriage of PEG signals which originate anywhere within a municipality's jurisdiction if requested to carry the PEG channel by the municipality. Under current law, the origination site must be in the provider's service area.
- It would allow PEG channel operators to apply for grants from the PEG Channel Fund. Under current law, only counties and cities may apply for a grant.
- It would increase the number of qualified PEG channels for which a county or city could receive supplemental PEG support funding from three to seven. Of the sales tax revenue on video programming that is distributable to local governments, $2,000,000 a year is allocated for supplemental PEG channel support. The $2,000,000 allocation is distributed to counties and cities with qualifying PEG channels. The annual amount per qualifying PEG channel is $25,000. A county or city can not receive supplemental PEG channel support for more than three PEG channels.
- It would provide that the amount of funding a county or city must provide for the operation and support of PEG channels must be the same level of support the county or city provided in fiscal year 2006-07. Under the legislation enacted in 2006, a county or city that imposed subscriber fees on cable customers must use a portion of the amount distributed to it under the sales tax distribution of video programming revenues for PEG channel operation and support. The amount it must use for this purpose is two times the amount of revenue it certified to the Secretary it imposed as subscriber fees during the first six months of fiscal year 2006-2007. The remainder of the money distributed to counties and cities may be used for any public purpose. This change would provide that the required level of funding would not be a stagnant number, but a proportionate number.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-SVxz-18 [v.5] (03/05)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/16/2008 2:36:37 PM

Short Title: IRC Update. (Public)

Sponsors: .

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:

"(1b) Code. – The Internal Revenue Code as enacted as of ~~January 1, 2007,~~ May 1, 2008, including any provisions enacted as of that date which become effective either before or after that date."

SECTION 2. Notwithstanding Section 1 of this act, any amendments to the Internal Revenue Code enacted after January 1, 2007, that increase North Carolina taxable income for the 2007 taxable year become effective for taxable years beginning on or after January 1, 2008.

SECTION 3. G.S. 105-130.5(a) reads as rewritten:

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

...

(15) ~~The~~ For taxable years 2002-2005, the applicable percentage of the amount allowed as a special accelerated depreciation deduction under section 168(k) or section 1400L of the Code, as set out in the table below. In addition, a taxpayer who was allowed a special accelerated depreciation deduction under section 168(k) or section 1400L of the Code in a taxable year beginning before January 1, 2002, and whose North Carolina taxable income in that earlier year reflected that accelerated depreciation deduction must add to federal taxable income in the taxpayer's first taxable year beginning on or after January 1, 2002, an amount equal to the amount of the deduction allowed in the

earlier taxable year. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes. The applicable percentage is as follows:

Taxable Year	Percentage
2002	100%
2003	70%
2004	70%
2005~~ and thereafter~~	0%

..."

SECTION 4. G.S. 105-130.5 (a) is amended by adding a new subdivision to read:

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

...

(15a) The applicable percentage of the amount allowed as a special accelerated depreciation deduction under section 168(k) of the Code for property placed in service after December 31, 2007, but before January 1, 2009. In addition, a taxpayer who was allowed a special accelerated depreciation deduction in taxable year 2007 for property placed in service during that period, and whose North Carolina taxable income for that year reflected that accelerated depreciation deduction must add to federal taxable income in the taxpayer's 2008 taxable year an amount equal to the applicable percentage of the deduction amount allowed in the 2007 taxable year. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes. The applicable percentage under this subdivision is eighty-five percent (85%).

..."

SECTION 5. G.S. 105-134.6(c) reads as rewritten:

"(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

...

(8) ~~The~~ For taxable years 2002-2005, the applicable percentage of the amount allowed as a special accelerated depreciation deduction under section 168(k) or section 1400L of the Code, as set out in the table below. In addition, a taxpayer who was allowed a special accelerated depreciation deduction under section 168(k) or section 1400L of the Code in a taxable year beginning before January 1, 2002, and whose North Carolina taxable income in that earlier year reflected that accelerated depreciation deduction must add to federal taxable income in the taxpayer's first taxable year beginning on or after January 1, 2002, an amount equal to the amount of the deduction allowed in the

earlier taxable year. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes. The applicable percentage is as follows:

Taxable Year	Percentage
2002	100%
2003	70%
2004	70%
2005 ~~and thereafter~~	0%

..."

SECTION 6. G.S. 105-134.6(c) is amended by adding a new subdivision to read:

"(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

...

"(8a) The applicable percentage of the amount allowed as a special accelerated depreciation deduction under section 168(k) of the Code for property placed in service after December 31, 2007, but before January 1, 2009. In addition, a taxpayer who was allowed a special accelerated depreciation deduction in taxable year 2007 for property placed in service for that period, and whose North Carolina taxable income for that year reflected that accelerated depreciation deduction must add to federal taxable income in the taxpayer's 2008 taxable year an amount equal to the applicable percentage of the deduction amount allowed in the 2007 taxable year. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes. The applicable percentage under this subdivision is eighty-five percent (85%).

..."

SECTION 7. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

...

(21a) In each of the taxpayer's first five taxable years beginning on or after January 1, 2009, an amount equal to twenty percent (20%) of the amount added to taxable income in taxable year 2008 as accelerated depreciation under subdivision (a)(15a) of this section."

..."

SECTION 8. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(b) Deductions. – The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in taxable income:

...

(17a) In each of the taxpayer's first five taxable years beginning on or after January 1, 2009, an amount equal to twenty percent (20%) of the amount added to taxable income in taxable year 2008 as accelerated depreciation under subdivision (c)(8a) of this section."

..."

SECTION 9. This act is effective for taxable years beginning on or after January 1, 2008.

DRAFT 2007-SVxz-18: IRC Update

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	April 30, 2008
Introduced by:		**Summary by:**	Trina Griffin
Version:			Committee Counsel

SUMMARY: This proposal would update from January 1, 2007, to May 1, 2008, the reference to the Internal Revenue Code used in defining and determining certain State tax provisions. By doing so, North Carolina would conform to changes made by three federal acts, except that the bill would delay the impact of the bonus depreciation provision authorized by the Economic Stimulus Act. The bill would become effective for taxable years beginning on or after January 1, 2008.

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. The current reference date is January 1, 2007.

BILL ANALYSIS: The proposal would change the reference date to May 1, 2008. By changing the reference date to May 1, 2008, the bill effectively incorporates into our State tax laws changes made by three federal acts, with one exception. The Economic Stimulus Act of 2008 (ESA) has three major components, only two of which impact State revenues: the 50% bonus depreciation provision and the increased expensing limit. The bill conforms to the increased expensing limit but delays the impact of the bonus depreciation provision. Additional detail on the nonconforming provision is provided below. The three federal acts are as follows:

- Economic Stimulus Act of 2008
- Mortgage Forgiveness Debt Relief Act of 2007
- Small Business and Work Opportunity Tax Act of 2007

Economic Stimulus Act of 2008

Enacted on February 13, 2008, the Economic Stimulus Act of 2008 (P.L. 110-185) is a $152 billion package designed to stimulate the economy through rebates for individual taxpayers and incentives for businesses. The rebates, which are technically "advance credit payments," do not impact State revenues and are not discussed in this analysis. The three business incentives are the 50% bonus depreciation provision for qualifying property placed in service in 2008, the increased limits for section 179

[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."

expensing of qualified property in 2008, and increased depreciation limits for "luxury" autos predominantly used for business.

50% Bonus Depreciation Provision. – Depreciation is an income tax deduction that allows a taxpayer to recover the cost or other basis of certain property over several years. It is an annual allowance for the wear and tear, deterioration, or obsolescence of the property. Bonus depreciation allows a business to claim more of a deduction up front and spread the remainder out over the normal depreciation schedule. In other words, a taxpayer will recover the basis in the asset sooner than under prior law. However, over the life of the asset the taxpayer still receives the same benefit. Congress has used bonus depreciation several times to encourage business investment, specifically after September 11, 2001. The Jobs Creation and Worker Assistance Act of 2002 provided a 30% bonus depreciation allowance. The Jobs and Growth Tax Relief Reconciliation Act of 2003 extended the sunset and increased the amount to 50%.

Under the ESA, a taxpayer is entitled to depreciate in the first year 50% of the adjusted basis of certain qualified property placed in service during the 2008 calendar year.[3] To be eligible to claim bonus depreciation, property must be (1) eligible for the modified accelerated cost recovery system (MACRS) with a depreciation of 20 years or less; (2) water utility property; (3) off-the-shelf computer software; or (4) qualified leasehold property. Bonus depreciation is available for every item of tangible personal property, except inventory, property used outside the U.S., and property depreciated under the alternative depreciation system. Other than the computer software mentioned, it is not available for intangibles. If property is sold in the same year it is placed in service, no bonus depreciation is allowed.

►***BILL ANALYSIS*:** The bill does not conform State law to the accelerated depreciation schedule allowed under the ESA. Over the life of an asset placed in service during 2008, taxpayers will be able to deduct the same amount of the asset's basis under both federal and State law; it is just that the timing of the deduction will differ. To accomplish this "decoupling" from the federal accelerated depreciation provision, the bill does two things:

- The taxpayer must add back to federal taxable income 85% of the accelerated depreciation amount (50%) in the year the accelerated depreciation is claimed for federal purposes. The add-back means that for State tax purposes, a taxpayer would deduct less in that tax year than the taxpayer would have deducted if the State conformed to the accelerated depreciation law.
- In tax years beginning on or after January 1, 2009, the taxpayer may deduct from federal taxable income the total amount of the add-back required for either the 2007 or 2008 tax year, divided into five equal installments. This means that for State tax purposes, a taxpayer would be allowed to deduct a greater depreciation amount in the outlying tax years – the normal depreciation amount plus 20% of the accelerated depreciation amount the taxpayer had to add back. The purpose of this recovery provision is to enable the taxpayer to have the same basis in assets for federal and State purposes. Without this deduction provision, a taxpayer would have a different basis in the depreciable asset for State and federal purposes and would have to keep separate books and records for State and federal purposes until the disposal of the asset. In effect, the add-back and subsequent deduction will affect the timing of the impact of bonus depreciation on the State but it will not increase or decrease the total amount of revenue the State receives over the affected years.

[3] The placed-in-service date is extended one year, through December 31, 2009, for property with a recovery period of 10 years or longer, for transportation property, and for certain aircraft.

Increased Section 179 Expensing Limits - In general, a qualifying taxpayer may elect to treat the cost of certain property as an expense and deduct it in the year the property is placed in service instead of depreciating it over several years. This property is frequently referred to as section 179 property, after the relevant section in the Internal Revenue Code. To be eligible, the property must be tangible personal property which is actively used in the taxpayer's business for which a depreciation deduction would be allowed. The property must be used more than 50% for business and must be newly purchased property. Generally, taxpayers take expensing first and claim section 168(k) depreciation on any remaining basis.

Last year, Congress increased the annual expensing limitation to $125,000 with a phase-out beginning at $500,000. Both of these limitations are indexed for inflation. Thus, prior to the ESA, the deduction was limited to $128,000 of the cost of the property with a phase-out at $510,000 for 2008. Because the deduction is completely phased out for qualifying purchases exceeding $638,000, the deduction is confined generally to the relatively small business.

The new law temporarily doubles the limitation to $250,000.[4] The threshold for reducing the deduction is also increased to $800,000 with a complete phase-out once qualifying purchases exceed $1.05 million. These limitations apply only to property purchased and placed in service in tax years beginning in 2008. The limitations will return to the lower levels for tax years beginning in 2009.

► ***BILL ANALYSIS:*** The bill conforms to the increased expensing limit.

Increased Depreciation Limits for "Luxury" Autos. – Since the new law permits taxpayers to claim bonus depreciation, it also increases section 280F depreciation limits on luxury vehicles.[5] A luxury vehicle is one that costs more than the "luxury auto price floor," which is adjusted annually for inflation along with the depreciation limits. The first-year limit on depreciation for passenger vehicles placed in service in 2008 is projected to be $2,960 for automobiles and $3,160 for vans and trucks. The new law raises the cap by $8,000 for a maximum first-year depreciation of $10,960 for autos and $11,160 for vans and trucks.

► ***BILL ANALYSIS:*** The bill conforms to this provision.

Mortgage Forgiveness Debt Relief Act of 2007 (P.L. 110-142)

Enacted on December 20, 2007, the Mortgage Forgiveness Debt Relief Act was Congress's response to the problems generated by the subprime crisis, short sales, and rising foreclosure rates.

Income Exclusion for Discharged Indebtedness on Principal Residence. - When a lender forecloses on property, sells the home for less than the borrower's outstanding mortgage and forgives all or part of the unpaid mortgage debt, the canceled debt is considered income under the Code. This act provides an exclusion from income for this discharged indebtedness related to a principal residence for the three-year period beginning January 1, 2007 and ending December 31, 2009. There is no income limitation but no more than $2 million in mortgage debt is eligible for exclusion.

Extension of Deduction for Mortgage Insurance Premiums. - The act temporarily extends for three years, through tax year 2010, the deduction for qualified mortgage insurance premiums. Qualified mortgage insurance is mortgage insurance provided by the Veterans Administration, the Federal Housing Administration, the Rural Housing Administration, or private mortgage insurance.

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[4] The new law does not alter the section 179 limitation imposed on sport utility vehicles, which have an expense limit of $25,000.

[5] These limits were increased when bonus depreciation was previously available.

Surviving Spouse Home Sale Exclusion. – The new law extends the period of time during which a surviving spouse may use the joint return filers' $500,000 home sale gain exclusion before being treated as a single individual, who is entitled only to a $250,000. Previously, a surviving spouse was entitled to the $500,000 exclusion only to the extent he or she could file a joint return with the deceased spouse's estate, which only occurs for the tax year in which the spouse dies. Starting January 1, 2008, the sale of a residence that had been jointly owned and occupied by the surviving and deceased spouse is entitled to the $500,000 gain exclusion provided the sale occurs no later than two years after the date of death of the individual spouse.

Income Exclusion for Volunteer Emergency Responders. - The act also allows volunteer emergency responders to exclude from income state and local tax benefits of up to $360 for tax years beginning after December 31, 2007. The benefit expires in 2010. Last year, the General Assembly established a $250 income tax deduction for certain volunteer emergency responders who attend at least 36 hours of annual training.

► ***BILL ANALYSIS:*** The bill conforms to the provisions of this act.

Small Business and Work Opportunity Tax Act of 2007 (P.L. 110-28)

Enacted on May 25, 2007, the Small Business and Work Opportunity Act of 2007 (SBWOA) was part of the larger U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007. It includes nearly $5 billion in tax incentives primarily for small businesses to help businesses absorb the cost of complying with the increase in the federal minimum wage as well as a package of S corporation reforms. It includes the following provisions:

Increased Small Business Expensing Limit – The dollar and investment limitations for expensing were increased retroactively to January 1, 2007, and were extended through 2010. The prior base limit of $100,000 was increased to $125,000 and the investment limitation was increased from $450,000 to $500,000 for tax years beginning in 2007. Both limits are indexed for inflation. However, this provision is effectively superseded by the newly increased expensing provision in the ESA.

Extension of Work Opportunity Tax Credit – Created in 1996 by the Small Business Job Protection Act, this tax credit is designed to encourage employers to hire individuals from economically-challenged populations. There are nine "target" groups, including public assistance recipients, ex-felons, veterans, high-risk youth, individuals who reside in certain economically depressed areas, and individuals referred to the employer as part of a vocational rehabilitation plan. The amount of the credit is a percentage of qualified wages paid during each of the first two years of employment. Prior to this act, the credit was scheduled to expire for employees hired after December 31, 2007.

This act extends the sunset for three and a half years, until August 31, 2011, and expands the scope of the credit. It expands the targeted veterans' population to include veterans with service-connected disabilities who have been unemployed for six months or more during a one-year period ending on the hire date and are hired within one year after having been discharged form the military or released from active duty. It also increases from $6,000 to $12,000 in the case of individuals who qualify under the newly expanded veterans' group. The high-risk youth and vocational rehabilitation referral groups are also expanded.

Family Business Tax Simplification - Effective for tax years beginning on and after December 31, 2006, the act allows a married couple who jointly operates an unincorporated business and who files a joint return to elect not to be treated as a partnership for federal tax purposes.

Katrina Recovery Tax Incentives. – The act also extends and enhances some of the tax incentives in the Gulf Opportunity Zone Act of 2005 and Katrina Emergency Tax Relief Act of 2005. These include the extension of special expensing for qualified property, an enhanced low-income housing credit, and flexible tax-exempt bond financing rules.

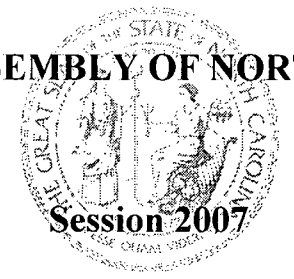
S Corporation Changes – Generally speaking, these provisions are designed to make it easier for small business to retain S corp status. They also encourage use of the S corp business entity by effectively reducing the taxes owed by shareholders.

1. Passive investment income. – An S corporation that has accumulated C corporation earnings and profits and has gross receipts of which more than 25% are passive investment income may lose its Subchapter S status and will be subject to a tax on the excess passive investment income. Effective for tax years beginning after May 25, 2007, capital gain from the sale or exchange of stock or securities is no longer treated as an item of passive investment income. These gains are still counted as gross receipts but not as passive investment income.
2. Banks as S corps. - Effective for tax years beginning after December 31, 2006, the new law eliminates the treatment of restricted bank director stock as outstanding stock that threatened S corp status under the single-class-of-stock rule. It also alters the treatment of accounting adjustments caused by a bank changing its method of accounting.
3. Partial sale of QSubs. – A qualified Subchapter S subsidiary (QSub) is a wholly owned subsidiary that an S corp elects to treat as a QSub. Under the new law, a sale of QSub stock that terminates the QSub election and creates a deemed new corporation is now treated as a sale of an undivided interest in the assets of the QSub. This treatment eliminates the danger of an avalanche of gain being recognized by a sale of only a partial, but substantial (i.e. more than 20%), interest in the subsidiary.
4. ESBT interest. – Effective for tax years beginning after December 31, 2006, the new law allows an electing small business trust (ESBT) to deduct interest paid on money borrowed to acquire S corporation stock. Although Treasury regulations allocated the interest to the S corporation portion of the ESBT, they did not allow a deduction.
5. E&P reduction. – Effective for tax years beginning after May 15, 2007, the new law allows a corporation that was an S corp before 1983, but was not an S corp for its first tax year that began after December 31, 1996, to eliminate its pre-1983 earnings and profits from the corporations accumulated E&P balance. This benefit had previously been available only to a corporation that was an S corp for its first taxable year after 1996. The result is that S corps to which this new provision applies may be able to reduce the amount of distributions treated as taxable dividends.

▶ ***BILL ANALYSIS:*** The bill conforms to the provisions of this act.

EFFECTIVE DATE: This bill is effective for taxable years beginning on or after January 1, 2008.

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: April 30, 2008

TO: Revenue Laws Study Committee

FROM: Barry Boardman
Fiscal Research Division

RE: 2007-SVxz-18 IRC Update

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13
REVENUES (millions):					
Net General Fund Impact	0.0	(1.2)	(0.8)	4.3	4.0
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: January 1, 2008

BILL SUMMARY: This proposal would update from January 1, 2007, to May 1, 2008, the reference to the Internal Revenue Code used in defining and determining certain State tax provisions. By doing so, North Carolina would conform to changes made by three federal acts, except that the bill would delay the impact of the bonus depreciation provision authorized by the

Economic Stimulus Act. The bill would become effective for taxable years beginning on or after January 1, 2008.

The proposal would change the reference date to May 1, 2008. By changing the reference date to May 1, 2008, the bill effectively incorporates into our State tax laws changes made by three federal acts, with one exception. The Economic Stimulus Act of 2008 (ESA) has three major components, only two of which impact State revenues: the 50% bonus depreciation provision and the increased expensing limit. The bill conforms to the increased expensing limit but delays the impact of the bonus depreciation provision. Additional detail on the nonconforming provision is provided below. The three federal acts are as follows:

- Economic Stimulus Act of 2008
- Mortgage Forgiveness Debt Relief Act of 2007
- Small Business and Work Opportunity Tax Act of 2007

Economic Stimulus Act of 2008

Enacted on February 13, 2008, the Economic Stimulus Act of 2008 (P.L. 110-185) is a $152 billion package designed to stimulate the economy through rebates for individual taxpayers and incentives for businesses. The rebates, which are technically "advance credit payments," do not impact State revenues and are not discussed in this analysis. The three business incentives are the 50% bonus depreciation provision for qualifying property placed in service in 2008, the increased limits for section 179 expensing of qualified property in 2008, and increased depreciation limits for "luxury" autos predominantly used for business.

50% Bonus Depreciation Provision. – Depreciation is an income tax deduction that allows a taxpayer to recover the cost or other basis of certain property over several years. It is an annual allowance for the wear and tear, deterioration, or obsolescence of the property. Bonus depreciation allows a business to claim more of a deduction up front and spread the remainder out over the normal depreciation schedule. In other words, a taxpayer will recover the basis in the asset sooner than under prior law. However, over the life of the asset the taxpayer still receives the same benefit. Congress has used bonus depreciation several times to encourage business investment, specifically after September 11, 2001. The Jobs Creation and Worker Assistance Act of 2002 provided a 30% bonus depreciation allowance. The Jobs and Growth Tax Relief Reconciliation Act of 2003 extended the sunset and increased the amount to 50%.

Under the ESA, a taxpayer is entitled to depreciate in the first year 50% of the adjusted basis of certain qualified property placed in service during the 2008 calendar year.[1] To be eligible to claim bonus depreciation, property must be (1) eligible for the modified accelerated cost recovery system (MACRS) with a depreciation of 20 years or less; (2) water utility property; (3) off-the-shelf computer software; or (4) qualified leasehold property. Bonus depreciation is available for every item of tangible personal property, except inventory, property used outside the U.S., and property depreciated under the alternative depreciation system. Other than the computer software mentioned, it is not available for intangibles. If property is sold in the same year it is placed in service, no bonus depreciation is allowed.

[1] The placed-in-service date is extended one year, through December 31, 2009, for property with a recovery period of 10 years or longer, for transportation property, and for certain aircraft.

The bill does not conform State law to the accelerated depreciation schedule allowed under the ESA. Over the life of an asset placed in service during 2008, taxpayers will be able to deduct the same amount of the asset's basis under both federal and State law; it is just that the timing of the deduction will differ. To accomplish this "decoupling" from the federal accelerated depreciation provision, the bill does two things:

- The taxpayer must add back to federal taxable income 85% of the accelerated depreciation amount (50%) in the year the accelerated depreciation is claimed for federal purposes. The add-back means that for State tax purposes, a taxpayer would deduct less in that tax year than the taxpayer would have deducted if the State conformed to the accelerated depreciation law.
- In tax years beginning on or after January 1, 2009, the taxpayer may deduct from federal taxable income the total amount of the add-back required for either the 2007 or 2008 tax year, divided into five equal installments. This means that for State tax purposes, a taxpayer would be allowed to deduct a greater depreciation amount in the outlying tax years – the normal depreciation amount plus 20% of the accelerated depreciation amount the taxpayer had to add back. The purpose of this recovery provision is to enable the taxpayer to have the same basis in assets for federal and State purposes. Without this deduction provision, a taxpayer would have a different basis in the depreciable asset for State and federal purposes and would have to keep separate books and records for State and federal purposes until the disposal of the asset. In effect, the add-back and subsequent deduction will affect the timing of the impact of bonus depreciation on the State but it will not increase or decrease the total amount of revenue the State receives over the affected years.

Increased Section 179 Expensing Limits - In general, a qualifying taxpayer may elect to treat the cost of certain property as an expense and deduct it in the year the property is placed in service instead of depreciating it over several years. This property is frequently referred to as section 179 property, after the relevant section in the Internal Revenue Code. To be eligible, the property must be tangible personal property which is actively used in the taxpayer's business for which a depreciation deduction would be allowed. The property must be used more than 50% for business and must be newly purchased property. Generally, taxpayers take expensing first and claim section 168(k) depreciation on any remaining basis.

Last year, Congress increased the annual expensing limitation to $125,000 with a phase-out beginning at $500,000. Both of these limitations are indexed for inflation. Thus, prior to the ESA, the deduction was limited to $128,000 of the cost of the property with a phase-out at $510,000 for 2008. Because the deduction is completely phased out for qualifying purchases exceeding $638,000, the deduction is confined generally to the relatively small business.

The new law temporarily doubles the limitation to $250,000.[2] The threshold for reducing the deduction is also increased to $800,000 with a complete phase-out once qualifying purchases exceed $1.05 million. These limitations apply only to property purchased and placed in service in tax years beginning in 2008. The limitations will return to the lower levels for tax years beginning in 2009.

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[2] The new law does not alter the section 179 limitation imposed on sport utility vehicles, which have an expense limit of $25,000.

Increased Depreciation Limits for "Luxury" Autos. – Since the new law permits taxpayers to claim bonus depreciation, it also increases section 280F depreciation limits on luxury vehicles.[3] A luxury vehicle is one that costs more than the "luxury auto price floor," which is adjusted annually for inflation along with the depreciation limits. The first-year limit on depreciation for passenger vehicles placed in service in 2008 is projected to be $2,960 for automobiles and $3,160 for vans and trucks. The new law raises the cap by $8,000 for a maximum first-year depreciation of $10,960 for autos and $11,160 for vans and trucks.

Mortgage Forgiveness Debt Relief Act of 2007 (P.L. 110-142)

Enacted on December 20, 2007, the Mortgage Forgiveness Debt Relief Act was Congress's response to the problems generated by the subprime crisis, short sales, and rising foreclosure rates.

Income Exclusion for Discharged Indebtedness on Principal Residence. - When a lender forecloses on property, sells the home for less than the borrower's outstanding mortgage and forgives all or part of the unpaid mortgage debt, the canceled debt is considered income under the Code. This act provides an exclusion from income for this discharged indebtedness related to a principal residence for the three-year period beginning January 1, 2007 and ending December 31, 2009. There is no income limitation but no more than $2 million in mortgage debt is eligible for exclusion.

Extension of Deduction for Mortgage Insurance Premiums. - The act temporarily extends for three years, through tax year 2010, the deduction for qualified mortgage insurance premiums. Qualified mortgage insurance is mortgage insurance provided by the Veterans Administration, the Federal Housing Administration, the Rural Housing Administration, or private mortgage insurance.

Surviving Spouse Home Sale Exclusion. – The new law extends the period of time during which a surviving spouse may use the joint return filers' $500,000 home sale gain exclusion before being treated as a single individual, who is entitled only to a $250,000. Previously, a surviving spouse was entitled to the $500,000 exclusion only to the extent he or she could file a joint return with the deceased spouse's estate, which only occurs for the tax year in which the spouse dies. Starting January 1, 2008, the sale of a residence that had been jointly owned and occupied by the surviving and deceased spouse is entitled to the $500,000 gain exclusion provided the sale occurs no later than two years after the date of death of the individual spouse.

Income Exclusion for Volunteer Emergency Responders. - The act also allows volunteer emergency responders to exclude from income state and local tax benefits of up to $360 for tax years beginning after December 31, 2007. The benefit expires in 2010. Last year, the General Assembly established a $250 income tax deduction for certain volunteer emergency responders who attend at least 36 hours of annual training.

Small Business and Work Opportunity Tax Act of 2007 (P.L. 110-28)

Enacted on May 25, 2007, the Small Business and Work Opportunity Act of 2007 (SBWOA) was part of the larger U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability

[3] These limits were increased when bonus depreciation was previously available.

Appropriations Act of 2007. It includes nearly $5 billion in tax incentives primarily for small businesses to help businesses absorb the cost of complying with the increase in the federal minimum wage as well as a package of S corporation reforms. It includes the following provisions:

Increased Small Business Expensing Limit – The dollar and investment limitations for expensing were increased retroactively to January 1, 2007, and were extended through 2010. The prior base limit of $100,000 was increased to $125,000 and the investment limitation was increased from $450,000 to $500,000 for tax years beginning in 2007. Both limits are indexed for inflation. However, this provision is effectively superseded by the newly increased expensing provision in the ESA.

Extension of Work Opportunity Tax Credit – Created in 1996 by the Small Business Job Protection Act, this tax credit is designed to encourage employers to hire individuals from economically-challenged populations. There are nine "target" groups, including public assistance recipients, ex-felons, veterans, high-risk youth, individuals who reside in certain economically depressed areas, and individuals referred to the employer as part of a vocational rehabilitation plan. The amount of the credit is a percentage of qualified wages paid during each of the first two years of employment. Prior to this act, the credit was scheduled to expire for employees hired after December 31, 2007.

This act extends the sunset for three and a half years, until August 31, 2011, and expands the scope of the credit. It expands the targeted veterans' population to include veterans with service-connected disabilities who have been unemployed for six months or more during a one-year period ending on the hire date and are hired within one year after having been discharged form the military or released from active duty. It also increases from $6,000 to $12,000 in the case of individuals who qualify under the newly expanded veterans' group. The high-risk youth and vocational rehabilitation referral groups are also expanded.

Family Business Tax Simplification - Effective for tax years beginning on and after December 31, 2006, the act allows a married couple who jointly operates an unincorporated business and who files a joint return to elect not to be treated as a partnership for federal tax purposes.

Katrina Recovery Tax Incentives. – The act also extends and enhances some of the tax incentives in the Gulf Opportunity Zone Act of 2005 and Katrina Emergency Tax Relief Act of 2005. These include the extension of special expensing for qualified property, an enhanced low-income housing credit, and flexible tax-exempt bond financing rules.

S Corporation Changes – Generally speaking, these provisions are designed to make it easier for small business to retain S corp status. They also encourage use of the S corp business entity by effectively reducing the taxes owed by shareholders.

1. Passive investment income. – An S corporation that has accumulated C corporation earnings and profits and has gross receipts of which more than 25% are passive investment income may lose its Subchapter S status and will be subject to a tax on the excess passive investment income. Effective for tax years beginning after May 25, 2007, capital gain from the sale or exchange of stock or securities is no longer treated as an item of passive investment income. These gains are still counted as gross receipts but not as passive investment income.

2. Banks as S corps. - Effective for tax years beginning after December 31, 2006, the new law eliminates the treatment of restricted bank director stock as outstanding stock that threatened S corp status under the single-class-of-stock rule. It also alters the treatment of accounting adjustments caused by a bank changing its method of accounting.
3. Partial sale of QSubs. – A qualified Subchapter S subsidiary (QSub) is a wholly owned subsidiary that an S corp elects to treat as a QSub. Under the new law, a sale of QSub stock that terminates the QSub election and creates a deemed new corporation is now treated as a sale of an undivided interest in the assets of the QSub. This treatment eliminates the danger of an avalanche of gain being recognized by a sale of only a partial, but substantial (i.e. more than 20%), interest in the subsidiary.
4. ESBT interest. – Effective for tax years beginning after December 31, 2006, the new law allows an electing small business trust (ESBT) to deduct interest paid on money borrowed to acquire S corporation stock. Although Treasury regulations allocated the interest to the S corporation portion of the ESBT, they did not allow a deduction.
5. E&P reduction. – Effective for tax years beginning after May 15, 2007, the new law allows a corporation that was an S corp before 1983, but was not an S corp for its first tax year that began after December 31, 1996, to eliminate its pre-1983 earnings and profits from the corporations accumulated E&P balance. This benefit had previously been available only to a corporation that was an S corp for its first taxable year after 1996. The result is that S corps to which this new provision applies may be able to reduce the amount of distributions treated as taxable dividends.

ASSUMPTIONS AND METHODOLOGY:
Based on the analysis of the Joint Committee on Taxation (JCT), there are three sections of this bill that would impact the State's General Fund revenues. They are the Sec. 179 expensing increases and the 50% bonus depreciation, which were both part of the Economic Stimulus Act, plus the Mortgage Debt Forgiveness Act. According to JCT analysis, the other sections of the IRC update are expected to have minimal or no impact on the General Fund.

The fiscal impact to the General Fund from partial conformity with the IRC update is based on JCT estimates on changes to federal taxes. The method used to determine the state fiscal impact begins with these JCT estimates. These estimates are calculated by federal fiscal year (October to October). Fiscal Research adjusts these numbers back to an approximate calendar year tax impact. Then the next step was to prorate the national numbers to the state impact. This adjustment involved two steps: accounting for the relative size of the state based on federal tax collections and then adjusting for the difference in federal and state marginal tax rates. This method is similar to that used by the Center for Budget and Policy Priorities (CBPP). Therefore, the tax year estimates were compared with estimates produced by CBPP and were found to be comparable in magnitude.

Once North Carolina's share of the JCT estimates were determined, state tax liability changes were estimated and then allocated to the appropriate fiscal year. In order to assess the impact of the 85% addback of the bonus depreciation contained in the Fiscal Stimulus Act, a series of depreciation schedules were developed. These depreciation simulations were used to determine the impact of

the bonus depreciation with the adoption of an 85 percent addback rule and a 5 year carryforward for each fiscal year.

To estimate the impact of the Mortgage Debt Forgiveness Act, similar methodology as described above was used. The share of North Carolina's fiscal impact was calculated with a slight difference. Rather than use tax collection data, real estate activity was used as a means to determine the State's share of the JCT estimated revenue changes.

SOURCES OF DATA: The Joint Committee on Taxation, The North Carolina Department of Revenue, Moody's economy.com., The Center for Budget and Policy Priorities

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U D

BILL DRAFT 2007-TDx-14 [v.4] (03/26)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/29/2008 6:20:47 PM

Short Title: Amend WOTC. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE WORK OPPORTUNITY TAX CREDIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-19.16G reads as rewritten:

"§ 105-129.16G. Work Opportunity Tax Credit.

(a) Credit. – A taxpayer who is allowed a federal tax credit under Part IV, Subpart F of the Code for the taxable year is allowed a credit against the tax imposed by this Part. The credit is equal to six percent (6%) of the amount of credit allowed under the ~~Code.~~Code for wages paid during the taxable year for positions located in this State. A position is located in this State if more than fifty percent (50%) of the employee's duties are performed in the State.

(b) Sunset. – This section expires for taxable years beginning on or after January 1, 2012."

SECTION 2. G.S. 105-130.5(b)(11) reads as rewritten:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

...

(11) If a deduction for an ordinary and necessary business expense was required to be reduced or was not allowed under the Code because the corporation claimed a federal tax credit against its federal income tax liability for the income year in lieu of a deduction, the amount by which the deduction was reduced and the amount of the deduction that was disallowed. This deduction is allowed only to the extent that a similar credit is not allowed by this Chapter for the amount."

SECTION 3. G.S. 105-134.6(d)(2) reads as rewritten:

"(d) Other Adjustments. – The following adjustments to taxable income shall be made in calculating North Carolina taxable income:

...

(2) The taxpayer may deduct the amount by which the taxpayer's deductions allowed under the Code were reduced, and the amount of the taxpayer's deductions that were not allowed, because the taxpayer elected a federal tax credit in lieu of a deduction. This deduction is allowed only to the extent that a similar credit is not allowed by this ~~Part~~ Chapter for the amount."

SECTION 4. Section 1 of this act is effective for taxable years beginning on or after July 1, 2008. The remainder of this act is effective when it becomes law.

DRAFT 2007-TDx-14: Amend Work Opportunity Tax Credit

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	April 30, 2008
Introduced by:	.	**Summary by:**	Heather Fennell
Version:	2007-TDx-13		Committee Counsel

SUMMARY: This bill limits the Work Opportunity Tax Credit to 6% of the Federal credit for wages paid in the same taxable year for positions located in North Carolina.

CURRENT LAW:

The Federal Work Opportunity Tax Credit (WOTC) provides a credit to employers that hire individuals in certain targeted groups. The nine targeted groups are:

A. Qualified recipients of Temporary Assistance to Needy Families (TANF).

B. Qualified veterans.

C. Qualified ex-felons.

D. Designated Community Residents.

E. Vocational rehabilitation referrals.

F. Qualified summer youth.

G. Qualified food stamp recipients.

H. Qualified recipients of SSI.

I. Long-term family assistance recipients.

The credit based on a percentage of wages paid and limited by dollar amount. The limits vary by group.

For all groups except for veterans, summer youth and long-term family assistance recipients the credit is limited to 40% of qualified first year wages up to $6,000 for individuals retained for at least 400 hours, maximum credit of $2,400 per employee, and 25% of qualified first year wages up to $6,000 for individuals retained for at least 120 but less than 400 hours, maximum credit of $1,500 per employee.

For veterans the credit is limited to 40% of qualified first year wages up to $12,000 for individuals retained for at least 400 hours, maximum credit of $4,800 per employee, and 25% of qualified first year wages up to $6,000 for individuals retained for at least 120 but less than 400 hours, maximum credit of $3,000 per employee

For summer youth the credit is limited to $1,200 per employee.

For long-term family assistance recipients the credit is limited to 40% of qualified first year wages up to $10,000, and 50% of qualified second year wages up to $10,000 for individuals retained for at least 400 hours, maximum credit of $9,000 per employee.

The North Carolina Credit: Section 31.21 of the 2007 Appropriations Act created a North Carolina tax credit equal to 6% of the Federal credit. The taxpayer must elect whether to take the credit against the franchise or the income tax, the credit may not exceed 50% of the tax against which the credit is claimed, and the credit may be carried forward for five years.

BILL ANALYSIS: This bill would limit the credit to 6% of the Federal credit for wages paid in the same taxable year for positions located in North Carolina. The bill also adds a sunset on the credit for taxable years beginning on or after January 1, 2012. The bill also makes a technical correction to clarify that corporations cannot take an additional deduction under G.S. 105-130.5(b)(11) if this credit is taken.

EFFECTIVE DATE: Section 1 of this bill is effective for taxable years beginning on or after January 1, 2008. The remainder of the bill is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U D

BILL DRAFT 2007-SVz-23 [v.6] (04/28)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/30/2008 8:13:41 AM

Short Title: Revenue Laws Technical Changes - Part II. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE TAX LAWS.

The General Assembly of North Carolina enacts:

REFORM TAX APPEALS CHANGES

SECTION 1.(a) G.S. 105-241.11(a) reads as rewritten:

"(a) Procedure. – A taxpayer who objects to a proposed denial of a refund or a proposed assessment of tax may request a Departmental review of the proposed action by filing a request for review. The request must be filed with the Department ~~within 45 days after the following:~~as follows:

(1) ~~The~~ Within 45 days of the date the notice of the proposed denial of the refund or proposed assessment was mailed to the taxpayer, if the notice was delivered by mail.

(2) ~~The~~ Within 45 days of the date the notice of the proposed denial of the refund or proposed assessment was delivered to the taxpayer, if the notice was delivered in person.

(3) ~~The date that~~ At any time between the date that inaction by the Department on a request for refund ~~was~~ is considered a proposed denial of the ~~refund.~~refund and the date the time periods set in the other subdivisions of this subsection expire."

SECTION 1.(b) G.S. 105-449.52(b) reads as rewritten:

"(b) ~~Hearing.~~ Review. – The procedure set out in G.S. 105-449.119 for ~~protesting~~ reviewing a penalty imposed under Article 36C, Part 6, of this Chapter applies to a penalty imposed under this section."

SECTION 1.(c) G.S. 150B-31.1(d) reads as rewritten:

"(d) ~~Law Enforcement~~ Reports. ~~A report of a law enforcement agency is~~ The following agency reports are admissible without testimony from personnel of the ~~law enforcement agency.~~ agency:

(1) Law enforcement reports.

(2) Government agency lab reports used for the enforcement of motor fuel tax laws."

COLLECTION CHANGES

SECTION 2.(a) G.S. 105-253 is recodified as G.S. 105-242.2 and reads as rewritten:

"**§ 105-242.2. Personal liability when certain taxes not ~~remitted.~~paid.**

(a) Definitions. – The following definitions apply in this section:

(1) Business entity. – A corporation, a limited liability company, or a partnership.

(2) Responsible person. – Any of the following:

a. The president, treasurer, or chief financial officer of a corporation.

b. A manager of a limited liability company or a partnership.

c. An officer of a corporation, a member of a limited liability company, or a partner in a partnership who has a duty to deduct, account for, or pay taxes listed in subsection (b) of this section.

d. A partner who is liable for the debts and obligations of a partnership under G.S. 59-45 or G.S. 59-403.

~~Any officer, trustee, or receiver of any corporation or limited liability company required to file a report with the Secretary who has custody of funds of the corporation or company and who allows the funds to be paid out or distributed to the stockholders of the corporation or to the members of the company without having remitted to the Secretary any State taxes that are due is personally liable for the payment of the tax.~~

(b) Responsible Person. – Each responsible ~~officer~~ person in a business entity is personally and individually liable for all of the ~~following:~~taxes listed in this subsection. If a business entity does not pay a tax it owes after the tax becomes collectible under G.S. 105-241.22, the Secretary may enforce the responsible person's liability for the tax by sending the responsible person a notice of proposed assessment in accordance with G.S. 105-241.9. The taxes for which a responsible person may be held personally and individually liable are:

(1) All sales and use taxes collected by ~~a corporation or a limited liability company~~ the business entity upon its taxable transactions.

(2) All sales and use taxes due upon taxable transactions of ~~a corporation or a limited liability company~~ the business entity but upon which it failed to collect the tax, but only if the person knew, or in the exercise of reasonable care should have known, that the tax was not being collected.

(3) All taxes due from ~~a corporation or a limited liability company~~ the business entity pursuant to the provisions of Articles 36C and 36D of

Subchapter V of this Chapter and all taxes payable under those Articles by it to a supplier for remittance to this State or another state.

(4) All income taxes required to be withheld from the wages of employees of ~~a corporation or a limited liability company.~~the business entity.

~~The liability of the responsible officer is satisfied upon timely remittance of the tax by the corporation or the limited liability company. If the tax remains unpaid after it is due and payable, the Secretary may proceed to enforce the responsible officer's liability for the tax by sending the responsible officer a notice of proposed assessment in accordance with G.S. 105-241.9. As used in this section, the term "responsible officer" means the president, treasurer, and chief financial officer of a corporation, the manager of a limited liability company, and any other officer of a corporation or member of a limited liability company who has a duty to deduct, account for, or pay taxes listed in this subsection. Any penalties that may be imposed under G.S. 105-236 and that apply to a deficiency also apply to an assessment made under this section.~~

~~The period of limitations for assessing a responsible officer for unpaid taxes under this section expires one year after the expiration of the period of limitations for assessment against the corporation or limited liability company.~~

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1007, s. 15.

(d) Distributions. – An officer, partner, trustee, or receiver of a business entity required to file a report with the Secretary who has custody of funds of the entity and who allows the funds to be paid out or distributed to the owners of the entity without having remitted to the Secretary any State taxes that are due is personally liable for the payment of the tax. The Secretary may enforce an individual's liability under this subsection by sending the individual a notice of proposed assessment in accordance with G.S. 105-241.9.

(e) Statute of Limitations. – The period of limitations for assessing a responsible person for unpaid taxes under this section expires one year after the expiration of the period of limitations for assessing the business entity."

SECTION 2.(b) This section becomes effective July 1, 2008, and applies to taxes that become collectible on or after that date.

SALES TAX CHANGES

SECTION 3. G.S. 105-164.16 is amended by adding a new subsection to read:

"(e) Simultaneous State and Local Changes. – When State and local sales and use tax rates change on the same date because one increases and the other decreases but the combined general rate does not change, sales and use taxes payable on the gross receipts from the following periodic payments are reportable in accordance with the changed State and local rates:

(1) Lease or rental payments billed after the effective date of the changes.

(2) Installment sale payments received after the effective date of the changes by a taxpayer who reports the installment sale on a cash basis."

OCCUPANCY TAX CHANGES

SECTION 4.(a) Article 9 of Chapter 105 is amended by adding a new section to read:

"**§ 105-264.1. Secretary's interpretation applies to local taxes that are based on State taxes.**

An interpretation by the Secretary of a law administered by the Secretary applies to a local law administered by a unit of local government when the local law refers to the State law to determine the application of the local law. A person who is subject to the local law or the unit of local government that administers the local law may ask the Secretary for an interpretation of the State law that determines the application of the local law. An interpretation by the Secretary of a State law that determines the application of a local law provides the same protections against liability under the local law that it provides under the State law."

SECTION 4.(b) G.S. 153A-155(c) reads as rewritten:

"(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. If a taxable accommodation is furnished as part of a package, the bundled transaction provisions in G.S. 105-164.4D apply in determining the sales price of the taxable accommodation. If those provisions do not address the type of package offered, the operator may determine an allocated price for each item in the package based on a reasonable allocation of revenue that is supported by the operator's business records kept in the ordinary course of business and collect tax on the allocated price of the taxable accommodation. ~~The~~

The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. ~~The~~

The taxing county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing county a discount equal to the discount the State allows the operator for State sales and use tax."

SECTION 4.(c) G.S. 160A-215(c) reads as rewritten:

"(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. If a taxable accommodation is furnished as part of a package, the bundled transaction provisions in G.S. 105-164.4D apply in determining the sales price of the taxable accommodation. If those provisions do not address the type of package offered, the operator may determine an allocated price for each item in the package based on a reasonable allocation of revenue that is supported by the operator's business records kept in the ordinary course of business and collect tax on the allocated price of the taxable accommodation. ~~The~~

The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the

taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. ~~The~~

The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax."

MEDICAID TECHNICAL CHANGES

SECTION 5.(a) G.S. 105-522, as enacted by Section 31.16.3(f) of S.L. 2007-323, reads as rewritten:

"**§ 105-522. City hold harmless for repealed local taxes.**

(a) Definitions. – The following definitions apply in this section:

(1) Eligible municipality. – A municipality that was incorporated on or before October 1, 2008, and receives a distribution of sales and use taxes under G.S. 105-472.

(2) Hold harmless amount. – Fifty percent (50%) of the amount of sales and use tax revenue ~~distributed under Article 40 of this Chapter to the municipality for a month, other than revenue from the sale of food that is subject to local tax but is exempt from State tax under G.S. 105-164.13B.~~ allocated under G.S. 105-486 for distribution to a municipality.

(b) Requirement. – A county is required to hold the eligible municipalities in the county harmless from the repeal of the local sales and use taxes formerly imposed under this Article. The Secretary must add an eligible municipality's hold harmless amount to the amount ~~distributed to the~~ otherwise allocated to the municipality for distribution under this Subchapter. To obtain the revenue for the hold harmless distribution, the Secretary must reduce ~~each county's monthly allocation under G.S. 105-472(b)~~ the amount otherwise allocated to a county for distribution under Article 39 of this Subchapter or under Chapter 1096 of the 1967 Session Laws by the hold harmless amounts for the municipalities in that county."

SECTION 5.(b) Section 31.16.3(d) of S.L. 2007-323 is repealed.

SECTION 5.(c) Section 31.16.3(e) of S.L. 2007-323 is repealed.

SECTION 5.(d) Subsection (a) of this section becomes effective October 1, 2008, and applies to distributions for months beginning on or after that date. The remainder of this section is effective when it becomes law.

SECTION 6.(a) G.S. 105-523, as enacted by Section 31.16.3(f) of S.L. 2007-323, reads as rewritten:

"**§ 105-523. County hold harmless for repealed local taxes.**

(a) Intent. – It is the intent of the General Assembly that each county benefit by at least five hundred thousand dollars ($500,000) annually from the exchange of a portion of the local sales and use taxes for the State's agreement to assume the responsibility for the non-administrative costs of Medicaid.

(b) Definitions. – The following definitions apply in this section:

(1) City hold harmless amount. – The hold harmless amount determined under G.S. 105-522 for the eligible municipalities in a county.

~~(1)~~(2) Hold harmless threshold. – The amount of a county's Medicaid service costs and Medicare Part D clawback payments assumed by the State under G.S. 108A-54 for the fiscal year, less five hundred thousand dollars ($500,000).

~~(2)~~(3) Repealed sales tax amount. – Fifty percent (50%) of the amount of sales and use tax revenue ~~distributed to a county under Article 40 of this Chapter, other than revenue from the sale of food that is subject to local tax but is exempt from State tax under G.S. 105-164.13B.~~ allocated under G.S. 105-486 for distribution to a county.

(c) Requirement. – If a county's repealed sales tax amount plus its city hold harmless amount for a fiscal year exceeds the county's hold harmless threshold for that fiscal year, the State is required to hold the county harmless for the difference by paying the amount of the difference to the county. The Secretary must withhold from sales and use tax collections under Article 5 of this Chapter the amount needed to make the county hold harmless payments required by this section.

(d) Method. – The Secretary must estimate a county's repealed sales tax ~~amount~~ amount, city hold harmless amount, and hold harmless threshold for a fiscal year to determine if the county is eligible for a hold harmless payment. The Secretary must send to an eligible county with the distribution made under G.S. 105-472 for March of that year an amount equal to ninety percent (90%) of its estimated hold harmless payment. At the end of each fiscal year, the Secretary must determine ~~the difference between a county's repealed sales tax amount and its~~ each county's hold harmless ~~threshold~~ payment for that year. The Secretary must send by August 15 the remainder of the county's hold harmless payment for the fiscal year that ended on June 30. The Secretary of the Department of Human Resources must give the Secretary of Revenue the data needed to determine a county's hold harmless threshold."

SECTION 6.(b) Section 31.16.3(g) of S.L. 2007-323 is repealed.

SECTION 6.(c) Section 31.16.4(c) of S.L. 2007-323 is repealed.

SECTION 6.(d) Section 31.16.4(d) of S.L. 2007-323 is repealed.

SECTION 6.(e) Section 31.16.4(e) of S.L. 2007-323 is repealed.

SECTION 6.(f) Section 14.4 of S.L. 2007-345 is repealed.

SECTION 6.(g) G.S. 105-522(a)(2), as enacted by Section 31.16.3(f) of S.L. 2007-323 and amended by Section 6 of this act, reads as rewritten:

"(2) Hold harmless amount. – ~~Fifty percent (50%) of the~~The sum of the following amounts allocated for distribution to a municipality for a month:

a. The amount of sales and use tax revenue allocated under G.S. ~~105-486 for distribution to a municipality.~~ 105-486. This calculation determines the effect of repealing a one-half percent (½%) sales and use tax distributed on a per capita basis.

b. An amount determined by subtracting twenty-five percent (25%) of the amount of sales and use tax revenue allocated under

G.S. 105-472 or Chapter 1096 of the 1967 Session Laws from fifty percent (50%) of the amount of sales and use tax revenue allocated under G.S. 105-486. This calculation determines the effect of distributing a one-quarter percent (.25%) tax on the basis of point of origin instead of on a per capita basis."

SECTION 6.(h) G.S. 105-523(b)(3), as enacted by Section 31.16.3(f) of S.L. 2007-323 and as amended by subsection (a) of this Section, reads as rewritten:

"(3) Repealed sales tax amount. ~~Fifty percent (50%) of the~~ The sum of the following amounts allocated for distribution to a county for a month:

a. The amount of sales and use tax revenue allocated under G.S. ~~105-486 for distribution to a county.~~ 105-486. This calculation determines the effect of repealing a one-half percent (½%) sales and use tax distributed on a per capita basis.

b. An amount determined by subtracting twenty-five percent (25%) of the amount of sales and use tax revenue allocated under G.S. 105-472 or Chapter 1096 of the 1967 Session Laws from fifty percent (50%) of the amount of sales and use tax revenue allocated under G.S. 105-486. This calculation determines the effect of distributing a one-quarter percent (.25%) tax on the basis of point of origin instead of on a per capita basis."

SECTION 6.(i) For fiscal year 2008-2009, the hold harmless amount determined for a municipality under G.S. 105-522 and the repealed sales tax amount determined for a county under G.S. 105-523 is reduced by the amount distributed in October, November, and December of 2008 to the municipality or county on a per capita basis under repealed G.S. 105-520(b).

For fiscal year 2009-2010, the hold harmless amount determined for a municipality under G.S. 105-522 and the repealed sales tax amount determined for a county under G.S. 105-523 is reduced by the amount distributed in October, November, and December of 2009 to the municipality or county on the basis of point of origin under repealed G.S. 105-520(a).

SECTION 6.(j) Subsection (a) of this section become effective October 1, 2008, and applies to distributions for months beginning on or after that date. Subsections (g) and (h) of this section become effective October 1, 2009, and apply to distributions for months beginning on or after that date. The remainder of this section is effective when it becomes law.

EFFECTIVE DATE

SECTION 7. Except as otherwise provided, this act is effective when it becomes law.

DRAFT 2007-SVz-23: Revenue Laws Technical, Clarifying, & Administrative Changes – Part II

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	April 30, 2008
Introduced by:		**Summary by:**	Trina Griffin
Version:	2007-SVz-23		Committee Counsel

SUMMARY: This legislative proposal represents 'Part II' of the Revenue Laws Technical Changes bill, which makes several technical, clarifying, and administrative changes to the revenue laws and related statutes.

BILL ANALYSIS: This draft proposal makes the following technical, clarifying, and administrative changes:

Section	Explanation
Reform Tax Appeals Changes	
1.(a)	Under the new administrative review process, the Department is required to take action on a request for a refund within six months after the request has been filed. If the Department denies the request, it must send a notice to the taxpayer, and the taxpayer has 45 days to request a review of the proposed denial. However, if the Department fails to take any action within six months, the request is considered denied, and the taxpayer has 45 days from that point to request review. The purpose of this provision is to allow the taxpayer to move forward in the administrative review process despite inaction by the Department. However, concerns have been raised that the running of this 45-day period without actual notice from the Department may create a potential trap that bars taxpayers from appealing the denial. Section 3.(a) provides that a taxpayer may file a request for review at any time after inaction by the Department is considered a proposed denial of the refund but within 45 days of receiving actual notice of a proposed denial by the Department. This change was requested by the Department.
1.(b)	This is a conforming change in the motor fuel tax law regarding the new administrative review process.
1.(c)	SB 242 made special provisions for contested tax cases heard at the Office of Administrative Hearings. Among them, a law enforcement report may be admitted into evidence without the testimony of personnel from the law enforcement agency. The Motor Fuels Tax Division of the Department has requested that government agency lab reports used in the enforcement of the motor fuel tax laws also be admitted without requiring agency personnel testimony.
Collection Changes	
2	Individual officers and directors of a corporation are usually not liable for corporate debts or obligations. This is in contrast to partnership debts and liabilities, which are chargeable personally to the individual partners. However, by statute, a "responsible officer" of a corporation or a limited liability company may be held personally liable for certain unpaid trust taxes owed by the business entity. These taxes include sales and use, motor fuels, and income withholding taxes. A "responsible officer" is defined as

	the president, treasurer, and the CFO of a corporation, the manager of a LLC, and any other officer of a corporation or a member of a LLC who has a duty to pay taxes on behalf of the entity. The Department is authorized to enforce collection by proposing an assessment against the officer. There is no similar statutory authorization to assess partners for these taxes. Instead, the Department, like any other creditor of a partnership, must sue in order to collect this liability. Once a judgment is obtained, the Department may seek to execute the judgment. The Department has requested that partners and managers of a partnership (who may or may not be a partner) be added to the list of officers or, as rewritten, "responsible persons" whom the Department may assess. This section also rewrites the section for clarity and style and places the statute in a more logical location within the Article.
Sales Tax Changes	
3	This section is a transitional provision for the "Medicaid swap" enacted in the 2007 Session by S.L. 2007-323. Under the swap, the local sales and use tax rate decreases by ¼ cent in 2008-09 and again in 2009-10, and the State sales and use tax rate increases by the same amount. The combined State and local rates do not change; instead, the allocation of the combined rate between the State and the counties changes. The question arises of how to report tax on gross receipts from periodic payments made pursuant to agreements entered into before the effective date of the rate changes. This section specifies how the tax on those receipts is to be reported. Periodic payments consist of lease and rental payments and installment sale payments. Sales and use tax is due on lease and rental payments when the payments are billed. For installment sales, the tax application differs depending on whether the retailer reports on an accrual basis or a cash basis. A retailer on an accrual basis reports all the sales tax due on an installment sale when the sale is made. A retailer on a cash basis reports sales tax when each installment payment is received. This provision requires retailers who receive periodic payments from existing contracts to report them at the current State and local rates. This eliminates confusion about what to report and how to report it. Without this provision, a retailer who receives periodic payments will have receipts from existing contracts that are reportable at State and local rates that differ from the State and local rates that apply to periodic payments from new contracts.
Occupancy Tax Changes	
4.(a)	As the result of an independent audit by at least one county, questions have arisen among local governments and within the tourism industry regarding what constitutes "gross receipts" for occupancy tax purposes. Most local occupancy tax acts state that a county or city may levy a room occupancy tax on "the gross receipts derived from the rental of any room...that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3)." Therefore, if an item of tangible personal property or a fee associated with the rental of an accommodation is subject to sales tax under G.S. 105-164.4(a)(3), then it is also subject to the local occupancy tax. While the Department can offer an interpretation of the State sales tax laws, it does not have statutory authority to offer an interpretation of the application of local occupancy

	tax laws, which it does not administer. This section provides that an interpretation by the Department of a State sales tax law applies to a local law that refers to the State sales tax law for its application.
4.(b) & (c)	In January of 2008, the Department issued a technical bulletin related to the rentals of accommodations. In that bulletin, the Department clarified that the bundling provisions in G.S. 105-164.4D apply to vacation packages. For example, a vacation package may include lodging, meals, and greens fees for one price. The lodging would be subject to sales and local occupancy tax, the meals would be subject only to sales tax, and the greens fees would not be subject to either sales or occupancy tax. The bundling provisions allow a hotel operator to allocate the revenues between taxable and exempt portions of the package. The allocation may be part of a hotel's internal records and is not required to appear on the customer's bill. A "bundled transaction" is defined as a sale that includes at least one taxable item and at least one exempt item. Since the release of the bulletin, the tourism industry has sought clarification of whether the allocation rules apply to vacation packages consisting only of taxable items, since those packages do not otherwise meet the definition of a bundled transaction. The clarification is needed because although the entire vacation package may be subject to *sales* tax, not all items may be subject to *occupancy* tax. The collectors would like the ability to allocate those revenues. This section provides that collectors of occupancy tax may allocate revenues for vacation packages that do not otherwise meet the definition of a bundled transaction.
Medicaid Technical Changes	
5	This section makes two changes. The first change is in G.S. 105-522(a)(2), which is set out in subsection (a) of the section. It is a technical change that describes the hold harmless calculation in a simpler way that does not require a reference to local sales taxes on food. The change in the description does not change the amount of the hold harmless. The local sales taxes on food are administered as if they were State taxes and are included, in part, in the amount distributed under Article 40 but are not part of the amount allocated under G.S. 105-486. The second change, made in the rest of the section, eliminates a potentially circular calculation of the amount of local sales and use tax revenue to be distributed. It does not change the amount of any tax or hold harmless payment. Currently, the law could be construed to calculate the amount of various hold harmless payments on the basis of an amount that includes a deduction for the payment that is attempted to be calculated, which is circular. The hold harmless payments are now both pegged, in part, on amounts distributed under Article 39 of Chapter 105 of the General Statutes and deducted from those amounts. Section 1 resolves this problem by making it clear that the hold harmless payments are calculated on the basis of amounts allocated for distribution before any subtraction for the hold harmless payments. References in Article 39 and Chapter 1096 of the 1967 Session Laws are replaced with a direction in G.S. 105-522(b) to deduct the city hold harmless payment from the amount of local sales and use tax revenue otherwise allocated under those provisions for distribution to a county. Subsection (a) adds an instruction in G.S. 105-522(b) to deduct the payment. Subsection (b) removes the

	instruction from Article 39 of Chapter 105. Subsection (c) removes the instruction from Chapter 1096.
6	This section makes three changes. First, it inserts the city hold harmless amount into the calculation of the county hold harmless payment, thereby ensuring that the intent of the General Assembly is fulfilled. G.S. 105-523(a) states that each county is to benefit from the "Medicaid swap" by at least $500,000. The current calculation for determining a county's hold harmless payment, however, does not include the amount a county is required to give to its cities in order to hold them harmless from the repealed local sales taxes. Subsection (a) adds the cost of the city hold harmless to the calculation of the county hold harmless payment. Subsections (d) and (f) repeal changes to G.S. 105-523 that were to take effect in 2009, and subsection (h) reinserts those same changes into the amended G.S. 105-523 while preserving the amendments added by subsection (a). Second, it makes the same technical change to G.S. 105-523(b)(3) that Section 1 makes to G.S. 105-522(a)(2). The technical change describes the hold harmless calculation in a simpler way that does not require a reference to local sales taxes on food. The change in the description does not change the amount of the hold harmless. The local sales taxes on food are administered as if they were State taxes and are included, in part, in the amount distributed under Article 40 but are not part of the amount allocated under G.S. 105-486. Third, it changes the city hold harmless formula and the county hold harmless formula that apply to fiscal years beginning in 2009-2010 to match these formulas to the ones used in the tables that calculated the impact of the swap. The current law incorrectly includes a ¼% tax distributed on the basis of point of origin as one of the elements of the formulas. The "Medicaid swap" is based on the repeal of ½% local sales and use taxes distributed on a per capita basis and the conversion of a ¼% per capita tax to a ¼% point of origin tax. To reflect this, the current reimbursement formula needs to be changed to delete the reference to a ¼% point of origin tax and replace it with a ¼% per capita tax. Subsections (c), (d), and (f) of this section repeal the provisions that contain the incorrect reference and subsections (g) and (h) insert the correct reference in the formulas. Subsections (b), (e), and (i) make conforming changes; they repeal sections that use terminology that does not match the revised reimbursement sections and replace them with a provision that uses terminology that is consistent with the revised sections.

2007-SVz-23-SMSV

Proposals tentatively approved by the Committee

- *Circuit Breaker Tax Modifications*
- *Quadrennial Revaluations & Mobile Home Liens*
- *Modify Estate Tax Law (Stowe case)*
- *Sales Tax Exemption for Disaster Assistance*
- *Extend Expiring Tax Credits*
  - *R&D credit*
  - *State Ports Tax Credit*
  - *Credit for Small Business Employee Health Benefits*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S D

BILL DRAFT 2007-MCxz-195C [v.5] (2/4)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
3/27/2008 1:22:46 PM

Short Title:	Circuit Breaker Tax Benefit Modifications.	(Public)
Sponsors:	Senator.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE CIRCUIT BREAKER TAX BENEFIT.

The General Assembly of North Carolina enacts:

PART I: CIRCUIT BREAKER MODIFICATIONS

SECTION 1.1. G.S. 105-273 reads as rewritten:

"**§ 105-273. Definitions.**

~~When used in this Subchapter (unless the context requires a different meaning):~~The following definitions apply in this Subchapter:

(1) ~~"Abstract" means the~~Abstract. – The document on which the property of a taxpayer is listed for ad valorem taxation and on which the appraised and assessed values of the property are recorded.

(2) ~~"Appraisal" means both the~~Appraisal. – The true value of property ~~and~~ or the process by which true value is ascertained.

(3) ~~"Assessment" means both the~~Assessment. – The tax value of property ~~and~~ or the process by which the assessment is determined.

(4) Repealed by Session Laws 1973, c. 695, s. 15, effective January 1, 1974.

(4a) ~~"Code" [is] defined~~Code. – Defined in G.S. 105-228.90.

(5) ~~"Collector" or "tax collector" means any~~Collector or tax collector. – A person charged with the duty of collecting taxes for a county or municipality.

(5a) ~~"Contractor" means a~~Construction contractor. – A taxpayer who is regularly engaged in building, installing, repairing, or improving real property.

(6) ~~"Corporation" includes nonprofit corporation and every type of~~ Corporation. – An organization having capital stock represented by ~~shares.~~ or an incorporated, non-profit organization.

(6a) ~~"Discovered property" includes all~~ Discovered property. – Any of the following:

a. Property that was not listed during a listing period.

b. Property that was listed but the listing included a substantial understatement.

c. Property that has been granted an exemption or exclusion and does not qualify for the exemption or exclusion.

(6b) ~~"To discover property" means to~~Discover property. – ~~determine~~Determine any of the following:

a. Property has not been listed during a listing period.

b. A taxpayer made a substantial understatement of listed property.

c. Property was granted an exemption or exclusion and the property does not qualify for an exemption or exclusion.

(7) ~~"Document" includes book,~~Document. – A book, paper, record, statement, account, map, plat, film, picture, tape, object, instrument, ~~and~~ or any other thing conveying information.

(7a) ~~"Failure to list property" includes all~~Failure to list property. – Any of the following:

a. Failure to list property during a listing period.

b. A substantial understatement of listed property.

c. Failure to notify the assessor that property granted an exemption or exclusion under an application for exemption or exclusion does not qualify for the exemption or exclusion.

(8) ~~"Intangible personal property" means patents,~~Intangible personal property. – Patents, copyrights, secret processes, formulae, good will, trademarks, trade brands, franchises, stocks, bonds, cash, bank deposits, notes, evidences of debt, leasehold interests in exempted real property, bills and accounts receivable, ~~and~~ or other like property.

(8a) ~~"Inventories" means~~Inventories. – Any of the following:

a. ~~(i) goods~~Goods held for sale in the regular course of business by manufacturers, retail and wholesale merchants, and ~~contractors, and (ii)~~construction contractors. As to retail and wholesale merchants and construction contractors, the term includes packaging materials that accompany and become a part of the goods sold.

b. ~~goods~~Goods held by construction contractors to be furnished in the course of building, installing, repairing, or improving real property.

c. As to manufacturers, ~~the term includes raw~~ raw materials, goods in process, ~~and~~ finished goods, ~~as well as~~or other

materials or supplies that are consumed in manufacturing or ~~processing.~~processing or that accompany and become a part of the sale of the property being sold. The term does not include fuel used in manufacturing or processing and materials or supplies not used directly in manufacturing or processing.

d. ~~The term also includes a~~A modular home as defined in G.S. 105-164.3(21b) that is used exclusively as a display model and held for eventual sale at the retail merchant's place of business.

e. ~~The term also includes crops.~~Crops, livestock, poultry, feed used in the production of livestock and poultry, ~~and~~ or other agricultural or horticultural products held for sale, whether in process or ready for sale. ~~The term does not include fuel used in manufacturing or processing, nor does it include materials or supplies not used directly in manufacturing or processing. As to retail and wholesale merchants and contractors, the term includes, in addition to articles held for sale, packaging materials that accompany and become a part of the sale of the property being sold.~~

(9) ~~"List" or "listing," when used as a noun, means abstract.~~List or listing. – An abstract, when the term is used as a noun.

(10) Repealed by Session Laws 1987, c. 43, s. 1.

(10a) ~~"Local tax official" includes a~~Local tax official. – A county assessor, an assistant county assessor, a member of a county board of commissioners, a member of a county board of equalization and review, a county tax collector, ~~and~~ or the municipal ~~equivalents~~ equivalent of one of these officials.

(10b) ~~"Manufacturer" means a~~Manufacturer. – A taxpayer who is regularly engaged in the mechanical or chemical conversion or transformation of materials or substances into new products for sale or in the growth, breeding, raising, or other production of new products for sale. The term does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.

(11) ~~"Municipal corporation" and "municipality" mean city.~~Municipal corporation or municipality. – A city, town, incorporated village, sanitary district, rural fire protection district, rural recreation district, mosquito control district, hospital district, metropolitan sewerage district, watershed improvement district, a consolidated city-county as defined by G.S. 160B-2, or ~~other~~ another district or unit of local government by or for which ad valorem taxes are levied. ~~The terms also include a consolidated city-county as defined by G.S. 160B-2(1).~~

(12) ~~"Person" and "he" include any~~Person. – An individual, a trustee, an executor, an administrator, ~~other~~ another fiduciary, a corporation, a

limited liability company, an unincorporated association, a partnership, a sole proprietorship, a company, a firm, or ~~other~~ another legal entity.

(13) ~~"Real property," "real estate," and "land" mean not only the~~Real property, real estate, or land. – Any of the following:

a. The land ~~itself,~~itself.

b. ~~but also buildings,~~Buildings, structures, improvements, ~~and~~ or permanent fixtures on ~~the land,~~land.

c. ~~and all~~All rights and privileges belonging or in any way appertaining to the property.

d. ~~These terms also mean a~~A manufactured home as defined in ~~G.S. 143-143.9(6)~~G.S. 143-143.9(6), unless it is considered tangible personal property for failure to meet all of the following requirements:

1. ~~if it~~It is a residential ~~structure;~~structure.

2. It has the moving hitch, wheels, and axles ~~removed;~~removed.

3. ~~and~~It is placed upon a permanent foundation either on land owned by the owner of the manufactured home or on land in which the owner of the manufactured home has a leasehold interest pursuant to a lease with a primary term of at least 20 years ~~for the real property on which the manufactured home is affixed~~ and ~~where~~ the lease expressly provides for disposition of the manufactured home upon termination of the lease. ~~A manufactured home as defined in G.S. 143-143.9(6) that does not meet all of these conditions is considered tangible personal property.~~

(13a) ~~"Retail Merchant" means a~~Retail merchant. – A taxpayer who is regularly engaged in the sale of tangible personal property, acquired by a means other than manufacture, processing, or producing by the merchant, to users or consumers.

(13b) ~~"Substantial understatement" means the~~Substantial understatement. – The omission of a material portion of the value, quantity, or other measurement of taxable property. The determination of materiality in each case shall be made by the assessor, subject to the taxpayer's right to review of the determination by the county board of equalization and review or board of commissioners and appeal to the Property Tax Commission.

(14) ~~"Tangible personal property" means all~~Tangible personal property. – All personal property that is not intangible and that is not permanently affixed to real property.

(15) ~~"Tax" and "taxes" include the~~Tax or taxes. – The principal amount of any ~~tax, costs, penalties, and interest imposed upon property tax or dog~~

~~license tax.~~property tax or dog license tax and costs, penalties, and interest.

(16) ~~"Taxing unit" means a~~Taxing unit. – A county or municipality authorized to levy ad valorem property taxes.

(17) ~~"Taxpayer" means any~~Taxpayer. – A 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.~~

(18) ~~"Valuation" means appraisal~~Valuation. – Appraisal and assessment.

(19) ~~"Wholesale Merchant" means a~~Wholesale merchant. – A taxpayer who is regularly engaged in the sale of tangible personal property, acquired by a means other than manufacture, processing, or producing by the merchant, to other retail or wholesale merchants for resale or to manufacturers for use as ingredient or component parts of articles being manufactured for sale."

SECTION 1.2. G.S. 105-277.1B reads as rewritten:

"**§ 105-277.1B. Property tax homestead circuit breaker.**

(a) Classification. – A permanent residence owned and occupied by a qualifying owner is designated a special class of property under Article V, Section 2(2) of the North Carolina Constitution and is taxable in accordance with this section.

(b) Definitions. – The definitions provided in G.S. 105-277.1 apply to this section.

(c) Income Eligibility Limit. – The income eligibility limit provided in G.S. 105-277.1(a2) applies to this section.

(d) Qualifying Owner. – For the purpose of qualifying for the property tax homestead circuit breaker under this section, a qualifying owner is an owner who meets all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

(1) The owner has an income for the preceding calendar year of not more than one hundred fifty percent (150%) of the income eligibility limit specified in subsection (c) of this section.

(2) The owner has owned and occupied the property as a permanent residence for at least five years.

(3) The owner is at least 65 years of age or totally and permanently disabled.

(4) The owner is a North Carolina resident.

(e) Multiple Owners. – A permanent residence owned and occupied by husband and wife as tenants by the entirety is entitled to the full benefit of the property tax homestead circuit breaker notwithstanding that only one of them meets the occupation requirement and the age or disability requirement of this section. When a permanent

residence is owned and occupied by two or more persons other than husband and wife, no property tax homestead circuit breaker is allowed unless all of the owners qualify and elect to defer taxes under this section.

(f) Tax Limitation. – A qualifying owner may defer the portion of tax imposed on his or her permanent residence if it exceeds ~~a~~ the percentage of the qualifying owner's income ~~as provided in this section.~~ set out in the table in this subsection. If a permanent residence is subject to tax by more than one taxing unit and the total tax liability exceeds the tax limit imposed by this section, then both the taxes due under this section and the taxes deferred under this section must be apportioned among the taxing units based upon the ratio each taxing unit's tax rate bears to the total tax rate of all units.

~~Income~~	~~Percentage~~
~~Less than the income eligibility limit~~	~~4.0%~~
~~100% to 150% of the income eligibility limit~~	~~5.0%~~

Income Over	**Income Up To**	**Percentage**
-0-	Income Eligibility Limit	4.0%
Income Eligibility Limit	150% of Income Eligibility Limit	5.0%

(g) Temporary Absence. – An otherwise qualifying owner does not lose the benefit of this circuit breaker because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

(h) Deferred Taxes. – The difference between the taxes due under this section and the taxes that would have been payable in the absence of this section are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes for the three fiscal years preceding the current tax year shall be carried forward in the records of the taxing unit or units as deferred taxes. ~~Interest accrues on the deferred taxes due as if they had been payable on the dates on which they originally became due.~~ The deferred taxes are due and payable in accordance with G.S. 105-277.1C when the property loses its eligibility for deferral because of the occurrence of a disqualifying event as provided in subsection (i) of this section. On or before September 1 of each year, the ~~assessor~~ collector shall notify each residence owner to whom a tax deferral has previously been granted of the accumulated sum of deferred taxes and interest.

(i) Disqualifying Events. – ~~Taxes deferred under this section are payable within nine months after a disqualifying event. The tax for the fiscal year that opens in a calendar year in which deferred taxes become due is computed as if the property was not eligible for property tax relief under this section.~~ Each of the following constitutes a disqualifying event:

(1) The owner transfers the residence. Transfer of the residence ~~under this subdivision~~ is not a disqualifying event if (i) the owner transfers the residence ~~as part of a divorce proceeding~~ to a co-owner of the residence or, as part of a divorce proceeding, to ~~either~~ his or her spouse ~~who qualifies for tax deferral under this section or to a co-owner of the residence.~~ and (ii) that individual occupies or continues to occupy the

property as his or her permanent ~~residence, and (iii) that individual elects to continue deferring payment of the tax.~~residence.

(2) The owner dies. Death of the owner ~~under this subdivision~~ is not a disqualifying event if (i) the owner's share passes to ~~either~~a co-owner of the residence or to his or her spouse ~~who qualifies for tax deferral under this section or to a co-owner of the residence.~~~~residence~~ and (ii) that individual occupies or continues to occupy the property as his or her permanent ~~residence, and (iii) that individual elects to continue deferring payment of the tax.~~residence.

(3) The owner ceases to use the property as a permanent residence.

(j) ~~Interruption of Qualification. – If the owner of a tax-deferred residence does not qualify under this section for deferral as of January 1 preceding a taxable year for reasons other than a disqualifying event or if the owner of a tax-deferred residence revokes an application for deferral by notifying the assessor in writing, the owner may not defer any additional property taxes under this section without submitting a new application. Deferred taxes from earlier years do not become due because of an interruption of qualification; however, deferred taxes existing at the time of an interruption of qualification shall be carried forward until the occurrence of a disqualifying event. If the owner qualifies for tax deferral under this section following an interruption of qualification, the taxing unit or units shall disregard the years during which there was an interruption of qualification for purposes of determining the three fiscal years preceding the current tax year under subsection (g) of this section.~~Gap in Deferral. – If an owner of a residence on which taxes have been deferred under this section is not eligible for continued deferral for a tax year, the taxes deferred from the prior tax years are not due and payable but are carried forward until a disqualifying event occurs. If the owner of the residence qualifies for deferral after one or more years in which he or she did not qualify for deferral, the years in which the owner did not qualify are disregarded in determining the three years for which the deferred taxes are carried forward.

~~(k) Prepayment. – All or part of the deferred taxes and accrued interest may be paid to the tax collector at any time. Any partial payment is applied first to accrued interest. A residence owner to whom a tax deferral has previously been granted may revoke the application for deferral at any time by notifying the assessor in writing.~~

(l) Creditor Limitations. – A mortgagee or trustee that elects to pay any tax deferred by the owner of a residence subject to a mortgage or deed of trust does not acquire a right to foreclose as a result of the election. Except for requirements dictated by federal law or regulation, any provision in a mortgage, deed of trust, or other agreement that prohibits the owner from deferring taxes on property under this section is void.

(m) Construction. – This section does not affect the attachment of a lien for personal property taxes against a tax-deferred residence.

(n) Application. – An application for property tax relief provided by this section should be filed during the regular listing period, but may be filed and must be accepted at any time up to and through June 1 preceding the tax year for which the relief is

claimed. Persons may apply for this property tax relief by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1."

SECTION 1.3. G.S. 105-282.1(a)(2)(e) is repealed.

SECTION 1.4. G.S. 153A-148.1(a) is amended by adding a new subdivision to read:

"(a) Disclosure Prohibited. – Notwithstanding Chapter 132 of the General Statutes or any other law regarding access to public records, local tax records that contain information about a taxpayer's income or receipts are not public records. A current or former officer, employee, or agent of a county who in the course of service to or employment by the county has access to information about the amount of a taxpayer's income or receipts may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(6) To include on a property tax receipt the amount of property taxes due and the amount of property taxes deferred on a residence classified under G.S. 105-277.1B, the property tax homestead circuit breaker."

SECTION 1.5. G.S. 160A-208.1(a) is amended by adding a new subdivision to read:

"(a) Disclosure Prohibited. – Notwithstanding Chapter 132 of the General Statutes or any other law regarding access to public records, local tax records that contain information about a taxpayer's income or receipts are not public records. A current or former officer, employee, or agent of a city who in the course of service to or employment by the city has access to information about the amount of a taxpayer's income or receipts may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(4) To include on a property tax receipt the amount of property taxes due and the amount of property taxes deferred on a residence classified under G.S. 105-277.1B, the property tax homestead circuit breaker."

PART II: DEFERRAL PROGRAM MODIFICATIONS

SECTION 2.1. G.S. 105-275(29a) reads as rewritten:

"**§ 105-275. Property classified and excluded from the tax base.**

The following classes of property are hereby designated special classes under authority of Article V, Sec. 2(2), of the North Carolina Constitution and shall not be listed, appraised, assessed, or taxed:

...

(29a) Land that is within an historic district ~~held.~~and is held by a nonprofit corporation organized for historic preservation ~~purposes.~~purposes for use as a future site for an historic structure that is to be moved to the site from another location. Property may be classified under this subdivision for no more than five years. The taxes that would otherwise be due on land classified under this subdivision shall be a lien on the real property of the taxpayer as provided in

G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit or units as deferred ~~taxes and shall be payable five years from the fiscal year the exclusion is first claimed unless an historic structure is moved onto the site during that time. If an historic structure has not been moved to the site within five years, then deferred taxes for the preceding five fiscal years shall immediately be payable, together with interest as provided in G.S. 105-360 for unpaid taxes that shall accrue on the deferred taxes as if they had been payable on the dates on which they would originally become due. All liens arising under this subdivision are extinguished upon either the payment of any deferred taxes under this subdivision or the location of an historic structure on the site within the five-year period allowed under this subdivision.~~taxes. The deferred taxes are due and payable in accordance with G.S. 105-277.1C when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when an historic structure is not moved to the property within five years from the first day of the fiscal year the property was classified under this subdivision."

SECTION 2.2. Chapter 105 of the North Carolina General Statutes is amended by adding a new section to read:

"**105-277.1C. Uniform provisions for payment of deferred taxes.**

(a) Scope. – This section applies to the following deferred tax programs:

(1) G.S. 105-275(29a), historic district property held as future site of historic structure.

(2) G.S. 105-277.1B, the property tax homestead circuit breaker.

(3) G.S. 105-277.4(c), present-use value property.

(4) G.S. 105-277.14, working waterfront property.

(5) G.S. 105-278(b), historic property.

(6) G.S. 105-278.6(e), nonprofit property held as future site of low- or moderate-income housing.

(b) Payment. – Taxes deferred on property under a deferral program listed in subsection (a) of this section are due and payable on the day the property loses its eligibility for the deferral program as a result of a disqualifying event. If only a part of property for which taxes are deferred loses its eligibility for deferral, the assessor must determine the amount of deferred taxes that apply to that part and that amount is due and payable. Interest accrues on deferred taxes as if they had been payable on the dates on which they would have originally become due.

The tax for the fiscal year that begins in the calendar year in which the deferred taxes are due and payable is computed as if the property had not been classified for that year. A lien for deferred taxes is extinguished when the taxes are paid.

All or part of the deferred taxes that are not due and payable may be paid to the tax collector at any time without affecting the property's eligibility for deferral. A partial payment is applied first to accrued interest."

SECTION 2.3. G.S. 105-277.4(c) reads as rewritten:

"(c) Deferred Taxes. – Land meeting the conditions for classification under G.S. 105-277.3 must be taxed on the basis of the value of the land for its present use. The difference between the taxes due on the present-use basis and the taxes that would have been payable in the absence of this classification, together with any interest, penalties, or costs that may accrue thereon, are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes must be carried forward in the records of the taxing unit or units as deferred taxes. The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1C when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when the land fails to meet any condition or requirement for classification or when an application is not approved. ~~The taxes become due and payable when the land fails to meet any condition or requirement for classification. Failure to have an application approved is ground for disqualification. The tax for the fiscal year that opens in the calendar year in which deferred taxes become due is computed as if the land had not been classified for that year, and taxes for the preceding three fiscal years that have been deferred are immediately payable, together with interest as provided in G.S. 105-360 for unpaid taxes. Interest accrues on the deferred taxes due as if they had been payable on the dates on which they originally became due. If only a part of the qualifying tract of land fails to meet a condition or requirement for classification, the assessor must determine the amount of deferred taxes applicable to that part and that amount becomes payable with interest as provided above. Upon the payment of any taxes deferred in accordance with this section for the three years immediately preceding a disqualification, all liens arising under this subsection are extinguished. The deferred taxes for any given year may be paid in that year without the qualifying tract of land becoming ineligible for deferred status.~~"

SECTION 2.4. G.S. 105-277.14(c) reads as rewritten:

"(c) Deferred Taxes. – The difference between the taxes that are due on working waterfront property taxed on the basis of its present use and that would be due if the property were taxed on the basis of its true value is a lien on the property. The difference in taxes must be carried forward in the records of each taxing unit as deferred taxes. The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1C when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when the property no longer qualifies as working waterfront property. ~~The deferred taxes become due when the property no longer qualifies as working waterfront property. The tax for the fiscal year that opens in the calendar year in which deferred taxes become due is computed as if the property had not been classified for that year, and taxes for the preceding three fiscal years that have been deferred are immediately payable, together with interest, as provided in G.S. 105-360 for unpaid taxes. Interest accrues on the deferred taxes due as if they had been payable on the dates on which they originally became due. If only a part of the property no longer qualifies as working waterfront property, the assessor must determine the amount of deferred taxes applicable to that part and that amount becomes payable with interest. Upon the payment of any taxes deferred under this~~

~~section for the three years immediately preceding a disqualification, all liens arising under this subsection are extinguished.~~"

SECTION 2.5. G.S. 105-278(b) reads as rewritten:

"(b) The difference between the taxes due on the basis of fifty percent (50%) of the true value of the property and the taxes that would have been payable in the absence of the classification provided for in subsection (a) shall be a lien on the property of the taxpayer as provided in ~~G.S. 105-355(a) and~~G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit or units as deferred ~~taxes, but shall not be payable until the property loses its eligibility for the benefit of this classification because of a change in an ordinance designating a historic property or a change in the property, except by fire or other natural disaster, which causes its historical significance to be lost or substantially impaired.~~taxes. The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1C when the property loses the benefit of this classification as a result of a disqualifying event. A disqualifying event occurs when there is a change in an ordinance designating a historic property or a change in the property, other than by fire or other natural disaster, that causes the property's historical significance to be lost or substantially impaired. ~~The tax for the fiscal year that opens in the calendar year in which a disqualification occurs shall be computed as if the property had not been classified for that year, and taxes for the preceding three fiscal years that have been deferred as provided herein shall be payable immediately, together with interest thereon as provided in G.S. 105-360 for unpaid taxes, which shall accrue on the deferred taxes as if they had been payable on the dates on which they originally became due. If only a part of the historic property loses its eligibility for the classification, a determination shall be made of the amount of deferred taxes applicable to that part, and the amount shall be payable with interest as provided above.~~"

SECTION 2.6. G.S. 105-278.6(e) reads as rewritten:

"(e) Real property held by an organization described in subdivision (a)(8) ~~is held~~ for a charitable purpose under this section ~~if it is held for no more than five years~~ as a future site for housing for individuals or families with low or moderate ~~incomes.~~incomes may be classified under this section for no more than five years. The taxes that would otherwise be due on real property exempt under this subsection shall be a lien on the property as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit as deferred ~~taxes and shall be payable five years after the tax year the exemption is first claimed unless the organization has constructed low- or moderate-income housing on the site. If this condition has not been met, the deferred taxes for the preceding five fiscal years shall be payable immediately, together with interest as provided in G.S. 105-360 for unpaid taxes that accrues on the deferred taxes as if they had been payable on the dates they would have originally become due. All liens arising under this subsection are extinguished upon one of the following:~~

~~(1) Payment of all deferred taxes under this subsection.~~

~~(2) Construction by the organization of low- or moderate-income housing on the site within five years after the tax year the exemption is first claimed.~~taxes. The deferred taxes are due and payable in accordance

with G.S. 105-277.1C when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when the organization fails to construct low- or moderate-income housing on the site within five years from the first day of the fiscal year the property was classified under this subsection."

SECTION 2.7. G.S. 105-360(a) reads as rewritten:

"(a) Taxes levied under this Subchapter by a taxing unit are due and payable on September 1 of the fiscal year for which the taxes are levied. Taxes are payable at par or face amount if paid before January 6 following the due date. Taxes paid on or after January 6 following the due date ~~are delinquent and~~ are subject to interest charges. Interest accrues on taxes paid on or after January 6 as follows:

(1) For the period January 6 to February 1, interest accrues at the rate of two percent ~~(2%); and~~(2%).

(2) For the period February 1 until the principal amount of the taxes, the accrued interest, and any penalties are paid, interest accrues at the rate of three-fourths of one percent (3/4%) a month or fraction thereof."

SECTION 2.8. Article 26 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-365.1. When and against whom collection remedies may be used.**

(a) Date of Delinquency. – A tax collector may collect a tax using the remedies provided in G.S. 105-366 through G.S. 105-375 on or after the date the tax is delinquent. A tax is delinquent on the following date:

(1) For a tax that is not a deferred tax, the date the tax accrues interest.

(2) For a deferred tax, other than a tax described in subdivision (3) of this section, the date a disqualifying event occurs.

(3) For a deferred tax under G.S. 105-277.1B that lost its eligibility for deferral due to the death of the owner, the first day of the sixth month following the date of death."

(b) Enforced Collection. – For purposes of using the collection remedies provided in G.S. 105-366 through G.S. 105-375 to collect delinquent taxes, the taxing unit shall proceed against property of the following taxpayer:

(1) To collect delinquent taxes assessed on real property, the owner of record of property on which tax is due as of the date of delinquency and any subsequent owner of record of the property.

(2) To collect delinquent taxes assessed on personal property, the owner of record as of January 1 of the calendar year in which the fiscal year of taxation begins.

(3) To collect delinquent taxes assessed on a registered motor vehicle, the owner of record as of the date on which the current vehicle registration is renewed or the date on which a new registration is applied for."

PART III: TECHNICAL CORRECTION

SECTION 3. G.S. 105-277.1(a2) reads as rewritten:

"(a2) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2008)** Income Eligibility Limit. – ~~Until~~ For the taxable year beginning on July 1, 2008, the income eligibility limit is twenty-five thousand dollars ($25,000). For taxable years beginning on or after July 1, ~~2008.~~2009, the income eligibility limit is the amount for the preceding year, adjusted by the same percentage of this amount as the percentage of any cost-of-living adjustment made to the benefits under Titles II and XVI of the Social Security Act for the preceding calendar year, rounded to the nearest one hundred dollars ($100.00). On or before July 1 of each year, the Department of Revenue must determine the income eligibility amount to be in effect for the taxable year beginning the following July 1 and must notify the assessor of each county of the amount to be in effect for that taxable year."

PART IV: EFFECTIVE DATE

SECTION 4. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2008.

SENATE BILL 1442:
Senior Circuit Breaker Tax Benefit

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	July 30, 2007
Introduced by:	Sen. Snow	**Summary by:**	Dan Ettefagh
Version:	PCS to First Edition S1442-CSMC		Committee Counsel

SUMMARY: The PCS for Senate Bill 1442 would create a senior property tax homestead deferral system based on certain qualifications and income requirements of owners of permanent residences located in North Carolina.

CURRENT LAW: Under current law, the only homestead property tax benefit is found in G.S. 105-277.1, the property tax homestead exclusion. Under the homestead exclusion, North Carolina residents who are at least 65 years of age or totally and permanently disabled and who meet the income eligibility limit[1] may exclude from taxation the greater of twenty thousand dollars ($20,000) or fifty percent (50%) of the appraised value of the permanent residence.

BILL ANALYSIS: Senate Bill 1442 proposes a property tax deferral benefit for North Carolina residents who have owned and occupied property located in the State as a permanent residence for at least five years and are either 65 years of age or older or totally and permanently disabled. The amount of taxes deferred would be based upon the income eligibility limit of the property tax homestead exclusion. Under this system, an owner who met the requirements of the circuit breaker benefit and made less than the income eligibility limit could elect to defer the portion of taxes imposed on the permanent residence that exceeds four percent (4%) of the owner's income. An owner who met the requirements of the circuit breaker benefit and made between the income eligibility limit and one and one-half times the income eligibility limit could elect to defer the portion of taxes imposed on the permanent residence that exceeds five percent (5%) of the owner's income.

Taxes deferred via the circuit breaker benefit would accrue interest and become a lien on the real property of the taxpayer. The general rule is that these deferred taxes would be carried forward until the death of the owner or until the owner transfers the property, at which time the amount of taxes for that year with no circuit breaker benefit plus those taxes deferred for the preceding three fiscal years, together with interest would become due and must be paid within nine months after the date of death or transfer. An exception to this rule exists, allowing the deferral to continue where the residence is transferred to the former owner's spouse, if the spouse qualifies for the circuit breaker benefit, occupies the property has a permanent residence, and elects to continue deferral.

If the owner ceases to use the residence as a permanent residence for a reason other than a temporary absence for reasons of health or an extended absence while confined to a rest home or nursing home while the residence remains either unoccupied or occupied by the owner's spouse or other dependent, the owner loses the benefit of the circuit breaker, and the deferred taxes become due and payable at the same time the tax levied on the residence in that year is due. If the owner fails to qualify for the circuit

[1] The income eligibility limit until July 1, 2003 was $18,000. For taxable years beginning on or after July 1, 2003, the income eligibility limit is the amount for the preceding year, adjusted by the same percentage of this amount as the percentage of any cost-of-living adjustment made to Social Security benefits, rounded to the nearest $100. In 2006, the income eligibility limit was $19,700.

breaker benefit for a taxable year but continues using the property as a permanent residence, no deferral is allowed for that year but deferred taxes from earlier years do not become due.

Other provisions in the bill include:

- The assessor must annually notify each owner electing this tax benefit of the accumulated sum of deferred taxes and interest.
- Prepayment of all or part of taxes deferred to the tax collector is allowed at any time, with partial payments applied first to accrued interest.
- A qualifying owner may revoke a tax deferral application at any time by written notification to the assessor.
- Mortgagees or trustees electing to pay taxes deferred by a qualifying owner do not acquire a right to foreclose as a result.
- Provisions in mortgages, deeds of trust, or other agreements prohibiting a qualifying owner from electing the circuit breaker benefit are void.
- Where property is owned by two or more persons other than husband and wife, all owners must qualify and elect the circuit breaker benefit for it to be available to any of the qualifying owners.
- The tax benefit under this section may not be combined with the property tax homestead exclusion. Owners qualifying for both types of property tax benefit must elect which to utilize.

EFFECTIVE DATE: This act is effective for taxes imposed for taxable years beginning on or after July 1, 2008.

S1442e1-SMMC-CSMC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H D

BILL DRAFT 2007-MCxz-196 [v.9] (2/13)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
3/28/2008 10:07:23 AM

Short Title: Change Real Property Revaluation Schedule. (Public)

Sponsors: Representative.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE SCHEDULE FOR GENERAL REAPPRAISALS OF REAL PROPERTY IN THE STATE TO REDUCE THE DISCREPANCY BETWEEN THE PROPERTY TAX VALUE OF PROPERTY AND ITS MARKET VALUE AND TO TREAT MOBILE HOMES THE SAME AS OTHER HOMES WITH RESPECT TO PROPERTY TAX LIENS.

The General Assembly of North Carolina enacts:

PART I: REAPPRAISAL SCHEDULE

SECTION 1.1. G.S. 105-282.1(e) reads as rewritten:

"(e) Annual Review of Exempted or Excluded Property. – Pursuant to G.S. 105-296(l), the assessor must annually review at least ~~one-eighth~~one-fourth of the parcels in the county exempted or excluded from taxation to verify that the parcels qualify for the exemption or exclusion."

SECTION 1.2. G.S. 105-284(b) reads as rewritten:

"(b) The assessed value of public service company system property subject to appraisal by the Department of Revenue under G.S. 105-335(b)(1) shall be determined by applying to the allocation of such value to each county a percentage to be established by the Department of Revenue. The percentage to be applied shall be either:

(1) The median ratio established in sales assessment ratio studies of real property conducted by the Department of Revenue in the county in the year the county conducts a reappraisal of real ~~property and in the fourth and seventh years thereafter; or~~ property.

(2) A weighted average percentage based on the median ratio for real property established by the Department of Revenue as provided in subdivision (1) and a one hundred percent (100%) ratio for personal

property. No percentage shall be applied in a year in which the median ratio for real property is ninety percent (90%) or greater.

If the median ratio for real property in any county is below ninety percent (90%) and if the county assessor has provided information satisfactory to the Department of Revenue that the county follows accepted guidelines and practices in the assessment of business personal property, the weighted average percentage shall be applied to public service company property. In calculating the weighted average percentage, the Department shall use the assessed value figures for real and personal property reported by the county to the Local Government Commission for the preceding year. In any county which fails to demonstrate that it follows accepted guidelines and practices, the percentage to be applied shall be the median ratio for real property. The percentage established in a year in which a sales assessment ratio study is conducted shall continue to be applied until another study is conducted by the Department of Revenue."

SECTION 1.3. G.S. 105-286 reads as rewritten:

"**§ 105-286. Time for general reappraisal of real property.**

~~(a) Octennial Plan. — Unless the date shall be advanced as provided in subdivision (a)(2), below, each county of the State, as of January 1 of the year prescribed in the schedule set out in subdivision (a)(1), below, and every eighth year thereafter, shall reappraise all real property in accordance with the provisions of G.S. 105-283 and 105-317.~~

~~(1) Schedule of Initial Reappraisals.—~~

~~Division One — 1972: Avery, Camden, Cherokee, Cleveland, Cumberland, Guilford, Harnett, Haywood, Lee, Montgomery, Northampton, and Robeson.~~

~~Division Two — 1973: Caldwell, Carteret, Columbus, Currituck, Davidson, Gaston, Greene, Hyde, Lenoir, Madison, Orange, Pamlico, Pitt, Richmond, Swain, Transylvania, and Washington. Division Three — 1974: Ashe, Buncombe, Chowan, Franklin, Henderson, Hoke, Jones, Pasquotank, Rowan, and Stokes. Division Four — 1975: Alleghany, Bladen, Brunswick, Cabarrus, Catawba, Dare, Halifax, Macon, New Hanover, Surry, Tyrrell, and Yadkin. Division Five — 1976: Bertie, Caswell, Forsyth, Iredell, Jackson, Lincoln, Onslow, Person, Perquimans, Rutherford, Union, Vance, Wake, Wilson, and Yancey.~~

~~Division Six — 1977: Alamance, Durham, Edgecombe, Gates, Martin, Mitchell, Nash, Polk, Randolph, Stanly, Warren, and Wilkes.~~

~~Division Seven — 1978: Alexander, Anson, Beaufort, Clay, Craven, Davie, Duplin, and Granville.~~

~~Division Eight — 1979: Burke, Chatham, Graham, Hertford, Johnston, McDowell, Mecklenburg, Moore, Pender, Rockingham, Sampson, Scotland, Watauga, and Wayne.~~

~~(2) Advancing Scheduled Octennial Reappraisal. — Any county desiring to conduct a reappraisal of real property earlier than required by this subsection (a) may do so upon adoption by the board of county commissioners of a resolution so providing. A copy of any such~~

~~resolution shall be forwarded promptly to the Department of Revenue. If the scheduled date for reappraisal for any county is advanced as provided herein, real property in that county shall thereafter be reappraised every eighth year following the advanced date unless, in accordance with the provisions of this subdivision (a)(2), an earlier date shall be adopted by resolution of the board of county commissioners, in which event a new schedule of octennial reappraisals shall thereby be established for that county.~~

~~(b) Fourth-Year Horizontal Adjustments. — As of January 1 of the fourth year following a reappraisal of real property conducted under the provisions of subsection (a), above, each county shall review the appraised values of all real property and determine whether changes should be made to bring those values into line with then current true value. If it is determined that the appraised value of all real property or of defined types or categories of real property require such adjustment, the assessor shall revise the values accordingly by horizontal adjustments rather than by actual appraisal of individual properties: That is, by uniform application of percentages of increase or reduction to the appraised values of properties within defined types or categories or within defined geographic areas of the county.~~

~~(c) Value to Be Assigned Real Property When Not Subject to Appraisal. — In years in which real property within a county is not subject to appraisal or reappraisal under subsections (a) or (b),above, or under G.S. 105-287, it shall be listed at the value assigned when last appraised under this section or under G.S. 105-287.~~

(a) Quadrennial Plan. – Each county must reappraise all real property in accordance with the provisions of G.S. 105-283 and G.S. 105-317 as of January 1 of the year set out in the following schedule and every fourth year thereafter, unless the county advances the date as provided in subsection (b):

Year	**Initial Reappraisal Schedule**
2011	Alexander, Ashe, Brunswick, Burke, Carteret, Catawba, Cumberland, Gaston, Henderson, Hertford, Iredell, Johnston, Lee, Macon, McDowell, Moore, New Hanover, Northampton, Pender, Rowan, Rutherford, Sampson, Scotland, Wayne, and Wilkes.
2012	Bertie, Carbarrus, Caswell, Cherokee, Cleveland, Columbus, Currituck, Greene, Guilford, Jackson, Lincoln, Madison, Montgomery, Pamlico, Perquimans, Pitt, Randolph, Richmond, Surry, Union, Vance, Washington, Wilson, and Yancey.
2013	Alamance, Caldwell, Chatham, Davie, Duplin, Edgecombe, Forsyth, Gates, Harnett, Hyde, Lenoir, Martin,

	Mecklenburg, Mitchell, Nash, Orange, Person, Polk, Rockingham, Stanly, Stokes, Swain, Transylvania, Tyrell, Wake, Warren, and Yadkin.
2014	Alleghany, Anson, Avery, Beaufort, Bladen, Buncombe, Camden, Chowan, Clay, Craven, Dare, Davidson, Durham, Franklin, Graham, Granville, Halifax, Haywood, Hoke, Jones, Onslow, Pasquotank, Robeson, and Watauga.

(b) Advancing Scheduled Reappraisal. – A county may conduct a reappraisal of real property earlier than required by subsection (a) of this section if the board of county commissioners adopts a resolution providing for advancement of the scheduled reappraisal. The board of county commissioners must promptly forward a copy of any adopted resolution advancing the scheduled reappraisal to the Department of Revenue. If a county advances the scheduled reappraisal under this subsection, the county must conduct future reappraisals every fourth year following the advanced date unless, in accordance with this subsection, the county adopts an earlier date by resolution."

SECTION 1.4. G.S. 105-287 reads as rewritten:

"**§ 105-287. Changing appraised value of real property in years in which general reappraisal ~~or horizontal adjustment~~ is not made.**

(a) In a year in which a general reappraisal ~~or horizontal adjustment~~ of real property in the county is not ~~made.~~made under G.S. 105-286, the property shall be listed at the value assigned when last appraised unless the value is changed in accordance with this section. ~~the~~ The assessor shall increase or decrease the appraised value of real property, as determined under G.S. 105-286, to recognize a change in the property's value resulting from one or more of the ~~reasons listed in this subsection. The reason necessitating a change in the property's value need not be under the control of or at the request of the owner of the affected property.~~following reasons:

(1) Correct a clerical or mathematical error.

(2) Correct an appraisal error resulting from a misapplication of the schedules, standards, and rules used in the county's most recent general ~~reappraisal or horizontal adjustment~~ reappraisal.

(2a) Recognize an increase or decrease in the value of the property resulting from a conservation or preservation agreement subject to Article 4 of Chapter 121 of the General Statutes, the Conservation and Historic Preservation Agreements Act.

(2b) Recognize an increase or decrease in the value of the property resulting from a physical change to the land or to the improvements on the land, other than a change listed in subsection (b) of this section.

(2c) Recognize an increase or decrease in the value of the property resulting from a change in the legally permitted use of the property.

(3) Recognize an increase or decrease in the value of the property resulting from a factor other than one listed in subsection (b).

(b) In a year in which a general reappraisal ~~or horizontal adjustment~~ of real property in the county is not made, the assessor may not increase or decrease the appraised value of real property, as determined under G.S. 105-286, to recognize a change in value caused by:

(1) Normal, physical depreciation of improvements;

(2) Inflation, deflation, or other economic changes affecting the county in general; or

(3) Betterments to the property made by:

a. Repainting buildings or other structures;

b. Terracing or other methods of soil conservation;

c. Landscape gardening;

d. Protecting forests against fire; or

e. Impounding water on marshland for non-commercial purposes to preserve or enhance the natural habitat of wildlife.

(c) An increase or decrease in the appraised value of real property authorized by this section shall be made in accordance with the schedules, standards, and rules used in the county's most recent general ~~reappraisal or horizontal adjustment.~~reappraisal. An increase or decrease in appraised value made under this section is effective as of January 1 of the year in which it is made and is not retroactive. The reason for an increase or decrease in appraised value made under this section need not be under the control of or at the request of the owner of the affected property. This section does not modify or restrict the provisions of G.S. 105-312 concerning the appraisal of discovered property.

(d) Notwithstanding subsection (a), if a tract of land has been subdivided into lots and more than five acres of the tract remain unsold by the owner of the tract, the assessor may appraise the unsold portion as land acreage rather than as lots. A tract is considered subdivided into lots when the lots are located on streets laid out and open for travel and the lots have been sold or offered for sale as lots since the last appraisal of the property."

SECTION 1.5. G.S. 105-296(j) reads as rewritten:

"(j) The assessor must annually review at least ~~one-eighth~~ one-fourth of the parcels in the county classified for taxation at present-use value to verify that these parcels qualify for the classification. By this method, the assessor must review the eligibility of all parcels classified for taxation at present-use value in ~~an eight-year~~a four-year period. The period of the review process is based on the average of the preceding three years' data. The assessor may request assistance from the Farm Service Agency, the Cooperative Extension Service, the Division of Forest Resources of the Department of Environment and Natural Resources, or other similar organizations.

The assessor may require the owner of classified property to submit any information, including sound management plans for forestland, needed by the assessor to verify that the property continues to qualify for present-use value taxation. The owner has 60 days from the date a written request for the information is made to submit the information to

the assessor. If the assessor determines the owner failed to make the information requested available in the time required without good cause, the property loses its present-use value classification and the property's deferred taxes become due and payable as provided in G.S. 105-277.4(c). If the property loses its present-use value classification for failure to provide the requested information, the assessor must reinstate the property's present-use value classification when the owner submits the requested information within 60 days after the disqualification unless the information discloses that the property no longer qualifies for present-use value classification. When a property's present-use value classification is reinstated, it is reinstated retroactive to the date the classification was revoked and any deferred taxes that were paid as a result of the revocation must be refunded to the property owner. The owner may appeal the final decision of the assessor to the county board of equalization and review as provided in G.S. 105-277.4(b1).

In determining whether property is operating under a sound management program, the assessor must consider any weather conditions or other acts of nature that prevent the growing or harvesting of crops or the realization of income from cattle, swine, or poultry operations. The assessor must also allow the property owner to submit additional information before making this determination."

SECTION 1.6. G.S. 105-296(l) reads as rewritten:

"(l) The assessor shall annually review at least ~~one-eighth~~one-fourth of the parcels in the county exempted or excluded from taxation to verify that these parcels qualify for the exemption or exclusion. By this method, the assessor shall review the eligibility of all parcels exempted or excluded from taxation in ~~an eight-year~~a four-year period. The assessor may require the owner of exempt or excluded property to make available for inspection any information reasonably needed by the assessor to verify that the property continues to qualify for the exemption or exclusion. The owner has 60 days from the date a written request for the information is made to submit the information to the assessor. If the assessor determines that the owner failed to make the information requested available in the time required without good cause, then the property loses its exemption or exclusion. If the property loses its exemption or exclusion for failure to provide the requested information, the assessor must reinstate the property's exemption or exclusion when the owner makes the requested information available within 60 days after the disqualification unless the information discloses that the property is no longer eligible for the exemption or exclusion."

SECTION 1.7. G.S. 153A-150 reads as rewritten:

"§ 153A-150. Reserve for ~~octennial~~ general reappraisal.

Before the beginning of the fiscal year immediately following the effective date of ~~an octennial~~a general reappraisal of real property conducted as required by G.S. 105-286, the county budget officer shall present to the board of commissioners ~~an eight-year~~a budget for financing the cost of the next ~~octennial~~ general reappraisal. The budget shall estimate the cost of the reappraisal and shall propose a plan for raising the necessary funds in ~~eight~~ annual installments during the ~~next fiscal years.~~intervening years between general reappraisals, with all installments as nearly uniform as practicable. The board shall consider this budget, making any amendments to the budget

it deems advisable, and shall adopt a resolution establishing a special reserve fund for the next ~~octennial~~ general reappraisal. In the budget ordinance of the first fiscal year of the plan, the board of commissioners shall appropriate to the special reappraisal reserve fund the amount set out in the plan for the first year's installment. When the county budget for each succeeding fiscal year is in preparation, the board shall review the ~~eight-year~~ reappraisal budget with the budget officer and shall amend it, if necessary, so that it will reflect the probable cost at that time of the reappraisal and will produce the necessary funds at the end of the ~~eight-year~~ intervening period. In the budget ordinance for each succeeding fiscal year, the board shall appropriate to the special reappraisal reserve fund the amount set out in the plan as due in that year.

Moneys appropriated to the special reappraisal reserve fund shall not be available or expended for any purpose other than the reappraisal of real property required by G.S. 105-286, except that the funds may be deposited at interest or invested as permitted by G.S. 159-30. If there is a fund balance in the reserve fund following payment for the required reappraisal, it shall be retained in the fund for use in financing the next required reappraisal.

Within 10 days after the adoption of each annual budget ordinance, the county finance officer shall report to the Department of Revenue, on forms to be supplied by the Department, the terms of the county's ~~eight-year~~ reappraisal budget, the current condition of the special reappraisal reserve fund, and the amount appropriated to the reserve fund in the current fiscal year."

PART II: MOBILE HOME LIENS

SECTION 2. G.S. 105-355 reads as rewritten:

"**§ 105-355. Creation of tax lien; date as of which lien attaches.**

(a) Lien on Real Property. – Regardless of the time at which liability for a tax for a given fiscal year may arise or the exact amount thereof be determined, the lien for taxes levied on a parcel of real property shall attach to the parcel taxed on the date as of which property is to be listed under G.S. 105-285, and the lien for taxes levied on personal property shall attach to all real property of the taxpayer in the taxing unit on the same date. All penalties, interest, and costs allowed by law shall be added to the amount of the lien and shall be regarded as attaching at the same time as the lien for the principal amount of the taxes. For purposes of this subsection (a):

(1) Taxes levied on real property listed in the name of a life tenant under G.S. 105-302 (c)(8) shall be a lien on the fee as well as the life estate.

(2) Taxes levied on improvements on or separate rights in real property owned by one other than the owner of the land, whether or not listed separately from the land under G.S. 105-302 (c)(11), shall be a lien on both the improvements or rights and on the land.

(b) Lien on Mobile Home Listed as Personal Property. – The lien for taxes levied on a mobile home listed as personal property shall attach to the mobile home and to all real property of the taxpayer in the taxing unit on the date as of which property is to be listed under G.S. 105-285.

~~(b)~~(c) Lien on Personal Property. – Taxes levied on real and personal property (including penalties, interest, and costs allowed by law) shall be a lien on personal property from and after levy or attachment and garnishment of the personal property levied upon or attached."

PART III: EFFECTIVE DATES

SECTION 3. Part I of this act is effective July 1, 2011; sections 1.2-1.4 apply to taxes imposed for taxable years beginning on or after that date. Part II of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2009. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U D

BILL DRAFT 2007-RBz-33 [v.4] (03/26)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/1/2008 6:46:06 PM

Short Title: Modify Estate Tax Law. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE FORMULA FOR CALCULATING NORTH CAROLINA ESTATE TAX ON ESTATES WITH PROPERTY IN MORE THAN ONE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-32.2(b) reads as rewritten:

"(b) Amount. – The amount of the estate tax imposed by this section is the amount of the state death tax credit that, as of December 31, 2001, would have been allowed under section 2011 of the Code against the federal taxable estate. The tax may not exceed the amount of federal estate tax due under the Code. The federal taxable estate and the amount of the federal estate tax due are determined without taking into account the deduction for state death taxes allowed under Section 2058 of the Code and the credits allowed under sections 2011 through 2015 of the Code.

If any property in the estate is located in a state other than North Carolina, the amount of tax payable depends on whether the decedent was a resident of this State at death. If the decedent was a resident of this State at death, the amount of tax due under this section is reduced by ~~the lesser of the amount of the death tax paid the other state or~~ an amount computed by multiplying the credit by a fraction, the numerator of which is the gross value of the estate that has a tax situs in another state and the denominator of which is the value of the decedent's gross estate. If the decedent was not a resident of this State at death, the amount of tax due under this section is an amount computed by multiplying the credit by a fraction, the numerator of which is the gross value of real property that is located in North Carolina plus the gross value of any personal property that has a tax situs in North Carolina and the denominator of which is the value of the decedent's gross estate. For purposes of this section, the gross value of property is its gross value as finally determined in the federal estate tax proceedings."

SECTION 2. This act is effective when it becomes law and applies retroactively to the estates of decedents for which the statute of limitations for claiming a refund had not expired as of December 28, 2007. A personal representative of an estate for which the statute of limitations had not expired as of December 28, 2007, may file a claim for refund under G.S. 105-241.6.

BILL DRAFT 2007-RBz-33: Modify Estate Tax Law

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	April 2, 2008
Introduced by:		**Summary by:**	Cindy Avrette
Version:	Bill Draft		Committee Staff

SUMMARY: This bill draft would modify the formula for calculating North Carolina estate tax on estates that include property located in another state by excluding the value of that property from the estate tax payable to North Carolina. The bill would become effective when it becomes law and apply retroactively to the estates of decedents for which the statute of limitations for claiming a refund had not expired as of December 28, 2007.

CURRENT LAW: For estates with property only in North Carolina, the North Carolina estate tax equals the amount of the credit for state estate tax allowed on the federal estate tax return, as the federal law provided in 2001. If an estate has property in more than one state, the federal credit amount must be prorated between North Carolina and the other states in which the estate has property. In 2002, the Estate Tax Section of the North Carolina Bar Association recommended a change in the calculation formula from a net value ratio to a gross value ratio. The recommended change also provided that when the estate of a North Carolina decedent included out-of-state property, the North Carolina estate tax would be calculated as the amount of the 2001 tax credit reduced by *the lesser of* the amount of estate tax paid to the other state or the amount of the 2001 tax credit times the value of the out-of-state property divided by the value of the gross estate.[1]

In 2001, Congress phased out the state estate tax credit over four years by reducing it 25% in 2002, 50% in 2003, 75% in 2004,and by repealing it entirely in 2005.[2] In calculating the estate tax payable in North Carolina for an estate that includes property located in a state that does not impose an estate tax, the current formula provides that the North Carolina estate tax would be reduced by zero, because that is the lesser of the amount paid to the state that does not impose an estate tax. This calculation results in North Carolina's estate tax being imposed on property that is not located within its taxing jurisdiction.[3]

BILL ANALYSIS: This bill draft would modify the formula for calculating North Carolina estate tax on estates that include property located in another state by prorating the federal credit amount between North Carolina and the other states in which the estate has property; it would eliminate the '*lesser of*' language that sometimes results in North Carolina's estate tax being imposed on property located in another state.

A case has been filed in Mecklenburg County, ***Stowe v. Department of Revenue***, to recover North Carolina estate taxes imposed on property located in South Carolina. The plaintiffs argue in their

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[1] This provision mirrored the Virginia law as it existed prior to July 1, 2007.

[2] The provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 made a number of changes to the estate tax rates and to the applicable exclusion amounts. The top marginal tax rates were gradually reduced and the exclusion amounts were gradually increased, with a full repeal of the estate tax for 2010. For 2007 through 2009, the top marginal tax rate is 45%; for 2007 and 2008, the applicable exclusion amount is $2,000,000; for 2009, the applicable exclusion amount is $3,500,000. The provisions for these changes are currently set to expire for estates of decedents dying on or after December 31, 2010. Therefore, in 2011, the exclusion amount goes back to $1,000,000, the top marginal rate returns to 55%, and the state estate tax credit is reinstated.

[3] Virginia repealed its estate tax in 2006. South Carolina, Georgia, and Tennessee do not require the payment of an estate tax for estates on which the federal estate tax law doe not allow a credit for state estate tax (2005-through 2010).

complaint that the formula for calculating North Carolina estate tax due when property is located in more than one state is unconstitutional because it provides less than a full reduction of the tax attributable to the out-of-state property when the other state does not impose an estate tax, or imposes an estate tax less than the prorated federal credit amount. The plaintiffs filed the complaint on December 27, 2007.

The bill draft provides that the change proposed in the bill would become effective when it becomes law and would apply retroactively to the estates of decedents for which the statute of limitations for claiming a refund had not expired on December 27, 2007. A personal representative of an estate for which the statute of limitations had not expired may file a claim for refund under G.S. 105-241.6.

G.S. 105-241.6 provides that the general statute of limitations for obtaining a refund of an overpayment of tax is the later of the following:

- Three years after the due date of the return. – A North Carolina estate tax return is due on the date a federal estate tax return is due. A federal estate tax return is due nine months from the date of death. An extension of time to file a federal estate tax return is an automatic extension of the time to file a State tax return.
- Two years after payment of the tax.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U D

BILL DRAFT 2007-RBz-32 [v.4] (03/25)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
3/27/2008 8:59:52 AM

Short Title: Exempt Disaster Assistance Debit Sales. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A SALES TAX EXEMPTION FOR TANGIBLE PERSONAL PROPERTY PURCHASED WITH A CLIENT ASSISTANCE DEBIT CARD ISSUED FOR DISASTER ASSISTANCE RELIEF BY A STATE AGENCY OR A FEDERAL AGENCY OR INSTRUMENTALITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(58) Tangible personal property purchased with a client assistance debit card issued for disaster assistance relief by a State agency or a federal agency or instrumentality."

SECTION 2. This act becomes effective July 1, 2008, and applies to purchases made on or after that date.

BILL DRAFT 2007-RBz-32: Exempt Disaster Assistance Debit Sales

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	April 2, 2008
Introduced by:		**Summary by:**	Cindy Avrette
Version:	Bill Draft		Committee Staff

SUMMARY: This bill draft would exempt from sales tax tangible personal property purchased with a client assistance debit card issued for disaster assistance relief by a State agency or a federal agency or instrumentality. The American Red Cross is an instrumentality of a federal agency. The bill would become effective July 1, 2008, and apply to purchases made on or after that date.

CURRENT LAW: The State may not impose its sales tax on purchases made by the federal government or an instrumentality of the federal government. G.S. 105-164.13(17) specifically exempts 'sales which a state would be without power to tax under the limitations of the Constitution or laws of the United States or under the Constitution of this State.' The American Red Cross (ARC) is an instrumentality of a federal agency. Therefore, sales made pursuant to a disbursing order issued by the ARC are considered a sale to the ARC that is exempt from taxation.

In the past, the ARC provided disaster assistance relief by giving disaster victims a disbursing order to purchase items that the victim needed. Over the last few years, the ARC has begun giving disaster victims debit cards to use to purchase these same items. The ARC began using debit cards because it believes they are more efficient, effective, and less bureaucratic for the victim and less administrative effort and expense for the organization. However, for purposes of the sales tax exemption, there is a significant difference between a debit card and a disbursing order: the purchaser, for purposes of the sales tax exemption, is the disaster victim when a debit card is used and it is the ARC when the disbursing order is used. Therefore, purchases made with a disaster assistance debit card are subject to sales tax.

BILL ANALYSIS: This bill draft would exempt from sales tax tangible personal property purchased with a client assistant debit card issued for disaster assistance relief by a State agency or a federal agency or instrumentality. The ARC is an instrumentality of a federal agency. Another example of a federal agency or instrumentality that may utilize this exemption would be FEMA.

This bill draft would extend the sales tax exemption that exists for purchases made through a disbursing order issued by a State or federal agency or instrumentality to purchases made with a client assistance debit card issued by it. It is my understanding that in 2007, the total disaster victim assistance purchases were $3 million across all North Carolina chapters of the ARC.

BACKGROUND: The ARC client assistance card clearly identifies itself as one issued by the ARC. The ARC has the ability to see from its reports of the card's use the amount purchased and the store from which the goods were purchased. Unlike the old disbursing order system, the ARC does not have a cash register receipt describing the specific items purchased. The client assistance card authorization form is a contract between the ARC and the disaster victim. The contract stipulates the types of items the card may be used to purchase. In the event of inappropriate purchases, the card can be suspended.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U D

BILL DRAFT 2007-SVz-20A [v.2] (04/17)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/24/2008 10:59:29 AM

Short Title: Extend Expiring Tax Credits. (Public)

Sponsors: Unknown.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO EXTEND FOR FIVE YEARS THE CREDIT FOR RESEARCH AND DEVELOPMENT, THE STATE PORTS TAX CREDIT, AND THE CREDIT FOR SMALL BUSINESS EMPLOYEE HEALTH BENEFITS.

The General Assembly of North Carolina enacts:

CREDIT FOR RESEARCH AND DEVELOPMENT

SECTION 1. G.S. 105-129.51(b) reads as rewritten:

"(b) This Article is repealed for taxable years beginning on or after January 1, ~~2009.~~2013."

CREDIT FOR NC STATE PORTS AUTHORITY

SECTION 2. G.S. 105-130.41(d) reads as rewritten:

"(d) Sunset. – This section is repealed effective for taxable years beginning on or after January 1, ~~2009.~~2013."

SECTION 3. 105-151.22 reads as rewritten:

"(d) Sunset. – This section is repealed effective for taxable years beginning on or after January 1, ~~2009.~~2013."

CREDIT FOR SMALL BUSINESS EMPLOYEE HEALTH BENEFITS

SECTION 4. G.S. 105-129.16E(d) reads as rewritten:

"(d) Sunset. – This section expires for taxable years beginning on or after January 1, ~~2009.~~2013."

EFFECTIVE DATE

SECTION 5. This act is effective when it becomes law.

DRAFT 2007-SVz-20A: Extend Expiring Tax Credits

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	April 30, 2008
Introduced by:		**Summary by:**	Trina Griffin
Version:			Committee Counsel

SUMMARY: This proposal extends for five years the following three tax credits that are due to expire in 2009:

- ***Credit for research and development***
- ***Credit for North Carolina State Ports Authority***
- ***Credit for small business employee health benefits***

CURRENT LAW:

Credit for Research and Development

In 2004, the General Assembly enacted a new research and development tax credit as an alternative to the Bill Lee research and development credit, which was set to expire along with the entire Bill Lee Act as of January 1, 2006.

Eligibility. – Effective for expenses on or after May 1, 2005, a taxpayer that has qualified North Carolina research expenses or North Carolina University research expenses is allowed a credit. The taxpayer must satisfy Bill Lee Act requirements related to employee wages, the provision of health insurance, the taxpayer's Occupational Safety and Health Act record, and the taxpayer's environmental record. The taxpayer is not required to have no overdue tax debts.

Credit Amount. – For North Carolina university research expenses, the credit amount is equal to 20% of the amount the taxpayer paid to the university for the research and development. For all other qualified research expenses, the credit is equal to a percentage of the expenses as follows:

- For small businesses[1], the rate is 3.25%.
- For research and development conducted in a development tier one area, the rate is 3.25%.
- For other research and development expenditures, the rate ranges from 1.25% to 3.25% as the amount of those expenditures increases.

Sunset. – The credit is currently scheduled to expire for taxable years beginning on or after January 1, 2009.

State Ports Tax Credit

In 1992, the General Assembly enacted the State Ports tax credit to encourage exporters to use the two State-owned port terminals in Wilmington and Morehead City. At that time, the credit applied to amounts paid by a taxpayer on any cargo exported at either port. Also, when first enacted, this credit was effective for taxable years beginning on or after March 1, 1992, and expired on February 28, 1996. Over the years, the credit has been expanded and the sunset has been extended.

Eligibility. – Currently, the State Ports tax credit is allowed to a taxpayer who loads or unloads waterborne cargo from an ocean carrier at the State-owned port terminal at Wilmington or Morehead

[1] A small business is a business whose annual receipts, combined with the annual receipts of all related persons, does not exceed $1,000,000.

City. The credit is allowed against the taxpayer's income tax. The taxpayer may be either an individual or a corporation.

Credit Amount. – The amount of the tax credit is equal to the amount of wharfage, handling, and throughput charges paid to the North Carolina State Ports Authority in the taxable year that exceeds the average amount of charges paid to the Authority for the current tax year and the two previous tax years. The credit is limited to 50% of the tax imposed on the taxpayer for the taxable year. Any excess credit may be carried forward and applied to the taxpayer's income tax liability for the next five years. The maximum cumulative credit that one taxpayer may claim is $2 million.

Definitions. – Although not defined by the relevant statutes, the various types of cargo differ as follows:

- Bulk cargo is a type of commodity that is loose and usually stockpiled. Examples of this type of commodity include coal, grain, salt, and wood chips.
- Break-bulk cargo consists of commodities that are packaged and stored on pallets or in cases that must be handled and stacked onto a ship by hand, crane, etc. Break-bulk cargo also includes machinery.
- Container cargo consists of commodities that are packaged in a metal trailer box that can be locked onto a tractor-trailer chassis and then detached and put on a ship without any other handling.

Sunset. – The credit is currently scheduled to expire for taxable years beginning on or after January 1, 2009.

Credit for Small Business Employee Health Benefits

Eligibility. – Effective for taxable years beginning on or after January 1, 2007, a small business that provides health benefits to all of its full-time employees is eligible for a tax credit. Under the Internal Revenue Code, an employer may deduct premiums paid for health insurance cost of its employees as a business expense. The credit is in addition to any expense deduction the taxpayer claimed on its income tax return for the health insurance costs.

Credit Amount. – The credit amount is equal to $250 per employee for whom the taxpayer pays the health insurance premium, not to exceed the taxpayer's cost of providing the health insurance benefit. The taxpayer may use the credit against either its income tax or its franchise tax liability. The credit may not exceed 50% of the taxpayer's tax liability. Any unused portions of the credit may be carried forward for five years. The credit is effective for taxable years beginning on or after January 1, 2007.

Definitions. –

- A small business is a taxpayer that employs no more than 25 full-time employees.
- An eligible employee is one that works a normal workweek of 30 or more hours and whose total wages or salary received from the business does not exceed $40,000 on annual basis.
- Providing health benefits means one or more of the following:
  - The taxpayer pays at least 50% of the premiums for health insurance coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee.
  - The employee has existing coverage under one or more of the following: Medicare; Medicaid; a government funded program; a health insurance or benefit arrangement that provides benefits similar to or in excess of benefits provided under the basic health care plan.

Sunset. – The credit is currently scheduled to expire for taxable years beginning on or after January 1, 2009.

BILL ANALYSIS: This proposal would extend for five years, until the year 2013, the sunsets on each of the above-named tax credits.

EFFECTIVE DATE: This act would be effective when it becomes law.

BACKGROUND: Tax credits are considered a mechanism for encouraging and rewarding behavior that is beneficial to the State. Like appropriations, tax credits are expenditures of public funds for the benefit of certain businesses, interest groups, and other taxpayers. However, unlike appropriations, without some limitation, they can continue in perpetuity costing the State millions of dollars without review by the General Assembly. It was for this reason that in 1998, the Revenue Laws Study Committee recommended that sunsets be placed on virtually all of the tax credits as a means to review and reevaluate those credits. The thought was that periodic review would allow the General Assembly to consider each credit on its merits to determine whether it continues to serve a public purpose that justifies its cost.

2007-SVz-20A-SMSV

REVENUE LAWS STUDY COMMITTEE
Wednesday, May 7, 2008
Room 544, Legislative Office Building
10:00 a.m.

MINUTES

The Revenue Laws Study Committee met at 10:00 a.m. on Wednesday, May 7, 2008, in room 544 of the Legislative Office Building. Eleven members of the committee were present. Representative Luebke presided as chair.

Approval of Minutes from the April 30 Meeting

Representative Brubaker moved that the minutes be approved and the motion carried.

Credit for Reinvestment by a Recycling Facility

The proposal would place a sunset on the credit for investing in a large or major recycling facility and would extend by five years the sunset on the credit for reinvestment in a recycling facility. Stewart Dickinson, NC Department of Commerce, was recognized and spoke in favor of extending the sunset on the credit for reinvestment. Johnny Jacobs, Nucor, was recognized to answer questions. Senator Hoyle moved for the proposal, which establishes a sunset on the investment credit and extends the current sunset on the reinvestment credit, to be included in the Committee's recommendation to the Session. Trina Griffin, a staff attorney with the Research Division, was recognized to briefly explain the proposal. The committee then carried Senator Hoyle's motion.

Reports by Publicly Traded Partnerships

Cindy Avrette, a staff attorney with the Research Division, was recognized to explain the proposal which would require publicly traded partnerships to file an informational return with the Secretary of Revenue that lists the partners who received more than $500 of income from the partnership during the taxable year. Senator Kerr moved to include the proposal in the Committee's recommendations to the Session and the motion carried.

Tax on Short-Term Heavy Equipment Rentals

Martha Walston, a staff attorney with the Fiscal Research Division, was recognized to explain the proposal which repeals the property tax on heavy equipment owned and offered for short-term lease by a person whose principal business is the short-term rental of heavy equipment at retail and enacts in its place local option county and city gross receipts taxes. Representative Gibson recused himself from voting on this issue. Senator Hoyle moved to include the proposal in the Committee's recommendations to the Session and the motion carried.

PEG Channels and Video Programming Changes

Cindy Avrette was recognized to summarize the changes to the PEG channels and video programming laws. Representative Wainwright, Representative Brubaker and Senator Hoyle voiced opposition stating that the first and third proposals were long session issues. Representative Wainwright moved to not include the "Modify PEG Channel Grant Program" proposal in the Committee's recommendation and the motion carried. Representative Wainwright moved to not include the "PEG Channels and Video Programming Changes" proposal in the recommendations and the motion carried. Then, Representative Wainwright moved to include the "Supplemental PEG Support" proposal and the motion carried.

All of the proposals are included in a single document which is attached.

Legislative Proposals Tentatively Approved for Inclusion in Final Report

- Procedure for Tax Class Actions
- IRC Update
- Close Franchise Tax Loopholes
- Extend Expiring Tax Credits
- Modify Estate Tax Law

- Deferred Property Tax Program & Benefit Changes
- PUV Ownership, Quadrennial Revaluations, and Mobile Home Liens
- Sales Tax Exemption for Disaster Assistance
- Technical, Administrative, and Clarifying Changes

Senator Hoyle moved to include all of the previously tentatively approved legislative proposals and all approved items that had been decided upon at the meeting for inclusion in the Committee's final report. The motion carried. All of the proposals are included in the Revenue Laws Committee draft report which is attached.

Representative Luebke took a point of personal privilege to voice his appreciation of Senator Kerr and said what an honor it was to have worked with Senator Kerr.

The meeting adjourned at 11:32 a.m.

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 — May 7, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Elizabeth Dalton	NCRMA
Pat Goddard	Johnston Co Tax Administrator
Pete Roddy	Forsyth County Tax Assessor/Collector
D McLaughlin	Time Warner Cable
Bill Phillips	TWC
Jimmy Robertson	TWC
[illegible]	Charter Comm.
Shannon Smith	NCBA - Speaker Pro. Tem's office
Karen Johnson	Electricities
Donald Lanham	Electricities

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — May 7, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
LORI ANN HARRIS	LAHA
Wm Helms	Smith Anderson
[illegible]	NC Farm Bureau
ANTHONY SUTON	[illegible]
Bill Willson	DOR
David Baker	DOR
William Zeuck MK	DOR
Michael Brown	DOR
Guy Ralph	DOR
Stan Pate	V2
Dana Sapson	SA

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — May 7, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Fred Bone	Bone & Asso.
Billard Everette	Everette & Asso.
Mark Brason	AT&T
BILL RUSSI	DOR
Bill Harris	Commerce
Ed [illegible]	United Rentals
Will Culpepper	Moore + Van Allen
Katherine Coley	Moore + van allen
Johnny Jacobs	NUCOR
Debra Derr	AT+T
Robert Wells	N.C. Telephone Alliance

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — May 7, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Kim Crouch	NC Bar
Doug Heron	Williams Mullen
Bill Weathersfoor	NC Petroleum Council
Gary Harris	NC Petroleum & Convenience Mktrs.
Ken Melton	Ken Melton & Associates
John Goodman	NC Chamber
Russ Dubishy	IFNC
Karl Knapp	NCLM
Jeff Mixon	Civitas
George Hincapie	High Road
Butch Gunnells	NC Beverage Ass'n

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — May 7, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
T. Jerry Wilson	Multi Chem
[illegible]	[illegible]
Michael Honser	NCDOR
Josh McKeyl	Gov Office
Tenisha Jacobs	NCDOT
Janice W. Davidson	NC DOR
Donna Alderman	NC DOR
Sharon Miller	CUCA
Lindsay Sander	National Association of Publicly Traded Partnerships
Jonathan TART	NC DOR
Cam Brawley	EY

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — May 7, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Pam Molton	EMBARQ
Steve Brewer	EMBARQ
Marty Bocock	EMBARQ
Dwight Allen	Allen Law Offices, PLLC
Jim Ahlzer	NCACPA

VISITOR REGISTRATION SHEET

Revenue Laws Study Committee — May 7, 2008

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Carol Covington	B P M H L
Angie Bailey	e-NC Authority
Marcus Fraiser	Brody Pierce
Mark J. Prak	Brooks Pierce
Jack Stanley	Time Warner Cable
Elaine Mejia	NC Budget + Tax Center
Chad Johnston	The Peoples Channel / ACM
Robert Sage	Action Audits, LLC
Doris Rogers	City of Charlotte / NATOA
Catharine Rice	Action Audits
Michael Williams	City of Raleigh SEATOA
Patrick Baffkin	NMRS

REVENUE LAWS STUDY COMMITTEE AGENDA

Sen. John Kerr Rep. Paul Luebke

Wednesday, May 7, 2008
Room 1027, Legislative Building
10:00 a.m.

I. **Approval of the Minutes from the April 30, 2008 Meeting**

II. **Credit for Reinvestment by a Recycling Facility**

- Comments from Department of Commerce

III. **Items to be Decided**

- **Reports by Publicly Traded Partnerships**
  Cindy Avrette, Research Division
- **Sunsets for Recycling Facility Credits**
  Trina Griffin, Research Division
- **Tax on Short-Term Heavy Equipment Rentals**
  Martha Walston, Fiscal Research Division
- **PEG Channels and Video Programming Changes**
  Cindy Avrette, Research Division

VI. **Legislative Proposals Tentatively Approved for Inclusion in Final Report**

- **Procedure for Tax Class Actions**
  Trina Griffin, Research Division
- **IRC Update**
  Trina Griffin, Research Division
- **Close Franchise Tax Loopholes**
  Cindy Avrette, Research Division
- **Extend Expiring Tax Credits**
  Trina Griffin, Research Division
- **Modify Estate Tax Law**
  Cindy Avrette, Research Division
- **Deferred Property Tax Program & Benefit Changes**
  Dan Ettefagh, Bill Drafting Division
  Martha Walston, Fiscal Research Division

- **PUV Ownership, Quadrennial Revaluations, and Mobile Home Liens**
  Dan Ettefagh, Bill Drafting Division
  Martha Walston, Fiscal Research Division
- **Sales Tax Exemption for Disaster Assistance**
  Cindy Avrette, Research Division
- **Technical, Administrative, and Clarifying Changes**
  Trina Griffin, Research Division

IV. Approval of Final Report

V. Adjournment

REVENUE LAWS STUDY COMMITTEE
Wednesday, April 30, 2008
Room 544, Legislative Office Building
9:30 a.m.

MINUTES

The Revenue Laws Study Committee met at 9:30 a.m. on Wednesday, April 30, 2008, in room 544 of the Legislative Office Building. Thirteen members of the committee were present. Senator Kerr presided as chair.

Approval of Minute from the April 2 Meeting

Brubaker

Representative Wainwright moved that the minutes be approved and the motion carried.

Extension of Sunset for Credit for Reinvestment and Establishment of Sunset for Credit for Investing in Major Recycling Facility

Trina Griffin, a staff attorney with the Research Division, was recognized to explain the credits related to recycling facilities. Johnny Jacobs, Controller for Nucor Steel Corporation, was recognized to speak in favor of the credits and answer questions. Copies of Ms. Griffin's and Mr. Jacob's handouts are attached.

Franchise Tax Loophole Closings

Cindy Avrette, a staff attorney with the Research Division, was recognized to explain a legislative proposal that would conform current laws to decisions made in 2006-2007. They involved 1) LLCs that elect to be taxes as S corporations and 2) captive REITs. A copy of the proposal and its summary is attached.

Publicly Traded Partnerships

Cindy Avrette was recognized to explain the legislative proposal on publicly traded partnerships income reports. Lindsey Sander, representing the National Association of Publicly Traded Partnerships, was recognized to speak in favor of the proposal. Jonathan Tart, Department of Revenue, was recognized to answer any questions. A copy of proposal and the summary is attached.

Tax on Heavy Equipment Short-Term Rental Agreements

Martha Walston, a staff attorney with the Fiscal Research Division, was recognized to explain the proposal. The proposal would resolve problems with applying property tax to heavy equipment rented on a short-term basis by allowing taxpayers who are engaged in the short-term heavy equipment rental business to pay a local tax based on the gross receipts of the business in lieu of paying property taxes on the heavy equipment. Pete Rodda, Forsyth County Tax Assessor, was recognized to answer questions and request data to learn the impact of the proposal. Ed Newman, a United Rentals representative, was recognized to speak in favor of the proposal. A copy of the proposal and its summary is attached.

Class Actions

Trina Griffin was recognized to explain the establishment of a procedure for taxpayers to join a class action seeking a refund of an unconstitutional tax. A copy of the proposal and its summary is attached.

Motor Fuel Tax Changes

Cindy Avrette was recognized to explain a proposal that would make changes to the motor fuel tax laws. Donna Alderman, Department of Revenue's Motor Fuels Tax Division representative, was recognized to answer questions. A copy of the proposal and its summary is attached.

Simplify Ownership of PUV Property

Martha Walston was recognized to explain the legislative proposal. The proposal would modify the ownership requirements of present-use value property to reflect common forms of land ownership. A copy of the proposal and its summary is attached.

Due to Representative Luebke's illness and a prior commitment, Senator Kerr gave the chair's gavel to Senator Hoyle who presided over the rest of the meeting.

911 Technical Corrections

Heather Fennell, a staff attorney with the Research Division, was recognized to explain the proposal which would make technical corrections to the Emergency Telephone Service Act. A copy of the proposal and its summary is attached.

Video Programming

Cindy Avrette was recognized to present three legislation proposals.

The first, "Supplemental Peg Support," would clarify the distribution of supplemental Peg support funding as requested by the league of Municipalities and the Southeast Association of Telecommunications Officers and Advisors. Karl Knapp, NC League of Municipalities' Research & Policy manager, was recognized to speak in favor of the proposal. Mark Prak, a lobbyist for the NC Cable Telecommunications Association, was recognized to speak in opposition to the proposal. A copy of the proposal and its summary is attached.

The second proposal, "Modify PEG Channel Grant Program," would modify the PEG channel grant program as requested by the e-NC Authority. Mark Prak was recognized to speak in opposition to the proposal. A copy of the proposal and its summary is attached.

The third proposal, "PEG Channels and Video Programming Changes," would modify the laws relating to state franchise for cable service providers, the PEG channel grant fund and local government allocations for PEG channels from the distributions it receives from the sales tax on video programming. This was requested by the Southeastern Association of Telecommunications (SEATOA) officers and advisors. Mark Prak spoke in opposition to the proposal. Catherine Rice, SEATOA, and Angie

Bailey, e-NC Authority representative was recognized to speak in favor of the proposal. A copy of the proposal and its summary is attached.

IRC Update

Trina Griffin was recognized to explain the legislative proposal which would update the reference to the Internal Revenue Code used in defining and determining certain State tax provisions. A copy of the proposal, its summary and the fiscal memo is attached.

Work Opportunity Tax Credit

Heather Fennell was recognized to explain the legislative proposal which would limit the Work Opportunity Tax Credit to 6% of the federal credit for wages paid in the same taxable year for positions located in North Carolina. A copy of the proposal and its summary is attached.

Revenue Laws Technical Changes – Part II

Trina Griffin was recognized to explain the proposal which would make technical, clarifying and administrative changes to current tax laws. A copy of the proposal and its summary is attached.

The meeting adjourned at 11:50 a.m.

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

Representative Paul Luebke, Co-Chair
Revenue Laws Study Committee

DeAnne Mangum, Committee Clerk

Items to be Decided

- Reports by Publicly Traded Partnerships
- Sunset Recycling Facility Credits
- PEG Channels and Video Programming Changes
- Tax on Short-Term Heavy Equipment Rentals

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U D

BILL DRAFT 2007-RBz-39B [v.5] (04/28)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/7/2008 8:19:43 AM

Short Title: Reports by Publicly Traded Partnerships. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE PUBLICLY TRADED PARTNERSHIPS TO GIVE THE DEPARTMENT OF REVENUE A LIST OF THE PARTNERS WHO RECEIVED MORE THAN FIVE HUNDRED DOLLARS OF INCOME FROM THE PARTNERSHIP.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-154 reads as rewritten:

"**§ 105-154. Information at the source returns.**

(a) Repealed by Session Laws 1993, c. 354, s. 14.

(b) Information Returns of Payers. – A person who is a resident of this State, has a place of business in this State, or has an employee, an agent, or another representative in any capacity in this State shall file an information return as required by the Secretary if the person directly or indirectly pays or controls the payment of any income to any taxpayer. The return shall contain all information required by the Secretary. The filing of any return in compliance with this section by a foreign corporation is not evidence that the corporation is doing business in this State.

(c) Information Returns of Partnerships. – A partnership doing business in this State and required to file a return under the Code shall file an information return with the Secretary. A partnership that the Secretary believes to be doing business in this State and to be required to file a return under the Code shall file an information return when requested to do so by the Secretary. The information return shall contain all information required by the Secretary. It shall state specifically the items of the partnership's gross income, the deductions allowed under the Code, and the adjustments required by this Part. The information return shall also include the name and address of each person who would be entitled to share in the partnership's net income, if distributable, and the amount each person's distributive share would be. The information return shall specify the part of each person's distributive share of the net income that represents corporation

dividends. The information return shall be signed by one of the partners under affirmation in the form required by the Secretary.

A partnership that files an information return under this subsection shall furnish to each person who would be entitled to share in the partnership's net income, if distributable, any information necessary for that person to properly file a State income tax return. The information shall be in the form prescribed by the Secretary and must be furnished on or before the due date of the information return.

(d) Payment of Tax on Behalf of Nonresident Owner or Partner. – If a business conducted in this State is owned by a nonresident individual or by a partnership having one or more nonresident members, the manager of the business shall report the earnings of the business in this State, the distributive share of the income of each nonresident owner or partner, and any other information required by the Secretary. The manager of the business shall pay with the return the tax on each nonresident owner or partner's share of the income computed at the rate levied on individuals under G.S. 105-134.2(a)(3). The business may deduct the payment for each nonresident owner or partner from the owner or partner's distributive share of the profits of the business in this State. If the nonresident partner is not an individual and the partner has executed an affirmation that the partner will pay the tax with its corporate, partnership, trust, or estate income tax return, the manager of the business is not required to pay the tax on the partner's share. In this case, the manager shall include a copy of the affirmation with the report required by this subsection.

(e) Publicly Traded Partnership. – The information return and payment requirements under this section are modified as follows for a partnership that qualifies as a publicly traded partnership under section 7704(c) of the Code:

(1) The information return required under subsection (c) of this section is limited to partners whose distributive share of the partnership's net income during the tax year was more than five hundred dollars ($500).

(2) The payment requirements under subsection (d) of this section do not apply."

SECTION 2. This act is effective for taxable years beginning on or after January 1, 2008.

BILL DRAFT 2007-RBz-39B: Reports by Publicly Traded Partnerships

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	May 7, 2008
Introduced by:		**Summary by:**	Cindy Avrette
Version:	Bill Draft		Committee Staff

SUMMARY: ***This bill draft would require publicly traded partnerships (PTPs) to file an informational return with the Secretary of Revenue that lists the partners who received more than $500 of income from the partnership during the taxable year. This return would be in lieu of the current requirement for partnerships to report the distributive share of the income of each member and to pay the tax on any nonresident member's share of income. The bill would become effective for taxable years beginning on or after January 1, 2008.***

CURRENT LAW: A partnership doing business in this State must file an information return with the Department of Revenue that gives the name and address of each person who would be entitled to share in the partnership's net income, if distributable, and the amount each person's distributive share would be. A partnership that files a report must also furnish to each partner the information needed by that partner to file a North Carolina income tax return. For nonresident members of a partnership, the partnership must pay income tax for that partner based on the partner's distributive share.

BILL ANALYSIS: Legislative Proposal X, *Reports by Publicly Traded Partnerships,* changes the reporting and payment requirements that apply to PTPs that qualify as a PTP under section 7704(c) of the Internal Revenue Code. It requires a PTP to report annually to the Department of Revenue the partners in the PTP who received more than $500 of income rather than report the income received by every partner. It also exempts PTPs from the requirement to pay tax on the partnership income received by a nonresident. In making these changes, the proposal seeks to strike a balance between the costs and burden of compliance with the reporting requirements for both the PTPs and the Department of Revenue and the benefits gained by compliance.

A PTP is a limited partnership the interests in which are traded on stock exchanges such as the New York, American, and NASDAQ exchanges. Unlike a traditional partnership, a PTP has tens of thousands, and sometimes hundreds of thousands, of unitholders.[1] A PTP's unitholders can change daily in trades on public exchanges. A PTP determines who its unitholders are once a year so the PTP can send K-1s to the unitholders.

PTPs operate in several states. The amount paid by any unitholder once a PTP's taxable income has been divided up among all unitholders and apportioned among all the states in which the PTP does business will rarely be a large amount, and in many cases will be under the state threshold for paying tax. In looking at the PTPs in North Carolina, only a small number of their unitholders has income above $500 from the partnership during the taxable year.[2] The information reportable to the Department under this proposal would allow it to cross-check a handful of entities and individuals to ensure they are paying tax owed to North Carolina.

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[1] Many of the units are held in 'street names' by brokerage houses.

[2] A survey of seven PTPs in N.C., conducted by the National Association of Publicly Traded Partnerships, showed that the PTPs had more than 200,000 unitholders. Of those 200,000 unitholders, only seven of them had income levels of more than $500 and only four of them had income levels above $1,000. Of the unitholders with income above $500, six of them were corporations.

PTPs pay their unitholders quarterly cash distributions.[3] Although the distributions resemble corporate dividends, PTP distributions are treated differently for tax purposes. The distributions are treated as a return of capital rather than taxable investment income and reduce the partner's basis in its partnership units.[4] When the units are sold, the difference between the sales price and the adjusted basis equals taxable gain or loss. The partner is not taxed on the distributions until (1) it sells the PTP units and pays tax on the gain or (2) its basis reaches zero.[5]

Every unit in a class of securities must be identical to, and interchangeable with, every other unit so that it makes no difference to a purchaser which particular units are bought. If a PTP pays state tax for a nonresident unitholder and deducts the payment from the unitholder's share, the nonresident's units will have different attributes than those held by state residents, and that would cause the PTP to be in noncompliance with federal security laws and to forfeit its exchange listings.

The Multi-State Tax Commission has adopted a model statute that exempts PTPs from reporting and payment requirements for nonresident members of pass-through entities. Twenty-six states have excluded PTPs from tax payment requirements for nonresident partners through either specific legislation or administrative action. Eight states exempt PTPs from reporting distributions to its partners except for distributions of income that exceed $1,000 during the taxable year.

BACKGROUND: PTPs initially came into existence during the 1980s as a means for companies to raise large amounts of capital that are used to build or buy capital-intensive assets, like pipelines. The limited partnership has one or more general partners that mange the partnership and limited partners that provide capital to the partnership.

Under the Internal Revenue Code, a PTP may be treated like a partnership for income tax purposes rather than a corporation if it meets the 'qualified income test' under section 7704(c) of the Code: a PTP must generate 90% of its income from qualified sources. Qualified sources include real estate activities, mineral or natural resources activities like exploration, production, mining, refining, marketing, and transportation of oil, gas, minerals, geothermal energy, and timber. Most PTPs that meet the section 7704(c) income restrictions are in energy or real estate related businesses. There are approximately 90 PTPs that meet this requirement in the country, and 10 in North Carolina.[6]

Since the Code treats a section 7704(c) PTP like a partnership, the PTP itself does not pay tax. Rather, its income and other tax items are 'passed through' to the individual partners. A PTP investor receives a K-1 form at the end of each year showing its share of each item of partnership income, gain, loss, deductions, and credits. The investor uses that information to determine its taxable partnership income.[7]

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[3] The cash distributions are unrelated to the partner's share of taxable income, which is received only on paper. Partners are liable for tax on their share of partnership income whether or not they receive a cash distribution.

[4] The investor's original basis is the price paid for the units. The basis is reduced by each distribution that is treated as a return of capital and is increased or decreased, as appropriate, with each allocation of the PTP's net income or loss.

[5] It usually takes years for a partner's basis to be reduced to zero because the basis is constantly adjusting up and down, as described in the preceding footnote.

[6] The ten PTPs in N.C. are involved in pipelines (1), terminal facilities (2), propane gas (5), and real estate (2). N.C. PTPs include Magellan Midstream Partners, Spectra Energy Partners, AmeriGas, and Ferrell Gas.

[7] If the result is net income, the partner pays tax on it at its individual rate. If the result is a net loss, it is considered a 'passive loss' and may not be used to offset income from other sources; it must be carried forward and used to offset future income from the same PTP.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-SVz-20 [v.6] (04/17)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/5/2008 11:25:57 PM

Short Title:	Sunset Recycling Facility Credits.	(Public)
Sponsors:	Unknown.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO PLACE A SUNSET ON THE CREDIT FOR INVESTING IN A LARGE OR MAJOR RECYCLING FACILITY AND TO EXTEND THE CREDIT FOR REINVESTMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-129.27 is amended by adding a new subsection to read:

"(g) Sunset. – This section is repealed effective for taxable years beginning on or after January 1, 2012."

SECTION 2. Section 19 of S.L. 1998-55 is repealed.

SECTION 3. G.S. 105-129.28 reads as rewritten:

"**§ 105-129.28. Credit for reinvestment.**

(a) Credit. – A major recycling facility that is accessible by neither ocean barge nor ship and that transports materials to the facility or products away from the facility is allowed a credit against the tax imposed by Part 1 of Article 4 of this Chapter equal to its additional transportation and transloading expenses incurred with respect to the materials and products due to its inability to use ocean barges or ships. The additional expenses for which credit is allowed are expenses due to using river barges and expenses due to having to use another mode of transportation because the quantity that is transported by river barge is insufficient to meet the facility's needs. In order to claim the credit allowed by this section, the facility must provide the Secretary of Commerce audited documentation of the amount of its additional transportation and transloading expenses incurred during the taxable year.

(b) Cap. – The credit allowed to a major recycling facility under this section for the taxable year may not exceed ten million four hundred thousand dollars ($10,400,000).~~the applicable annual cap provided in the following table:~~

~~Taxable Year Cap~~

~~1998 $ 150,000~~
~~1999 $ 640,000~~
~~2000 $ 3,860,000~~
~~2001 $ 8,050,000~~
~~2002 $ 9,550,000~~
~~2003 $ 10,100,000~~
~~2004-2007 $ 10,400,000~~

(c) Reduction. ~~For the first ten taxable years after the owner begins transporting materials and products to and from the major recycling facility, the~~ The credit allowed by this section must be reduced by the amount of credit allowed in previous years that was used for a purpose other than an allowable purpose under subsection (d) of this section, as certified by the Secretary of Commerce.

(d) Use of Credited Amount. ~~For the first ten taxable years after the owner begins construction of the major recycling facility, the~~ The owner must use the amount of credit allowed under this section to pay for (i) investment in rail or roads associated with the facility, (ii) investment in water system infrastructure designed to reduce the expense of transporting materials and products to and from the recycling facility, and (iii) investment in land and infrastructure for other industrial sites located in the same county as the recycling facility. If the owner determines that there are no reasonable economic opportunities in a given year to use the total amount of credit for the expenditures described above, the owner may use the excess for investment at or in connection with the recycling facility.~~facility above the initial required investment of three hundred million dollars ($300,000,000).~~

Expenses incurred for the purposes allowed in this subsection during a taxable year ~~in the ten-year period~~ may be counted toward a credit allowed in a later taxable year.~~year in the ten-year period.~~ If the owner is not able to use the full amount of the credit during a taxable year for any of the purposes allowed by this subsection, the excess may be used for these purposes in subsequent taxable years.

The owner must provide the Secretary of Commerce with annual audited documentation demonstrating that the amount of credit received under this section during the previous twelve-month period has not been used for a purpose inconsistent with this subsection. If the Secretary of Commerce determines that the owner has used any of the credit for a purpose that is inconsistent with the requirements of this subsection, the Secretary of Commerce ~~shall~~ must certify the amount so used to the Secretary of ~~Revenue~~ Revenue, and the credit allowed the owner under this section for the following taxable year ~~shall be~~ is reduced by that amount in accordance with subsection (c) of this section.

~~After the end of the ten-year period, the amount of any credit allowed under this section that has not yet been used may be used for investment at or in connection with the recycling facility above the initial required investment of three hundred million dollars ($300,000,000).~~

(e) Credit Refundable. – If the credit allowed by this section exceeds the amount of tax imposed by Part 1 of Article 4 of this Chapter for the taxable year reduced by the sum of all credits allowable, the Secretary ~~shall~~ must refund the excess to the taxpayer.

The refundable excess is considered an overpayment by the taxpayer.~~governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in Part 1 of Article 4 of this Chapter.~~ In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

(f) Sunset. – This section expires for taxable years beginning on or after January 1, 2012."

SECTION 4. This act is effective when it becomes law.

DRAFT 2007-SVz-20: Sunset Recycling Facility Credits

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	May 7, 2008
Introduced by:		**Summary by:**	Trina Griffin
Version:	Bill Draft		Committee Counsel

SUMMARY: This proposal would place a sunset on the credit for investing in a large or major recycling facility and would extend by five years the sunset on the credit for reinvestment in a recycling facility.

CURRENT LAW:

Credit for Investing in Large or Major Recycling Facility (§ 105-129.27)

Eligibility. – This credit, enacted in 1998, was intended as an alternative to the machinery and equipment credit available under the Bill Lee Act. It provides a credit to an owner who purchases or leases machinery and equipment for a major recycling facility in this State. The credit is allowed against franchise or income tax. The credit currently has no sunset.

Credit Amount. – The credit amount depends on the recycling facility.

- An owner who purchases or leases machinery and equipment for a **major** recycling facility is eligible for a credit equal to **50%** of the amount paid for the machinery and equipment.
- An owner who purchases or leases machinery and equipment for a **large** recycling facility is eligible for a credit equal to **20%** of the amount paid.

Carryforward Period. – 25 years

Change in Ownership. – The sale, merger, consolidation, conversion, acquisition, or bankruptcy of a recycling facility, or any transaction by which the facility is reformulated as another business, does not create new eligibility in a succeeding owner with respect to a credit for which the predecessor was not eligible under this section. A successor business may, however, take any carried-over portion of a credit that its predecessor could have taken if it had a tax liability.

Forfeiture. – If any machinery or equipment for which a credit is allowed is not placed in service within 30 months after the credit was allowed, the credit is forfeited. A taxpayer that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest.

Credit for Reinvestment by Recycling Facility (§ 105-129.28)

Eligibility. – Beginning with the 1998 tax year, a major recycling facility that is accessible by neither ocean barge nor ship and that and incurs additional expenses due to transporting its materials and products by alternative modes of transportation is allowed a refundable corporate income tax reinvestment credit. For the first ten years the reinvestment credit is in effect, a major recycling facility must use the amount received in credit to invest in rail and roads associated with the facility, in transportation infrastructure to reduce the expense of transporting materials and products to and from the facility, or in land and infrastructure for industrial sites, other than the facility itself, in the same county. If there are not enough reasonable opportunities for investments in those purposes in a given year, however, the major recycling facility may invest the amount of credit received in the facility itself, but only after it has made the minimum investment of $300 million required to qualify as a major recycling

facility. The facility must document its compliance with this reinvestment requirement and it forfeits any part of the credit it spends for another purpose.

Credit Amount. – The reinvestment credit is equal to the amount of these additional expenses, which must be documented annually to the Secretary of Commerce. The credit is subject to a dollar cap each year, in increasing amounts. In 1999, the cap was $640,000. In 2004, the cap leveled off at $10.4 million a year.

Sunset. – The credit expired for taxable years beginning on or after January 1, 2008. According to S.L. 1998-55, the purpose of the ten-year sunset was to allow a determination as to whether any major recycling facility continues to experience additional transportation and transloading expenses due to its inability to use ocean barges or ships. The intent is to postpone the sunset if any major recycling facility can document that it is still experiencing additional expenses in 2008 due to its inability to use ocean barges or ships. The intent is to postpone the sunset if any major recycling facility can document that it is still experiencing additional expenses in 2008 due to its inability to use ocean barges or ships to transport materials and products.

BILL ANALYSIS: The proposal would do the following two things:

- Place a five-year sunset on the credit for investment in a large or major recycling facility.
- Extend for five years the current January 1, 2008 sunset on the credit for reinvestment. The bill deletes language related to the initial ten-year period for the credit while preserving the conditions imposed on the use of the credit proceeds related to reinvestment in infrastructure.

EFFECTIVE DATE: This act would be effective when it becomes law.

2007-SMSV-20

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-RBz-40B [v.1] (04/26)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/7/2008 7:37:34 AM

Short Title: Supplemental PEG Support. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DISTRIBUTION OF SUPPLEMENTAL PEG SUPPORT FUNDING, AS REQUESTED BY THE LEAGUE OF MUNICIPALITIES AND THE SOUTHEAST ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.44I(b) reads as rewritten:

"(b) Supplemental PEG Support. – The Secretary must include the applicable amount of supplemental PEG channel support in each quarterly distribution to a county or city. The amount to include is one-fourth of twenty-five thousand dollars ($25,000) for each qualifying PEG channel ~~operated~~ certified by the county or city. The amount of money distributed under this subsection may not exceed two million dollars ($2,000,000) in a fiscal year. If the amount to be distributed for qualifying PEG channels in a fiscal year would otherwise exceed this maximum amount, the Secretary must proportionately reduce the applicable amount distributable for each PEG channel. If the amount to be distributed for qualifying PEG channels in a fiscal year is less than two million dollars ($2,000,000), the Secretary must credit the excess amount to the PEG Channel Fund established in G.S. 66-359.

A county or city must certify to the Secretary by July 15 of each year ~~the number of qualifying~~ each of the qualified PEG channels ~~it operates.~~ provided for its use by a cable service provider under either G.S. 66-357 or an existing agreement. ~~A qualifying PEG channel is one that meets the programming requirements under G.S. 66-357(d).~~ A county or city must include the name of the PEG channel operator for each qualifying PEG channel it certifies and any other information required by the Secretary. If a qualifying PEG channel has more than one PEG channel operator, then a county or city must included each operator of the PEG channel on its certification. A county or city

may not receive PEG channel support under this subsection for more than three qualifying PEG channels.

The amount included under this subsection in a distribution to a county or city is intended to supplement the PEG channel support available in the amount distributed under this section. ~~The money distributed to a~~ A county or city must use the money distributed to it under this subsection ~~must be used by it~~ for the operation and support of each of the qualified PEG ~~channels.~~ channels it certified by allocating the amount it receives equally among each of the qualified PEG channels. A county or city must distribute the money received under this subsection to the PEG channel operator of the qualified PEG channel within 30 days of its receipt of the supplemental PEG support funds from the Department, or as specified in an interlocal agreement. If a qualified PEG channel has more than one PEG channel operator, then the county or city must distribute the amount allocated for that PEG channel equally to each PEG channel operator, or as specified in an interlocal agreement. ~~For~~

If a county or city determines that it certified a PEG channel in error, the county or city must submit a revised certification to the Secretary and it must return all supplemental PEG channel support distributed to it as a result of the error. The Secretary must add the funds returned to the total amount to be allocated under this subsection in the following fiscal year. The amount distributed under this subsection for the following fiscal year may exceed the two million dollars ($2,000,000) limit by the amount of funds returned in the prior fiscal year.

For purposes of this subsection, the ~~term "PEG channel" has the same meaning as in G.S. 66-350.~~ following definitions apply:

(1) Existing agreement. – Defined in G.S. 66-350.

(2) PEG channel. – Defined in G.S. 66-350.

(3) PEG channel operator. – An entity that does one or more of the following:

a. Produces programming for delivery on a PEG channel.

b. Provides facilities for the production of programming or playback of programming for delivery on a PEG channel.

(4) Qualifying PEG channel. – A PEG channel that meets all of the following programming requirements for at least 120 continuous days:

a. The PEG channel must deliver at least eight hours of scheduled programming a day.

b. The PEG channel must deliver at least six hours and 45 minutes of scheduled, non-character-generated programming a day.

c. The programming content of the PEG channel must not repeat more than fifteen percent (15%) of the programming content on any other PEG channel provided to the certifying county or city."

SECTION 2. Notwithstanding G.S. 105-164.44I(b), certifications of qualifying PEG channels for use in distributing fiscal year 2008-2009 supplemental PEG channel support may be submitted to the Secretary on or before September 15, 2008. The distribution of supplemental PEG channel support that must be made within

75 days after June 30, 2008, shall be based on the qualifying PEG channel certification in effect for the prior distribution.

SECTION 3. This act is effective when it becomes law.

BILL DRAFT 2007-RBz-40B: Supplemental PEG Support

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	May 7, 2008
Introduced by:		**Summary by:**	Cindy Avrette
Version:	Bill Draft		Committee Staff

SUMMARY: This bill draft would clarify the distribution of supplemental PEG support funding. The League of Municipalities recommends the proposed changes to the Revenue Laws Study Committee. The bill would become effective when it becomes law. It would affect distributions made in the 2008-09 fiscal year.

CURRENT LAW: In 2006, the General Assembly established uniform taxes for video programming services by applying the combined general rate of sales tax to all video programming services and repealing the local authority to impose a local franchise tax. It preserved the local government revenue stream by distributing part of the sales tax revenues from telecommunications and video programming services to the counties and cities. The distribution formula is based upon the amount of cable franchise tax imposed during the first six months of fiscal year 2006-2007 plus any subscriber fees imposed during that same period.

Of the revenue distributable to local governments, two million dollars ($2,000,000) a year is allocated for supplemental PEG channel support. A PEG channel is a public, educational, or governmental access channel provided to a county or city. The $2,000,000 allocation is distributed to counties and cities with qualifying PEG channels. The annual amount per qualifying PEG channel is $25,000. A county or city can not receive supplemental PEG channel support for more than three PEG channels. The amount distributed to a county or city as supplemental PEG channel support must be used by it for the operation and support of PEG channels. If the amount to be distributed for qualifying PEG channels in a fiscal year is less than $2,000,000, the Secretary must credit the excess amount to the PEG Channel Fund to be used for matching local grants for PEG channel support.

At the time the General Assembly considered the legislation in 2006, the information the staff had collected indicated that there would be 36 qualifying PEG channels. There were 276 certified PEG channels in the March 2008 distribution. In working with the data, the Committee staff and the League of Municipalities believe that the form used by the Department of Revenue is not as clear as it could be. This confusion may have resulted in some channels being double counted and in some channels receiving a distribution although they did not qualify for one.

BILL ANALYSIS: This bill draft seeks to clarify the distribution requirements and to provide that all qualifying PEG channels receive supplemental PEG support funding. The bill may not drastically reduce the number of channels receiving a distribution, but it should result in the allocations being received by the qualifying PEG channels. The bill does the following:

- It defines in the distribution statute what constitutes a 'qualifying PEG channel'. The definition of a qualifying PEG channel differs slightly from the current law. It provides that the amount of character-generated programming may not exceed 15% of eight hours of scheduled programming (roughly six hours and 45 minutes) rather than 15% of the total number of scheduled programming hours.
- It allows the Secretary of Revenue to request additional information.

- It defines a PEG channel operator, requires a county or city to include the name of the PEG channel operator for each qualifying PEG channel it certifies, and requires the county or city to distribute the proceeds to the PEG channel operator. This change will better ensure that the money is distributed by the local government for the use of the PEG channels. Sometimes, a single PEG channel has more than one operator. This change will ensure that the funds go to the operator of the PEG channel, even if the PEG channel is claimed by more than one local government.
- It requires a county or city to certify all qualifying PEG channels and to allocate the proceeds it receives equally among all of its certified PEG channels, and it provides that the distribution must be made to the PEG channel within 30 days of the county or city's receipt of the supplemental PEG support revenue. Under current law, a county or city may only receive supplemental funding for three PEG channels. Some qualifying PEG channels believe the funds are not being distributed fairly among the channels. These changes ensure:
    - That each qualifying PEG channel receives supplemental funding, even if a county or city has more than three qualifying channels.
    - That each qualifying PEG channel receives an equal amount of funding.
    - That each qualifying PEG channel receives the funding in a timely manner.
- It provides a method to account for revenues that are distributed in error. If it is determined that a county or city received a distribution in error, the county or city must submit a revised certification and return all funds received in error. Any funds returned will be added to the amount to be distributed in the following year as supplemental PEG support funding.
- It extends the period of time a county and city has to make its certification in 2008 from July 15, 2008, to September 15, 2008. It provides that the Department may make the distribution of supplemental PEG channel support for the quarter ending June 30, 2008, based upon the qualifying PEG channel certifications in effect for the fiscal year 07-08 distributions.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U D

BILL DRAFT 2007-RBz-41A [v.1] (04/29)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/7/2008 7:52:46 AM

Short Title: Modify PEG Channel Grant Program. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE PEG CHANNEL GRANT PROGRAM, AS REQUESTED BY E-NC AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-359 reads as rewritten:

"**§ 66-359. PEG channel grants.**

(a) PEG Channel Fund. – The PEG Channel Fund is created as an interest-bearing special revenue fund. It consists of revenue allocated to it under G.S. 105-164.44I(b) and any other revenues appropriated to it. The e-NC Authority, created under G.S. 143B-437.46, administers the Fund. Up to three percent (3%) of the Fund may be used annually by e-NC Authority to cover its expenses in grant letting and monitoring, not to exceed sixty thousand dollars ($60,000) a year.

(b) Grants. – A county or city may apply to the e-NC Authority for a grant from the PEG Channel Fund. In awarding grants from the Fund, the e-NC Authority must, to the extent possible, select applicants from all parts of the State based upon need. Grants from the Fund are subject to the following limitations:

(1) The grant may not exceed twenty-five thousand dollars ($25,000).

(2) The applicant must provide a cash match for the ~~grant on a dollar-for-dollar basis.~~grant. The cash match required is a percentage of the grant amount and the applicable percentage varies based on the applicant's development tier designation:

Applicant Tier Designation	Required Match
Tier One	25%
Tier Two	50%
Tier Three	75%

(3) The grant may be used only for capital expenditures necessary to provide PEG channel programming. An applicant may provide in

writing that the grant proceeds be given to the PEG channel operator of the PEG channel for which the grant is given. An applicant may provide in writing that the capital expenditure purchased with the grant proceeds may be owned by the PEG channel operator rather than the applicant.

(4) An applicant may receive no more than one grant per PEG channel per fiscal year.

(c) Reports. – The e-NC Authority must publish an annual report on grants awarded under this section. The report must list each grant recipient, the amount of the grant, and the purpose of the grant."

SECTION 2. G.S. 66-350 reads as rewritten:

"§ 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.

(3a) Development tier. – Defined in G.S. 105-129.82.

(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.

(6a) PEG channel operator. – An entity that does one or more of the following:

a. Produces programming for delivery on a PEG channel.

b. Provides facilities for the production of programming or playback of programming for delivery on a PEG channel.

(7) Secretary. – The Secretary of State.

(8) Video programming. – Defined in G.S. 105-164.3."

SECTION 3. This act is effective when it becomes law and applies to grants made on or after July 1, 2008.

BILL DRAFT 2007-RBz-41A: Modify PEG Channel Grant Program

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	May 7, 2008
Introduced by:		**Summary by:**	Cindy Avrette
Version:	Bill Draft		Committee Staff

SUMMARY: This bill draft would make several changes to the PEG Channel Grant Program. The e-NC Authority, which administers the Fund, recommends the proposed changes to the Revenue Laws Study Committee. The bill would become effective when it becomes law and apply to grants made on or after July 1, 2008.

CURRENT LAW: In 2006, the General Assembly created the PEG Channel Grant Fund. The purpose of the Fund is to provide matching grants to counties and cities for PEG channel support. The e-NC Authority administers the Fund.[1] A grant may only be used for capital expenditures necessary to provide PEG channels. The size of a grant may not exceed $25,000 and an applicant may receive no more than one grant per fiscal year. The applicant must match the grant on a dollar-for-dollar basis. The Authority must publish an annual report on the grants awarded from the Fund.

The revenue in the Fund consists of revenue allocated to it under G.S. 105-164.44I(b) and any other revenues appropriated to it. In 2007, the General Assembly appropriated $1,000,000 the Fund. G.S. 105-164.44I provides that of the revenue distributable to local governments under that statute, $2,000,000 a year is allocated for supplemental PEG channel support to qualifying PEG channels. If the amount to be distributed for qualifying PEG channels in a fiscal year is less than $2,000,000, the excess is credited to the PEG Channel Fund. At the time the General Assembly created the Fund, it believed there would be excess revenue to credit to the Fund. However, that has not proved to be the case.

BILL ANALYSIS: This bill draft comes as a recommendation from the e-NC Authority, which administers the PEG Channel Grant Program. The recommended changes are as follows:

- It would allow the e-NC Authority to use up to 3% of the Fund, not to exceed $60,000 annually, to cover its expenses in grant letting and monitoring.
- It would provide a different match amount. Current law requires a dollar for dollar match amount. The proposal would require a 25% match amount for applicants in development tier one areas, a 50% match amount of applicants in development tier two areas, and a 75% match amount for applicants in a development tier three area.
- It would provide that the capital expenditure could be owned by the PEG channel operator rather than the applicant by allowing the grant monies to go directly to the applicant and by clarifying that the equipment may be owned by the operator.

[1] The e-NC Authority is charged with managing and promoting high-speed broadband Internet access.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U D

BILL DRAFT 2007-RBz-42 [v.6] (04/29)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/30/2008 9:06:25 AM

Short Title: PEG Channels and Video Programming Changes. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE LAWS RELATING TO STATE FRANCHISE FOR CABLE SERVICE PROVIDERS, THE PEG CHANNEL GRANT FUND, AND LOCAL GOVERNMENT ALLOCATIONS FOR PEG CHANNELS FROM THE DISTRIBUTIONS IT RECEIVES FROM THE SALES TAX ON VIDEO PROGRAMMING, AS REQUESTED BY THE SOUTHEAST ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-350 is amended by adding a new subdivision to read:

"**§ 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.

(6a) PEG channel operator. – An entity that does one or more of the following:

a. Produces programming for delivery on a PEG channel.

b. Provides facilities for the production of programming or playback of programming for delivery on a PEG channel.

(7) Secretary. – The Secretary of State.

(8) Video programming. – Defined in G.S. 105-164.3."

SECTION 2. G.S. 66-352(a) is amended by adding a new subdivision to read:

"(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 providing the service. A person who files a notice of franchise must pay a fee in the amount set in G.S. 57C-1-22 for filing articles of organization.

A notice of franchise is effective when it is filed with the Secretary. The notice of franchise must include all of the following:

(1) The applicant's name, principal place of business, mailing address, physical address, telephone number, and e-mail address.

(2) A description and map of the area to be served.

(3) A list of each county and city in which the described service area is located, in whole or in part.

(4) A schedule indicating when service is expected to be offered in the service area.

(5) The circumstance under which the applicant terminated an existing agreement under G.S. 66-355."

SECTION 3. G.S. 66-357(c) reads as rewritten:

"(c) Initial PEG Channels. – This subsection establishes the minimum number of PEG channels a cable service provider is required to provide to a county or city. The provider will make each channel, up to the initial number of allowed channels, available to a county or city that makes a written request as provided in subsection (b) of this section. ~~A~~

A city with a population of at least 50,000 is allowed a minimum of three initial PEG channels plus any channels in excess of this minimum that are activated, as of July 1, 2006, under the terms of an existing franchise agreement whose franchise area includes any portion of the city. A city with a population of less than 50,000 is allowed a minimum of two initial PEG channels plus any channels in excess of this minimum that are activated, as of July 1, 2006, under the terms of an existing franchise agreement whose franchise area includes the city. For a city included in the franchise area of an existing agreement, the agreement determines the service tier placement and transmission quality of the initial PEG channels. For a city that is not included in the franchise area of an existing agreement, the initial PEG channels must be on a basic service tier, and the transmission quality of the channels must be equivalent to those of the closest city covered by an existing agreement.

A county is allowed a minimum of two initial PEG channels plus any channels in excess of this minimum that are activated, as of July 1, 2006, under the terms of an

existing franchise agreement whose franchise area includes any portion of the county. For a county included in the franchise area of an existing agreement, the agreement determines the service tier placement and transmission quality of the initial PEG channels. For a county that is not included in the franchise area of an existing agreement, the initial PEG channels must be on a basic service tier and the transmission quality of the channels must be equivalent to those of any city with PEG channels in the county.

The cable service provider must maintain the same channel designation for a PEG channel unless the service area of the State-issued franchise includes PEG channels that are operated by different counties or cities and those PEG channels have the same channel designation. Each county and city whose PEG channels are served by the same cable system headend must cooperate with each other and with the cable system provider in sharing the capacity needed to provide the PEG channels.

For purposes of this subsection, a basic service tier is the lowest priced tier available to a subscriber which includes the local broadcast signals."

SECTION 4. G.S. 66-357(d) reads as rewritten:

"(d) Additional PEG Channels. – A county or city that ~~does not have~~ has fewer than seven PEG channels, including the initial PEG channels, is eligible for an additional PEG channel if it meets the programming requirements in this subsection. A county or city that has seven or more PEG channels is not eligible for an additional channel.

A county or city that meets the programming requirements in this subsection may make a written request under subsection (b) of this section for an additional channel. The additional channel may be provided on any service tier. The transmission quality of the additional channel must be at least equivalent to the transmission quality of the other channels provided.

The PEG channels operated by a county or city must meet the following programming requirements for at least 120 continuous days in order for the county or city to obtain an additional channel:

(1) All of the PEG channels must have scheduled programming for at least eight hours a day.

(2) The programming content of each of the PEG channels must not repeat more than fifteen percent (15%) of the programming content on any of the other PEG channels.

(3) No more than fifteen percent (15%) of the programming content on any of the PEG channels may be character-generated programming."

SECTION 5. G.S. 66-358(a) reads as rewritten:

"(a) Service. – A cable service provider operating under a State-issued franchise must transmit a PEG channel by one of the following methods:

(1) Interconnection with another cable system operated in its service area. A cable service provider operating ~~in~~ within 125 feet of the same service area as a provider under a State-issued franchise must interconnect its cable system on reasonable and competitively neutral terms with the other provider's cable system within 120 days after it

receives a written request for interconnection and may not refuse to interconnect on these terms. The terms include compensation for costs incurred in interconnecting. Interconnection may be accomplished by direct cable, microwave link, satellite, or another method of connection. A cable service provider must make a written request for interconnection within 30 days of its receipt of a written request for a PEG channel by a county or city under G.S. 66-357.

(2) Transmission of the signal from each PEG channel programmer's origination site, if ~~the origination site is in the provider's service area.~~any part of any designated service area of the cable service provider includes any portion of the county or city in which the PEG channel origination site is located."

SECTION 6. G.S. 66-359 reads as rewritten:

"**§ 66-359. PEG channel grants.**

(a) PEG Channel Fund. – The PEG Channel Fund is created as an interest-bearing special revenue fund. It consists of revenue allocated to it under G.S. 105-164.44I(b) and any other revenues appropriated to it. The e-NC Authority, created under G.S. 143B-437.46, administers the Fund.

(b) ~~Grants.~~Grant Applications. ~~A county or city may apply to the~~ The e-NC Authority may accept applications for a grant from the PEG Channel ~~Fund.~~ Fund from one or more of the following:

(1) A county.

(2) A city.

(3) A PEG channel operator of a PEG channel certified by a county or city as a qualifying PEG channel under G.S. 105-164.44I.

(c) Grant Awards. – In awarding grants from the Fund, the e-NC Authority must, to the extent possible, select applicants from all parts of the State based upon need. Grants from the Fund are subject to the following limitations:

(1) The grant may not exceed twenty-five thousand dollars ($25,000).

(2) The applicant must match the grant on a dollar-for-dollar basis.

(3) The grant may be used only for capital expenditures necessary to provide PEG channel programming.

(4) An applicant may receive no more than one grant per fiscal year.

(c) Reports. – The e-NC Authority must publish an annual report on grants awarded under this section. The report must list each grant recipient, the amount of the grant, and the purpose of the grant."

SECTION 7. G.S. 105-164.44I(b) reads as rewritten:

"(b) Supplemental PEG Support. – The Secretary must include the applicable amount of supplemental PEG channel support in each quarterly distribution to a county or city. The amount to include is one-fourth of twenty-five thousand dollars ($25,000) for each qualifying PEG channel operated by the county or city. The amount of money distributed under this subsection may not exceed two million dollars ($2,000,000) in a fiscal year. If the amount to be distributed for qualifying PEG channels in a fiscal year would otherwise exceed this maximum amount, the Secretary must proportionately

reduce the applicable amount distributable for each PEG channel. If the amount to be distributed for qualifying PEG channels in a fiscal year is less than two million dollars ($2,000,000), the Secretary must credit the excess amount to the PEG Channel Fund established in G.S. 66-359.

A county or city must certify to the Secretary by July 15 of each year the number of qualifying PEG channels it operates. A qualifying PEG channel is one that meets the programming requirements under G.S. 66-357(d). A county or city may not receive PEG channel support under this subsection for more than ~~three~~ seven qualifying PEG channels.

The amount included under this subsection in a distribution to a county or city is intended to supplement the PEG channel support available in the amount distributed under this section. The money distributed to a county or city under this subsection must be used by it for the operation and support of PEG channels. For purposes of this subsection, the term "PEG channel" has the same meaning as in G.S. 66-350."

SECTION 8. G.S. 105-164.44I(e) reads as rewritten:

"(e) Use of Proceeds. – A county or city that imposed subscriber fees during the first six months of the 2006-2007 fiscal year must use a portion of the funds distributed to it under subsections (c) and (d) of this section for the operation and support of PEG channels. The amount of funds that must be used for PEG channel operation and support is the proportion of the total funds received under subsection (d) of this section that is the same as the proportion of two times the amount of subscriber fee revenue the county or city certified to the Secretary that it imposed during the first six months of the 2006-2007 fiscal ~~year.~~ year compared to two times the amount of cable franchise tax and subscriber fee revenue the county or city certified to the Secretary that it imposed during the first six months of the 2006-2007 fiscal year. A county or city that used part of its franchise tax revenue in fiscal year 2005-2006 for the operation and support of PEG channels or a publicly owned and operated television station must use the funds distributed to it under subsections (c) and (d) of this section to continue the same level of support for the PEG channels and public stations. The remainder of the distribution may be used for any public purpose."

SECTION 9. This act becomes effective January 1, 2009.

BILL DRAFT 2007-RBz-42: PEG Channels and Video Programming Changes

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	May 7, 2008
Introduced by:		**Summary by:**	Cindy Avrette
Version:	Bill Draft		Committee Staff

SUMMARY: This bill draft would modify the laws relating to the following, as recommended to the Revenue Laws Study Committee by the Southeast Association of Telecommunications Officers and Advisors:

- ***State franchises for cable service providers.***
- ***The PEG Channel Grant Program.***
- ***The local government allocations for PEG channel operation and support from the distributions it receives from the sales tax on video programming.***

The bill would become January 1, 2009.

CURRENT LAW: In 2006, the General Assembly established uniform taxes for video programming services by applying the combined general rate of sales tax to all video programming services and repealing the local authority to impose a local franchise tax. As part of that legislation, it provided a State franchise process for cable service providers, in lieu of the prior locally negotiated franchise agreements. It preserved the local government revenue stream by distributing part of the sales tax revenues from telecommunications and video programming services to the counties and cities. The distribution formula is based upon the amount of cable franchise tax imposed during the first six months of fiscal year 2006-2007 plus any subscriber fees imposed during that same period.

BILL ANALYSIS: This bill draft comes to the Revenue Laws Study Committee as a recommendation from the Southeast Association of Telecommunications Officers and Advisors. The recommended changes are as follows:

- It would create a new defined term: 'PEG channel operator'.
- It would require a State notice of franchise to include the basis on which a cable service provider is filing for a State franchise. A cable service provider may file for a State franchise because it is a new entrant in the market area or because it is terminating its existing agreement with a local government. A cable service provider may terminate its existing agreement for one of three reasons, all of which relate to competition in the service area by another provider who has a State franchise.
- It would define a basic service tier as the lowest priced tier available to a subscriber which includes the local broadcast stations. The current law requires the initial PEG channels to be provided on a basic service tier.
- It would clarify that a county or city that has fewer than seven PEG channels may request a seventh channel.
- It would require interconnection between cable service providers if the systems are within 125 feet of each other. Under current law, a cable service provider may not request interconnection with another cable system unless the systems are within the same service area.

- It would require a cable service provider to provide carriage of PEG signals which originate anywhere within a municipality's jurisdiction if requested to carry the PEG channel by the municipality. Under current law, the origination site must be in the provider's service area.
- It would allow PEG channel operators to apply for grants from the PEG Channel Fund. Under current law, only counties and cities may apply for a grant.
- It would increase the number of qualified PEG channels for which a county or city could receive supplemental PEG support funding from three to seven. Of the sales tax revenue on video programming that is distributable to local governments, $2,000,000 a year is allocated for supplemental PEG channel support. The $2,000,000 allocation is distributed to counties and cities with qualifying PEG channels. The annual amount per qualifying PEG channel is $25,000. A county or city can not receive supplemental PEG channel support for more than three PEG channels.
- It would provide that the amount of funding a county or city must provide for the operation and support of PEG channels must be the same level of support the county or city provided in fiscal year 2006-07. Under the legislation enacted in 2006, a county or city that imposed subscriber fees on cable customers must use a portion of the amount distributed to it under the sales tax distribution of video programming revenues for PEG channel operation and support. The amount it must use for this purpose is two times the amount of revenue it certified to the Secretary it imposed as subscriber fees during the first six months of fiscal year 2006-2007. The remainder of the money distributed to counties and cities may be used for any public purpose. This change would provide that the required level of funding would not be a stagnant number, but a proportionate number.

REVENUE LAWS STUDY COMMITTEE

DRAFT

REPORT TO THE 2007
GENERAL ASSEMBLY OF NORTH CAROLINA
2008 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*

May 7, 2008

TO THE MEMBERS OF THE 2007 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

2007-2008

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 2007-2008 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 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.

[1] S.L. 2002-184, s. 8.

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 four times after the adjournment of the 2007 Regular Session of the 2007 General Assembly on August 2, 2007. 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 2007 GENERAL ASSEMBLY

The 2007 General Assembly enacted 6 of the Revenue Laws Study Committee's 8 legislative proposals in whole or in part. Appendix C lists the Committee's recommendations and the action taken on them in 2007. A document entitled "**2007 Finance Law Changes**" summarizes all of the tax legislation enacted in 2007. It is available in the Legislative Library located in the Legislative Office Building. It may also be viewed on the Legislative Library's website: http://www.ncleg.net/LegLibrary under 'Studies and Reports,' 'Tax Law Changes (1996 – 2007)'.

CLASS ACTIONS

The Revenue Laws Study Committee has spent a significant amount of time examining the issue of tax class actions. In fact, this issue has been studied three times during the last six years. Prompted by requests from both the North Carolina Bar

Association and the North Carolina Association of CPAs, the Committee first examined this issue in 2002. At that time, these organizations were seeking an overall simplification of the tax refund process as well as clarification of the protest rule after the decision in the *Bailey II* case. As the result of its study, the Committee recommended a proposal that was introduced as Senate Bill 228 during the 2003 Regular Session and would have created a unified refund procedure. Although no action was taken on the bill, it represented the first step toward simplifying and clarifying the refund procedure. The Committee tackled this issue again in 2006 as part of its broader, in-depth study of the procedures related to the review of disputed tax matters. In its report to the 2007 Regular Session of the 2007 General Assembly, the Committee recommended a proposal that substantially revised the entire administrative and judicial review process. Included in that proposal was a provision that would have limited tax class actions to only those taxpayers who filed a written demand for a refund with the Department. When the proposal, introduced as Senate Bill 242 in the 2007 Regular Session, was discussed in the Senate Finance Committee, the Department requested that the class action provision be removed because of ongoing class action litigation. A study provision was substituted[1] directing the Revenue Laws Study Committee to study whether any legislative changes should be made regarding the use and scope of class actions to challenge the constitutionality of a tax in light of the forthcoming decision in *Dunn v. State of North Carolina*. In December of 2007, the North Carolina Supreme Court affirmed the class certification in the *Dunn* case.

The Committee recognized that the decision to uphold the class certification in *Dunn* is indicative of the trend by the North Carolina courts with regard to tax class actions. Since 1998, the North Carolina courts have eroded, if not obliterated, the former protest statute by allowing the claim of one taxpayer to stand for the claims of

[1] Section 45 of S.L. 2007-491.

all similarly situated taxpayers despite the protest statute's requirement taxpayers must file a claim for refund as a prerequisite to becoming a party to a lawsuit challenging the legality of a tax. The Committee determined that since the recent court cases undermine the plain wording and intent of the now-repealed protest statute and since Senate Bill 242 was silent on tax class actions, the current law needs to be clarified. The Committee identified that the purpose of the clarification is to protect and to identify the potential liability of the State for tax refunds and to give taxpayers, the Department, and practitioners clear guidance as to the proper procedure governing class actions. As a result, the Committee recommends Legislative Proposal #1, *Procedure for Tax Class Actions.*

Legislative Proposal 1 would require a taxpayer seeking to join a pending class action to obtain a refund of tax paid due to an unconstitutional statute to file a claim for refund with the Department. In addition to satisfying the existing requirements for a refund claim, the taxpayer would also need to specify that the sole basis for the claim is to obtain a refund of tax paid due to an unconstitutional statute, to identify the alleged unconstitutional statute, and to identify the pending class action of which the taxpayer seeks to become a member. A taxpayer making a valid refund claim under this new provision would not be required to exhaust the administrative review process. When a class action refund claim is filed, the Department would be required to send a copy of the claim to the court in which the class action is pending. The statute of limitations for filing of a class action refund claim would be tolled for any taxpayer who, at the time, the class action was commenced could timely file a claim for refund.

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

[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.

to update its reference to the Code.[3] Updating the reference makes recent amendments to the Code applicable to the State to the extent that State law previously tracked federal law. The current reference to the Code is January 1, 2007. Since that date, Congress has enacted three pieces of legislation that made changes to the Code. This federal legislation includes the Small Business and Work Opportunity Tax Act of 2007 (P.L. 110-28) signed into law on May 25, 2007, the Mortgage Forgiveness Debt Relief Act of 2007 (P.L. 110-142) signed into law December 20, 2007, and the Economic Stimulus Act of 2008 (P.L. 110-185) signed into law February 13, 2008.

The Committee began its discussion of conformity with an overview of the three federal acts. Specific attention was given to the Economic Stimulus Act (ESA) in light of the substantial fiscal impact conformity would have on State revenues. Among other changes, the ESA includes a 50% bonus depreciation provision and increased limits for section 179 expensing of qualified property purchased and placed in service during 2008. The bonus depreciation provision allows a taxpayer to depreciate in the first year 50% of the adjusted basis of certain qualified property.[4] The expensing limit was almost doubled to $250,000, and the threshold for reducing the deduction was increased to $800,000 with a complete phase-out once qualifying purchases exceed $1.05 million. [5] The limitations will return to the lower levels for tax years beginning in 2009.

The fiscal impact on the State's General Fund of fully conforming to the ESA

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[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."

[4]The placed-in-service date is extended one year, through December 31, 2009, for property with a recovery period of 10 years or longer, for transportation property, and for certain aircraft.

[5] The new law does not alter the section 179 limitation imposed on sport utility vehicles, which have an expense limit of $25,000.

would be a combined loss of approximately $320 million for the 2008-09 and 2009-10 fiscal years. Of this loss to the General Fund, $300 million is associated with the 50% bonus depreciation provision. The increased expensing limits would reduce the State's General Fund by approximately $6.5 million for FY 2008-09 and $9.4 for FY 2009-10.

In deciding whether to conform to the federal changes, the Committee balanced the benefits of conformity, which include improved compliance, tax simplicity, and ease of administration, against the General Assembly's responsibility to provide the necessary revenues to support the State's budget. In light of the cost of conformity and the unknowns associated with the budget outlook, the Committee recommended Legislative Proposal 2, *IRC Update*. The proposal updates the Code reference to May 1, 2008, and conforms to all of the federal changes, with the exception of the bonus depreciation provision in the Economic Stimulus Act. The proposal delays the impact of that provision in a manner similar to the approach North Carolina took several years ago when Congress previously enacted bonus depreciation provisions. Under this proposal, taxpayers would be required to add back to federal taxable income for purposes of determining State net income 85% of the depreciation amount taken with corresponding deductions taken over the next five years in equal installments.

CORPORATE TAX LAW CHANGES

The Revenue Laws Study Committee considered three changes to the corporate tax laws. The Department of Revenue requested the Committee to review two franchise tax issues and the Association of Publicly Traded Companies asked the Committee to review a corporate tax reporting and withholding requirement.

North Carolina's franchise tax does not apply to limited liability companies (LLC) because the definition of a corporation, for franchise tax purposes, does not include a LLC. Since 2001, the General Assembly has spent time protecting its franchise tax base from tax planning

strategies whereby a corporation could avoid paying franchise tax on its assets by transferring them to an affiliated LLC. In 2006, the General Assembly amended the definition of 'corporation', as it applies to the franchise tax statutes, to include a limited liability company (LLC) that elects to be taxed as a C corporation for federal income tax purposes. The Department began to receive questions from S corporations as to whether they could convert to an LLC and elect to be treated as S corporations for income tax purposes, and thereby be exempt from paying franchise tax. In 2005, S corporations paid more than $50 million in franchise tax. Legislative Proposal 3, *Close Franchise Tax Loopholes*, addresses this potential tax avoidance strategy by providing that an LLC that elects to be treated as a corporation for income tax purposes, either a C corporation or a S corporation, is also considered a corporation for franchise tax purposes.

In 2007, the General Assembly limited a corporation's ability to use captive real estate investment trusts (REITs) to avoid State corporate income taxes by disallowing the dividend paid deduction when a REIT is a captive REIT. The effect of this change is that a captive REIT is treated as a regular corporation for income tax purposes. Under the current franchise tax law, a REIT may, in determining its value for franchise tax purposes, deduct the aggregate market value of its investments in the stocks, bonds, debentures, or other securities or evidences of debt of other corporations, partnerships, individuals, municipalities, governmental agencies or governments. Legislative Proposal 3, *Close Franchise Tax Loopholes,* makes a similar change to the franchise tax statutes by providing that this deduction may only be used by a REIT that is not a captive REIT.

TAX CREDITS

Tax credits are considered a mechanism for encouraging and rewarding behavior that is beneficial to the State. Like appropriations, tax credits are expenditures of public

funds for the benefit of certain businesses, interest groups, and other taxpayers. However, unlike appropriations, without some limitation, they can continue in perpetuity costing the State millions of dollars without review by the General Assembly. It was for this reason that in 1998, the Revenue Laws Study Committee recommended that sunsets be placed on virtually all of the tax credits as a means to review and reevaluate those credits. The thought was that periodic review would allow the General Assembly to consider each credit on its merits to determine whether it continues to serve a public purpose that justifies its cost.

To this end, the Committee reviewed five credits, four of which are due to expire either this year or next year, and one with no sunset. After the Committee was provided with an overview of each of the credits, advocates were given an opportunity to express their support for extending the sunsets. The North Carolina Technology Association and the North Carolina Biosciences Organization expressed their support for extending the sunset on the credit for research and development. A copy of NCTA's letter supporting the extension is attached as Appendix D. The North Carolina State Ports Authority submitted a letter in support of extending the State Ports tax credit and a document explaining the rationale for the credit, both of which are attached as Appendix E. Gregg Thompson, representing the National Federation of Independent Businesses, spoke in favor of extending the credit for small business employee health benefits. Finally, the Committee heard from Johnny Jacobs, comptroller for the Nucor Steel Corporation, who spoke in favor of extending the sunset on the credit for reinvestment by a recycling facility. He submitted written documentation supporting extension of the credit, which is attached as Appendix F.

ESTATE AND GIFT TAX LAWS

The Revenue Laws Study Committee recommended legislation to the 2007 General Assembly to reform the State's gift tax to more closely conform it to the federal tax,[6] but the

[6] House Bill 235, *Simplify Gift Tax.*

General Assembly did not enact the bill. North Carolina is one of only three states that impose a gift tax. Its gift tax is not unified with the estate tax and is applied differently based on the relationship between the donor and donee. The State receives an average of $18 million annually from gift tax revenues. The revenue loss associated with simplifying the gift tax laws is not quantifiable.

During the 2007 Session, the Estate and Gift Tax Section of the North Carolina Bar Association raised concerns about the application of the gift tax simplification. The Estate and Gift Tax Section worked with the Department of Revenue and Committee staff to address these concerns. The Committee continues to recognize the need to simplify the State's gift tax laws. However, the Committee did not want to recommend legislation that would reduce General Fund revenues.

The Committee learned that a case has been filed in Mecklenburg County, ***Stowe v. Department of Revenue,*** to recover North Carolina estate taxes imposed on property located in South Carolina. The plaintiffs argue in their complaint that the formula for calculating North Carolina estate tax due when property is located in more than one state is unconstitutional because it provides less than a full reduction of the tax attributable to the out-of-state property when the other state does not impose an estate tax, or imposes an estate tax less than the prorated federal credit amount. Legislative Proposal 7, *Modify Estate Tax Law,* modifies the formula for calculating North Carolina estate tax on estates that include property located in another state by excluding the value of that property from the estate tax payable to North Carolina. The proposal would become effective when it becomes law and apply retroactively to the estates of decedents for which the statute of limitations for claiming a refund had not expired as of December 28, 2007.

PROPERTY TAX PROPOSALS

The Revenue Laws Study Committee directed staff to address any needed changes to the property tax circuit breaker deferral program (S.L. 2007-497) and to review several property tax proposals introduced in Senate Bill 1309 during the last session but not enacted. The 2007 proposals in Senate Bill 1309 included shortening the property tax revaluation from an octennial schedule to a quadrennial schedule and providing for a property tax lien on mobile homes listed as personal property. Staff met six times with representatives from the Department of Revenue, North Carolina Association of County Commissioners, North Carolina Tax Assessors and Collectors Association, and the School of Government to discuss these issues and to make recommendations to the Committee. Representatives from the North Carolina Farm Bureau joined the working group for its last two meetings to discuss ownership problems with farmland assessed and appraised at its present-use value for property tax purposes. Members of the Committee had received comments from constituents regarding the complexities and perceived unfairness of the ownership requirements for qualified farmland. The working group looked at ways to remedy concerns. Finally, the Committee looked at different ways to tax short-term rentals of heavy equipment.[7]

The Revenue Laws Study Committee reviewed and recommended the following two property tax proposals:

Legislative Proposal # 6, *Deferred Property Tax Programs Changes,* modifies the circuit breaker tax benefit as recommended by representatives from the Department of Revenue, the School of Government, and the North Carolina Association of Tax Assessors and Collectors. The circuit breaker program is a property tax deferral benefit for North Carolina residents who

have owned and occupied property in the State as a permanent residence for at least five years and who are at least 65 years of age or totally and permanently disabled. Beginning in the 2009-2010 fiscal year, an owner who meets the requirements of the circuit breaker benefit and makes less than the income eligibility limit of the homestead exclusion may defer the portion of taxes imposed on the permanent residence that exceeds four percent of the owner's income. If an owner makes between the income eligibility limit and one and one-half times the income eligibility limit, the owner may defer the portion of taxes imposed on the permanent residence that exceeds five percent of the owner's income. The deferred taxes become due when one of the following disqualifying events occurs: death of the owner, transfer of the residence by the owner, or cessation of use of the residence as a permanent residence by the owner. Proposal #6 makes four modifications that should ease the administration and implementation of the circuit breaker program: (1) the proposal would transfer the responsibility for notifying qualifying owners of the cumulative amount of the deferred taxes, including interest, from the tax assessor to the tax collector; (2) the proposal would increase uniformity regarding when enforced collection remedies become available to a taxing unit following a disqualifying event; (3) the proposal would convert the application process from a one-time application to an annual application; and (4) the proposal would create an exception to the general prohibition regarding access to public records that contain information about a taxpayer's income in order to allow agents of a county to disclose the amount of property taxes due and deferred on a property tax receipt.

Proposal #6 also creates a new statute setting out uniform provisions for the payment of deferred property taxes under the following programs: historic district property held as a future site of historic structures, the circuit breaker tax deferral program, nonprofit property held as

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[7] During the 2007 long session, House Bill authorized the Revenue Laws Study Committee to study the issue of whether to impose a gross receipts tax on heavy equipment property rentals in lieu of a property tax on the

future site of low- or moderate-income housing, present-use value property, working waterfront property, and historic property. The uniform provisions are intended to reduce redundant statutory language and to eliminate disparity in terminology and administration.

Proposal #6 additionally creates a second statutory section that collects and simplifies the current statutes governing when and against whom a taxing unit may utilize enforced property tax collection remedies. Finally, Proposal #6 makes various technical corrections, including a technical correction regarding the income eligibility limit of the property tax homestead exclusion.

Legislative Proposal #7, *Property Tax Modifications,* recommends the following three changes: Part I of the proposal would change the staggered octennial schedule for general reappraisals of property to a staggered quadrennial schedule and would eliminate horizontal adjustments beginning in 2011. This change would provide that the appraised value of property for tax purposes more closely identifies with its market value. Horizontal adjustments would be eliminated for practical reasons, since these adjustments are not utilized by the counties. Part II of the proposal would treat mobile home liens the same as tax liens on other homes by providing that a tax lien attaches to a mobile home listed as personal property and to all real property of the taxpayer in the taxing unit on the date the mobile home is listed. This change would remedy the problem that often occurs when a mobile home listed as personal property is sold or moved and property taxes are due on the property. The whereabouts of the former owner are often unknown, and current law allows no recourse against the new owner of the mobile home. Part III would modify the ownership requirements of farmland appraised and assessed at its present-use value (PUV) in order to reflect common forms of land ownership used in modern estate planning. Under current law, eligible farmland may be owned by an individual person, tenants in common,

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equipment. House Bill 1895 is currently in the Senate Finance Committee.

trusts, or certain business entities. However, the make-up of these owners does not reflect modern estate planning. For example all members of an eligible business entity must be individuals. This would prevent farmland from being in the PUV program if it is owned by individuals and a trust created by the individuals naming their children as beneficiaries of the trust. Part III of the proposal would expand the membership of a qualified business entity to include trusts and other business entities, expand the beneficiary of a qualified trust to include a business entity, and expand tenants in common to include a trust. Part III clarifies that an individual may be a direct or indirect member of a qualified business entity or a direct or indirect beneficiary of a qualified trust. The individual must continue to be actively engaged in the farming operation or a relative of an individual who is actively engaged in the operation. Part II also clarifies that a qualified business does not include a corporation whose shares are publicly traded or who has a member that is a corporation whose shares are publicly traded. Finally, Part III would allow property to remain in present-use value if deferred taxes are paid at the time of the property's transfer to a new owner, and the new owner continues to farm the land and files a timely application for PUV status.

EXEMPT DISASTER ASSISTANCE DEBIT SALES

The American Red Cross (ARC) asked the Revenue Laws Study Committee to consider whether purchases made by disaster victims using a debit card issued to the victim by the ARC should be exempt from sales tax in the same manner that purchases made by disaster victims using disbursing order issued by the ARC are exempt. In the past, the ARC provided disaster assistance relief by giving disaster victims a disbursing order to purchase items that the victim needed. Over the last few years, the ARC has begun giving disaster victims debit cards to use to purchase these same items. The ARC began using debit cards because it believes they are more

efficient, effective, and less bureaucratic for the victim and less administrative effort and expense for the organization. However, for purposes of the sales tax exemption, there is a significant difference between a debit card and a disbursing order: the purchaser, for purposes of the sales tax exemption, is the disaster victim when a debit card is used and it is the ARC when the disbursing order is used. Current law exempts purchases made by the ARC from sales tax, but not purchases made by disaster victims.

Legislative Proposal 8, *Exempt Disaster Assistance Debit Sales,* exempts from sales tax tangible personal property purchased with a client assistance debit card issued for disaster assistance relief by a State agency or a federal agency or instrumentality. The American Red Cross is an instrumentality of a federal agency. The ARC client assistance card clearly identifies itself as one issued by the ARC. The ARC has the ability to see from its reports of the card's use the amount purchased and the store from which the goods were purchased. Unlike the old disbursing order system, the ARC does not have a cash register receipt describing the specific items purchased. The client assistance card authorization form is a contract between the ARC and the disaster victim. The contract stipulates the types of items the card may be used to purchase. In the event of inappropriate purchases, the card can be suspended.

TECHNICAL, ADMINISTRATIVE, AND CLARIFYING CHANGES

The Revenue Laws Study Committee recommends Legislative Proposal 9, *Revenue Laws Technical, Administrative, and Clarifying Changes.* This proposal makes several technical and clarifying changes to the revenue laws and related statutes, many of which were recommendations of the Department of Revenue.

The proposal incorporates changes recommended by the Committee regarding the Work Opportunity Tax Credit as enacted by the 2007 Appropriations Act (S.L. 2007-323). The credit is equal to 6% of the federal Work Opportunity Tax Credit. The credit

is granted to employers based on wages paid to newly hired individuals who are members of certain targeted groups including qualified veterans, TANF recipients, and ex-felons. The Committee considered how the federal credit and similar credits in other states are implemented. In particular, the Committee discussed ways in which to narrow the credit to provide the maximum benefit to employers. The Committee recommended modifying the credit by limiting its applicability to wages paid during the taxable year for positions located in this State and by creating a sunset for the credit.

This proposal also includes changes to the following acts or provisions enacted last year:

- Reform Tax Appeals (S.L. 2007-491)
- Medicaid swap (Section 31.16 of S.L. 2007-323)
- Coordinate Statewide Enhanced 911 System (S.L. 2007-383)

COMMITTEE RECOMMENDATIONS AND LEGISLATIVE PROPOSALS

The Revenue Laws Study Committee makes the following nine recommendations to the 2008 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. Procedure for Tax Class Actions
2. IRC Update
3. Close Franchise Tax Loopholes
4. Extend Expiring Tax Credits
5. Modify Estate Tax Law
6. Deferred Property Tax Programs Changes
7. Property Tax Modifications
8. Exempt Disaster Assistance Debit Sales
9. Revenue Laws Technical, Clarifying, & Administrative Changes

LEGISLATIVE PROPOSAL #1

PROCEDURE FOR TAX CLASS ACTIONS

LEGISLATIVE PROPOSAL #1

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2008 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO ESTABLISH A PROCEDURE FOR TAXPAYERS TO JOIN A CLASS ACTION SEEKING A REFUND OF AN UNCONSTITUTIONAL TAX.

SHORT TITLE: Procedure for Tax Class Actions.

SPONSORS:

BRIEF OVERVIEW: This proposal establishes a procedure for taxpayers seeking to join a class action in order to obtain a refund of an unconstitutional tax.

FISCAL IMPACT:

EFFECTIVE DATE: This act would become effective when it becomes law and applies to actions filed on or after that date.

A copy of the proposed legislation and a bill analysis begin on the next page.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-SVz-22 [v.11] (04/23)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/6/2008 9:39:57 AM

Short Title: Procedure for Tax Class Actions. (Public)

Sponsors: .

Referred to: .

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PROCEDURE FOR TAXPAYERS TO JOIN A CLASS ACTION SEEKING A REFUND OF TAX PAID DUE TO AN UNCONSTITUTIONAL STATUTE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 105 is amended by adding a new section to read:

"**§ 105-241.18. Class actions.**

(a) Requirements. – A taxpayer must meet the requirements set out in G.S. 105-241.17 to bring a class action seeking the refund of a tax paid due to an unconstitutional statute. A taxpayer who wants to become a member of a pending class action seeking the refund of a tax paid due to an unconstitutional statute must comply with all of the requirements in this section. A taxpayer who does not meet all of these requirements is not eligible for inclusion in the class. The requirements are:

(1) File a claim for refund in accordance with G.S. 105-241.7.

(2) Specify in the claim for refund that the sole basis for the claim is to obtain a refund of a tax paid due to an unconstitutional statute and identify the statute that is unconstitutional. If the taxpayer's claim for refund includes another basis, that basis is not subject to review unless the taxpayer files a separate claim for refund on that basis in accordance with G.S. 105-241.7.

(3) Specify in the claim for refund that the taxpayer seeks to become a member of a pending class action seeking the refund of a tax paid due to an unconstitutional statute and identify the pending class action.

(b) Procedure. – The procedures in G.S. 105-241.11 through G.S. 105-241.17 for administrative and judicial review of a request for refund and a proposed denial of a request for refund do not apply to a claim for refund that meets the requirements of this

section. The Department must send a copy of a claim for refund that meets the requirements of this section to the court in which the class action specified in the claim is pending. The Department must wait for direction from the court to take any other action on the claim for refund.

(c) Statute of Limitations. – The statute of limitations for filing a claim for refund is tolled for a taxpayer who could timely file a claim for refund on the date a class action commences seeking the refund of a tax paid due to an unconstitutional statute. A class action is considered to commence on the earlier of the date a complaint or motion is filed in a civil action seeking certification of a class. The statute of limitations is tolled for the limited purpose of giving a taxpayer an opportunity to become a member of the class action by filing a claim for refund that meets the requirements of this section. The statute of limitations for filing a claim for refund is not tolled for any other purpose.

The tolling of the statute of limitations under this section for filing a claim for refund ends when a court enters any of the following in a class action:

(1) A final order denying certification of the class.

(2) A final order dismissing the class action without an adjudication on the merits.

(3) A final judgment on the merits."

SECTION 2. G.S. 105-241.19 reads as rewritten:

"**§ 105-241.19. Declaratory judgments, injunctions, and other actions prohibited.**

The remedies in G.S. 105-241.11 through G.S. ~~105-241.17~~ 105-241.18 set out the exclusive remedies for disputing the denial of a requested refund, a taxpayer's liability for a tax, or the constitutionality of a tax statute. Any other action is barred. Neither an action for declaratory judgment, an action for an injunction to prevent the collection of a tax, nor any other action is allowed."

SECTION 3. This act is effective when it becomes law and applies to actions filed on or after that date.

DRAFT 2007-SVz-22: Procedure for Tax Class Actions

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	May 7, 2008
Introduced by:		**Summary by:**	Trina Griffin
Version:	Draft Proposal		Committee Counsel

SUMMARY: This proposal establishes a procedure for taxpayers seeking to join a class action in order to obtain a refund of an unconstitutional tax.

BILL ANALYSIS: This proposal does not change the current law with regard to a taxpayer who wishes to commence a class action challenging the constitutionality of a tax. That taxpayer must exhaust the administrative review procedures prior to filing suit. This proposal sets out the procedure for a taxpayer seeking to become a member of a class action once that lawsuit has already been filed. In order to join a class action, a taxpayer would be required to do the following:

- File a claim for refund with the Department of Revenue.
- Specify that the sole basis for the claim for refund is the unconstitutionality of a statute and identify the alleged unconstitutional statute. If a taxpayer's claim for refund includes a basis other than the facial unconstitutionality of a statute, then the taxpayer must file a separate claim for refund.
- Specify the pending class action to which the taxpayer seeks to become a member.

A taxpayer seeking to join a class action who properly files a claim for refund would not be required to exhaust the administrative and judicial review process. Once the claim is filed, the Department would be required to notify the court in which the class action is pending by sending it a copy of the claim for refund.

The statute of limitations for filing a claim for refund is tolled for any taxpayer who, at the time the class action was commenced, could have filed a timely claim for refund. However, the statute of limitations is tolled only for the limited purpose of giving the taxpayer an opportunity to become a member of the class action. A class action is considered to commence on the earlier of the date a complaint or motion is filed in a civil action seeking certification of a class. The tolling ends when the court enters any of the following:

1. A final order denying certification of the class.
2. A final order dismissing the class action without an adjudication on the merits.
3. A final judgment on the merits.

EFFECTIVE DATE: This act is effective when it becomes law and applies to actions filed on or after that date.

CURRENT LAW & BACKGROUND: The current law regarding tax class actions is a complex amalgamation of conflicting common law legal principles, statutes, and judicial interpretation. The intersection of these principles and laws provide little guidance to the Department, taxpayers, or practitioners as to the proper procedure for seeking the refund of an unconstitutional tax.

Prior to the enactment of SB 242 in 2007, the "protest statute" was the relevant statute for class action purposes. For over 80 years, it provided the authority for and the procedural mechanism by which

taxpayers could bring a lawsuit challenging the illegality of a tax. This statute required a taxpayer to pay the tax first, file a claim for a refund, and wait 90 days before filing suit. This statute was repealed by SB 242. However, it is still relevant to understanding the current law because it is the centerpiece of State judicial opinions in this area.

Until 1998, the law in North Carolina was well-settled with regard to the protest rule. North Carolina courts had consistently upheld the application of the statute as a procedural bar to relief if the requirements had not been met. In the *Bailey I* case, a group of State and local employees filed suit alleging impairment of contract as the result of legislative changes made to the taxation of retiree income. None of the plaintiffs had filed a protest. The North Carolina Supreme Court upheld the dismissal of the case for failure to comply with the procedural requirements of G.S. 105-267. The *Swanson* case involved a similar issue. In that case, the plaintiffs filed a "class demand letter" attempting to have one claim for refund stand for all claims. The North Carolina Supreme Court also upheld the dismissal of the case.

After the decision in *Bailey I*, the plaintiffs refiled their case and, this time, all of the plaintiffs had individually complied with the protest requirement. The Court reversed itself. In *Bailey II*, the Court found that not only were the plaintiffs who had filed a protest entitled to a refund, but all nonprotesters were entitled to a refund as well. The Court seemed most persuaded by the fact that the State had sufficient notice of its liability where there was an identifiable class of affected taxpayers consisting of all those State and local employees who had vested in the State retirement system as of August 12, 1989.

The *Smith* case was another class action lawsuit comprised of both protesters and nonprotesters challenging the intangibles tax. In that case, the North Carolina Supreme Court also held that the nonprotesters were entitled to relief as well as the protesters. However, the Court based its reasoning, not on the protest statute, but on the uniformity provision of the State Constitution.

Dunn is an ongoing case that has to do with the taxation of interest earned on out-of-state municipal bonds. In December of 2007, the North Carolina Supreme Court upheld the certification of a class that includes plaintiffs who have not filed a refund claim, who are of a different tax type than the named plaintiffs, and for tax years other than the years the plaintiffs are seeking a refund.

In the tax class actions that have been decided since 1998, the North Carolina courts have demonstrated a willingness to effectively allow the claim or protest of one taxpayer to stand for the claims of all similarly situated taxpayers despite the protest statute's requirement taxpayers must file a claim for refund as a prerequisite to becoming a party to a lawsuit challenging the legality of a tax.

With the passage of SB 242, the protest statute is repealed and a new statute is enacted setting out the conditions that must be met in order to file a lawsuit challenging the constitutionality of a tax statute, which includes obtaining a final determination from the Department and filing a contested case with the Office of Administrative Hearings. SB 242 did not make any express class action provision.

Given SB 242's silence and the trend over the last 10 years in our courts on this issue, this proposal is designed to provide clear guidance to the Department, taxpayers, and practitioners, consistent with the original intent of the protest statute, that each taxpayer seeking to become a member of a class action must file a claim for refund indicating that desire and identifying the specific class action.

2007-SMSVz-22

LEGISLATIVE PROPOSAL #2

IRC UPDATE

LEGISLATIVE PROPOSAL #2

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2008 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 from January 1, 2007 to May 1, 2008, the reference to the Internal Revenue Code used in defining and determining certain State tax provisions. By doing so, North Carolina would conform to changes made by three federal acts, except that the bill would delay the impact of the bonus depreciation provision authorized by the Economic Stimulus Act. The three federal acts are as follows:

1) Economic Stimulus Act of 2008
2) Mortgage Forgiveness Debt Relief Act of 2007
3) Small Business and Work Opportunity Tax Act of 2007

FISCAL IMPACT: Based on the analysis of the Joint Committee on Taxation (JCT), there are three sections of this bill that would impact the State's General Fund revenues. They are the Sec. 179 expensing increases and the 50% bonus depreciation, which were both part of the Economic Stimulus Act, plus the Mortgage Debt Forgiveness Act. According to JCT analysis, the other sections of the IRC update are expected to have minimal or no impact on the General Fund.

The fiscal impact to the General Fund from partial conformity with the IRC update is based on JCT estimates on changes to federal taxes. The method used to determine the state fiscal

impact begins with these JCT estimates. These estimates are calculated by federal fiscal year (October to October). Fiscal Research adjusts these numbers back to an approximate calendar year tax impact. Then the next step was to prorate the national numbers to the state impact. This adjustment involved two steps: accounting for the relative size of the state based on federal tax collections and then adjusting for the difference in federal and state marginal tax rates. This method is similar to that used by the Center for Budget and Policy Priorities (CBPP). Therefore, the tax year estimates were compared with estimates produced by CBPP and were found to be comparable in magnitude.

Once North Carolina's share of the JCT estimates were determined, state tax liability changes were estimated and then allocated to the appropriate fiscal year. In order to assess the impact of the 85% addback of the bonus depreciation contained in the Fiscal Stimulus Act, a series of depreciation schedules were developed. These depreciation simulations were used to determine the impact of the bonus depreciation with the adoption of an 85 percent addback rule and a 5 year carryforward for each fiscal year.

To estimate the impact of the Mortgage Debt Forgiveness Act, similar methodology as described above was used. The share of North Carolina's fiscal impact was calculated with a slight difference. Rather than use tax collection data, real estate activity was used as a means to determine the State's share of the JCT estimated revenue changes.

EFFECTIVE DATE: This act would become effective for taxable years beginning on or after January 1, 2008.

A copy of the proposed legislation and a bill analysis begin on the next page.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U D

BILL DRAFT 2007-SVxz-18 [v.5] (03/05)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/16/2008 2:36:37 PM

Short Title: IRC Update. (Public)

Sponsors: .

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:

"(1b) Code. – The Internal Revenue Code as enacted as of ~~January 1, 2007,~~ May 1, 2008, including any provisions enacted as of that date which become effective either before or after that date."

SECTION 2. Notwithstanding Section 1 of this act, any amendments to the Internal Revenue Code enacted after January 1, 2007, that increase North Carolina taxable income for the 2007 taxable year become effective for taxable years beginning on or after January 1, 2008.

SECTION 3. G.S. 105-130.5(a) reads as rewritten:

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

...

(15) ~~The~~ For taxable years 2002-2005, the applicable percentage of the amount allowed as a special accelerated depreciation deduction under section 168(k) or section 1400L of the Code, as set out in the table below. In addition, a taxpayer who was allowed a special accelerated depreciation deduction under section 168(k) or section 1400L of the Code in a taxable year beginning before January 1, 2002, and whose North Carolina taxable income in that earlier year reflected that accelerated depreciation deduction must add to federal taxable income in the taxpayer's first taxable year beginning on or after January 1, 2002, an amount equal to the amount of the deduction allowed in the

earlier taxable year. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes. The applicable percentage is as follows:

Taxable Year	Percentage
2002	100%
2003	70%
2004	70%
2005~~ and thereafter~~	0%

..."

SECTION 4. G.S. 105-130.5 (a) is amended by adding a new subdivision to read:

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

...

(15a) The applicable percentage of the amount allowed as a special accelerated depreciation deduction under section 168(k) of the Code for property placed in service after December 31, 2007, but before January 1, 2009. In addition, a taxpayer who was allowed a special accelerated depreciation deduction in taxable year 2007 for property placed in service during that period, and whose North Carolina taxable income for that year reflected that accelerated depreciation deduction must add to federal taxable income in the taxpayer's 2008 taxable year an amount equal to the applicable percentage of the deduction amount allowed in the 2007 taxable year. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes. The applicable percentage under this subdivision is eighty-five percent (85%).

..."

SECTION 5. G.S. 105-134.6(c) reads as rewritten:

"(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

...

(8) ~~The~~ For taxable years 2002-2005, the applicable percentage of the amount allowed as a special accelerated depreciation deduction under section 168(k) or section 1400L of the Code, as set out in the table below. In addition, a taxpayer who was allowed a special accelerated depreciation deduction under section 168(k) or section 1400L of the Code in a taxable year beginning before January 1, 2002, and whose North Carolina taxable income in that earlier year reflected that accelerated depreciation deduction must add to federal taxable income in the taxpayer's first taxable year beginning on or after January 1, 2002, an amount equal to the amount of the deduction allowed in the

earlier taxable year. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes. The applicable percentage is as follows:

Taxable Year	Percentage
2002	100%
2003	70%
2004	70%
2005 ~~and thereafter~~	0%

..."

SECTION 6. G.S. 105-134.6(c) is amended by adding a new subdivision to read:

"(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

...

"(8a) The applicable percentage of the amount allowed as a special accelerated depreciation deduction under section 168(k) of the Code for property placed in service after December 31, 2007, but before January 1, 2009. In addition, a taxpayer who was allowed a special accelerated depreciation deduction in taxable year 2007 for property placed in service for that period, and whose North Carolina taxable income for that year reflected that accelerated depreciation deduction must add to federal taxable income in the taxpayer's 2008 taxable year an amount equal to the applicable percentage of the deduction amount allowed in the 2007 taxable year. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes. The applicable percentage under this subdivision is eighty-five percent (85%).

..."

SECTION 7. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

...

(21a) In each of the taxpayer's first five taxable years beginning on or after January 1, 2009, an amount equal to twenty percent (20%) of the amount added to taxable income in taxable year 2008 as accelerated depreciation under subdivision (a)(15a) of this section."

..."

SECTION 8. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(b) Deductions. – The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in taxable income:

...

(17a) In each of the taxpayer's first five taxable years beginning on or after January 1, 2009, an amount equal to twenty percent (20%) of the amount added to taxable income in taxable year 2008 as accelerated depreciation under subdivision (c)(8a) of this section."

..."

SECTION 9. This act is effective for taxable years beginning on or after January 1, 2008.

DRAFT 2007-SVxz-18: IRC Update

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	April 30, 2008
Introduced by:		**Summary by:**	Trina Griffin
Version:			Committee Counsel

SUMMARY: This proposal would update from January 1, 2007, to May 1, 2008, the reference to the Internal Revenue Code used in defining and determining certain State tax provisions. By doing so, North Carolina would conform to changes made by three federal acts, except that the bill would delay the impact of the bonus depreciation provision authorized by the Economic Stimulus Act. The bill would become effective for taxable years beginning on or after January 1, 2008.

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. The current reference date is January 1, 2007.

BILL ANALYSIS: The proposal would change the reference date to May 1, 2008. By changing the reference date to May 1, 2008, the bill effectively incorporates into our State tax laws changes made by three federal acts, with one exception. The Economic Stimulus Act of 2008 (ESA) has three major components, only two of which impact State revenues: the 50% bonus depreciation provision and the increased expensing limit. The bill conforms to the increased expensing limit but delays the impact of the bonus depreciation provision. Additional detail on the nonconforming provision is provided below. The three federal acts are as follows:

- Economic Stimulus Act of 2008
- Mortgage Forgiveness Debt Relief Act of 2007
- Small Business and Work Opportunity Tax Act of 2007

Economic Stimulus Act of 2008

Enacted on February 13, 2008, the Economic Stimulus Act of 2008 (P.L. 110-185) is a $152 billion package designed to stimulate the economy through rebates for individual taxpayers and incentives for businesses. The rebates, which are technically "advance credit payments," do not impact State revenues and are not discussed in this analysis. The three business incentives are the 50% bonus depreciation provision for qualifying property placed in service in 2008, the increased limits for section 179

[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."

expensing of qualified property in 2008, and increased depreciation limits for "luxury" autos predominantly used for business.

50% Bonus Depreciation Provision. – Depreciation is an income tax deduction that allows a taxpayer to recover the cost or other basis of certain property over several years. It is an annual allowance for the wear and tear, deterioration, or obsolescence of the property. Bonus depreciation allows a business to claim more of a deduction up front and spread the remainder out over the normal depreciation schedule. In other words, a taxpayer will recover the basis in the asset sooner than under prior law. However, over the life of the asset the taxpayer still receives the same benefit. Congress has used bonus depreciation several times to encourage business investment, specifically after September 11, 2001. The Jobs Creation and Worker Assistance Act of 2002 provided a 30% bonus depreciation allowance. The Jobs and Growth Tax Relief Reconciliation Act of 2003 extended the sunset and increased the amount to 50%.

Under the ESA, a taxpayer is entitled to depreciate in the first year 50% of the adjusted basis of certain qualified property placed in service during the 2008 calendar year.[3] To be eligible to claim bonus depreciation, property must be (1) eligible for the modified accelerated cost recovery system (MACRS) with a depreciation of 20 years or less; (2) water utility property; (3) off-the-shelf computer software; or (4) qualified leasehold property. Bonus depreciation is available for every item of tangible personal property, except inventory, property used outside the U.S., and property depreciated under the alternative depreciation system. Other than the computer software mentioned, it is not available for intangibles. If property is sold in the same year it is placed in service, no bonus depreciation is allowed.

►***BILL ANALYSIS***: The bill does not conform State law to the accelerated depreciation schedule allowed under the ESA. Over the life of an asset placed in service during 2008, taxpayers will be able to deduct the same amount of the asset's basis under both federal and State law; it is just that the timing of the deduction will differ. To accomplish this "decoupling" from the federal accelerated depreciation provision, the bill does two things:

- The taxpayer must add back to federal taxable income 85% of the accelerated depreciation amount (50%) in the year the accelerated depreciation is claimed for federal purposes. The add-back means that for State tax purposes, a taxpayer would deduct less in that tax year than the taxpayer would have deducted if the State conformed to the accelerated depreciation law.
- In tax years beginning on or after January 1, 2009, the taxpayer may deduct from federal taxable income the total amount of the add-back required for either the 2007 or 2008 tax year, divided into five equal installments. This means that for State tax purposes, a taxpayer would be allowed to deduct a greater depreciation amount in the outlying tax years – the normal depreciation amount plus 20% of the accelerated depreciation amount the taxpayer had to add back. The purpose of this recovery provision is to enable the taxpayer to have the same basis in assets for federal and State purposes. Without this deduction provision, a taxpayer would have a different basis in the depreciable asset for State and federal purposes and would have to keep separate books and records for State and federal purposes until the disposal of the asset. In effect, the add-back and subsequent deduction will affect the timing of the impact of bonus depreciation on the State but it will not increase or decrease the total amount of revenue the State receives over the affected years.

Increased Section 179 Expensing Limits - In general, a qualifying taxpayer may elect to treat the cost of certain property as an expense and deduct it in the year the property is placed in service instead of depreciating it over several years. This property is frequently referred to as section 179 property, after the relevant section in the Internal Revenue Code. To be eligible, the property must be tangible personal

[3] The placed-in-service date is extended one year, through December 31, 2009, for property with a recovery period of 10 years or longer, for transportation property, and for certain aircraft.

property which is actively used in the taxpayer's business for which a depreciation deduction would be allowed. The property must be used more than 50% for business and must be newly purchased property. Generally, taxpayers take expensing first and claim section 168(k) depreciation on any remaining basis.

Last year, Congress increased the annual expensing limitation to $125,000 with a phase-out beginning at $500,000. Both of these limitations are indexed for inflation. Thus, prior to the ESA, the deduction was limited to $128,000 of the cost of the property with a phase-out at $510,000 for 2008. Because the deduction is completely phased out for qualifying purchases exceeding $638,000, the deduction is confined generally to the relatively small business.

The new law temporarily doubles the limitation to $250,000.[4] The threshold for reducing the deduction is also increased to $800,000 with a complete phase-out once qualifying purchases exceed $1.05 million. These limitations apply only to property purchased and placed in service in tax years beginning in 2008. The limitations will return to the lower levels for tax years beginning in 2009.

► ***BILL ANALYSIS:*** The bill conforms to the increased expensing limit.

Increased Depreciation Limits for "Luxury" Autos. – Since the new law permits taxpayers to claim bonus depreciation, it also increases section 280F depreciation limits on luxury vehicles.[5] A luxury vehicle is one that costs more than the "luxury auto price floor," which is adjusted annually for inflation along with the depreciation limits. The first-year limit on depreciation for passenger vehicles placed in service in 2008 is projected to be $2,960 for automobiles and $3,160 for vans and trucks. The new law raises the cap by $8,000 for a maximum first-year depreciation of $10,960 for autos and $11,160 for vans and trucks.

► ***BILL ANALYSIS:*** The bill conforms to this provision.

Mortgage Forgiveness Debt Relief Act of 2007 (P.L. 110-142)

Enacted on December 20, 2007, the Mortgage Forgiveness Debt Relief Act was Congress's response to the problems generated by the subprime crisis, short sales, and rising foreclosure rates.

Income Exclusion for Discharged Indebtedness on Principal Residence. - When a lender forecloses on property, sells the home for less than the borrower's outstanding mortgage and forgives all or part of the unpaid mortgage debt, the canceled debt is considered income under the Code. This act provides an exclusion from income for this discharged indebtedness related to a principal residence for the three-year period beginning January 1, 2007 and ending December 31, 2009. There is no income limitation but no more than $2 million in mortgage debt is eligible for exclusion.

Extension of Deduction for Mortgage Insurance Premiums. - The act temporarily extends for three years, through tax year 2010, the deduction for qualified mortgage insurance premiums. Qualified mortgage insurance is mortgage insurance provided by the Veterans Administration, the Federal Housing Administration, the Rural Housing Administration, or private mortgage insurance.

Surviving Spouse Home Sale Exclusion. – The new law extends the period of time during which a surviving spouse may use the joint return filers' $500,000 home sale gain exclusion before being treated as a single individual, who is entitled only to a $250,000. Previously, a surviving spouse was entitled to the $500,000 exclusion only to the extent he or she could file a joint return with the deceased spouse's estate, which only occurs for the tax year in which the spouse dies. Starting January 1, 2008, the sale of a residence that had been jointly owned and occupied by the surviving and deceased spouse is entitled to the $500,000 gain exclusion provided the sale occurs no later than two years after the date of death of the individual spouse.

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[4] The new law does not alter the section 179 limitation imposed on sport utility vehicles, which have an expense limit of $25,000.

[5] These limits were increased when bonus depreciation was previously available.

Income Exclusion for Volunteer Emergency Responders. - The act also allows volunteer emergency responders to exclude from income state and local tax benefits of up to $360 for tax years beginning after December 31, 2007. The benefit expires in 2010. Last year, the General Assembly established a $250 income tax deduction for certain volunteer emergency responders who attend at least 36 hours of annual training.

▶ ***BILL ANALYSIS:*** The bill conforms to the provisions of this act.

Small Business and Work Opportunity Tax Act of 2007 (P.L. 110-28)

Enacted on May 25, 2007, the Small Business and Work Opportunity Act of 2007 (SBWOA) was part of the larger U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007. It includes nearly $5 billion in tax incentives primarily for small businesses to help businesses absorb the cost of complying with the increase in the federal minimum wage as well as a package of S corporation reforms. It includes the following provisions:

Increased Small Business Expensing Limit – The dollar and investment limitations for expensing were increased retroactively to January 1, 2007, and were extended through 2010. The prior base limit of $100,000 was increased to $125,000 and the investment limitation was increased from $450,000 to $500,000 for tax years beginning in 2007. Both limits are indexed for inflation. However, this provision is effectively superseded by the newly increased expensing provision in the ESA.

Extension of Work Opportunity Tax Credit – Created in 1996 by the Small Business Job Protection Act, this tax credit is designed to encourage employers to hire individuals from economically-challenged populations. There are nine "target" groups, including public assistance recipients, ex-felons, veterans, high-risk youth, individuals who reside in certain economically depressed areas, and individuals referred to the employer as part of a vocational rehabilitation plan. The amount of the credit is a percentage of qualified wages paid during each of the first two years of employment. Prior to this act, the credit was scheduled to expire for employees hired after December 31, 2007.

This act extends the sunset for three and a half years, until August 31, 2011, and expands the scope of the credit. It expands the targeted veterans' population to include veterans with service-connected disabilities who have been unemployed for six months or more during a one-year period ending on the hire date and are hired within one year after having been discharged form the military or released from active duty. It also increases from $6,000 to $12,000 in the case of individuals who qualify under the newly expanded veterans' group. The high-risk youth and vocational rehabilitation referral groups are also expanded.

Family Business Tax Simplification - Effective for tax years beginning on and after December 31, 2006, the act allows a married couple who jointly operates an unincorporated business and who files a joint return to elect not to be treated as a partnership for federal tax purposes.

Katrina Recovery Tax Incentives. – The act also extends and enhances some of the tax incentives in the Gulf Opportunity Zone Act of 2005 and Katrina Emergency Tax Relief Act of 2005. These include the extension of special expensing for qualified property, an enhanced low-income housing credit, and flexible tax-exempt bond financing rules.

S Corporation Changes – Generally speaking, these provisions are designed to make it easier for small business to retain S corp status. They also encourage use of the S corp business entity by effectively reducing the taxes owed by shareholders.

1. Passive investment income. – An S corporation that has accumulated C corporation earnings and profits and has gross receipts of which more than 25% are passive investment income may lose its Subchapter S status and will be subject to a tax on the excess passive investment income. Effective for tax years beginning after May 25, 2007, capital gain from the sale or exchange of

stock or securities is no longer treated as an item of passive investment income. These gains are still counted as gross receipts but not as passive investment income.

2. Banks as S corps. - Effective for tax years beginning after December 31, 2006, the new law eliminates the treatment of restricted bank director stock as outstanding stock that threatened S corp status under the single-class-of-stock rule. It also alters the treatment of accounting adjustments caused by a bank changing its method of accounting.

3. Partial sale of QSubs. – A qualified Subchapter S subsidiary (QSub) is a wholly owned subsidiary that an S corp elects to treat as a QSub. Under the new law, a sale of QSub stock that terminates the QSub election and creates a deemed new corporation is now treated as a sale of an undivided interest in the assets of the QSub. This treatment eliminates the danger of an avalanche of gain being recognized by a sale of only a partial, but substantial (i.e. more than 20%), interest in the subsidiary.

4. ESBT interest. – Effective for tax years beginning after December 31, 2006, the new law allows an electing small business trust (ESBT) to deduct interest paid on money borrowed to acquire S corporation stock. Although Treasury regulations allocated the interest to the S corporation portion of the ESBT, they did not allow a deduction.

5. E&P reduction. – Effective for tax years beginning after May 15, 2007, the new law allows a corporation that was an S corp before 1983, but was not an S corp for its first tax year that began after December 31, 1996, to eliminate its pre-1983 earnings and profits from the corporations accumulated E&P balance. This benefit had previously been available only to a corporation that was an S corp for its first taxable year after 1996. The result is that S corps to which this new provision applies may be able to reduce the amount of distributions treated as taxable dividends.

► ***BILL ANALYSIS:*** The bill conforms to the provisions of this act.

EFFECTIVE DATE: This bill is effective for taxable years beginning on or after January 1, 2008.

2007-SMSVxz-18

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: April 30, 2008

TO: Revenue Laws Study Committee

FROM: Barry Boardman
Fiscal Research Division

RE: 2007-SVxz-18 IRC Update

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13
REVENUES (millions):					
Net General Fund Impact	0.0	(1.2)	(0.8)	4.3	4.0
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: January 1, 2008

BILL SUMMARY: This proposal would update from January 1, 2007, to May 1, 2008, the reference to the Internal Revenue Code used in defining and determining certain State tax provisions. By doing so, North Carolina would conform to changes made by three federal acts, except that the bill would delay the impact of the bonus depreciation provision authorized by the Economic Stimulus Act. The bill would become effective for taxable years beginning on or after January 1, 2008.

The proposal would change the reference date to May 1, 2008. By changing the reference date to May 1, 2008, the bill effectively incorporates into our State tax laws changes made by three federal acts, with one exception. The Economic Stimulus Act of 2008 (ESA) has three major components, only two of which impact State revenues: the 50% bonus depreciation provision and the increased expensing limit. The bill conforms to the increased expensing limit but delays the impact of the bonus depreciation provision. Additional detail on the nonconforming provision is provided below. The three federal acts are as follows:

- Economic Stimulus Act of 2008
- Mortgage Forgiveness Debt Relief Act of 2007
- Small Business and Work Opportunity Tax Act of 2007

Economic Stimulus Act of 2008

Enacted on February 13, 2008, the Economic Stimulus Act of 2008 (P.L. 110-185) is a $152 billion package designed to stimulate the economy through rebates for individual taxpayers and incentives for businesses. The rebates, which are technically "advance credit payments," do not impact State revenues and are not discussed in this analysis. The three business incentives are the 50% bonus depreciation provision for qualifying property placed in service in 2008, the increased limits for section 179 expensing of qualified property in 2008, and increased depreciation limits for "luxury" autos predominantly used for business.

50% Bonus Depreciation Provision. – Depreciation is an income tax deduction that allows a taxpayer to recover the cost or other basis of certain property over several years. It is an annual allowance for the wear and tear, deterioration, or obsolescence of the property. Bonus depreciation allows a business to claim more of a deduction up front and spread the remainder out over the normal depreciation schedule. In other words, a taxpayer will recover the basis in the asset sooner than under prior law. However, over the life of the asset the taxpayer still receives the same benefit. Congress has used bonus depreciation several times to encourage business investment, specifically after September 11, 2001. The Jobs Creation and Worker Assistance Act of 2002 provided a 30% bonus depreciation allowance. The Jobs and Growth Tax Relief Reconciliation Act of 2003 extended the sunset and increased the amount to 50%.

Under the ESA, a taxpayer is entitled to depreciate in the first year 50% of the adjusted basis of certain qualified property placed in service during the 2008 calendar year.[1] To be eligible to claim bonus depreciation, property must be (1) eligible for the modified accelerated cost recovery system (MACRS) with a depreciation of 20 years or less; (2) water utility property; (3) off-the-shelf computer software; or (4) qualified leasehold property. Bonus depreciation is available for every item of tangible personal property, except inventory, property used outside the U.S., and property depreciated under the alternative depreciation system. Other than the computer software mentioned, it is not available for intangibles. If property is sold in the same year it is placed in service, no bonus depreciation is allowed.

The bill does not conform State law to the accelerated depreciation schedule allowed under the ESA. Over the life of an asset placed in service during 2008, taxpayers will be able to deduct the same amount of the asset's basis under both federal and State law; it is just that the timing of the deduction will differ. To accomplish this "decoupling" from the federal accelerated depreciation provision, the bill does two things:

- The taxpayer must add back to federal taxable income 85% of the accelerated depreciation amount (50%) in the year the accelerated depreciation is claimed for federal purposes. The

[1] The placed-in-service date is extended one year, through December 31, 2009, for property with a recovery period of 10 years or longer, for transportation property, and for certain aircraft.

add-back means that for State tax purposes, a taxpayer would deduct less in that tax year than the taxpayer would have deducted if the State conformed to the accelerated depreciation law.

- In tax years beginning on or after January 1, 2009, the taxpayer may deduct from federal taxable income the total amount of the add-back required for either the 2007 or 2008 tax year, divided into five equal installments. This means that for State tax purposes, a taxpayer would be allowed to deduct a greater depreciation amount in the outlying tax years – the normal depreciation amount plus 20% of the accelerated depreciation amount the taxpayer had to add back. The purpose of this recovery provision is to enable the taxpayer to have the same basis in assets for federal and State purposes. Without this deduction provision, a taxpayer would have a different basis in the depreciable asset for State and federal purposes and would have to keep separate books and records for State and federal purposes until the disposal of the asset. In effect, the add-back and subsequent deduction will affect the timing of the impact of bonus depreciation on the State but it will not increase or decrease the total amount of revenue the State receives over the affected years.

Increased Section 179 Expensing Limits - In general, a qualifying taxpayer may elect to treat the cost of certain property as an expense and deduct it in the year the property is placed in service instead of depreciating it over several years. This property is frequently referred to as section 179 property, after the relevant section in the Internal Revenue Code. To be eligible, the property must be tangible personal property which is actively used in the taxpayer's business for which a depreciation deduction would be allowed. The property must be used more than 50% for business and must be newly purchased property. Generally, taxpayers take expensing first and claim section 168(k) depreciation on any remaining basis.

Last year, Congress increased the annual expensing limitation to $125,000 with a phase-out beginning at $500,000. Both of these limitations are indexed for inflation. Thus, prior to the ESA, the deduction was limited to $128,000 of the cost of the property with a phase-out at $510,000 for 2008. Because the deduction is completely phased out for qualifying purchases exceeding $638,000, the deduction is confined generally to the relatively small business.

The new law temporarily doubles the limitation to $250,000.[2] The threshold for reducing the deduction is also increased to $800,000 with a complete phase-out once qualifying purchases exceed $1.05 million. These limitations apply only to property purchased and placed in service in tax years beginning in 2008. The limitations will return to the lower levels for tax years beginning in 2009.

Increased Depreciation Limits for "Luxury" Autos. – Since the new law permits taxpayers to claim bonus depreciation, it also increases section 280F depreciation limits on luxury vehicles.[3] A luxury vehicle is one that costs more than the "luxury auto price floor," which is adjusted annually for inflation along with the depreciation limits. The first-year limit on depreciation for passenger vehicles placed in service in 2008 is projected to be $2,960 for automobiles and $3,160 for vans and trucks. The new law raises the cap by $8,000 for a maximum first-year depreciation of $10,960 for autos and $11,160 for vans and trucks.

Mortgage Forgiveness Debt Relief Act of 2007 (P.L. 110-142)

Enacted on December 20, 2007, the Mortgage Forgiveness Debt Relief Act was Congress's response to the problems generated by the subprime crisis, short sales, and rising foreclosure rates.

Income Exclusion for Discharged Indebtedness on Principal Residence. - When a lender forecloses on property, sells the home for less than the borrower's outstanding mortgage and forgives all or part of the

[2] The new law does not alter the section 179 limitation imposed on sport utility vehicles, which have an expense limit of $25,000.

[3] These limits were increased when bonus depreciation was previously available.

unpaid mortgage debt, the canceled debt is considered income under the Code. This act provides an exclusion from income for this discharged indebtedness related to a principal residence for the three-year period beginning January 1, 2007 and ending December 31, 2009. There is no income limitation but no more than $2 million in mortgage debt is eligible for exclusion.

Extension of Deduction for Mortgage Insurance Premiums. - The act temporarily extends for three years, through tax year 2010, the deduction for qualified mortgage insurance premiums. Qualified mortgage insurance is mortgage insurance provided by the Veterans Administration, the Federal Housing Administration, the Rural Housing Administration, or private mortgage insurance.

Surviving Spouse Home Sale Exclusion. – The new law extends the period of time during which a surviving spouse may use the joint return filers' $500,000 home sale gain exclusion before being treated as a single individual, who is entitled only to a $250,000. Previously, a surviving spouse was entitled to the $500,000 exclusion only to the extent he or she could file a joint return with the deceased spouse's estate, which only occurs for the tax year in which the spouse dies. Starting January 1, 2008, the sale of a residence that had been jointly owned and occupied by the surviving and deceased spouse is entitled to the $500,000 gain exclusion provided the sale occurs no later than two years after the date of death of the individual spouse.

Income Exclusion for Volunteer Emergency Responders. - The act also allows volunteer emergency responders to exclude from income state and local tax benefits of up to $360 for tax years beginning after December 31, 2007. The benefit expires in 2010. Last year, the General Assembly established a $250 income tax deduction for certain volunteer emergency responders who attend at least 36 hours of annual training.

Small Business and Work Opportunity Tax Act of 2007 (P.L. 110-28)

Enacted on May 25, 2007, the Small Business and Work Opportunity Act of 2007 (SBWOA) was part of the larger U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007. It includes nearly $5 billion in tax incentives primarily for small businesses to help businesses absorb the cost of complying with the increase in the federal minimum wage as well as a package of S corporation reforms. It includes the following provisions:

Increased Small Business Expensing Limit – The dollar and investment limitations for expensing were increased retroactively to January 1, 2007, and were extended through 2010. The prior base limit of $100,000 was increased to $125,000 and the investment limitation was increased from $450,000 to $500,000 for tax years beginning in 2007. Both limits are indexed for inflation. However, this provision is effectively superseded by the newly increased expensing provision in the ESA.

Extension of Work Opportunity Tax Credit – Created in 1996 by the Small Business Job Protection Act, this tax credit is designed to encourage employers to hire individuals from economically-challenged populations. There are nine "target" groups, including public assistance recipients, ex-felons, veterans, high-risk youth, individuals who reside in certain economically depressed areas, and individuals referred to the employer as part of a vocational rehabilitation plan. The amount of the credit is a percentage of qualified wages paid during each of the first two years of employment. Prior to this act, the credit was scheduled to expire for employees hired after December 31, 2007.

This act extends the sunset for three and a half years, until August 31, 2011, and expands the scope of the credit. It expands the targeted veterans' population to include veterans with service-connected disabilities who have been unemployed for six months or more during a one-year period ending on the hire date and are hired within one year after having been discharged form the military or released from active duty. It also increases from $6,000 to $12,000 in the case of individuals who qualify under the newly expanded veterans' group. The high-risk youth and vocational rehabilitation referral groups are also expanded.

Family Business Tax Simplification - Effective for tax years beginning on and after December 31, 2006, the act allows a married couple who jointly operates an unincorporated business and who files a joint return to elect not to be treated as a partnership for federal tax purposes.

Katrina Recovery Tax Incentives. – The act also extends and enhances some of the tax incentives in the Gulf Opportunity Zone Act of 2005 and Katrina Emergency Tax Relief Act of 2005. These include the extension of special expensing for qualified property, an enhanced low-income housing credit, and flexible tax-exempt bond financing rules.

S Corporation Changes – Generally speaking, these provisions are designed to make it easier for small business to retain S corp status. They also encourage use of the S corp business entity by effectively reducing the taxes owed by shareholders.

6. Passive investment income. – An S corporation that has accumulated C corporation earnings and profits and has gross receipts of which more than 25% are passive investment income may lose its Subchapter S status and will be subject to a tax on the excess passive investment income. Effective for tax years beginning after May 25, 2007, capital gain from the sale or exchange of stock or securities is no longer treated as an item of passive investment income. These gains are still counted as gross receipts but not as passive investment income.

7. Banks as S corps. - Effective for tax years beginning after December 31, 2006, the new law eliminates the treatment of restricted bank director stock as outstanding stock that threatened S corp status under the single-class-of-stock rule. It also alters the treatment of accounting adjustments caused by a bank changing its method of accounting.

8. Partial sale of QSubs. – A qualified Subchapter S subsidiary (QSub) is a wholly owned subsidiary that an S corp elects to treat as a QSub. Under the new law, a sale of QSub stock that terminates the QSub election and creates a deemed new corporation is now treated as a sale of an undivided interest in the assets of the QSub. This treatment eliminates the danger of an avalanche of gain being recognized by a sale of only a partial, but substantial (i.e. more than 20%), interest in the subsidiary.

9. ESBT interest. – Effective for tax years beginning after December 31, 2006, the new law allows an electing small business trust (ESBT) to deduct interest paid on money borrowed to acquire S corporation stock. Although Treasury regulations allocated the interest to the S corporation portion of the ESBT, they did not allow a deduction.

10. E&P reduction. – Effective for tax years beginning after May 15, 2007, the new law allows a corporation that was an S corp before 1983, but was not an S corp for its first tax year that began after December 31, 1996, to eliminate its pre-1983 earnings and profits from the corporations accumulated E&P balance. This benefit had previously been available only to a corporation that was an S corp for its first taxable year after 1996. The result is that S corps to which this new provision applies may be able to reduce the amount of distributions treated as taxable dividends.

ASSUMPTIONS AND METHODOLOGY:

Based on the analysis of the Joint Committee on Taxation (JCT), there are three sections of this bill that would impact the State's General Fund revenues. They are the Sec. 179 expensing increases and the 50% bonus depreciation, which were both part of the Economic Stimulus Act, plus the Mortgage Debt Forgiveness Act. According to JCT analysis, the other sections of the IRC update are expected to have minimal or no impact on the General Fund.

The fiscal impact to the General Fund from partial conformity with the IRC update is based on JCT estimates on changes to federal taxes. The method used to determine the state fiscal impact begins with these JCT estimates. These estimates are calculated by federal fiscal year (October to October). Fiscal

Research adjusts these numbers back to an approximate calendar year tax impact. Then the next step was to prorate the national numbers to the state impact. This adjustment involved two steps: accounting for the relative size of the state based on federal tax collections and then adjusting for the difference in federal and state marginal tax rates. This method is similar to that used by the Center for Budget and Policy Priorities (CBPP). Therefore, the tax year estimates were compared with estimates produced by CBPP and were found to be comparable in magnitude.

Once North Carolina's share of the JCT estimates were determined, state tax liability changes were estimated and then allocated to the appropriate fiscal year. In order to assess the impact of the 85% addback of the bonus depreciation contained in the Fiscal Stimulus Act, a series of depreciation schedules were developed. These depreciation simulations were used to determine the impact of the bonus depreciation with the adoption of an 85 percent addback rule and a 5 year carryforward for each fiscal year.

To estimate the impact of the Mortgage Debt Forgiveness Act, similar methodology as described above was used. The share of North Carolina's fiscal impact was calculated with a slight difference. Rather than use tax collection data, real estate activity was used as a means to determine the State's share of the JCT estimated revenue changes.

SOURCES OF DATA: The Joint Committee on Taxation, The North Carolina Department of Revenue, Moody's economy.com., The Center for Budget and Policy Priorities

TECHNICAL CONSIDERATIONS: None

LEGISLATIVE PROPOSAL #3

CLOSE FRANCHISE TAX LOOPHOLES

LEGISLATIVE PROPOSAL #3

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2008 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO CLOSE FRANCHISE TAX LOOPHOLES BY REQUIRING A LIMITED LIABILITY COMPANY THAT ELECTS TO BE TREATED AS A CORPORATION AND A CAPTIVE REIT TO PAY FRANCHISE TAX.

SHORT TITLE: Close Franchise Tax Loopholes.

SPONSORS:

BRIEF OVERVIEW: This proposal would make changes to the franchise tax laws that conform to changes the General Assembly made in 2006 and 2007 to the corporate income tax laws. The changes are recommended to the Revenue Laws Study Committee by the Department of Revenue.

FISCA L IMPACT: *.

EFFECTIVE DATE: This act would become effective for taxable years beginning on or after January 1, 2008.

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-SVxz-21 [v.3] (04/21)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/29/2008 6:36:30 PM

Short Title: Close Franchise Tax Loopholes. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLOSE FRANCHISE TAX LOOPHOLES BY REQUIRING A LIMITED LIABILITY COMPANY THAT ELECTS TO BE TREATED AS A CORPORATION AND A CAPTIVE REIT TO PAY FRANCHISE TAX.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-114(b) reads as rewritten:

"(b) Definitions. – The following definitions apply in this Article:

...

(2) Corporation. – A domestic corporation, a foreign corporation, an electric membership corporation organized under Chapter 117 of the General Statutes or doing business in this State, or an association that is organized for pecuniary gain, has capital stock represented by shares, whether with or without par value, and has privileges not possessed by individuals or partnerships. The term includes a mutual or capital stock savings and loan association or building and loan association chartered under the laws of any state or of the United States. The term includes a limited liability company that elects to be taxed as a ~~C Corporation~~ corporation under the Code, but does not otherwise include a limited liability company.

..."

SECTION 2. G.S. 105-114.1(a)(5) reads as rewritten:

(5) Noncorporate limited liability company. – A limited liability company that does not elect to be taxed as a ~~C Corporation~~ corporation under the Code.

SECTION 3. G.S. 105-125(b) reads as rewritten:

"(b) Certain Investment Companies. ~~A corporation doing business in North Carolina that qualifies as a "regulated investment company" under section 851 of the~~

~~Code or as a "real estate investment trust" under section 856 of the Code and elects for federal income tax purposes to be treated as a "regulated investment company" or as a "real estate investment trust,"~~ A corporation doing business in North Carolina that meets one or more of the following conditions may, in determining its basis for franchise tax, deduct the aggregate market value of its investments in the stocks, bonds, debentures, or other securities or evidences of debt of other corporations, partnerships, individuals, municipalities, governmental agencies, or ~~governments.~~governments:

(1) A regulated investment company. A regulated investment company is an entity that qualifies as a regulated investment company under section 851 of the Code.

(2) A REIT, unless the REIT is a captive REIT. The terms 'REIT' and 'captive REIT' have the same meanings as defined in G.S. 105-130.12."

SECTION 4. This act is effective for taxable years beginning on or after January 1, 2008.

BILL DRAFT 2007-SVxz-24: Close Franchise Tax Loopholes

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	May 7, 2008
Introduced by:		**Summary by:**	Cindy Avrette
Version:	Bill Draft		Committee Staff

SUMMARY: This bill draft makes changes to the franchise tax laws that conform to changes the General Assembly made in 2006 and 2007 to the corporate income tax laws. The changes are recommended to the Revenue Laws Study Committee by the Department of Revenue. The bill would become effective for taxable years beginning on or after January 1, 2009.

BILL ANALYSIS: The bill draft provides that LLCs that elect to be taxed as S corporations are subject to the franchise tax in the same manner as other S corporations and that captive REITS are subject to the franchise tax in the same manner as a corporation.

In 2006, the General Assembly amended the definition of 'corporation', as it applies to the franchise tax statutes, to include a limited liability company that elects to be taxed as a C corporation for federal income tax purposes. The Department began to receive questions from S corporations as to whether they could convert to an LLC and elect to be treated as S corporations for income tax purposes, thereby being exempt from paying franchise tax. In 2005, S corporations paid more than $50 million in franchise tax. Section 1 of the bill draft provide that an LLC that elects to be treated as a corporation for income tax purposes, either a C corporation or a S corporation, is also considered a corporation for franchise tax purposes. Section 2 makes a conforming change to the definition of 'noncorporate limited liability company'.

In 2007, the General Assembly limited a corporation's ability to use captive real estate investment trusts (REITs) to avoid State taxes by disallowing the dividend paid deduction when a REIT is a captive REIT. The effect of this change is that a captive REIT is treated as a regular corporation for income tax purposes. A REIT is an organization that uses the pooled capital of many investors to purchase and mange real estate. [1] A REIT that is owned or controlled by a single entity is commonly referred to as a captive REIT.[2]

Section 3 of the bill draft would provide that a captive REIT is also treated as a regular corporation for franchise tax purposes. Under the current franchise tax law, a REIT may, in determining its value for

[1] Under federal and State law, a REIT is taxable only on income that is not distributed to shareholders. The amount of income a REIT distributes is not subject to tax because the REIT is allowed a deduction for the dividends it pays. The amounts received by the shareholders of the REIT are taxable.

[2] Two common types of captive REITs are rental REITs and mortgage REITs.

franchise tax purposes, deduct the aggregate market value of its investments in the stocks, bonds, debentures, or other securities or evidences of debt of other corporations, partnerships, individuals, municipalities, governmental agencies or governments. Section 3 of the bill draft changes the statute to provide that this deduction may only be used by a REIT that is not a captive REIT.

LEGISLATIVE PROPOSAL #4

EXTEND EXPIRING TAX CREDITS

LEGISLATIVE PROPOSAL #4

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2008 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO EXTEND FOR FIVE YEARS THE CREDIT FOR RESEARCH AND DEVELOPMENT, THE STATE PORTS TAX CREDIT, AND THE CREDIT FOR SMALL BUSINESS EMPLOYEE HEALTH BENEFITS.

SHORT TITLE: Extend Expiring Tax Credits.

SPONSORS:

BRIEF OVERVIEW: This proposal extends for five years the following three tax credits that are due to expire in 2009:

- Credit for research and development
- Credit for North Carolina State Ports Authority
- Credit for small business employee health benefits

FISCAL IMPACT: The methodology used to estimate the fiscal impact of extending each of these tax credits to the 2013 was to examine the level of credits currently taken. Growth in the credits was estimated based on any discernable trends in the credit or on a forecast of economy-based growth.

Credit for Research and Development: This credit is relatively new and has seen only modest use since its inception in 2005. With recent enhancements to the credit and some noticeable increase in credits taken, it is expected to grow modestly over the next several years. Credits could reach $2 million for FY 2008-09 and grow is anticipated at nearly 7 percent per year.

State Ports Tax Credit: Port credits vary from year to year. From FY 1994-95 through FY 2006-07 credits have ranged from $200,000 to $2.2 million. The average over this time period is just under $1 million. Because in any given year the potential credits taken is close to $2 million (which has occurred on 2 occasions), the fiscal estimate reflects this potential level of credits taken.

Credit for Small Business Employee Health Benefits: This credit became available to small businesses beginning in the 2007 tax year. It is too early to tell what credits were taken in tax year 2007, returns are just now being received and total credits taken will probably not be known until sometime in 2009. The fiscal note attached to the original bill estimated fiscal year impacts of $16 to $18 million. Until actually data becomes available, the previous fiscal analysis is our best understanding of what impact can be expected from extending the credit.

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-SVz-20A [v.2] (04/17)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/24/2008 10:59:29 AM

Short Title: Extend Expiring Tax Credits. (Public)

Sponsors: Unknown.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO EXTEND FOR FIVE YEARS THE CREDIT FOR RESEARCH AND DEVELOPMENT, THE STATE PORTS TAX CREDIT, AND THE CREDIT FOR SMALL BUSINESS EMPLOYEE HEALTH BENEFITS.

The General Assembly of North Carolina enacts:

CREDIT FOR RESEARCH AND DEVELOPMENT

SECTION 1. G.S. 105-129.51(b) reads as rewritten:

"(b) This Article is repealed for taxable years beginning on or after January 1, ~~2009.~~2013."

CREDIT FOR NC STATE PORTS AUTHORITY

SECTION 2. G.S. 105-130.41(d) reads as rewritten:

"(d) Sunset. – This section is repealed effective for taxable years beginning on or after January 1, ~~2009.~~2013."

SECTION 3. 105-151.22 reads as rewritten:

"(d) Sunset. – This section is repealed effective for taxable years beginning on or after January 1, ~~2009.~~2013."

CREDIT FOR SMALL BUSINESS EMPLOYEE HEALTH BENEFITS

SECTION 4. G.S. 105-129.16E(d) reads as rewritten:

"(d) Sunset. – This section expires for taxable years beginning on or after January 1, ~~2009.~~2013."

EFFECTIVE DATE

SECTION 5. This act is effective when it becomes law.

DRAFT 2007-SVz-20A: Extend Expiring Tax Credits

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	April 30, 2008
Introduced by:		**Summary by:**	Trina Griffin
Version:			Committee Counsel

SUMMARY: This proposal extends for five years the following three tax credits that are due to expire in 2009:

- ***Credit for research and development***
- ***Credit for North Carolina State Ports Authority***
- ***Credit for small business employee health benefits***

CURRENT LAW:

Credit for Research and Development

In 2004, the General Assembly enacted a new research and development tax credit as an alternative to the Bill Lee research and development credit, which was set to expire along with the entire Bill Lee Act as of January 1, 2006.

Eligibility. – Effective for expenses on or after May 1, 2005, a taxpayer that has qualified North Carolina research expenses or North Carolina University research expenses is allowed a credit. The taxpayer must satisfy Bill Lee Act requirements related to employee wages, the provision of health insurance, the taxpayer's Occupational Safety and Health Act record, and the taxpayer's environmental record. The taxpayer is not required to have no overdue tax debts.

Credit Amount. – For North Carolina university research expenses, the credit amount is equal to 20% of the amount the taxpayer paid to the university for the research and development. For all other qualified research expenses, the credit is equal to a percentage of the expenses as follows:

- For small businesses[1], the rate is 3.25%.
- For research and development conducted in a development tier one area, the rate is 3.25%.
- For other research and development expenditures, the rate ranges from 1.25% to 3.25% as the amount of those expenditures increases.

Sunset. – The credit is currently scheduled to expire for taxable years beginning on or after January 1, 2009.

State Ports Tax Credit

In 1992, the General Assembly enacted the State Ports tax credit to encourage exporters to use the two State-owned port terminals in Wilmington and Morehead City. At that time, the credit applied to amounts paid by a taxpayer on any cargo exported at either port. Also, when first enacted, this credit was effective for taxable years beginning on or after March 1, 1992, and expired on February 28, 1996. Over the years, the credit has been expanded and the sunset has been extended.

Eligibility. – Currently, the State Ports tax credit is allowed to a taxpayer who loads or unloads waterborne cargo from an ocean carrier at the State-owned port terminal at Wilmington or Morehead

[1] A small business is a business whose annual receipts, combined with the annual receipts of all related persons, does not exceed $1,000,000.

City. The credit is allowed against the taxpayer's income tax. The taxpayer may be either an individual or a corporation.

Credit Amount. – The amount of the tax credit is equal to the amount of wharfage, handling, and throughput charges paid to the North Carolina State Ports Authority in the taxable year that exceeds the average amount of charges paid to the Authority for the current tax year and the two previous tax years. The credit is limited to 50% of the tax imposed on the taxpayer for the taxable year. Any excess credit may be carried forward and applied to the taxpayer's income tax liability for the next five years. The maximum cumulative credit that one taxpayer may claim is $2 million.

Definitions. – Although not defined by the relevant statutes, the various types of cargo differ as follows:

- Bulk cargo is a type of commodity that is loose and usually stockpiled. Examples of this type of commodity include coal, grain, salt, and wood chips.
- Break-bulk cargo consists of commodities that are packaged and stored on pallets or in cases that must be handled and stacked onto a ship by hand, crane, etc. Break-bulk cargo also includes machinery.
- Container cargo consists of commodities that are packaged in a metal trailer box that can be locked onto a tractor-trailer chassis and then detached and put on a ship without any other handling.

Sunset. – The credit is currently scheduled to expire for taxable years beginning on or after January 1, 2009.

Credit for Small Business Employee Health Benefits

Eligibility. – Effective for taxable years beginning on or after January 1, 2007, a small business that provides health benefits to all of its full-time employees is eligible for a tax credit. Under the Internal Revenue Code, an employer may deduct premiums paid for health insurance cost of its employees as a business expense. The credit is in addition to any expense deduction the taxpayer claimed on its income tax return for the health insurance costs.

Credit Amount. – The credit amount is equal to $250 per employee for whom the taxpayer pays the health insurance premium, not to exceed the taxpayer's cost of providing the health insurance benefit. The taxpayer may use the credit against either its income tax or its franchise tax liability. The credit may not exceed 50% of the taxpayer's tax liability. Any unused portions of the credit may be carried forward for five years. The credit is effective for taxable years beginning on or after January 1, 2007.

Definitions. –

- A small business is a taxpayer that employs no more than 25 full-time employees.
- An eligible employee is one that works a normal workweek of 30 or more hours and whose total wages or salary received from the business does not exceed $40,000 on annual basis.
- Providing health benefits means one or more of the following:
  - The taxpayer pays at least 50% of the premiums for health insurance coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee.
  - The employee has existing coverage under one or more of the following: Medicare; Medicaid; a government funded program; a health insurance or benefit arrangement that provides benefits similar to or in excess of benefits provided under the basic health care plan.

Sunset. – The credit is currently scheduled to expire for taxable years beginning on or after January 1, 2009.

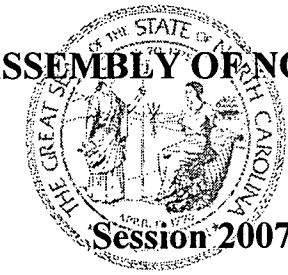
BILL ANALYSIS: This proposal would extend for five years, until the year 2013, the sunsets on each of the above-named tax credits.

EFFECTIVE DATE: This act would be effective when it becomes law.

BACKGROUND: Tax credits are considered a mechanism for encouraging and rewarding behavior that is beneficial to the State. Like appropriations, tax credits are expenditures of public funds for the benefit of certain businesses, interest groups, and other taxpayers. However, unlike appropriations, without some limitation, they can continue in perpetuity costing the State millions of dollars without review by the General Assembly. It was for this reason that in 1998, the Revenue Laws Study Committee recommended that sunsets be placed on virtually all of the tax credits as a means to review and reevaluate those credits. The thought was that periodic review would allow the General Assembly to consider each credit on its merits to determine whether it continues to serve a public purpose that justifies its cost.

2007-SVz-20A-SMSV

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: April 30, 2008

TO: Revenue Laws Study Committee

FROM: Barry Boardman
Fiscal Research Division

RE: 2007-SVz-20A

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available ( )**

	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13
REVENUES ($ millions):					
R & D credit	(1.0)	(2.1)	(2.3)	(2.5)	(2.6)
Ports credit	(1.0)	(2.0)	(2.0)	(2.0)	(2.0)
Small bus. Health insurance credit	** See Assumption and Methodology**				
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: This act would be effective when it becomes law.

BILL SUMMARY: This proposal extends for five years the following three tax credits that are due to expire in 2009:

- Credit for research and development
- Credit for North Carolina State Ports Authority
- Credit for small business employee health benefits

Credit for Research and Development

In 2004, the General Assembly enacted a new research and development tax credit as an alternative to the Bill Lee research and development credit, which was set to expire along with the entire Bill Lee Act as of January 1, 2006.

Eligibility. – Effective for expenses on or after May 1, 2005, a taxpayer that has qualified North Carolina research expenses or North Carolina University research expenses is allowed a credit. The taxpayer must satisfy Bill Lee Act requirements related to employee wages, the provision of health insurance, the taxpayer's Occupational Safety and Health Act record, and the taxpayer's environmental record. The taxpayer is not required to have no overdue tax debts.

Credit Amount. – For North Carolina university research expenses, the credit amount is equal to 20% of the amount the taxpayer paid to the university for the research and development. For all other qualified research expenses, the credit is equal to a percentage of the expenses as follows:

- For small businesses[1], the rate is 3.25%.
- For research and development conducted in a development tier one area, the rate is 3.25%.
- For other research and development expenditures, the rate ranges from 1.25% to 3.25% as the amount of those expenditures increases.

Sunset. – The credit is currently scheduled to expire for taxable years beginning on or after January 1, 2009. This bill would extend the tax credit for five years, until the year 2013.

State Ports Tax Credit

In 1992, the General Assembly enacted the State Ports tax credit to encourage exporters to use the two State-owned port terminals in Wilmington and Morehead City. When enacted, the credit applied to amounts paid by a taxpayer on any cargo exported at either port. When first enacted, this credit was effective for taxable years beginning on or after March 1, 1992, and ending on or before February 28, 1996. Over the years, the credit has been expanded and the sunset has been extended.

Eligibility. – The State Ports tax credit is allowed to a taxpayer who loads or unloads waterborne cargo from an ocean carrier at the State-owned port terminal at Wilmington or Morehead City. The credit is allowed against the taxpayer's income tax. The taxpayer may be either an individual or a corporation.

Credit Amount. – The amount of the tax credit is equal to the amount of wharfage, handling, and throughput charges paid to the North Carolina State Ports Authority in the taxable year that exceeds the average amount of charges paid to the Authority for the current tax year and the two previous tax years. The credit is limited to 50% of the tax imposed on the taxpayer for the taxable year. Any excess credit may be carried forward and applied to the taxpayer's income tax liability for the next five years. The maximum cumulative credit that one taxpayer may claim is $2 million.

Definitions. – Although not defined by the relevant statutes, the various types of cargo differ as follows:

[1] A small business is a business whose annual receipts, combined with the annual receipts of all related persons, does not exceed $1,000,000.

- Bulk cargo is a type of commodity that is loose and usually stockpiled. Examples of this type of commodity include coal, grain, salt, and wood chips.
- Break-bulk cargo consists of commodities that are packaged and stored on pallets or in cases that must be handled and stacked onto a ship by hand, crane, etc. Break-bulk cargo also includes machinery.
- Container cargo consists of commodities that are packaged in a metal trailer box that can be locked onto a tractor-trailer chassis and then detached and put on a ship without any other handling.

Sunset. – The credit is currently scheduled to expire for taxable years beginning on or after January 1, 2009. This bill would extend the tax credit for five years, until the year 2013.

Credit for Small Business Employee Health Benefits

Eligibility. – Effective for taxable years beginning on or after January 1, 2007, a small business that provides health benefits to all of its full-time employees is eligible for a tax credit. Under the Internal Revenue Code, an employer may deduct premiums paid for health insurance cost of its employees as a business expense. The credit is in addition to any expense deduction the taxpayer claimed on its income tax return for the health insurance costs.

Credit Amount. – The credit amount is equal to $250 per employee for whom the taxpayer pays the health insurance premium, not to exceed the taxpayer's cost of providing the health insurance benefit. The taxpayer may use the credit against either its income tax or its franchise tax liability. The credit may not exceed 50% of the taxpayer's tax liability. Any unused portions of the credit may be carried forward for five years. The credit is effective for taxable years beginning on or after January 1, 2007.

Definitions. –

- A small business is a taxpayer that employs no more than 25 full-time employees.
- An eligible employee is one that works a normal workweek of 30 or more hours and whose total wages or salary received from the business does not exceed $40,000 on annual basis.
- Providing health benefits means one or more of the following:
  - The taxpayer pays at least 50% of the premiums for health insurance coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee.
  - The employee has existing coverage under one or more of the following: Medicare; Medicaid; a government funded program; a health insurance or benefit arrangement that provides benefits similar to or in excess of benefits provided under the basic health care plan.

Sunset. – The credit is currently scheduled to expire for taxable years beginning on or after January 1, 2009. This bill would extend the tax credit for five years, until the year 2013.

ASSUMPTIONS AND METHODOLOGY: The methodology used to estimate the fiscal impact of extending each of these tax credits to the 2013 was to examine the level of credits currently taken. Growth in the credits was estimated based on any discernable trends in the credit or on a forecast of economy-based growth.

Credit for Research and Development: This credit is relatively new and has seen only modest use since its inception in 2005. with recent enhancements to the credit and some noticeable increase in credits taken, it is expected to grow modestly over the next several years. Credits could reach $2 million for FY 2008-09 and grow is anticipated at nearly 7 percent per year.

State Ports Tax Credit: Port credits vary from year to year. From FY 1994-95 through FY 2006-07 credits have ranged from $200,000 to $2.2 million. The average over this time period is just under $1 million. Because in any given year the potential credits taken is close to $2 million (which has occurred on 2 occasions), the fiscal estimate reflects this potential level of credits taken.

Credit for Small Business Employee Health Benefits: This credit became available to small businesses beginning in the 2007 tax year. It is too early to tell what credits were taken in tax year 2007, returns are just now being received and total credits taken will probably not be known until sometime in 2009. The fiscal note attached to the original bill estimated fiscal year impacts of $16 to $18 million. Until actually data becomes available, the previous fiscal analysis is our best understanding of what impact can be expected from extending the credit.

SOURCES OF DATA: Department of Revenue, Moody's economy.com

TECHNICAL CONSIDERATIONS: None

LEGISLATIVE PROPOSAL #5

MODIFY ESTATE TAX LAW

LEGISLATIVE PROPOSAL #5

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2008 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO MODIFY THE FORMULA FOR CALCULATING NORTH CAROLINA ESTATE TAX ON ESTATES WITH PROPERTY IN MORE THAN ONE STATE.

SHORT TITLE: Modify Estate Tax Law.

SPONSORS:

BRIEF OVERVIEW: The proposal would modify the formula for calculating North Carolina estate tax on estates that include property located in another state by excluding the value of that property from the estate tax payable to North Carolina.

FISCAL IMPACT: Based on data provided by the Department of Revenue, the dollar amount from taxpayers claiming a refund could equal $1.5 million. This estimate is based on estate tax returns between 2002 and 2007 and assumes:

1) that the statute of limitations would extend no more than three years prior to December 28, 2007; and
2) that all taxpayers eligible for a refund will apply for the refund.

Passage of this bill will also mean that all out of state property will be excluded from the estate tax and this would reduce estate tax collections by $0.5 million per fiscal year.

EFFECTIVE DATE: The bill would become effective when it becomes law and apply retroactively to the estates of decedents for which the statute of limitations for claiming a refund had not expired as of December 28, 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-RBz-33 [v.4] (03/26)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/1/2008 6:46:06 PM

Short Title: Modify Estate Tax Law. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE FORMULA FOR CALCULATING NORTH CAROLINA ESTATE TAX ON ESTATES WITH PROPERTY IN MORE THAN ONE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-32.2(b) reads as rewritten:

"(b) Amount. – The amount of the estate tax imposed by this section is the amount of the state death tax credit that, as of December 31, 2001, would have been allowed under section 2011 of the Code against the federal taxable estate. The tax may not exceed the amount of federal estate tax due under the Code. The federal taxable estate and the amount of the federal estate tax due are determined without taking into account the deduction for state death taxes allowed under Section 2058 of the Code and the credits allowed under sections 2011 through 2015 of the Code.

If any property in the estate is located in a state other than North Carolina, the amount of tax payable depends on whether the decedent was a resident of this State at death. If the decedent was a resident of this State at death, the amount of tax due under this section is reduced by ~~the lesser of the amount of the death tax paid the other state or~~ an amount computed by multiplying the credit by a fraction, the numerator of which is the gross value of the estate that has a tax situs in another state and the denominator of which is the value of the decedent's gross estate. If the decedent was not a resident of this State at death, the amount of tax due under this section is an amount computed by multiplying the credit by a fraction, the numerator of which is the gross value of real property that is located in North Carolina plus the gross value of any personal property that has a tax situs in North Carolina and the denominator of which is the value of the decedent's gross estate. For purposes of this section, the gross value of property is its gross value as finally determined in the federal estate tax proceedings."

SECTION 2. This act is effective when it becomes law and applies retroactively to the estates of decedents for which the statute of limitations for claiming a refund had not expired as of December 28, 2007. A personal representative of an estate for which the statute of limitations had not expired as of December 28, 2007, may file a claim for refund under G.S. 105-241.6.

BILL DRAFT 2007-RBz-33: Modify Estate Tax Law

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	April 2, 2008
Introduced by:		**Summary by:**	Cindy Avrette
Version:	Bill Draft		Committee Staff

SUMMARY: This bill draft would modify the formula for calculating North Carolina estate tax on estates that include property located in another state by excluding the value of that property from the estate tax payable to North Carolina. The bill would become effective when it becomes law and apply retroactively to the estates of decedents for which the statute of limitations for claiming a refund had not expired as of December 28, 2007.

CURRENT LAW: For estates with property only in North Carolina, the North Carolina estate tax equals the amount of the credit for state estate tax allowed on the federal estate tax return, as the federal law provided in 2001. If an estate has property in more than one state, the federal credit amount must be prorated between North Carolina and the other states in which the estate has property. In 2002, the Estate Tax Section of the North Carolina Bar Association recommended a change in the calculation formula from a net value ratio to a gross value ratio. The recommended change also provided that when the estate of a North Carolina decedent included out-of-state property, the North Carolina estate tax would be calculated as the amount of the 2001 tax credit reduced by *the lesser of* the amount of estate tax paid to the other state or the amount of the 2001 tax credit times the value of the out-of-state property divided by the value of the gross estate.[1]

In 2001, Congress phased out the state estate tax credit over four years by reducing it 25% in 2002, 50% in 2003, 75% in 2004,and by repealing it entirely in 2005.[2] In calculating the estate tax payable in North Carolina for an estate that includes property located in a state that does not impose an estate tax, the current formula provides that the North Carolina estate tax would be reduced by zero, because that is the lesser of the amount paid to the state that does not impose an estate tax. This calculation results in North Carolina's estate tax being imposed on property that is not located within its taxing jurisdiction.[3]

BILL ANALYSIS: This bill draft would modify the formula for calculating North Carolina estate tax on estates that include property located in another state by prorating the federal credit amount between North Carolina and the other states in which the estate has property; it would eliminate the '*lesser of*' language that sometimes results in North Carolina's estate tax being imposed on property located in another state.

A case has been filed in Mecklenburg County, ***Stowe v. Department of Revenue,*** to recover North Carolina estate taxes imposed on property located in South Carolina. The plaintiffs argue in their

[1] This provision mirrored the Virginia law as it existed prior to July 1, 2007.

[2] The provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 made a number of changes to the estate tax rates and to the applicable exclusion amounts. The top marginal tax rates were gradually reduced and the exclusion amounts were gradually increased, with a full repeal of the estate tax for 2010. For 2007 through 2009, the top marginal tax rate is 45%; for 2007 and 2008, the applicable exclusion amount is $2,000,000; for 2009, the applicable exclusion amount is $3,500,000. The provisions for these changes are currently set to expire for estates of decedents dying on or after December 31, 2010. Therefore, in 2011, the exclusion amount goes back to $1,000,000, the top marginal rate returns to 55%, and the state estate tax credit is reinstated.

[3] Virginia repealed its estate tax in 2006. South Carolina, Georgia, and Tennessee do not require the payment of an estate tax for estates on which the federal estate tax law doe not allow a credit for state estate tax (2005-through 2010).

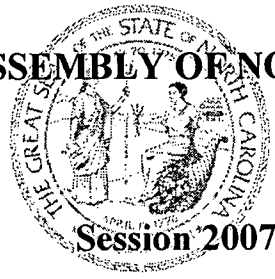
complaint that the formula for calculating North Carolina estate tax due when property is located in more than one state is unconstitutional because it provides less than a full reduction of the tax attributable to the out-of-state property when the other state does not impose an estate tax, or imposes an estate tax less than the prorated federal credit amount. The plaintiffs filed the complaint on December 27, 2007.

The bill draft provides that the change proposed in the bill would become effective when it becomes law and would apply retroactively to the estates of decedents for which the statute of limitations for claiming a refund had not expired on December 27, 2007. A personal representative of an estate for which the statute of limitations had not expired may file a claim for refund under G.S. 105-241.6.

G.S. 105-241.6 provides that the general statute of limitations for obtaining a refund of an overpayment of tax is the later of the following:

- Three years after the due date of the return. – A North Carolina estate tax return is due on the date a federal estate tax return is due. A federal estate tax return is due nine months from the date of death. An extension of time to file a federal estate tax return is an automatic extension of the time to file a State tax return.
- Two years after payment of the tax.

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:

TO:

FROM: Barry Boardman
Fiscal Research Division

RE: 2007-RBz-33

FISCAL IMPACT

	Yes ( )	No ( )	No Estimate Available ( )		
	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13
REVENUES ($ millions):	(2.0)	(0.5)	(0.5)	(0.5)	(0.5)
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: When the bill becomes law

BILL SUMMARY: This bill would modify the formula for calculating the North Carolina estate tax on estates that include property in another state by excluding the value of the property from the estate tax payable to North Carolina. The bill apply retroactively to the estates of decedents for which the statue of limitations for claiming a refund had not expired as of December 28, 2007.

ASSUMPTIONS AND METHODOLOGY: Based on data provided by the Department of Revenue, the dollar amount from taxpayers claiming a refund could equal $1.5 million. This estimate is based on estate tax returns between 2002 and 2007 and assumes that the statute of limitations would extend no more than three years prior to December 28, 2007. It is also assumed that all taxpayers eligible for a refund will apply for the refund. Passage of this bill will also mean that all out of state property will be excluded from the estate tax and this would reduce estate tax collections by $0.5 million per fiscal year.

SOURCES OF DATA: Department of Revenue

TECHNICAL CONSIDERATIONS: None

LEGISLATIVE PROPOSAL #6

DEFERRED PROPERTY TAX PROGRAMS CHANGES

LEGISLATIVE PROPOSAL #6

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2008 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO MODIFY THE CIRCUIT BREAKER TAX BENEFIT, TO STANDARDIZE ADMINISTRATION OF ALL DEFERRED PROPERTY TAX PROGRAMS, AND TO CORRECT THE EFFECTIVE DATE OF CHANGES TO THE HOMESTEAD EXCLUSION.

SHORT TITLE: Deferred Property Tax Programs Changes.

SPONSORS:

BRIEF OVERVIEW: This proposal would make certain modifications to the circuit breaker tax benefit, as recommended by the Department, the School of Government, and county assessors and collectors, to ease the administration and implementation of the program; would create a new statutory section to collect and synchronize administration of all of North Carolina's property tax deferral programs; would create a new statutory section to collect and simplify statutory treatment of enforced collection remedies; and would make other necessary technical, clarifying, and conforming changes.

FISCAL IMPACT: The draft bill contains no provisions that are expected to have any significant fiscal impact.

EFFECTIVE DATE: This act would be effective for taxes imposed for taxable years beginning on or after July 1, 2008.

A copy of the proposed legislation and a bill analysis begin on the next page.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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BILL DRAFT 2007-MCxz-195C [v.7] (2/4)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/6/2008 11:19:46 AM

Short Title: Deferred Property Tax Programs Changes. (Public)

Sponsors: Senator.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE CIRCUIT BREAKER TAX BENEFIT, TO STANDARDIZE ADMINISTRATION OF ALL DEFERRED PROPERTY TAX PROGRAMS, AND TO CORRECT THE EFFECTIVE DATE OF CHANGES TO THE HOMESTEAD EXCLUSION.

The General Assembly of North Carolina enacts:

PART I: CIRCUIT BREAKER MODIFICATIONS

SECTION 1.1. G.S. 105-273 reads as rewritten:

"**§ 105-273. Definitions.**

~~When used in this Subchapter (unless the context requires a different meaning):~~The following definitions apply in this Subchapter:

(1) ~~"Abstract" means the~~Abstract. – The document on which the property of a taxpayer is listed for ad valorem taxation and on which the appraised and assessed values of the property are recorded.

(2) ~~"Appraisal" means both the~~Appraisal. – The true value of property ~~and~~ or the process by which true value is ascertained.

(3) ~~"Assessment" means both the~~Assessment. – The tax value of property ~~and~~ or the process by which the assessment is determined.

(4) Repealed by Session Laws 1973, c. 695, s. 15, effective January 1, 1974.

(4a) ~~"Code" [is] defined~~Code. – Defined in G.S. 105-228.90.

(5) ~~"Collector" or "tax collector" means any~~Collector or tax collector. – A person charged with the duty of collecting taxes for a county or municipality.

(5a) ~~"Contractor" means a~~Construction contractor. – A taxpayer who is regularly engaged in building, installing, repairing, or improving real property.

(6) ~~"Corporation" includes nonprofit corporation and every type of~~ Corporation. – An organization having capital stock represented by ~~shares.~~ or an incorporated, non-profit organization.

(6a) ~~"Discovered property" includes all~~ Discovered property. – Any of the following:

a. Property that was not listed during a listing period.

b. Property that was listed but the listing included a substantial understatement.

c. Property that has been granted an exemption or exclusion and does not qualify for the exemption or exclusion.

(6b) ~~"To discover property" means to~~Discover property. – ~~determine~~Determine any of the following:

a. Property has not been listed during a listing period.

b. A taxpayer made a substantial understatement of listed property.

c. Property was granted an exemption or exclusion and the property does not qualify for an exemption or exclusion.

(7) ~~"Document" includes book,~~Document. – A book, paper, record, statement, account, map, plat, film, picture, tape, object, instrument, ~~and~~ or any other thing conveying information.

(7a) ~~"Failure to list property" includes all~~Failure to list property. – Any of the following:

a. Failure to list property during a listing period.

b. A substantial understatement of listed property.

c. Failure to notify the assessor that property granted an exemption or exclusion under an application for exemption or exclusion does not qualify for the exemption or exclusion.

(8) ~~"Intangible personal property" means patents,~~Intangible personal property. – Patents, copyrights, secret processes, formulae, good will, trademarks, trade brands, franchises, stocks, bonds, cash, bank deposits, notes, evidences of debt, leasehold interests in exempted real property, bills and accounts receivable, ~~and~~ or other like property.

(8a) ~~"Inventories" means~~Inventories. – Any of the following:

a. ~~(i) goods~~Goods held for sale in the regular course of business by manufacturers, retail and wholesale merchants, and ~~contractors, and (ii)~~construction contractors. As to retail and wholesale merchants and construction contractors, the term includes packaging materials that accompany and become a part of the goods sold.

b. ~~goods~~Goods held by construction contractors to be furnished in the course of building, installing, repairing, or improving real property.

c. As to manufacturers,~~ the term includes raw~~ raw materials, goods in process, ~~and~~ finished goods, ~~as well as~~or other materials or supplies that are consumed in manufacturing or ~~processing,~~processing or that accompany and become a part of the sale of the property being sold. The term does not include fuel used in manufacturing or processing and materials or supplies not used directly in manufacturing or processing.

d. ~~The term also includes a~~A modular home as defined in G.S. 105-164.3(21b) that is used exclusively as a display model and held for eventual sale at the retail merchant's place of business.

e. ~~The term also includes crops,~~Crops, livestock, poultry, feed used in the production of livestock and poultry, ~~and~~ or other agricultural or horticultural products held for sale, whether in process or ready for sale. ~~The term does not include fuel used in manufacturing or processing, nor does it include materials or supplies not used directly in manufacturing or processing. As to retail and wholesale merchants and contractors, the term includes, in addition to articles held for sale, packaging materials that accompany and become a part of the sale of the property being sold.~~

(9) ~~"List" or "listing," when used as a noun, means abstract.~~List or listing. – An abstract, when the term is used as a noun.

(10) Repealed by Session Laws 1987, c. 43, s. 1.

(10a) ~~"Local tax official" includes a~~Local tax official. – A county assessor, an assistant county assessor, a member of a county board of commissioners, a member of a county board of equalization and review, a county tax collector, ~~and~~ or the municipal ~~equivalents~~ equivalent of one of these officials.

(10b) ~~"Manufacturer" means a~~Manufacturer. – A taxpayer who is regularly engaged in the mechanical or chemical conversion or transformation of materials or substances into new products for sale or in the growth, breeding, raising, or other production of new products for sale. The term does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.

(11) ~~"Municipal corporation" and "municipality" mean city,~~Municipal corporation or municipality. – A city, town, incorporated village, sanitary district, rural fire protection district, rural recreation district, mosquito control district, hospital district, metropolitan sewerage district, watershed improvement district, a consolidated city-county as

defined by G.S. 160B-2, or ~~other~~ another district or unit of local government by or for which ad valorem taxes are levied. ~~The terms also include a consolidated city-county as defined by G.S. 160B-2(1).~~

(12) ~~"Person" and "he" include any~~Person. – An individual, a trustee, an executor, an administrator, ~~other~~ another fiduciary, a corporation, a limited liability company, an unincorporated association, a partnership, a sole proprietorship, a company, a firm, or ~~other~~ another legal entity.

(13) ~~"Real property," "real estate," and "land" mean not only the~~Real property, real estate, or land. – Any of the following:

a. The land ~~itself,~~itself.

b. ~~but also buildings,~~Buildings, structures, improvements, ~~and~~ or permanent fixtures on ~~the land,~~land.

c. ~~and all~~All rights and privileges belonging or in any way appertaining to the property.

d. ~~These terms also mean a~~A manufactured home as defined in ~~G.S. 143-143.9(6)~~G.S. 143-143.9(6), unless it is considered tangible personal property for failure to meet all of the following requirements:

1. ~~if it~~It is a residential ~~structure;~~structure.

2. It has the moving hitch, wheels, and axles ~~removed;~~removed.

3. ~~and~~It is placed upon a permanent foundation either on land owned by the owner of the manufactured home or on land in which the owner of the manufactured home has a leasehold interest pursuant to a lease with a primary term of at least 20 years ~~for the real property on which the manufactured home is affixed~~ and ~~where~~ the lease expressly provides for disposition of the manufactured home upon termination of the lease. ~~A manufactured home as defined in G.S. 143-143.9(6) that does not meet all of these conditions is considered tangible personal property.~~

(13a) ~~"Retail Merchant" means a~~Retail merchant. – A taxpayer who is regularly engaged in the sale of tangible personal property, acquired by a means other than manufacture, processing, or producing by the merchant, to users or consumers.

(13b) ~~"Substantial understatement" means the~~Substantial understatement. – The omission of a material portion of the value, quantity, or other measurement of taxable property. The determination of materiality in each case shall be made by the assessor, subject to the taxpayer's right to review of the determination by the county board of equalization and review or board of commissioners and appeal to the Property Tax Commission.

(14) ~~"Tangible personal property" means all~~Tangible personal property. – All personal property that is not intangible and that is not permanently affixed to real property.

(15) ~~"Tax" and "taxes" include the~~Tax or taxes. – The principal amount of any ~~tax, costs, penalties, and interest imposed upon property tax or dog license tax.~~property tax or dog license tax and costs, penalties, and interest.

(16) ~~"Taxing unit" means a~~Taxing unit. – A county or municipality authorized to levy ad valorem property taxes.

(17) ~~"Taxpayer" means any~~Taxpayer. – A 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.~~

(18) ~~"Valuation" means appraisal~~Valuation. – Appraisal and assessment.

(19) ~~"Wholesale Merchant" means a~~Wholesale merchant. – A taxpayer who is regularly engaged in the sale of tangible personal property, acquired by a means other than manufacture, processing, or producing by the merchant, to other retail or wholesale merchants for resale or to manufacturers for use as ingredient or component parts of articles being manufactured for sale."

SECTION 1.2. G.S. 105-277.1B reads as rewritten:

"**§ 105-277.1B. Property tax homestead circuit breaker.**

(a) Classification. – A permanent residence owned and occupied by a qualifying owner is designated a special class of property under Article V, Section 2(2) of the North Carolina Constitution and is taxable in accordance with this section.

(b) Definitions. – The definitions provided in G.S. 105-277.1 apply to this section.

(c) Income Eligibility Limit. – The income eligibility limit provided in G.S. 105-277.1(a2) applies to this section.

(d) Qualifying Owner. – For the purpose of qualifying for the property tax homestead circuit breaker under this section, a qualifying owner is an owner who meets all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

(1) The owner has an income for the preceding calendar year of not more than one hundred fifty percent (150%) of the income eligibility limit specified in subsection (c) of this section.

(2) The owner has owned and occupied the property as a permanent residence for at least five years.

(3) The owner is at least 65 years of age or totally and permanently disabled.

(4) The owner is a North Carolina resident.

(e) Multiple Owners. – A permanent residence owned and occupied by husband and wife as tenants by the entirety is entitled to the full benefit of the property tax homestead circuit breaker notwithstanding that only one of them meets the occupation requirement and the age or disability requirement of this section. When a permanent residence is owned and occupied by two or more persons other than husband and wife, no property tax homestead circuit breaker is allowed unless all of the owners qualify and elect to defer taxes under this section.

(f) Tax Limitation. – A qualifying owner may defer the portion of tax imposed on his or her permanent residence if it exceeds ~~a~~ the percentage of the qualifying owner's income ~~as provided in this section.~~ set out in the table in this subsection. If a permanent residence is subject to tax by more than one taxing unit and the total tax liability exceeds the tax limit imposed by this section, then both the taxes due under this section and the taxes deferred under this section must be apportioned among the taxing units based upon the ratio each taxing unit's tax rate bears to the total tax rate of all units.

~~Income~~	~~Percentage~~
~~Less than the income eligibility limit~~	~~4.0%~~
~~100% to 150% of the income eligibility limit~~	~~5.0%~~

Income Over	**Income Up To**	**Percentage**
-0-	Income Eligibility Limit	4.0%
Income Eligibility Limit	150% of Income Eligibility Limit	5.0%

(g) Temporary Absence. – An otherwise qualifying owner does not lose the benefit of this circuit breaker because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

(h) Deferred Taxes. – The difference between the taxes due under this section and the taxes that would have been payable in the absence of this section are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes for the three fiscal years preceding the current tax year shall be carried forward in the records of the taxing unit or units as deferred taxes. ~~Interest accrues on the deferred taxes due as if they had been payable on the dates on which they originally became due.~~ The deferred taxes are due and payable in accordance with G.S. 105-277.1C when the property loses its eligibility for deferral because of the occurrence of a disqualifying event as provided in subsection (i) of this section. On or before September 1 of each year, the ~~assessor~~ collector shall notify each residence owner to whom a tax deferral has previously been granted of the accumulated sum of deferred taxes and interest.

(i) Disqualifying Events. – ~~Taxes deferred under this section are payable within nine months after a disqualifying event. The tax for the fiscal year that opens in a calendar year in which deferred taxes become due is computed as if the property was not eligible for property tax relief under this section.~~ Each of the following constitutes a disqualifying event:

(1) The owner transfers the residence. Transfer of the residence ~~under this subdivision~~ is not a disqualifying event if (i) the owner transfers the residence ~~as part of a divorce proceeding~~ to a co-owner of the residence or, as part of a divorce proceeding, to ~~either~~ his or her spouse ~~who qualifies for tax deferral under this section or to a co-owner of the residence,~~and (ii) that individual occupies or continues to occupy the property as his or her permanent ~~residence, and (iii) that individual elects to continue deferring payment of the tax.~~residence.

(2) The owner dies. Death of the owner ~~under this subdivision~~ is not a disqualifying event if (i) the owner's share passes to ~~either~~a co-owner of the residence or to his or her spouse ~~who qualifies for tax deferral under this section or to a co-owner of the residence,~~~~residence~~ and (ii) that individual occupies or continues to occupy the property as his or her permanent ~~residence, and (iii) that individual elects to continue deferring payment of the tax.~~residence.

(3) The owner ceases to use the property as a permanent residence.

(j) ~~Interruption of Qualification. – If the owner of a tax-deferred residence does not qualify under this section for deferral as of January 1 preceding a taxable year for reasons other than a disqualifying event or if the owner of a tax-deferred residence revokes an application for deferral by notifying the assessor in writing, the owner may not defer any additional property taxes under this section without submitting a new application. Deferred taxes from earlier years do not become due because of an interruption of qualification; however, deferred taxes existing at the time of an interruption of qualification shall be carried forward until the occurrence of a disqualifying event. If the owner qualifies for tax deferral under this section following an interruption of qualification, the taxing unit or units shall disregard the years during which there was an interruption of qualification for purposes of determining the three fiscal years preceding the current tax year under subsection (g) of this section.~~Gap in Deferral. – If an owner of a residence on which taxes have been deferred under this section is not eligible for continued deferral for a tax year, the taxes deferred from the prior tax years are not due and payable but are carried forward until a disqualifying event occurs. If the owner of the residence qualifies for deferral after one or more years in which he or she did not qualify for deferral, the years in which the owner did not qualify are disregarded in determining the three years for which the deferred taxes are carried forward.

~~(k) Prepayment. – All or part of the deferred taxes and accrued interest may be paid to the tax collector at any time. Any partial payment is applied first to accrued interest. A residence owner to whom a tax deferral has previously been granted may revoke the application for deferral at any time by notifying the assessor in writing.~~

(l) Creditor Limitations. – A mortgagee or trustee that elects to pay any tax deferred by the owner of a residence subject to a mortgage or deed of trust does not acquire a right to foreclose as a result of the election. Except for requirements dictated by federal law or regulation, any provision in a mortgage, deed of trust, or other

agreement that prohibits the owner from deferring taxes on property under this section is void.

(m) Construction. – This section does not affect the attachment of a lien for personal property taxes against a tax-deferred residence.

(n) Application. – An application for property tax relief provided by this section should be filed during the regular listing period, but may be filed and must be accepted at any time up to and through June 1 preceding the tax year for which the relief is claimed. Persons may apply for this property tax relief by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1."

SECTION 1.3. G.S. 105-282.1(a)(2)(e) is repealed.

SECTION 1.4. G.S. 153A-148.1(a) is amended by adding a new subdivision to read:

"(a) Disclosure Prohibited. – Notwithstanding Chapter 132 of the General Statutes or any other law regarding access to public records, local tax records that contain information about a taxpayer's income or receipts are not public records. A current or former officer, employee, or agent of a county who in the course of service to or employment by the county has access to information about the amount of a taxpayer's income or receipts may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(6) To include on a property tax receipt the amount of property taxes due and the amount of property taxes deferred on a residence classified under G.S. 105-277.1B, the property tax homestead circuit breaker."

SECTION 1.5. G.S. 160A-208.1(a) is amended by adding a new subdivision to read:

"(a) Disclosure Prohibited. – Notwithstanding Chapter 132 of the General Statutes or any other law regarding access to public records, local tax records that contain information about a taxpayer's income or receipts are not public records. A current or former officer, employee, or agent of a city who in the course of service to or employment by the city has access to information about the amount of a taxpayer's income or receipts may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(4) To include on a property tax receipt the amount of property taxes due and the amount of property taxes deferred on a residence classified under G.S. 105-277.1B, the property tax homestead circuit breaker."

PART II: DEFERRAL PROGRAM MODIFICATIONS

SECTION 2.1. G.S. 105-275(29a) reads as rewritten:

"**§ 105-275. Property classified and excluded from the tax base.**

The following classes of property are hereby designated special classes under authority of Article V, Sec. 2(2), of the North Carolina Constitution and shall not be listed, appraised, assessed, or taxed:

...

(29a) Land that is within an historic district ~~held,~~and is held by a nonprofit corporation organized for historic preservation ~~purposes,~~purposes for use as a future site for an historic structure that is to be moved to the site from another location. Property may be classified under this subdivision for no more than five years. The taxes that would otherwise be due on land classified under this subdivision shall be a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit or units as deferred ~~taxes and shall be payable five years from the fiscal year the exclusion is first claimed unless an historic structure is moved onto the site during that time. If an historic structure has not been moved to the site within five years, then deferred taxes for the preceding five fiscal years shall immediately be payable, together with interest as provided in G.S. 105-360 for unpaid taxes that shall accrue on the deferred taxes as if they had been payable on the dates on which they would originally become due. All liens arising under this subdivision are extinguished upon either the payment of any deferred taxes under this subdivision or the location of an historic structure on the site within the five-year period allowed under this subdivision.~~taxes. The deferred taxes are due and payable in accordance with G.S. 105-277.1C when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when an historic structure is not moved to the property within five years from the first day of the fiscal year the property was classified under this subdivision."

SECTION 2.2. Chapter 105 of the North Carolina General Statutes is amended by adding a new section to read:

"**105-277.1C. Uniform provisions for payment of deferred taxes.**

(a) Scope. – This section applies to the following deferred tax programs:

(1) G.S. 105-275(29a), historic district property held as future site of historic structure.

(2) G.S. 105-277.1B, the property tax homestead circuit breaker.

(3) G.S. 105-277.4(c), present-use value property.

(4) G.S. 105-277.14, working waterfront property.

(5) G.S. 105-278(b), historic property.

(6) G.S. 105-278.6(e), nonprofit property held as future site of low- or moderate-income housing.

(b) Payment. – Taxes deferred on property under a deferral program listed in subsection (a) of this section are due and payable on the day the property loses its eligibility for the deferral program as a result of a disqualifying event. If only a part of property for which taxes are deferred loses its eligibility for deferral, the assessor must determine the amount of deferred taxes that apply to that part and that amount is due and payable. Interest accrues on deferred taxes as if they had been payable on the dates on which they would have originally become due.

The tax for the fiscal year that begins in the calendar year in which the deferred taxes are due and payable is computed as if the property had not been classified for that year. A lien for deferred taxes is extinguished when the taxes are paid.

All or part of the deferred taxes that are not due and payable may be paid to the tax collector at any time without affecting the property's eligibility for deferral. A partial payment is applied first to accrued interest."

SECTION 2.3. G.S. 105-277.4(c) reads as rewritten:

"(c) Deferred Taxes. – Land meeting the conditions for classification under G.S. 105-277.3 must be taxed on the basis of the value of the land for its present use. The difference between the taxes due on the present-use basis and the taxes that would have been payable in the absence of this classification, together with any interest, penalties, or costs that may accrue thereon, are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes must be carried forward in the records of the taxing unit or units as deferred taxes. The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1C when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when the land fails to meet any condition or requirement for classification or when an application is not approved. ~~The taxes become due and payable when the land fails to meet any condition or requirement for classification. Failure to have an application approved is ground for disqualification. The tax for the fiscal year that opens in the calendar year in which deferred taxes become due is computed as if the land had not been classified for that year, and taxes for the preceding three fiscal years that have been deferred are immediately payable, together with interest as provided in G.S. 105-360 for unpaid taxes. Interest accrues on the deferred taxes due as if they had been payable on the dates on which they originally became due. If only a part of the qualifying tract of land fails to meet a condition or requirement for classification, the assessor must determine the amount of deferred taxes applicable to that part and that amount becomes payable with interest as provided above. Upon the payment of any taxes deferred in accordance with this section for the three years immediately preceding a disqualification, all liens arising under this subsection are extinguished. The deferred taxes for any given year may be paid in that year without the qualifying tract of land becoming ineligible for deferred status.~~"

SECTION 2.4. G.S. 105-277.14(c) reads as rewritten:

"(c) Deferred Taxes. – The difference between the taxes that are due on working waterfront property taxed on the basis of its present use and that would be due if the property were taxed on the basis of its true value is a lien on the property. The difference in taxes must be carried forward in the records of each taxing unit as deferred taxes. The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1C when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when the property no longer qualifies as working waterfront property. ~~The deferred taxes become due when the property no longer qualifies as working waterfront property. The tax for the fiscal year that opens in the calendar year in which deferred taxes become due is computed as if the property had not been classified for that year, and taxes for the preceding three~~

~~fiscal years that have been deferred are immediately payable, together with interest, as provided in G.S. 105-360 for unpaid taxes. Interest accrues on the deferred taxes due as if they had been payable on the dates on which they originally became due. If only a part of the property no longer qualifies as working waterfront property, the assessor must determine the amount of deferred taxes applicable to that part and that amount becomes payable with interest. Upon the payment of any taxes deferred under this section for the three years immediately preceding a disqualification, all liens arising under this subsection are extinguished.~~"

SECTION 2.5. G.S. 105-278(b) reads as rewritten:

"(b) The difference between the taxes due on the basis of fifty percent (50%) of the true value of the property and the taxes that would have been payable in the absence of the classification provided for in subsection (a) shall be a lien on the property of the taxpayer as provided in ~~G.S. 105-355(a) and~~G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit or units as deferred ~~taxes, but shall not be payable until the property loses its eligibility for the benefit of this classification because of a change in an ordinance designating a historic property or a change in the property, except by fire or other natural disaster, which causes its historical significance to be lost or substantially impaired.~~taxes. The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1C when the property loses the benefit of this classification as a result of a disqualifying event. A disqualifying event occurs when there is a change in an ordinance designating a historic property or a change in the property, other than by fire or other natural disaster, that causes the property's historical significance to be lost or substantially impaired. ~~The tax for the fiscal year that opens in the calendar year in which a disqualification occurs shall be computed as if the property had not been classified for that year, and taxes for the preceding three fiscal years that have been deferred as provided herein shall be payable immediately, together with interest thereon as provided in G.S. 105-360 for unpaid taxes, which shall accrue on the deferred taxes as if they had been payable on the dates on which they originally became due. If only a part of the historic property loses its eligibility for the classification, a determination shall be made of the amount of deferred taxes applicable to that part, and the amount shall be payable with interest as provided above.~~"

SECTION 2.6. G.S. 105-278.6(e) reads as rewritten:

"(e) Real property held by an organization described in subdivision (a)(8) ~~is held~~ for a charitable purpose under this section ~~if it is held for no more than five years~~ as a future site for housing for individuals or families with low or moderate ~~incomes.~~incomes may be classified under this section for no more than five years. The taxes that would otherwise be due on real property exempt under this subsection shall be a lien on the property as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit as deferred ~~taxes and shall be payable five years after the tax year the exemption is first claimed unless the organization has constructed low- or moderate-income housing on the site. If this condition has not been met, the deferred taxes for the preceding five fiscal years shall be payable immediately, together with interest as provided in G.S. 105-360 for unpaid taxes that accrues on the deferred taxes~~

~~as if they had been payable on the dates they would have originally become due. All liens arising under this subsection are extinguished upon one of the following:~~

~~(1) Payment of all deferred taxes under this subsection.~~

~~(2) Construction by the organization of low- or moderate-income housing on the site within five years after the tax year the exemption is first claimed.~~taxes. The deferred taxes are due and payable in accordance with G.S. 105-277.1C when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when the organization fails to construct low- or moderate-income housing on the site within five years from the first day of the fiscal year the property was classified under this subsection."

SECTION 2.7. G.S. 105-360(a) reads as rewritten:

"(a) Taxes levied under this Subchapter by a taxing unit are due and payable on September 1 of the fiscal year for which the taxes are levied. Taxes are payable at par or face amount if paid before January 6 following the due date. Taxes paid on or after January 6 following the due date ~~are delinquent and~~ are subject to interest charges. Interest accrues on taxes paid on or after January 6 as follows:

(1) For the period January 6 to February 1, interest accrues at the rate of two percent ~~(2%); and~~(2%).

(2) For the period February 1 until the principal amount of the taxes, the accrued interest, and any penalties are paid, interest accrues at the rate of three-fourths of one percent (3/4%) a month or fraction thereof."

SECTION 2.8. Article 26 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-365.1. When and against whom collection remedies may be used.**

(a) Date of Delinquency. – A tax collector may collect a tax using the remedies provided in G.S. 105-366 through G.S. 105-375 on or after the date the tax is delinquent. A tax is delinquent on the following date:

(1) For a tax that is not a deferred tax, the date the tax accrues interest.

(2) For a deferred tax, other than a tax described in subdivision (3) of this section, the date a disqualifying event occurs.

(3) For a deferred tax under G.S. 105-277.1B that lost its eligibility for deferral due to the death of the owner, the first day of the sixth month following the date of death."

(b) Enforced Collection. – For purposes of using the collection remedies provided in G.S. 105-366 through G.S. 105-375 to collect delinquent taxes, the taxing unit shall proceed against property of the following taxpayer:

(1) To collect delinquent taxes assessed on real property, the owner of record of property on which tax is due as of the date of delinquency and any subsequent owner of record of the property.

(2) To collect delinquent taxes assessed on personal property, the owner of record as of January 1 of the calendar year in which the fiscal year of taxation begins.

(3) To collect delinquent taxes assessed on a registered motor vehicle, the owner of record as of the date on which the current vehicle registration is renewed or the date on which a new registration is applied for."

PART III: TECHNICAL CORRECTION

SECTION 3. G.S. 105-277.1(a2) reads as rewritten:

"(a2) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2008)** Income Eligibility Limit. – ~~Until~~ For the taxable year beginning on July 1, 2008, the income eligibility limit is twenty-five thousand dollars ($25,000). For taxable years beginning on or after July 1, ~~2008,~~2009, the income eligibility limit is the amount for the preceding year, adjusted by the same percentage of this amount as the percentage of any cost-of-living adjustment made to the benefits under Titles II and XVI of the Social Security Act for the preceding calendar year, rounded to the nearest one hundred dollars ($100.00). On or before July 1 of each year, the Department of Revenue must determine the income eligibility amount to be in effect for the taxable year beginning the following July 1 and must notify the assessor of each county of the amount to be in effect for that taxable year."

PART IV: EFFECTIVE DATE

SECTION 4. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2008.

BILL DRAFT 2007-MCxz-195C: Deferred Property Tax Programs Changes

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	April 9, 2008
Introduced by:		**Summary by:**	Dan Ettefagh
Version:	Bill Draft		Committee Counsel

SUMMARY: This legislative proposal would make certain modifications to the circuit breaker tax benefit, as recommended by the Department, the School of Government, and county assessors and collectors, to ease the administration and implementation of the program; would create a new statutory section to collect and synchronize administration of all of North Carolina's property tax deferral programs; would create a new statutory section to collect and simplify statutory treatment of enforced collection remedies; and would make other necessary technical, clarifying, and conforming changes.

BILL ANALYSIS:

Circuit Breaker Tax Deferral Program

In 2007, the General Assembly enacted a new property tax deferral benefit for North Carolina residents who have owned and occupied property located in the State as a permanent residence for at least five years and are either 65 years of age or older or totally and permanently disabled, to go into effect for the 2009-2010 fiscal year. An owner who meets the requirements of the circuit breaker benefit and makes less than the income eligibility limit of the homestead exclusion may defer the portion of taxes imposed on the permanent residence that exceeds four percent (4%) of the owner's income. An owner who meets the requirements of the circuit breaker benefit and makes between the income eligibility limit and one and one-half times the income eligibility limit may defer the portion of taxes imposed on the permanent residence that exceeds five percent (5%) of the owner's income.

The proposal would make four substantive changes to the circuit breaker program:

- First, it would transfer the responsibility for notifying qualifying owners of the cumulative amount of deferred taxes, including interest, to the tax collector. Under current law, the tax assessor must make this required notification. In those areas where a town, e.g., has a separate tax collector, the assessor usually does not have access to all the information required to make the notification, but the collector does. Moreover, the collector can merely include this information with the tax bill that is sent out in July and August.

- Second, it would increase uniformity regarding when enforced collection remedies become available to a taxing unit following a disqualifying event. Under current law, taxes deferred under the circuit breaker program accrue interest, become a lien on the real property, and are carried forward until one of three disqualifying events occurs: death of the owner, transfer of the residence by the owner, or cessation of use of the residence as a permanent residence by the owner other than a qualifying temporary absence.[1] Upon the occurrence of a disqualifying event, the amount of taxes for that year with no circuit breaker benefit plus those taxes deferred for the preceding three fiscal years, together with interest, become due, but enforced collection remedies may not be utilized until nine months after the disqualifying

[1] An exception to this rule exists, allowing deferral to continue if the residence is transferred to a spouse or qualifying co-owner and that individual qualifies for deferral and elects to continue deferral.

event. This delay is unique among North Carolina's property tax deferral programs, and the proposal would modify the delay in two ways: first, it eliminates the delay in using the enforced collection remedies for all disqualifying events other than the owner's death, and second, it reduces the delay when the disqualifying event is the owner's death from nine months to the first day of the sixth month following the date of death.

- Third, it would convert the application process from a one-time application to an annual application. Under current law, the application process, like many eligibility thresholds and definitions, was modeled after the homestead exclusion. However, while eligibility for both programs is contingent on a taxpayer's income, the actual benefit received is a function of different variables: the property value for the exclusion versus the taxpayer's income for the circuit breaker. Since the amount of the circuit breaker tax benefit is a function of the taxpayer's income, annual reporting of income is necessary for the county to prepare the tax bill.
- Fourth, it would create an exception to the general prohibition regarding access to public records that contain information about a taxpayer's income in order to allow agents of a county to disclose on a property tax receipt the amount of property taxes due and deferred. Under current law, G.S. 132-1.1 prohibits disclosure of local tax records that contain information about a taxpayer's income. Since the amount of taxes that can be deferred under the program is a function of income and since counties make property tax records public, one could use the amount of deferred taxes to calculate a qualifying owner's income, thus necessitating an exception to permit continuation of current practice.

The proposal also makes the following clarifying, conforming, or technical changes:

- It synchronizes the income eligibility limit for the 4% benefit under the circuit breaker program with the income eligibility limit for the homestead exclusion. Under current law, there is a one penny discrepancy between these income limits.
- It modernizes G.S. 105-273 to use current drafting practices for definitions (Section 1.1).
- It eliminates surplus language that would be redundant to the newly created statutory sections for the uniform provisions for tax deferral programs or enforced collection remedies (Sections 1.1 and 1.2).
- It adds language to the qualification requirements to match the classification language (Section 1.2).
- It adds language regarding multiple owners to match the language found in the homestead exclusion (Section 1.2).
- It clarifies that language regarding exceptions to disqualifying events (Section 1.2).
- It makes necessary conforming changes to accommodate an annual application system (Section 1.2).

Uniform Provisions for Deferred Property Tax Programs

North Carolina has six property tax deferral programs: (i) historic district property held as future site of historic structures (G.S. 105-275(29a)), the circuit breaker tax deferral program (G.S. 105-277.1B), (iii) nonprofit property held as future site of low- or moderate-income housing (G.S. 105-278.6(e)), (iv) present-use value property (G.S. 105.277.4(c)), (v) working waterfront property (G.S. 105-277.14), and (vi) historic property (G.S. 105-278(b)). The proposal sets forth a series of six suggested uniform provisions, to be collected in one newly created statutory section, to reduce redundant statutory language and to eliminate disparity in terminology and administration. Those six provisions are as follows:

- Deferred taxes are due and payable on the day the property loses its eligibility for deferral as a result of a disqualifying event. This provision represents no change in current law for any of the deferral programs.
- Interest accrues as of the date the taxes would have originally become due without the deferral program. This provision represents no change in current law for any of the deferral programs.
- The tax for a year in which a disqualifying event occurs is computed without the benefit of the deferral program. This provision represents no change in current law for any of the deferral programs.
- Liens resulting from deferred taxes are extinguished when the taxes are paid. This provision represents no change in current law for any of the deferral programs.
- If part of a property on which taxes are deferred loses eligibility, the assessor determines the amount of deferred taxes that apply to that part and that amount is due and payable. Under current law, only some of the deferral programs permit partial loss of eligibility; the other programs (namely, future historic site, future low- or moderate-income housing site, and the circuit breaker) are an all-or-nothing system. The proposal would make each of the programs conform to permitting partial loss of eligibility.
- All or part of taxes deferred may be paid at any time without affecting deferral eligibility, and partial payments are applied first to accrued interest, not the principal. The Department's construction of current law is that a taxpayer cannot make a partial payment of taxes deferred from previous years without withdrawing the property from the deferral program. This effectively forced a taxpayer to choose between paying down any accrued deferred taxes on eligible property and keeping the property in the deferral program. The proposal would eliminate this disincentive and permit payment against accrued taxes and interest.

Enforced Collection Remedies

Under current law, statutory provisions relevant to when and against whom a taxing unit may utilize enforced collection remedies are interspersed over a span of 100 statutory sections, including the definition of taxpayer. The proposal would create a second new statutory section that would collect and centrally lay out these provisions. The proposal sets up two sets of three rules. The first set of rules equates the date of delinquency with the date enforced collection remedies may be used and provides:

- For normal taxes, the date of delinquency is the date the tax accrues interest. Under G.S. 105-360, that date is January 6th.
- For deferred taxes other than the circuit breaker where the disqualifying event is the death of the owner, the date of delinquency is the date a disqualifying event occurs.
- For deferred taxes under the circuit breaker where the disqualifying event is the death of the owner, the date of delinquency is the first day of the sixth month following the date of death.

The second set of rules provides against whom enforced collection remedies may be used (based on property type):

- For delinquent taxes on real property, the taxing unit may proceed against the owner of record as of the date of delinquency and any subsequent owner.
- For delinquent taxes on personal property, the taxing unit may proceed against the owner of record as of January 1 of the calendar year in which the fiscal year of taxation begins.

- For delinquent taxes on registered motor vehicles, the taxing unit may proceed against the owner of record as of the date on which the current vehicle registration is renewed or the date on which a new registration is applied for.

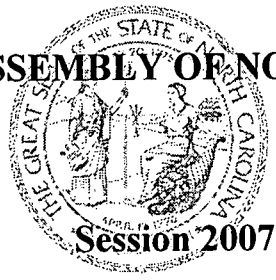
Homestead Exclusion Technical Correction

Part III of the proposal would make a technical correction to the taxable year the income eligibility limit for the homestead exclusion is raised. Last year, the General Assembly passed legislation to raise the income eligibility limit for the homestead exclusion to $25,000. That increase was supposed to take effect for taxable years beginning on July 1, 2008. An error in the effective date precludes that effect, and the proposal substitutes appropriate language to accomplish the intent of the original bill.

EFFECTIVE DATE: The proposal would be effective for taxes imposed for taxable years beginning on or after July 1, 2008.

2007-MCxz-195C-SMMC

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: May 6, 2008

TO: Revenue Laws Study Committee

FROM: Rodney Bizzell
Fiscal Research Division

RE: 2007-MCxz-195C

FISCAL IMPACT

Yes ( ) **No (x)** **No Estimate Available ( )**

	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13
REVENUES:					
General Fund			***No General Fund Impact***		
Local Governments			***No Significant Impact***		

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Local Governments; NC Department of Revenue

EFFECTIVE DATE: Taxable years beginning July 1, 2008.

BILL SUMMARY:
This legislative proposal would make certain modifications to the circuit breaker tax benefit, as recommended by the Department, the School of Government, and county assessors and collectors, to ease the administration and implementation of the program. The bill also creates a new statutory section to collect and synchronize administration of all of North Carolina's property tax deferral programs and creates a new statutory section to collect and simplify statutory treatment of enforced collection remedies. The bill also makes other necessary technical, clarifying, and conforming changes.

ASSUMPTIONS AND METHODOLOGY:

In 2007, the General Assembly enacted a new property tax deferral benefit for North Carolina residents who have owned and occupied property located in the State as a permanent residence for at least five years and are either 65 years of age or older or totally and permanently disabled, to go into effect for the 2009-2010 fiscal year. An owner who meets the requirements of the circuit breaker benefit and makes less than the income eligibility limit of the homestead exclusion may defer the portion of taxes imposed on the permanent residence that exceeds four percent (4%) of their income. An owner who meets the requirements of the circuit breaker benefit and makes between the income eligibility limit and one and one-half times the income eligibility limit may defer the portion of taxes imposed on the permanent residence that exceeds five percent (5%) of the owner's income.

The proposal would make four substantive changes to the circuit breaker program:

- First, it would transfer the responsibility for notifying qualifying owners of the cumulative amount of deferred taxes, including interest, to the tax collector. Under current law, the tax assessor must make this required notification. In those areas where a town, e.g., has a separate tax collector, the assessor usually does not have access to all the information required to make the notification, but the collector does. Moreover, the collector can merely include this information with the tax bill that is sent out in July and August.
- Second, it would increase uniformity regarding when enforced collection remedies become available to a taxing unit following a disqualifying event. Under current law, taxes deferred under the circuit breaker program accrue interest, become a lien on the real property, and are carried forward until one of three disqualifying events occurs: death of the owner, transfer of the residence by the owner, or cessation of use of the residence as a permanent residence by the owner other than a qualifying temporary absence.[1] Upon the occurrence of a disqualifying event, the amount of taxes for that year with no circuit breaker benefit plus those taxes deferred for the preceding three fiscal years, together with interest, become due, but enforced collection remedies may not be utilized until nine months after the disqualifying event. This delay is unique among North Carolina's property tax deferral programs, and the proposal would modify the delay in two ways: first, it eliminates the delay in using the enforced collection remedies for all disqualifying events other than the owner's death, and second, it reduces the delay when the disqualifying event is the owner's death from nine months to the first day of the sixth month following the date of death.
- Third, it would convert the application process from a one-time application to an annual application. Under current law, the application process, like many eligibility thresholds and definitions, was modeled after the homestead exclusion. However, while eligibility for both programs is contingent on a taxpayer's income, the actual benefit received is a function of different variables: the property value for the exclusion versus the taxpayer's income for the circuit breaker. Since the amount of the circuit breaker tax benefit is a function of the taxpayer's income, annual reporting of income is necessary for the county to prepare the tax bill.
- Fourth, it would create an exception to the general prohibition regarding access to public records that contain information about a taxpayer's income in order to allow agents of a county to disclose on a property tax receipt the amount of property taxes due and deferred. Under current law, G.S. 132-1.1 prohibits disclosure of local tax records that contain information about a taxpayer's income. Since the amount of taxes that can be deferred under the program is a function of income and since counties make property tax records public, one

[1] An exception to this rule exists, allowing deferral to continue if the residence is transferred to a spouse or qualifying co-owner and that individual qualifies for deferral and elects to continue deferral.

could use the amount of deferred taxes to calculate a qualifying owner's income, thus necessitating an exception to permit continuation of current practice.

The remaining proposed changes are clarifying or technical in nature. None of the proposed changes are expected to have any significant fiscal impact.

SOURCES OF DATA: NC Department of Revenue

TECHNICAL CONSIDERATIONS: None

LEGISLATIVE PROPOSAL #7

PROPERTY TAX MODIFICATIONS

LEGISLATIVE PROPOSAL #7

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2008 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO MODIFY THE SCHEDULE FOR GENERAL REAPPRAISALS OF REAL PROPERTY IN THE STATE TO REDUCE THE DISCREPANCY BETWEEN THE PROPERTY TAX VALUE OF PROPERTY AND ITS MARKET VALUE, TO TREAT MOBILE HOMES THE SAME AS OTHER HOMES WITH RESPECT TO PROPERTY TAX LIENS, TO MODIFY THE OWNERSHIP REQUIREMENTS OF PRESENT-USE VALUE PROPERTY TO REFLECT COMMON FORMS OF LAND OWNERSHIP, AND TO ALLOW PROPERTY TO REMAIN IN PRESENT-USE VALUE WHEN THE DEFERRED TAXES ARE PAID AT THE TIME OF TRANSFER AND THE NEW OWNER CONTINUES TO FARM THE PROPERTY.

SHORT TITLE: Property Tax Modifications.

SPONSORS:

BRIEF OVERVIEW: This proposal would change the current, staggered octennial schedule for general reappraisals to a staggered quadrennial schedule, would eliminate horizontal adjustments, would treat mobile home liens the same as tax liens on other homes, would modify the present-use value ownership requirements to reflect common forms of land ownership for estate planning purposes, and would allow property to remain in present-use value when deferred taxes are paid at the time of transfer and the new owner continues to farm the land and files an application for present-use value status.

FISCAL IMPACT: The draft bill contains no provisions that are expected to have any significant fiscal impact on local governments. The provisions of the draft bill changing the treatment of mobile home liens is expected to generate between $2.5 and $5 million in additional revenue to local governments.

EFFECTIVE DATE: The provisions of this act changing the revaluation schedule would be effective July 1, 2011, and would apply to taxes imposed for taxable years beginning on or after that date. The provisions of this act changing the treatment of mobile home liens would be effective for taxable years beginning on or after July 1, 2009. The provisions of the act modifying the present-use value statutes would be effective for taxes imposed for taxable years beginning on or after July 1, 2008.

A copy of the proposed legislation and a bill analysis begin on the next page.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

U D

BILL DRAFT 2007-LAxz-20 [v.9] (4/25)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/5/2008 4:17:12 PM

Short Title: Property Tax Modifications. (Public)

Sponsors: Unknown.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE SCHEDULE FOR GENERAL REAPPRAISALS OF REAL PROPERTY IN THE STATE TO REDUCE THE DISCREPANCY BETWEEN THE PROPERTY TAX VALUE OF PROPERTY AND ITS MARKET VALUE, TO TREAT MOBILE HOMES THE SAME AS OTHER HOMES WITH RESPECT TO PROPERTY TAX LIENS, TO MODIFY THE OWNERSHIP REQUIREMENTS OF PRESENT-USE VALUE PROPERTY TO REFLECT COMMON FORMS OF LAND OWNERSHIP, AND TO ALLOW PROPERTY TO REMAIN IN PRESENT-USE VALUE WHEN THE DEFERRED TAXES ARE PAID AT THE TIME OF TRANSFER AND THE NEW OWNER CONTINUES TO FARM THE PROPERTY.

The General Assembly of North Carolina enacts:

PART I: REAPPRAISAL SCHEDULE

SECTION 1.1. G.S. 105-282.1(e) reads as rewritten:

"(e) Annual Review of Exempted or Excluded Property. – Pursuant to G.S. 105-296(l), the assessor must annually review at least ~~one-eighth~~one-fourth of the parcels in the county exempted or excluded from taxation to verify that the parcels qualify for the exemption or exclusion."

SECTION 1.2. G.S. 105-284(b) reads as rewritten:

"(b) The assessed value of public service company system property subject to appraisal by the Department of Revenue under G.S. 105-335(b)(1) shall be determined by applying to the allocation of such value to each county a percentage to be established by the Department of Revenue. The percentage to be applied shall be either:

(1) The median ratio established in sales assessment ratio studies of real property conducted by the Department of Revenue in the county in the

year the county conducts a reappraisal of real ~~property and in the fourth and seventh years thereafter; or~~ property.

(2) A weighted average percentage based on the median ratio for real property established by the Department of Revenue as provided in subdivision (1) and a one hundred percent (100%) ratio for personal property. No percentage shall be applied in a year in which the median ratio for real property is ninety percent (90%) or greater.

If the median ratio for real property in any county is below ninety percent (90%) and if the county assessor has provided information satisfactory to the Department of Revenue that the county follows accepted guidelines and practices in the assessment of business personal property, the weighted average percentage shall be applied to public service company property. In calculating the weighted average percentage, the Department shall use the assessed value figures for real and personal property reported by the county to the Local Government Commission for the preceding year. In any county which fails to demonstrate that it follows accepted guidelines and practices, the percentage to be applied shall be the median ratio for real property. The percentage established in a year in which a sales assessment ratio study is conducted shall continue to be applied until another study is conducted by the Department of Revenue."

SECTION 1.3. G.S. 105-286 reads as rewritten:

"§ 105-286. Time for general reappraisal of real property.

~~(a) Octennial Plan. — Unless the date shall be advanced as provided in subdivision (a)(2), below, each county of the State, as of January 1 of the year prescribed in the schedule set out in subdivision (a)(1), below, and every eighth year thereafter, shall reappraise all real property in accordance with the provisions of G.S. 105-283 and 105-317.~~

~~(1) Schedule of Initial Reappraisals. —~~

~~Division One — 1972: Avery, Camden, Cherokee, Cleveland, Cumberland, Guilford, Harnett, Haywood, Lee, Montgomery, Northampton, and Robeson.~~

~~Division Two — 1973: Caldwell, Carteret, Columbus, Currituck, Davidson, Gaston, Greene, Hyde, Lenoir, Madison, Orange, Pamlico, Pitt, Richmond, Swain, Transylvania, and Washington. Division Three — 1974: Ashe, Buncombe, Chowan, Franklin, Henderson, Hoke, Jones, Pasquotank, Rowan, and Stokes. Division Four — 1975: Alleghany, Bladen, Brunswick, Cabarrus, Catawba, Dare, Halifax, Macon, New Hanover, Surry, Tyrrell, and Yadkin. Division Five — 1976: Bertie, Caswell, Forsyth, Iredell, Jackson, Lincoln, Onslow, Person, Perquimans, Rutherford, Union, Vance, Wake, Wilson, and Yancey.~~

~~Division Six — 1977: Alamance, Durham, Edgecombe, Gates, Martin, Mitchell, Nash, Polk, Randolph, Stanly, Warren, and Wilkes.~~

~~Division Seven — 1978: Alexander, Anson, Beaufort, Clay, Craven, Davie, Duplin, and Granville.~~

~~Division Eight — 1979: Burke, Chatham, Graham, Hertford, Johnston, McDowell, Mecklenburg, Moore, Pender, Rockingham, Sampson, Scotland, Watauga, and Wayne.~~

~~(2) Advancing Scheduled Octennial Reappraisal. — Any county desiring to conduct a reappraisal of real property earlier than required by this subsection (a) may do so upon adoption by the board of county commissioners of a resolution so providing. A copy of any such resolution shall be forwarded promptly to the Department of Revenue. If the scheduled date for reappraisal for any county is advanced as provided herein, real property in that county shall thereafter be reappraised every eighth year following the advanced date unless, in accordance with the provisions of this subdivision (a)(2), an earlier date shall be adopted by resolution of the board of county commissioners, in which event a new schedule of octennial reappraisals shall thereby be established for that county.~~

~~(b) Fourth-Year Horizontal Adjustments. — As of January 1 of the fourth year following a reappraisal of real property conducted under the provisions of subsection (a), above, each county shall review the appraised values of all real property and determine whether changes should be made to bring those values into line with then current true value. If it is determined that the appraised value of all real property or of defined types or categories of real property require such adjustment, the assessor shall revise the values accordingly by horizontal adjustments rather than by actual appraisal of individual properties: That is, by uniform application of percentages of increase or reduction to the appraised values of properties within defined types or categories or within defined geographic areas of the county.~~

~~(c) Value to Be Assigned Real Property When Not Subject to Appraisal. — In years in which real property within a county is not subject to appraisal or reappraisal under subsections (a) or (b),above, or under G.S. 105-287, it shall be listed at the value assigned when last appraised under this section or under G.S. 105-287.~~

(a) Quadrennial Plan. – Each county must reappraise all real property in accordance with the provisions of G.S. 105-283 and G.S. 105-317 as of January 1 of the year set out in the following schedule and every fourth year thereafter, unless the county advances the date as provided in subsection (b):

Year	**Initial Reappraisal Schedule**
2011	Alexander, Ashe, Brunswick, Burke, Carteret, Catawba, Cumberland, Gaston, Henderson, Hertford, Iredell, Johnston, Lee, Macon, McDowell, Moore, New Hanover, Northampton, Pender, Rowan, Rutherford, Sampson, Scotland, Wayne, and Wilkes.
2012	Bertie, Carbarrus, Caswell, Cherokee, Cleveland, Columbus, Currituck, Greene, Guilford, Jackson, Lincoln,

	Madison, Montgomery, Pamlico, Perquimans, Pitt, Randolph, Richmond, Surry, Union, Vance, Washington, Wilson, and Yancey.
2013	Alamance, Caldwell, Chatham, Davie, Duplin, Edgecombe, Forsyth, Gates, Harnett, Hyde, Lenoir, Martin, Mecklenburg, Mitchell, Nash, Orange, Person, Polk, Rockingham, Stanly, Stokes, Swain, Transylvania, Tyrell, Wake, Warren, and Yadkin.
2014	Alleghany, Anson, Avery, Beaufort, Bladen, Buncombe, Camden, Chowan, Clay, Craven, Dare, Davidson, Durham, Franklin, Graham, Granville, Halifax, Haywood, Hoke, Jones, Onslow, Pasquotank, Robeson, and Watauga.

(b) Advancing Scheduled Reappraisal. – A county may conduct a reappraisal of real property earlier than required by subsection (a) of this section if the board of county commissioners adopts a resolution providing for advancement of the scheduled reappraisal. The board of county commissioners must promptly forward a copy of any adopted resolution advancing the scheduled reappraisal to the Department of Revenue. If a county advances the scheduled reappraisal under this subsection, the county must conduct future reappraisals every fourth year following the advanced date unless, in accordance with this subsection, the county adopts an earlier date by resolution."

SECTION 1.4. G.S. 105-287 reads as rewritten:

"**§ 105-287. Changing appraised value of real property in years in which general reappraisal ~~or horizontal adjustment~~ is not made.**

(a) In a year in which a general reappraisal ~~or horizontal adjustment~~ of real property in the county is not ~~made,~~made under G.S. 105-286, the property shall be listed at the value assigned when last appraised unless the value is changed in accordance with this section. ~~the~~ The assessor shall increase or decrease the appraised value of real property, as determined under G.S. 105-286, to recognize a change in the property's value resulting from one or more of the ~~reasons listed in this subsection. The reason necessitating a change in the property's value need not be under the control of or at the request of the owner of the affected property.~~following reasons:

(1) Correct a clerical or mathematical error.

(2) Correct an appraisal error resulting from a misapplication of the schedules, standards, and rules used in the county's most recent general ~~reappraisal or horizontal adjustment.~~reappraisal.

(2a) Recognize an increase or decrease in the value of the property resulting from a conservation or preservation agreement subject to

Article 4 of Chapter 121 of the General Statutes, the Conservation and Historic Preservation Agreements Act.

(2b) Recognize an increase or decrease in the value of the property resulting from a physical change to the land or to the improvements on the land, other than a change listed in subsection (b) of this section.

(2c) Recognize an increase or decrease in the value of the property resulting from a change in the legally permitted use of the property.

(3) Recognize an increase or decrease in the value of the property resulting from a factor other than one listed in subsection (b).

(b) In a year in which a general reappraisal ~~or horizontal adjustment~~ of real property in the county is not made, the assessor may not increase or decrease the appraised value of real property, as determined under G.S. 105-286, to recognize a change in value caused by:

(1) Normal, physical depreciation of improvements;

(2) Inflation, deflation, or other economic changes affecting the county in general; or

(3) Betterments to the property made by:

a. Repainting buildings or other structures;

b. Terracing or other methods of soil conservation;

c. Landscape gardening;

d. Protecting forests against fire; or

e. Impounding water on marshland for non-commercial purposes to preserve or enhance the natural habitat of wildlife.

(c) An increase or decrease in the appraised value of real property authorized by this section shall be made in accordance with the schedules, standards, and rules used in the county's most recent general ~~reappraisal or horizontal adjustment.~~reappraisal. An increase or decrease in appraised value made under this section is effective as of January 1 of the year in which it is made and is not retroactive. The reason for an increase or decrease in appraised value made under this section need not be under the control of or at the request of the owner of the affected property. This section does not modify or restrict the provisions of G.S. 105-312 concerning the appraisal of discovered property.

(d) Notwithstanding subsection (a), if a tract of land has been subdivided into lots and more than five acres of the tract remain unsold by the owner of the tract, the assessor may appraise the unsold portion as land acreage rather than as lots. A tract is considered subdivided into lots when the lots are located on streets laid out and open for travel and the lots have been sold or offered for sale as lots since the last appraisal of the property."

SECTION 1.5. G.S. 105-296(j) reads as rewritten:

"(j) The assessor must annually review at least ~~one-eighth~~ one-fourth of the parcels in the county classified for taxation at present-use value to verify that these parcels qualify for the classification. By this method, the assessor must review the eligibility of all parcels classified for taxation at present-use value in ~~an eight-year~~a four-year period. The period of the review process is based on the average of the

preceding three years' data. The assessor may request assistance from the Farm Service Agency, the Cooperative Extension Service, the Division of Forest Resources of the Department of Environment and Natural Resources, or other similar organizations.

The assessor may require the owner of classified property to submit any information, including sound management plans for forestland, needed by the assessor to verify that the property continues to qualify for present-use value taxation. The owner has 60 days from the date a written request for the information is made to submit the information to the assessor. If the assessor determines the owner failed to make the information requested available in the time required without good cause, the property loses its present-use value classification and the property's deferred taxes become due and payable as provided in G.S. 105-277.4(c). If the property loses its present-use value classification for failure to provide the requested information, the assessor must reinstate the property's present-use value classification when the owner submits the requested information within 60 days after the disqualification unless the information discloses that the property no longer qualifies for present-use value classification. When a property's present-use value classification is reinstated, it is reinstated retroactive to the date the classification was revoked and any deferred taxes that were paid as a result of the revocation must be refunded to the property owner. The owner may appeal the final decision of the assessor to the county board of equalization and review as provided in G.S. 105-277.4(b1).

In determining whether property is operating under a sound management program, the assessor must consider any weather conditions or other acts of nature that prevent the growing or harvesting of crops or the realization of income from cattle, swine, or poultry operations. The assessor must also allow the property owner to submit additional information before making this determination."

SECTION 1.6. G.S. 105-296(l) reads as rewritten:

"(l) The assessor shall annually review at least ~~one-eighth~~one-fourth of the parcels in the county exempted or excluded from taxation to verify that these parcels qualify for the exemption or exclusion. By this method, the assessor shall review the eligibility of all parcels exempted or excluded from taxation in ~~an eight-year~~a four-year period. The assessor may require the owner of exempt or excluded property to make available for inspection any information reasonably needed by the assessor to verify that the property continues to qualify for the exemption or exclusion. The owner has 60 days from the date a written request for the information is made to submit the information to the assessor. If the assessor determines that the owner failed to make the information requested available in the time required without good cause, then the property loses its exemption or exclusion. If the property loses its exemption or exclusion for failure to provide the requested information, the assessor must reinstate the property's exemption or exclusion when the owner makes the requested information available within 60 days after the disqualification unless the information discloses that the property is no longer eligible for the exemption or exclusion."

SECTION 1.7. G.S. 153A-150 reads as rewritten:

"§ 153A-150. Reserve for ~~octennial~~ general reappraisal.

Before the beginning of the fiscal year immediately following the effective date of ~~an octennial~~a general reappraisal of real property conducted as required by G.S. 105-286, the county budget officer shall present to the board of commissioners ~~an eight-year~~a budget for financing the cost of the next ~~octennial~~ general reappraisal. The budget shall estimate the cost of the reappraisal and shall propose a plan for raising the necessary funds in ~~eight~~ annual installments during the ~~next fiscal years,~~intervening years between general reappraisals, with all installments as nearly uniform as practicable. The board shall consider this budget, making any amendments to the budget it deems advisable, and shall adopt a resolution establishing a special reserve fund for the next ~~octennial~~ general reappraisal. In the budget ordinance of the first fiscal year of the plan, the board of commissioners shall appropriate to the special reappraisal reserve fund the amount set out in the plan for the first year's installment. When the county budget for each succeeding fiscal year is in preparation, the board shall review the ~~eight-year~~ reappraisal budget with the budget officer and shall amend it, if necessary, so that it will reflect the probable cost at that time of the reappraisal and will produce the necessary funds at the end of the ~~eight-year~~ intervening period. In the budget ordinance for each succeeding fiscal year, the board shall appropriate to the special reappraisal reserve fund the amount set out in the plan as due in that year.

Moneys appropriated to the special reappraisal reserve fund shall not be available or expended for any purpose other than the reappraisal of real property required by G.S. 105-286, except that the funds may be deposited at interest or invested as permitted by G.S. 159-30. If there is a fund balance in the reserve fund following payment for the required reappraisal, it shall be retained in the fund for use in financing the next required reappraisal.

Within 10 days after the adoption of each annual budget ordinance, the county finance officer shall report to the Department of Revenue, on forms to be supplied by the Department, the terms of the county's ~~eight-year~~ reappraisal budget, the current condition of the special reappraisal reserve fund, and the amount appropriated to the reserve fund in the current fiscal year."

PART II: MOBILE HOME LIENS

SECTION 2. G.S. 105-355 reads as rewritten:

"§ 105-355. Creation of tax lien; date as of which lien attaches.

(a) Lien on Real Property. – Regardless of the time at which liability for a tax for a given fiscal year may arise or the exact amount thereof be determined, the lien for taxes levied on a parcel of real property shall attach to the parcel taxed on the date as of which property is to be listed under G.S. 105-285, and the lien for taxes levied on personal property shall attach to all real property of the taxpayer in the taxing unit on the same date. All penalties, interest, and costs allowed by law shall be added to the amount of the lien and shall be regarded as attaching at the same time as the lien for the principal amount of the taxes. For purposes of this subsection (a):

(1) Taxes levied on real property listed in the name of a life tenant under G.S. 105-302 (c)(8) shall be a lien on the fee as well as the life estate.

(2) Taxes levied on improvements on or separate rights in real property owned by one other than the owner of the land, whether or not listed separately from the land under G.S. 105-302 (c)(11), shall be a lien on both the improvements or rights and on the land.

(b) Lien on Mobile Home Listed as Personal Property. – The lien for taxes levied on a mobile home listed as personal property shall attach to the mobile home and to all real property of the taxpayer in the taxing unit on the date as of which property is to be listed under G.S. 105-285.

~~(b)~~(c) Lien on Personal Property. – Taxes levied on real and personal property (including penalties, interest, and costs allowed by law) shall be a lien on personal property from and after levy or attachment and garnishment of the personal property levied upon or attached."

PART III: PRESENT-USE VALUE PROPERTY CHANGES

SECTION 3.1. G.S. 105-277.2 reads as rewritten:

"§ **105-277.2. Agricultural, horticultural, and forestland – Definitions.**

The following definitions apply in G.S. 105-277.3 through G.S. 105-277.7:

(1) Agricultural land. – Land that is a part of a farm unit that is actively engaged in the commercial production or growing of crops, plants, or animals under a sound management program. Agricultural land includes woodland and wasteland that is a part of the farm unit, but the woodland and wasteland included in the unit must be appraised under the use-value schedules as woodland or wasteland. A farm unit may consist of more than one tract of agricultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(1), and each tract must be under a sound management program. If the agricultural land includes less than 20 acres of woodland, then the woodland portion is not required to be under a sound management program. Also, woodland is not required to be under a sound management program if it is determined that the highest and best use of the woodland is to diminish wind erosion of adjacent agricultural land, protect water quality of adjacent agricultural land, or serve as buffers for adjacent livestock or poultry operations.

(1a) Business entity. – A corporation, a general partnership, a limited partnership, or a limited liability company.

(2) Forestland. – Land that is a part of a forest unit that is actively engaged in the commercial growing of trees under a sound management program. Forestland includes wasteland that is a part of the forest unit, but the wasteland included in the unit must be appraised under the use-value schedules as wasteland. A forest unit may consist of more than one tract of forestland, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(3), and each tract must be under a sound management program.

(3) Horticultural land. – Land that is a part of a horticultural unit that is actively engaged in the commercial production or growing of fruits or vegetables or nursery or floral products under a sound management program. Horticultural land includes woodland and wasteland that is a part of the horticultural unit, but the woodland and wasteland included in the unit must be appraised under the use-value schedules as woodland or wasteland. A horticultural unit may consist of more than one tract of horticultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(2), and each tract must be under a sound management program. If the horticultural land includes less than 20 acres of woodland, then the woodland portion is not required to be under a sound management program. Also, woodland is not required to be under a sound management program if it is determined that the highest and best use of the woodland is to diminish wind erosion of adjacent horticultural land or protect water quality of adjacent horticultural land. Land used to grow horticultural and agricultural crops on a rotating basis or where the horticultural crop is set out or planted and harvested within one growing season, may be treated as agricultural land as described in subdivision (1) of this section when there is determined to be no significant difference in the cash rental rates for the land.

(4) Individually owned. – Owned by one of the following:

a. ~~A natural person. For the purpose of this section, a natural person who is an income beneficiary of a trust that owns land may elect to treat the person's beneficial share of the land as owned by that person. If the person's beneficial interest is not an identifiable share of land but can be established as a proportional interest in the trust income, the person's beneficial share of land is a percentage of the land owned by the trust that corresponds to the beneficiary's proportional interest in the trust income. For the purpose of this section, a natural person who is a member of a business entity, other than a corporation, that owns land may elect to treat the person's share of the land as owned by that person. The person's share is a percentage of the land owned by the business entity that corresponds to the person's percentage of ownership in the entity.~~An individual.

b. A business entity ~~having as its principal business one of the activities described in subdivisions (1), (2), and (3) and whose members are all natural persons who meet one or more of the conditions listed in this sub-subdivision. For the purpose of this sub-subdivision, the terms "having as its principal business" and "actively engaged in the business of the entity" include the leasing of the land for one of the activities described in~~

~~subdivisions (1), (2), and (3) only if all members of the business entity are relatives.~~

~~1. The member is actively engaged in the business of the entity.~~

~~2. The member is a relative of a member who is actively engaged in the business of the entity.~~

~~3. The member is a relative of, and inherited the membership interest from, a decedent who met one or both of the preceding conditions after the land qualified for classification in the hands of the business entity.~~that meets all of the following conditions:

1. Its principal business is farming agricultural land, horticultural land, or forestland.
2. All of its members are, directly or indirectly, individuals who are actively engaged in farming agricultural land, horticultural land, or forestland or a relative of one of the individuals who is actively engaged. An individual is indirectly a member of a business entity that owns the land if the individual is a member of a business entity or a beneficiary of a trust that is part of the ownership structure of the business entity that owns the land.
3. It is not a corporation whose shares are publicly traded and none of its members are corporations whose shares are publicly traded.
4. If it leases the land, all of its members are individuals and are relatives. Under this condition, 'principal business' and 'actively engaged' include leasing.

c. A trust that ~~was created by a natural person who transferred the land to the trust and each of whose beneficiaries who is currently entitled to receive income or principal~~ meets ~~one~~ all of the following conditions:

1. ~~Is the creator of the trust or the creator's relative.~~It was created by an individual who owned the land and transferred the land to the trust.
2. ~~Is a second trust whose beneficiaries who are currently entitled to receive income or principal are all either the creator of the first trust or the creator's relatives.~~All of its beneficiaries are, directly or indirectly, individuals who are the creator of the trust or a relative of the creator. An individual is indirectly a beneficiary of a trust that owns the land if the individual is a beneficiary of another trust or a member of a business entity that has a beneficial interest in the trust that owns the land.

d. A testamentary trust that meets all of the following conditions:

1. It was created by ~~a natural person~~an individual who transferred to the trust land that qualified in that ~~person's~~ individual's hands for classification under G.S. 105-277.3.
2. At the ~~time~~ date of the creator's death, the creator had no ~~relatives as defined in this section as of the date of death.~~relatives.
3. The trust income, less reasonable administrative expenses, is used exclusively for educational, scientific, literary, cultural, charitable, or religious purposes as defined in G.S. 105-278.3(d).

e. Tenants in common, if each tenant ~~is either a natural person or a business entity described in sub-subdivision b. of this subdivision.~~ would qualify as an owner if the tenant were the sole owner. Tenants in common may elect to treat their individual shares as owned by them individually in accordance with G.S. 105-302(c)(9). The ownership requirements of G.S. 105-277.3(b) apply to each tenant in common who is ~~a natural person,~~an individual, and the ownership requirements of G.S. 105-277.3(b1) apply to each tenant in common who is a business ~~entity.~~entity or a trust.

(4a) Member. – A shareholder of a corporation, a partner of a general or limited partnership, or a member of a limited liability company.

(5) Present-use value. – The value of land in its current use as agricultural land, horticultural land, or forestland, based solely on its ability to produce income and assuming an average level of management. A rate of nine percent (9%) shall be used to capitalize the expected net income of forestland. The capitalization rate for agricultural land and horticultural land is to be determined by the Use-Value Advisory Board as provided in G.S. 105-277.7.

(5a) Relative. – Any of the following:

a. A spouse or the spouse's lineal ancestor or descendant.
b. A lineal ancestor or a lineal descendant.
c. A brother or sister, or the lineal descendant of a brother or sister. For the purposes of this sub-subdivision, the term brother or sister includes stepbrother or stepsister.
d. An aunt or an uncle.
e. A spouse of ~~a person~~an individual listed in paragraphs a. through d. For the purpose of this subdivision, an adoptive or adopted relative is a relative and the term "spouse" includes a surviving spouse.

(6) Sound management program. – A program of production designed to obtain the greatest net return from the land consistent with its conservation and long-term improvement.

(7) Unit. – One or more tracts of agricultural land, horticultural land, or forestland. Multiple tracts must be under the same ownership and be of the same type of classification. If the multiple tracts are located within different counties, they must be within 50 miles of a tract qualifying under G.S. 105-277.3(a). "

SECTION 3.2. G.S. 105-277.3 reads as rewritten:

"**§ 105-277.3. Agricultural, horticultural, and forestland – Classifications.**

(a) Classes Defined. – The following classes of property are designated special classes of property under authority of Section 2(2) of Article V of the North Carolina Constitution and must be appraised, assessed, and taxed as provided in G.S. 105-277.2 through G.S. 105-277.7.

(1) Agricultural land. – Individually owned agricultural land consisting of one or more tracts, one of which satisfies the requirements of this subdivision. For agricultural land used as a farm for aquatic species, as defined in G.S. 106-758, the tract must meet the income requirement for agricultural land and must consist of at least five acres in actual production or produce at least 20,000 pounds of aquatic species for commercial sale annually, regardless of acreage. For all other agricultural land, the tract must meet the income requirement for agricultural land and must consist of at least 10 acres that are in actual production. Land in actual production includes land under improvements used in the commercial production or growing of crops, plants, or animals.

To meet the income requirement, agricultural land must, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have produced an average gross income of at least one thousand dollars ($1,000). Gross income includes income from the sale of the agricultural products produced from the land, any payments received under a governmental soil conservation or land retirement program, and the amount paid to the taxpayer during the taxable year pursuant to P.L. 108-357, Title VI, Fair and Equitable Tobacco Reform Act of 2004.

(2) Horticultural land. – Individually owned horticultural land consisting of one or more tracts, one of which consists of at least five acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have met the applicable minimum gross income requirement. Land in actual production includes land under improvements used in the commercial production or growing of fruits or vegetables or nursery or floral products. Land that has been used to produce evergreens intended for use as Christmas trees must have met the minimum gross income requirements established by the Department of Revenue for the land. All other horticultural land must have produced an average gross income of at least one thousand dollars ($1,000). Gross income

includes income from the sale of the horticultural products produced from the land and any payments received under a governmental soil conservation or land retirement program.

(3) Forestland. – Individually owned forestland consisting of one or more tracts, one of which consists of at least 20 acres that are in actual production and are not included in a farm unit.

(b) ~~Natural Person~~Individual Ownership Requirements. – In order to come within a classification described in subsection (a) of this section, ~~the~~ land ~~must, if~~ owned by ~~a natural person,~~an individual must also satisfy one of the following conditions:

(1) It is the owner's place of residence.

(2) It has been owned by the current owner or a relative of the current owner for the four years preceding January 1 of the year for which the benefit of this section is claimed.

(3) At the time of transfer to the current owner, it qualified for classification in the hands of a business entity or trust that transferred the land to the current owner who was a member of the business entity or a beneficiary of the trust, as appropriate.

(b1) Entity Ownership Requirements. – In order to come within a classification described in subsection (a) of this section, ~~the~~ land ~~must, if~~ owned by a business entity or ~~trust,~~trust must have been owned by the business entity or trust or by one or more of its members or creators, respectively, for the four years immediately preceding January 1 of the year for which the benefit of this section is claimed.

(b2) ~~Exception~~ Exceptions to Ownership Requirements. – Notwithstanding the provisions of subsections (b) and (b1) of this section, land may qualify for classification in the hands of the new owner if all of the conditions listed in either subdivision of this subsection are met, even if the new owner does not meet all of the ownership requirements of subsections (b) and (b1) of this section with respect to the land.

(1) ~~Exception for assumption of deferred liability.~~Continued use. – If the land qualifies for classification in the hands of the new owner under the provisions of this subdivision, then ~~the~~ any deferred taxes remain a lien on the land under G.S. 105-277.4(c), the new owner becomes liable for the deferred taxes, and the deferred taxes become payable if the land fails to meet any other condition or requirement for classification. Land qualifies for classification in the hands of the new owner if all of the following conditions are met:

a. The land was appraised at its present use value at the time title to the land passed to the new owner.

b. ~~At the time title to the land passed to the new owner, the~~The new owner acquires the land ~~for the purposes of~~ and continues to use the land for the ~~purposes~~ purpose for which it was classified under subsection (a) of this section while under previous ownership.

c. The new owner has timely filed an application as required by G.S. 105-277.4(a) and has certified that the new owner accepts

liability for ~~the~~ any deferred taxes and intends to continue the present use of the land.

(2) ~~Exception for expansion~~Expansion of existing unit. – ~~If deferred liability is not assumed under subdivision (1) of this subsection, the land~~Land qualifies for classification in the hands of the new owner if, at the time title passed to the new owner, the land was not appraised at its present-use value but was being used for the same purpose and was eligible for appraisal at its present-use value as other land already owned by the new owner and classified under subsection (a) of this section. The new owner must timely file an application as required by G.S. 105-277.4(a)."

(c) Repealed by Session Laws 1995, c. 454, s. 2.

(d) Exception for Conservation Reserve Program. – Land enrolled in the federal Conservation Reserve Program authorized by 16 U.S.C. Chapter 58 is considered to be in actual production, and income derived from participation in the federal Conservation Reserve Program may be used in meeting the minimum gross income requirements of this section either separately or in combination with income from actual production. Land enrolled in the federal Conservation Reserve Program must be assessed as agricultural land if it is planted in vegetation other than trees, or as forestland if it is planted in trees.

(d1) Exception for Easements on Qualified Conservation Lands Previously Appraised at Use Value. – Property that is appraised at its present-use value under G.S. 105-277.4(b) shall continue to qualify for appraisal, assessment, and taxation as provided in G.S. 105-277.2 through G.S. 105-277.7 as long as the property is subject to an enforceable conservation easement that would qualify for the conservation tax credit provided in G.S. 105-130.34 and G.S. 105-151.12, without regard to actual production or income requirements of this section. Notwithstanding G.S. 105-277.3(b) and (b1), subsequent transfer of the property does not extinguish its present-use value eligibility as long as the property remains subject to an enforceable conservation easement that qualifies for the conservation tax credit provided in G.S. 105-130.34 and G.S. 105-151.12. The exception provided in this subsection applies only to that part of the property that is subject to the easement.

(e) Exception for Turkey Disease. – Agricultural land that meets all of the following conditions is considered to be in actual production and to meet the minimum gross income requirements:

(1) The land was in actual production in turkey growing within the preceding two years and qualified for present use value treatment while it was in actual production.

(2) The land was taken out of actual production in turkey growing solely for health and safety considerations due to the presence of Poult Enteritis Mortality Syndrome among turkeys in the same county or a neighboring county.

(3) The land is otherwise eligible for present use value treatment.

(f) Sound Management Program for Agricultural Land and Horticultural Land. – If the property owner demonstrates any one of the following factors with respect to agricultural land or horticultural land, then the land is operated under a sound management program:

(1) Enrollment in and compliance with an agency-administered and approved farm management plan.
(2) Compliance with a set of best management practices.
(3) Compliance with a minimum gross income per acre test.
(4) Evidence of net income from the farm operation.
(5) Evidence that farming is the farm operator's principal source of income.
(6) Certification by a recognized agricultural or horticultural agency within the county that the land is operated under a sound management program.

Operation under a sound management program may also be demonstrated by evidence of other similar factors. As long as a farm operator meets the sound management requirements, it is irrelevant whether the property owner received income or rent from the farm operator.

(g) Sound Management Program for Forestland. – If the owner of forestland demonstrates that the forestland complies with a written sound forest management plan for the production and sale of forest products, then the forestland is operated under a sound management program."

PART IV: EFFECTIVE DATES

SECTION 4. Part I of this act is effective July 1, 2011; sections 1.2-1.4 apply to taxes imposed for taxable years beginning on or after that date. Part II of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2009. Part III of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2008. Notwithstanding G.S. 105-277.4(a), an application submitted for the 2008-2009 tax year under G.S. 105-277.4 for the classification of land owned by a business entity or a trust is considered timely if it is filed on or before September 1, 2008. The remainder of this act is effective when it becomes law.

BILL DRAFT 2007-LAxz-20: Property Tax Modifications

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	May 6, 2008
Introduced by:		**Summary by:**	Dan Ettefagh
Version:	2007-LAxz-20		Martha Walston
			Committee Counsel

SUMMARY: This legislative proposal would make the following changes to the property tax laws:

- ***Part I would change the current, staggered octennial schedule for general reappraisals to a staggered quadrennial schedule and would eliminate horizontal adjustments.***
- ***Part II would treat mobile home liens the same as tax liens on other homes***
- ***Part III would modify the present-use value ownership requirements to reflect modern estate planning and would allow property to remain in present-use value when deferred taxes are paid at the time of transfer and the new owner continues to farm the land and files an application for present-use value status.***

BILL ANALYSIS:

General Reappraisals of Real Property

Under current law, counties are required to reappraise real property at least once ever eight years in a staggered cycle. The law provides for advancing the octennial schedule so as to allow counties to adopt a shorter cycle of, e.g., four or six years. Counties are also permitted the option of horizontal adjustments in the fourth year of the cycle, in which the county reviews the appraised values of real property and compares it to the current true value to determine whether an adjustment is needed.

Section 1.3 of Part I of the proposal would require counties to reappraise real property at least every four years in a staggered system. This new quadrennial system would be the default cycle; however, counties would retain their current option of advancing the schedule so as to allow adoption of a shorter cycle. Horizontal adjustments, by way of contrast, would be eliminated under Section 1.4 of the proposal, based on the practical consideration that it is not utilized by the counties. The initial schedule of quadrennial revaluations would begin in 2011, and placement of the counties in the initial schedule was a product of a study conducted by the Department of Revenue to determine (i) what year would best accommodate each county's currently projected cycle and next general reappraisal and (ii) how to, as far as practicable, split the 100 counties into four equal groups. The delayed implementation of the initial schedule would, additionally, allow counties to request any needed or desired modifications.

The remainder of Part I would accomplish the following conforming changes:

- The requirement, that the assessor annually review at least one-eighth of the parcels in the county exempted or excluded from taxation or classified for present-use value to verify eligibility, would be increased to one-fourth of the parcels to maintain a schedule that allowed all parcels exempted or excluded to have eligibility verified once in between general reappraisals (Sections 1.1, 1.5, and 1.6).
- Public service company system property is appraised by the Department yearly. Under current law, if the median ratio established in sales assessment ratio studies for real property

in a county is below ninety percent in the year the county conducts a reappraisal of real property or in the fifth or eighth year, an adjustment may be made. Since fifth and eighth years are not possible in a quadrennial system, the proposal would eliminate references to these years (Section 1.2).

- Under current law, a county must raise funds for the next general reappraisal in roughly equal, annual installments in the fiscal years between reappraisals. The proposal would not change this requirement, but it would change the statutory language from referencing, specifically, an octennial schedule to accommodate any cycle (i.e. the default quadrennial cycle or a shorter cycle, should a county adopt one) (Section 1.7).

Lien on Mobile Home Classified as Personal Property

Under current law, a mobile home may be listed as real property or personal property for property tax purposes. If property taxes are not paid on the mobile home, the tax collector may go against the taxpayer by garnishing wages, attaching bank accounts, and using debt setoff. The tax collector may also levy on the home by taking possession and selling the home if the delinquent taxpayer owns the home. When the mobile home is listed as real property, then the unpaid taxes are a lien on the mobile home and a subsequent purchaser of the mobile home is also liable for the unpaid taxes. Counties have encountered problems when there is nonpayment of property taxes on mobile homes listed as personal property. Often the mobile home has been repossessed and sold on site or the mobile home is sold and moved without a permit issued by the tax collector as required by G.S. 105-316.1. The tax collector may not be aware of the sale until after it is completed and the former owner has disappeared. Once the mobile home is transferred to a new owner for value, the county's ability to collect taxes due by levy and sale expires. The county tax collector has no recourse against the present owner. The tax collector could garnish the former owner's wages, but often the whereabouts of the former owner are unknown.

Part II of the proposal would remedy the above problem by providing that a tax lien attaches to a mobile home listed as personal property and to all real property of the taxpayer in the taxing unit on the date the mobile home is listed. Once the lien has attached, its priority is not affected by transfer of title, by death, or by receivership of the property owner. In effect, the delinquent taxes follow the mobile home regardless of whether it is listed as real property or personal property, and a subsequent buyer is liable for the unpaid taxes. This proposed language was part of Senate Bill 1309 that passed the Senate during the 2007 Session.

Present-Use Value Ownership Modifications

Since 1973, the General Assembly has provided special property tax treatment for farmland that is classified and used for agricultural, horticultural, or forest purposes.[1] If the farmland meets certain ownership and size requirements and is engaged in commercial production under a sound management program, the land may be appraised and taxed at its present-use value (PUV) as opposed to market value.[2] PUV is usually much less than market value. The difference between the taxes due on the PUV and taxes that would have been payable in the absence of the special tax treatment is known as deferred taxes. When the land becomes disqualified for PUV, the deferred taxes for the current year and the three previous years with interest will usually become due and payable.[3]

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[1] During the 2007 Session, the agricultural land classification was amended to include agricultural land used as an aquatic specifies farm, effective in the 2008-2009 tax year.

[2] Agricultural and horticultural land must also meet an income requirement: the land must have one tract that produces at least $1,000 average gross income over the three preceding years.

[3] No deferred taxes are due if the property loses its classification for one of the following purposes: (1) the land is enrolled in the federal Conservation Reserve Program and is no longer in production and therefore does not meet the income requirement, (2) the land is conveyed by gift to certain exempt organizations and governmental entities. This applies to conveyances by gift to nonprofit organizations where the property will qualify for exclusion from the tax base because it is real property that will be exclusively used for educational and scientific purposes as a protected natural area, or where the

One of the most complex parts of the PUV program is determining the ownership requirements in order to qualify for the program, particularly when the property is owned by a business entity or trust. The law requires that PUV property be "individually owned". Any of the following categories satisfy this definition:

- Natural person.
- Business entity – This term applies to limited liability companies, general partnerships, limited partnerships, and corporations. To satisfy the definition of "business entity", the entity must have agriculture, horticulture, or forestry as its principal business; all members of the entity must be natural persons; and all members of the business entity must be actively engaged in the principal business of the entity or be related to a member who is actively engaged in the principal business of the entity. Alternately, a member can be a relative of a decedent who met one or both of the above two conditions after the business entity had already qualified for PUV classification and from whom the member inherited his interest.
- Tenancy in common – This is a form of ownership where multiple owners (natural persons or business entities) can own individual interests in property.
- Trusts – The trust must be created by a natural person who transferred the land to the trust. Each beneficiary who is entitled to receive income or principal must be one of the following:
  (a) The creator of the trust or a relative of the creator of the trust.
  (b) A second trust whose beneficiaries (currently entitled to receive income or principal) are all either the creator of the trust or a relative of the creator of the trust.
- Testamentary trust – The trust must satisfy all of the following requirements:
  (a) Must be created by a natural person who transferred the land to the trust.
  (b) Land must have qualified for classification in the hands of the natural person prior to transfer to the trust.
  (c) At the time of the creator's death, the creator had no relatives.
  (d) Trust income, less reasonable administrative expenses, is used exclusively for educational, scientific, literary, cultural, charitable, or religious purposes.

Ownership Modifications

In recent years, taxpayers have voiced concerns about the complexities and perceived unfairness of certain aspects of the ownership requirements for qualified farmland. In addition, county tax assessors, who must apply the PUV laws, have echoed concerns about the complexity of these requirements. Staff met with representatives of county tax assessors, the North Carolina Association of County Commissioners, the School of Government, the North Carolina Farm Bureau, and the Department of Revenue to discuss these issues. This working group proposed the following changes to PUV ownership set out in Part III of the proposal:

- Change the definition of "individually owned" as follows:
  (a) The awkward reference to ""owned by a natural person" is changed to "owned by an individual".
  (b) Members of a business entity are no longer restricted to individuals and will include trusts and other business entities. A qualified business entity, however, may not be a corporation whose shares are publicly traded and none of its members may be corporations whose shares are publicly traded. When the membership of a business entity includes a business entity or a trust, then all members of the business entity and all beneficiaries of the trust must be individuals. These individuals are deemed to be indirect members of the qualified business

property will be exclusively used for nonprofit historic preservation purposes, or (3) the property is conveyed by gift to the State, political subdivisions of the State, or the United States.

entity.[4] As in current law, the principal business of the business entity must be in agriculture, horticulture, or forestry, and each member must be actively engaged in one of these activities or related to a member who is actively engaged in one of these activities. Also if the land is leased, all members of the business entity must be individuals and relatives.

(c) Beneficiaries of a trust may be a business entity as long as the members of the business entity are individuals who either created the trust or who are relatives of the creator. These individuals are deemed to be indirect beneficiaries.

(d) A tenant in common may include a trust in addition to an individual and business entity.

The following are examples of land that would qualify for PUV under the proposed changes:

- A corporation applies for PUV. Four shareholders of the corporation are individuals who are actively engaged in farming the land and one shareholder is an LLC. The members of the LLC are all relatives of one of the individual shareholders. (Under current law, the corporation would not qualify because it has an LLC as a member.)
- Tenancy in common applies for PUV, and one of the tenants is a trust. (Under current law, the property would not qualify, because all tenants must be individuals or business entities.)
- An LLC applies for PUV, and one of the members of the LLC is a trust. All beneficiaries of the trust are children of the individual members of the LLC that owns the land. (Under current law, the LLC would not qualify because the trust is not an individual.)

Deferred Taxes Paid at Transfer

The property tax working group also proposed clarifying language that will allow land to remain in the PUV system if land currently in PUV is transferred to a new owner, but the deferred taxes are paid at the time the transfer occurs.

Under current law, there are several standard ownership requirements that a natural person or business entity must meet in order for their property to be in the PUV system:

- If the property is owned by a natural person, the property must meet one of the following requirements:
  1. The property is the owner's place of residence.
  2. The property has been owned by the current owner or a relative of the current owner for the four full years preceding January 1 of the year for which application is made.
  3. If transferring from a business entity or trust to the current owner, the property must have been qualified for and receiving PUV.
- If the property is owned by a business entity, the property must have been owned by the business entity or by one or more members of the business entity for the four full years preceding January 1 for which application is made.

An exception to these standard ownership requirements exists when land appraised at its PUV value is transferred to a new owner and the new owner (i) continues to use the land for its current PUV classification, (ii) files an application for PUV, and (iii) assumes the deferred taxes. However, this exception has been interpreted not to apply when the seller pays more than the current year's taxes at the time of transfer. The seller is deemed to have voluntarily removed the property from the PUV program, and the new owner may have to wait four years to qualify for PUV. Part III of the proposal would allow

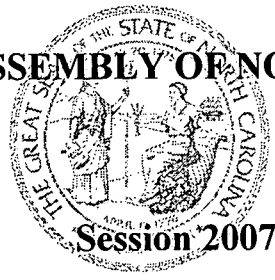
[4] The indirect ownership determination does not stop at the first tier of the business entity that owns farmland. For example, if a business entity has as one of its members an LLC and one of the members of the LLC is another LLC, then the indirect ownership will apply to any member of the second LLC if the member is an individual who is actively engaged in farming the land or a relative of an individual who is actively engaged in farming the land.

the land to remain in PUV when the deferred taxes are paid at the time of transfer. The new owner will become liable for subsequent deferred taxes when the land becomes disqualified.

EFFECTIVE DATE: Part I of the proposal is effective July 1, 2011, with the substantive changes converting the octennial schedule to a quadrennial schedule and eliminating the horizontal adjustment provisions applying to taxes imposed for taxable years beginning on or after that date. Part II of the proposal is effective for taxes imposed for taxable years beginning on or after July 1, 2009. Part III of the proposal is effective for taxes imposed for taxable years beginning on or after July 1, 2008. Notwithstanding G.S. 105-277.4(a), an application submitted for the 2008-2009 tax year for the classification of land owned by a business entity or trust is considered timely if it is filed on or before September 1, 2008.

This summary quotes extensively from the "Present-Use Value Program" prepared by the Property Tax Division of the North Carolina Department of Revenue.

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: May 6, 2008

TO: Revenue Laws Study Committee

FROM: Rodney Bizzell
Fiscal Research Division

RE: 2007-LAxz-20

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13
REVENUES:					
General Fund	***No General Fund Impact***				
Local Governments	***$2.5 - $5 million annual gain from mobile home lien changes***				
EXPENDITURES:					
Local Governments	***Some local governments will experience increased costs associated with a more frequent revaluation process. The amount per county will differ and the total cost is not known.***				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Local Governments; NC Department of Revenue

EFFECTIVE DATE: Part I (Quadrennial Revaluation) is effective July 1, 2011; Part II (mobile home liens) is effective for taxes imposed for taxable years beginning on or after July 1, 2009; Part III (PUV Changes) is effective for taxable years beginning on or after July 1, 2008.

BILL SUMMARY:

This legislative proposal would change the current, staggered octennial schedule for general reappraisals to a staggered quadrennial schedule, would eliminate horizontal readjustments, would treat mobile home liens the same as tax liens on other homes, would modify the present-use value ownership requirements to reflect common forms of land ownership for estate planning purposes, and would allow property to remain in present-use value when deferred taxes are paid at the time of transfer and new owner continues to farm the land and files an application for present-use value status.

ASSUMPTIONS AND METHODOLOGY:

Quadrennial Revaluation Schedule

Under current law, counties are required to reappraise real property at least once ever eight years in a staggered cycle. The law provides for advancing the octennial schedule so as to allow counties to adopt a shorter cycle of, e.g., four or six years. Counties are also permitted the option of horizontal adjustments in the fourth year of the cycle, in which the county reviews the appraised values of real property and compares it to the current true value to determine whether an adjustment is needed.

This bill would require counties to reappraise real property at least every four years in a staggered system. This new quadrennial system would be the default cycle; however, counties would retain their current option of advancing the schedule so as to allow adoption of a shorter cycle. Horizontal adjustments, by way of contrast, would be eliminated under Section 1.4 of the proposal, based on the practical consideration that it is not utilized by the counties. The initial schedule of quadrennial revaluations would begin in 2011, and placement of the counties in the initial schedule was a product of a study conducted by the Department to determine (i) what year would best accommodate each county's currently projected cycle and next general reappraisal and (ii) how to, as far as practicable, split the 100 counties into four equal groups.

The revaluation process allows counties to levy the property tax on property values that more closely reflect current market values. The process does not have any revenue impact to the extent that local governments convert to a revenue neutral tax rate following the revaluation.

Under current law, anyone other than a manufacturer, retailer, or licensed carrier of mobile homes, must obtain a permit from the county tax collector before moving a mobile home.

Mobile Home Liens

Under current law, anyone other than a manufacturer, retailer, or licensed carrier of mobile homes, must obtain a permit from the county tax collector before moving a mobile home.

If a holder of a lien is repossessing a mobile home, the lienholder must apply for the permit and inform the tax collector of the location to which the home is to be taken. If the lienholder is a North Carolina resident, the taxes must be paid within seven days of issuance of the permit. Nonresident lienholders must pay the taxes at the time of application for a permit.

Counties have encountered frequent situations where a mobile home has been repossessed and sold on site or where the mobile home is sold and moved without a permit issued by the county tax collector. Often tax collectors are not aware of the sales until after they are completed and the former owner has disappeared. Once the mobile home is transferred to a new owner for value, the county's ability to collect taxes due by levy and sale expires. The county tax collector has no recourse against the present owner if the mobile home is listed as personal property. The county could garnish the former owner's wages, but usually the whereabouts of the former owner are unknown.

This bill would remedy the above problem by providing that a tax lien attaches to a mobile home listed as personal property and to all real property of the taxpayer in the taxing unit on the date the mobile home is listed (January 1). Once the lien has attached, its priority is not affected by transfer of title, by death, or by receivership of the property owner. In other words, the delinquent taxes follow the mobile home, and a subsequent buyer is liable for the unpaid taxes.

According to the NC Tax Collectors Association, the current tax collection rate for manufactured homes is approximately 85% and the improving the rate to 96% would generate approximately $2.5 million in additional revenue. The total revenue gain would be higher because this figure does not include municipalities.

PUV Changes

The General Assembly provides special tax treatment for farmland if the property is used for agricultural, horticultural or forestry purposes. If the farmland meets certain ownership and size requirements and is engaged in commercial production under a sound management plan, the land may be appraised and taxed at its present-use value (PUV), rather than market value. When the land becomes disqualified from PUV, the deferred taxes for the current year and the previous three years become due.

The bill makes several changes to simplify the PUV ownership requirements. Currently, PUV land must be individually owned. This requirement can be satisfied by the following categories: natural persons, business entities, tenancy in common and trusts. To satisfy the definition of business entity, the entity must be composed of natural persons, and the members must be actively engaged in the business or be related to a member who is actively engaged in the business.

The current ownership requirements do not allow for a business entity, such as an LLC, to qualify if one of the members of the business is a trust. For example, if an LLC applies for PUV, and one of the members of the LLC is a trust, the property would not satisfy the ownership requirements because all of the members are not "natural persons," even though the members of the trust may be children of the members of the LLC.

The bill simplifies the ownership requirements by eliminating the requirement that all members of the business entity be natural persons. The definition of "individually owned is changed to include "farms groups," directly or indirectly by individuals in the group. An indirect owner may be the beneficiary of a trust or a business entity. The definition of business entity specifically excludes publicly-traded corporations and clarifies that the business entity must have as its principal business one of the following: agriculture, horticulture, or forestry.

The proposed changes allow the tax assessor to consider the make-up of individual ownership without excluding beneficiaries of a trust who would otherwise be eligible. The changes are not expected to have any significant fiscal impact.

Payment of Deferred Taxes

The bill also allows land to remain in the PUV system if it is transferred to a new owner and the deferred taxes are paid at the time of the transfer. Current law requires the new owner to assume the deferred taxes. This section of the bill is also not expected to have any significant impact.

SOURCES OF DATA: NC Department of Revenue; NC Tax Collectors Association

TECHNICAL CONSIDERATIONS: None

LEGISLATIVE PROPOSAL #8

EXEMPT DISASTER ASSISTANCE DEBIT SALES

LEGISLATIVE PROPOSAL #8

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2008 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO PROVIDE A SALES TAX EXEMPTION FOR TANGIBLE PERSONAL PROPERTY PURCHASED WITH A CLIENT ASSISTANCE DEBIT CARD ISSUED FOR DISASTER ASSISTANCE RELIEF BY A STATE AGENCY OR A FEDERAL AGENCY OR INSTRUMENTALITY.

SHORT TITLE: Exempt Disaster Assistance Debit Sales.

SPONSORS:

BRIEF OVERVIEW: The proposal would exempt from sales tax tangible personal property purchased with a client assistance debit card issued for disaster assistance relief by a State agency or a federal agency or instrumentality. The American Red Cross is an instrumentality of a federal agency.

FISCAL IMPACT: The fiscal impact of exempting client assistance debit cards from state and local sales and use taxes is based on data provided by the Triangle ARC. During the 2006-07 fiscal year, North Carolina American Red Cross chapters provided an estimated $3.9 million dollars in disaster relief assistance with approximately 70 percent of the $3.9 million ($2.8 million) in the form of client assistance cards.

Based on Moody's Economy.com inflation rates, Fiscal Research estimates that ARC will provide roughly three million dollars in disaster relief via debit cards in FY2008-09. Should client assistance cards receive a tax exemption, state and local sales tax revenues would decline by approximately $196,000 during this same period.

EFFECTIVE DATE: The bill would become effective July 1, 2008, and apply to purchases 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

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BILL DRAFT 2007-RBz-32 [v.4] (03/25)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
3/27/2008 8:59:52 AM

Short Title: Exempt Disaster Assistance Debit Sales. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A SALES TAX EXEMPTION FOR TANGIBLE PERSONAL PROPERTY PURCHASED WITH A CLIENT ASSISTANCE DEBIT CARD ISSUED FOR DISASTER ASSISTANCE RELIEF BY A STATE AGENCY OR A FEDERAL AGENCY OR INSTRUMENTALITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(58) Tangible personal property purchased with a client assistance debit card issued for disaster assistance relief by a State agency or a federal agency or instrumentality."

SECTION 2. This act becomes effective July 1, 2008, and applies to purchases made on or after that date.

BILL DRAFT 2007-RBz-32:
Exempt Disaster Assistance Debit Sales

BILL ANALYSIS

Committee:	Revenue Laws Study Committee	**Date:**	April 2, 2008
Introduced by:		**Summary by:**	Cindy Avrette
Version:	Bill Draft		Committee Staff

SUMMARY: This bill draft would exempt from sales tax tangible personal property purchased with a client assistance debit card issued for disaster assistance relief by a State agency or a federal agency or instrumentality. The American Red Cross is an instrumentality of a federal agency. The bill would become effective July 1, 2008, and apply to purchases made on or after that date.

CURRENT LAW: The State may not impose its sales tax on purchases made by the federal government or an instrumentality of the federal government. G.S. 105-164.13(17) specifically exempts 'sales which a state would be without power to tax under the limitations of the Constitution or laws of the United States or under the Constitution of this State.' The American Red Cross (ARC) is an instrumentality of a federal agency. Therefore, sales made pursuant to a disbursing order issued by the ARC are considered a sale to the ARC that is exempt from taxation.

In the past, the ARC provided disaster assistance relief by giving disaster victims a disbursing order to purchase items that the victim needed. Over the last few years, the ARC has begun giving disaster victims debit cards to use to purchase these same items. The ARC began using debit cards because it believes they are more efficient, effective, and less bureaucratic for the victim and less administrative effort and expense for the organization. However, for purposes of the sales tax exemption, there is a significant difference between a debit card and a disbursing order: the purchaser, for purposes of the sales tax exemption, is the disaster victim when a debit card is used and it is the ARC when the disbursing order is used. Therefore, purchases made with a disaster assistance debit card are subject to sales tax.

BILL ANALYSIS: This bill draft would exempt from sales tax tangible personal property purchased with a client assistant debit card issued for disaster assistance relief by a State agency or a federal agency or instrumentality. The ARC is an instrumentality of a federal agency. Another example of a federal agency or instrumentality that may utilize this exemption would be FEMA.

This bill draft would extend the sales tax exemption that exists for purchases made through a disbursing order issued by a State or federal agency or instrumentality to purchases made with a client assistance debit card issued by it. It is my understanding that in 2007, the total disaster victim assistance purchases were $3 million across all North Carolina chapters of the ARC.

BACKGROUND: The ARC client assistance card clearly identifies itself as one issued by the ARC. The ARC has the ability to see from its reports of the card's use the amount purchased and the store from which the goods were purchased. Unlike the old disbursing order system, the ARC does not have a cash register receipt describing the specific items purchased. The client assistance card authorization form is a contract between the ARC and the disaster victim. The contract stipulates the types of items the card may be used to purchase. In the event of inappropriate purchases, the card can be suspended.

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: April 30, 2008

TO: Revenue Laws

FROM: Sandra Johnson
Fiscal Research Division

RE: 2007-RBz-32

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13
REVENUES:					
General Fund Impact	(129,000)	(139,000)	(136,000)	(139,000)	(142,000)
Local Impact	(67,000)	(61,000)	(68,000)	(69,000)	(71,000)
EXPENDITURES:					
POSITIONS (cumulative):	-	-	-	-	-

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
North Carolina Department of Revenue
EFFECTIVE DATE: July 1, 2008

BILL SUMMARY: This bill draft would exempt from sales tax tangible personal property purchased with a client assistance card (debit card) issued for disaster assistance relief by a State agency or a

federal agency or instrumentality. The American Red Cross is an instrumentality of a federal agency. The bill would become effective July 1, 2008, and apply to purchases made on or after that date.

CURRENT LAW: The State may not impose its sales tax on purchases made by the federal government or an instrumentality of the federal government. G.S. 105-164.13(17) specifically exempts sales which a state would be without power to tax under the limitations of the Constitution or laws of the United States or under the Constitution of this State. The American Red Cross (ARC) is an instrumentality of a federal agency. Therefore, sales made pursuant to a disbursing order issued by the ARC are considered a sale to the ARC and is exempt from taxation.

In the past, the ARC provided disaster assistance relief by giving disaster victims a disbursing order reimbursement form to purchase items, but in recent years began giving disaster victims client assistance cards to make these purchases. Debit cards prove more efficient, effective, and less bureaucratic for the victim and require less administrative effort and expense from ARC. However, for purposes of the sales tax exemption, there is a significant difference between a debit card and a disbursing order. The purchaser, for purposes of the sales tax exemption, is the disaster victim when a debit card is used. The ARC is the purchaser when the disbursing order is used. Therefore, purchases made with a disaster assistance debit card are subject to sales tax.

ASSUMPTIONS AND METHODOLOGY:

The fiscal impact of exempting client assistance debit cards from state and local sales and use taxes is based on data provided by the Triangle ARC. During the 2006-07 fiscal year, North Carolina American Red Cross chapters provided an estimated $3.9 million dollars in disaster relief assistance with approximately 70 percent of the $3.9 million ($2.8 million) in the form of client assistance cards.

Based on Moody's Economy.com inflation rates, Fiscal Research estimates that ARC will provide roughly three million dollars in disaster relief assistance via debit cards in FY2008-09. Should client assistance cards receive a tax exemption, state and local sales tax revenues would decline by approximately $196,000 during this same period (Table1).

Table 1 provides information on the projected sales tax revenue forgone by exempting disaster relief assistance debit cards from state and local sales and use taxes. The table also accounts for state and local sales and use tax changes occurring in October 2008 and October 2009.

Table 1: Revenue Impact of Exempting Disaster Relief Client Assistance Card Disbursements from Sales Tax, by Fiscal Year (in thousands)					
	*FY 2008-09	**FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13
State and Local Impact (6.75% sales tax)	(196,000)	(200,000)	(204,000)	(208,000)	(213,000)
General Fund Impact	(129,000)	(139,000)	(136,000)	(139,000)	(142,000)
Local Impact	(67,000)	(61,000)	(68,000)	(69,000)	(71,000)
* FY2008-09 estimates incorporate local and state sales tax rate changes occurring on October 1, 2008; Assumes local sales tax rate of 2.5% for three months and 2.25% for nine months; Also assumes state sales tax rate of 4.25% for three months and 4.5% for nine months					
* *FY2009-10 estimates incorporate local and state sales tax rate changes occurring on October 1, 2009; Assumes local sales tax rate of 2.25% for three months and 2% for nine months; Also assumes state sales tax rate of 4.5% for three months and 4.75% for nine months					
Source: Triangle American Red Cross Documentation of FY07 Financial & Material Assistance					

SOURCES OF DATA:

Triangle American Red Cross, Moody's Economy.com

TECHNICAL CONSIDERATIONS: None

LEGISLATIVE PROPOSAL #9

REVENUE LAWS TECHNICAL, CLARIFYING, & ADMINISTRATIVE CHANGES

LEGISLATIVE PROPOSAL #9

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2008 REGULAR SESSION OF THE 2007 GENERAL ASSEMBLY

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE TAX AND RELATED LAWS.

SHORT TITLE: Revenue Laws Technical, Clarifying, & Admin Changes.

SPONSORS:

BRIEF OVERVIEW: The proposal makes several technical, clarifying, and administrative changes to the revenue laws and related statutes.

FISCAL IMPACT:

EFFECTIVE DATE: Bill sections 20-62 are effective January 1, 2009. Except as otherwise provided, the remainder of this act is 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-SVz-23 [v.11] (04/28)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/6/2008 4:44:46 PM

Short Title: Rev Laws Tech., Clarifying, & Admin Changes. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE TAX AND RELATED LAWS.

The General Assembly of North Carolina enacts:

911 TECHNICAL CHANGES

SECTION 1.(a) G.S. 62A-44 is amended by adding a new subsection to read:

"(b1) Adjustment. – If the revenues allocated to PSAPs under subdivision (b)(2) of this section are insufficient to fund the distribution under G.S. 62A-46(a)(1), then the Board may, once each fiscal year, adjust the allocation of revenues, provided that after the adjustment:

(1) The amount allocated to PSAPs is equal to the amount required to fund the distribution under G.S. 62A-46(a)(1).

(2) The amount allocated to CMRS providers is sufficient to make reimbursements under G.S. 62A-45."

SECTION 1.(b) G.S. 62A-46(b) reads as rewritten:

"(b) Percentage Designations. – The 911 Board must determine how revenue that is allocated to the 911 Fund for distribution to primary PSAPs and is not needed to make the base amount distribution required by subdivision (a)(1) of this section is to be used. The 911 Board must designate a percentage of the remaining funds to be distributed to primary PSAPs on a per capita basis and a percentage to be allocated to the PSAP Grant Account established in G.S. 62A-47. If the 911 Board does not designate an amount to be allocated to the PSAP Grant Account, the 911 Board must distribute all of the remaining funds on a per capita basis. The 911 Board may not change the percentage designation more than once each ~~calendar~~ fiscal year."

SECTION 1.(c) G.S. 62A-46 is amended by adding a new subsection to read:

"(f) The Eastern Band of the Cherokee. – Notwithstanding GS 62A-46(e), the Eastern Band of the Cherokee is eligible for distributions from the 911 Fund. The 911 Board shall determine the base amount to be distributed to the Eastern Band of the Cherokee upon receipt of satisfactory evidence of the amount of 911 funds the PSAP received in the fiscal year ending June 30, 2007."

WORK OPPORTUNITY TAX CREDIT CHANGES

SECTION 2.(a) G.S. 105-129.16G reads as rewritten:

"**§ 105-129.16G. Work Opportunity Tax Credit.**

(a) Credit. – A taxpayer who is allowed a federal tax credit under Part IV, Subpart F of the Code for the taxable year is allowed a credit against the tax imposed by this Part. The credit is equal to six percent (6%) of the amount of credit allowed under the ~~Code.~~Code for wages paid during the taxable year for positions located in this State. A position is located in this State if more than fifty percent (50%) of the employee's duties are performed in the State.

(b) Sunset. – This section expires for taxable years beginning on or after January 1, 2012."

SECTION 2.(b) G.S. 105-130.5(b)(11) reads as rewritten:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

...

(11) If a deduction for an ordinary and necessary business expense was required to be reduced or was not allowed under the Code because the corporation claimed a federal tax credit against its federal income tax liability for the income year in lieu of a deduction, the amount by which the deduction was reduced and the amount of the deduction that was disallowed. This deduction is allowed only to the extent that a similar credit is not allowed by this Chapter for the amount."

SECTION 2.(c) G.S. 105-134.6(d)(2) reads as rewritten:

"(2) The taxpayer may deduct the amount by which the taxpayer's deductions allowed under the Code were reduced, and the amount of the taxpayer's deductions that were not allowed, because the taxpayer elected a federal tax credit in lieu of a deduction. This deduction is allowed only to the extent that a similar credit is not allowed by this ~~Part~~ Chapter for the amount."

SECTION 2.(d) Subsection (a) of this section is effective for taxable years beginning on or after July 1, 2008.

REFORM TAX APPEALS CHANGES

SECTION 3.(a) Section 10 of S.L. 2007-491 is repealed.

SECTION 3.(b) G.S. 105-122(a) reads as rewritten:

"(a) An annual franchise or privilege tax is imposed on a corporation doing business in this State. The tax is determined on the basis of the books and records of the corporation as of the close of its income year. A corporation subject to the tax must file a return under affirmation with the Secretary at the place and in the manner prescribed by the Secretary. The return must be signed by the president, vice-president, treasurer,

or chief financial officer of the corporation. The return is due on or before the fifteenth day of the fourth month following the end of the corporation's income year. ~~Every corporation, domestic and foreign, incorporated, or, by an act, domesticated under the laws of this State or doing business in this State, except as otherwise provided in this Article, shall, on or before the fifteenth day of the third month following the end of its income year, annually make and deliver to the Secretary in the form prescribed by the Secretary a full, accurate, and complete report and statement signed by either its president, vice-president, treasurer, assistant treasurer, secretary or assistant secretary, containing the facts and information required by the Secretary as shown by the books and records of the corporation at the close of the income year.~~

~~There shall be annexed to the return required by this subsection the affirmation of the officer signing the return.~~"

SECTION 3.(c) Subsections (a) and (c) of this section are effective January 1, 2008. Subsection (b) of this section is effective for taxable years beginning on or after January 1, 2009.

SECTION 4.(a) G.S. 105-130.16(a) reads as rewritten:

"(a) Return. – Every corporation doing business in this State must file with the Secretary an income tax return showing specifically the items of gross income and the deductions allowed by this Part and any other facts the Secretary requires to make any computation required by this Part. The return of a corporation must be signed by its president, vice-president, treasurer, ~~assistant treasurer, secretary, or assistant secretary.~~ or chief financial officer. The officer signing the return must furnish an affirmation verifying the return. The affirmation must be in the form required by the Secretary."

SECTION 4.(b) This section is effective for taxable years beginning on or after January 1, 2009.

SECTION 5.(a) G.S. 105-241.11(a) reads as rewritten:

"(a) Procedure. – A taxpayer who objects to a proposed denial of a refund or a proposed assessment of tax may request a Departmental review of the proposed action by filing a request for review. The request must be filed with the Department ~~within 45 days after the following:~~as follows:

(1) ~~The~~ Within 45 days of the date the notice of the proposed denial of the refund or proposed assessment was mailed to the taxpayer, if the notice was delivered by mail.

(2) ~~The~~ Within 45 days of the date the notice of the proposed denial of the refund or proposed assessment was delivered to the taxpayer, if the notice was delivered in person.

(3) ~~The date that~~ At any time between the date that inaction by the Department on a request for refund ~~was~~ is considered a proposed denial of the ~~refund.~~refund and the date the time periods set in the other subdivisions of this subsection expire."

SECTION 5.(b) This section is effective for taxable years beginning on or after January 1, 2008.

SECTION 6.(a) G.S. 105-241.14(c) reads as rewritten:

"(c) Time Limit. – The process set out in G.S. 105-241.13 for reviewing and attempting to resolve a proposed denial of a refund or a proposed assessment must conclude, and a final determination must be issued within nine months after the date the taxpayer files a request for review. The Department and the taxpayer may extend this time limit by mutual agreement. Failure to issue a notice of final determination within the required time does not affect the validity of a proposed denial of a refund or proposed assessment."

SECTION 6.(b) This section is effective for taxable years beginning on or after January 1, 2008.

SECTION 7.(a) G.S. 105-241.22 reads as rewritten:

"**§ 105-241.22. Collection of tax.**

The Department may collect a tax in the following circumstances:

(1) When a taxpayer files a return showing ~~tax~~ an amount due with the return and does not pay the amount shown due.

..."

SECTION 7.(b) This section is effective for taxable years beginning on or after January 1, 2008.

SECTION 8. G.S. 105-449.52(b) reads as rewritten:

"(b) ~~Hearing.~~ Review. – The procedure set out in G.S. 105-449.119 for ~~protesting~~ reviewing a penalty imposed under Article 36C, Part 6, of this Chapter applies to a penalty imposed under this section."

SECTION 9. G.S. 150B-31.1(d) reads as rewritten:

"(d) ~~Law Enforcement~~ Reports. ~~A report of a law enforcement agency is~~ The following agency reports are admissible without testimony from personnel of the ~~law enforcement agency.~~ agency:

(1) Law enforcement reports.

(2) Government agency lab reports used for the enforcement of motor fuel tax laws."

COLLECTION CHANGES

SECTION 10.(a) G.S. 105-253 is recodified as G.S. 105-242.2 and reads as rewritten:

"**§ 105-242.2. Personal liability when certain taxes not ~~remitted.~~paid.**

(a) Definitions. – The following definitions apply in this section:

(1) Business entity. – A corporation, a limited liability company, or a partnership.

(2) Responsible person. – Any of the following:

a. The president, treasurer, or chief financial officer of a corporation.

b. A manager of a limited liability company or a partnership.

c. An officer of a corporation, a member of a limited liability company, or a partner in a partnership who has a duty to deduct, account for, or pay taxes listed in subsection (b) of this section.

d. A partner who is liable for the debts and obligations of a partnership under G.S. 59-45 or G.S. 59-403.

~~Any officer, trustee, or receiver of any corporation or limited liability company required to file a report with the Secretary who has custody of funds of the corporation or company and who allows the funds to be paid out or distributed to the stockholders of the corporation or to the members of the company without having remitted to the Secretary any State taxes that are due is personally liable for the payment of the tax.~~

(b) Responsible Person. – Each responsible ~~officer~~ person in a business entity is personally and individually liable for all of the ~~following:~~taxes listed in this subsection. If a business entity does not pay a tax it owes after the tax becomes collectible under G.S. 105-241.22, the Secretary may enforce the responsible person's liability for the tax by sending the responsible person a notice of proposed assessment in accordance with G.S. 105-241.9. The taxes for which a responsible person may be held personally and individually liable are:

(1) All sales and use taxes collected by ~~a corporation or a limited liability company~~ the business entity upon its taxable transactions.

(2) All sales and use taxes due upon taxable transactions of ~~a corporation or a limited liability company~~ the business entity but upon which it failed to collect the tax, but only if the person knew, or in the exercise of reasonable care should have known, that the tax was not being collected.

(3) All taxes due from ~~a corporation or a limited liability company~~ the business entity pursuant to the provisions of Articles 36C and 36D of Subchapter V of this Chapter and all taxes payable under those Articles by it to a supplier for remittance to this State or another state.

(4) All income taxes required to be withheld from the wages of employees of ~~a corporation or a limited liability company.~~the business entity.

~~The liability of the responsible officer is satisfied upon timely remittance of the tax by the corporation or the limited liability company. If the tax remains unpaid after it is due and payable, the Secretary may proceed to enforce the responsible officer's liability for the tax by sending the responsible officer a notice of proposed assessment in accordance with G.S. 105-241.9. As used in this section, the term "responsible officer" means the president, treasurer, and chief financial officer of a corporation, the manager of a limited liability company, and any other officer of a corporation or member of a limited liability company who has a duty to deduct, account for, or pay taxes listed in this subsection. Any penalties that may be imposed under G.S. 105-236 and that apply to a deficiency also apply to an assessment made under this section.~~

~~The period of limitations for assessing a responsible officer for unpaid taxes under this section expires one year after the expiration of the period of limitations for assessment against the corporation or limited liability company.~~

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1007, s. 15.

(d) Distributions. – An officer, partner, trustee, or receiver of a business entity required to file a report with the Secretary who has custody of funds of the entity and who allows the funds to be paid out or distributed to the owners of the entity without having remitted to the Secretary any State taxes that are due is personally liable for the payment of the tax. The Secretary may enforce an individual's liability under this

subsection by sending the individual a notice of proposed assessment in accordance with G.S. 105-241.9.

(e) Statute of Limitations. – The period of limitations for assessing a responsible person for unpaid taxes under this section expires one year after the expiration of the period of limitations for assessing the business entity."

SECTION 10.(b) This section becomes effective July 1, 2008, and applies to taxes that become collectible on or after that date.

SALES TAX CHANGES

SECTION 11. G.S. 105-164.16 is amended by adding a new subsection to read:

"(e) Simultaneous State and Local Changes. – When State and local sales and use tax rates change on the same date because one increases and the other decreases but the combined general rate does not change, sales and use taxes payable on the gross receipts from the following periodic payments are reportable in accordance with the changed State and local rates:

(1) Lease or rental payments billed after the effective date of the changes.

(2) Installment sale payments received after the effective date of the changes by a taxpayer who reports the installment sale on a cash basis."

OCCUPANCY TAX CHANGES

SECTION 12.(a) Article 9 of Chapter 105 is amended by adding a new section to read:

"**§ 105-264.1. Secretary's interpretation applies to local taxes that are based on State taxes.**

An interpretation by the Secretary of a law administered by the Secretary applies to a local law administered by a unit of local government when the local law refers to the State law to determine the application of the local law. A person who is subject to the local law or the unit of local government that administers the local law may ask the Secretary for an interpretation of the State law that determines the application of the local law. An interpretation by the Secretary of a State law that determines the application of a local law provides the same protections against liability under the local law that it provides under the State law."

SECTION 12.(b) G.S. 153A-155(c) reads as rewritten:

"(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. If a taxable accommodation is furnished as part of a package, the bundled transaction provisions in G.S. 105-164.4D apply in determining the sales price of the taxable accommodation. If those provisions do not address the type of package offered, the operator may determine an allocated price for each item in the package based on a reasonable allocation of revenue that is supported by the operator's business records kept in the ordinary course of business and collect tax on the allocated price of the taxable accommodation. ~~The~~

The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the

taxing county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. ~~The~~

The taxing county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing county a discount equal to the discount the State allows the operator for State sales and use tax."

SECTION 12.(c) G.S. 160A-215(c) reads as rewritten:

"(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. If a taxable accommodation is furnished as part of a package, the bundled transaction provisions in G.S. 105-164.4D apply in determining the sales price of the taxable accommodation. If those provisions do not address the type of package offered, the operator may determine an allocated price for each item in the package based on a reasonable allocation of revenue that is supported by the operator's business records kept in the ordinary course of business and collect tax on the allocated price of the taxable accommodation. ~~The~~

The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. ~~The~~

The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax."

MEDICAID TECHNICAL CHANGES

SECTION 13.(a) G.S. 105-522, as enacted by Section 31.16.3(f) of S.L. 2007-323, reads as rewritten:

"§ 105-522. City hold harmless for repealed local taxes.

(a) Definitions. – The following definitions apply in this section:

(1) Eligible municipality. – A municipality that was incorporated on or before October 1, 2008, and receives a distribution of sales and use taxes under G.S. 105-472.

(2) Hold harmless amount. – Fifty percent (50%) of the amount of sales and use tax revenue ~~distributed under Article 40 of this Chapter to the municipality for a month, other than revenue from the sale of food that is subject to local tax but is exempt from State tax under G.S. 105-164.13B.~~ allocated under G.S. 105-486 for distribution to a municipality.

(b) Requirement. – A county is required to hold the eligible municipalities in the county harmless from the repeal of the local sales and use taxes formerly imposed under this Article. The Secretary must add an eligible municipality's hold harmless amount to the amount ~~distributed to the~~ otherwise allocated to the municipality for distribution

under this Subchapter. To obtain the revenue for the hold harmless distribution, the Secretary must reduce ~~each county's monthly allocation under G.S. 105-472(b)~~ the amount otherwise allocated to a county for distribution under Article 39 of this Subchapter or under Chapter 1096 of the 1967 Session Laws by the hold harmless amounts for the municipalities in that county."

SECTION 13.(b) Section 31.16.3(d) of S.L. 2007-323 is repealed.

SECTION 13.(c) Section 31.16.3(e) of S.L. 2007-323 is repealed.

SECTION 13.(d) Subsection (a) of this section becomes effective October 1, 2008, and applies to distributions for months beginning on or after that date. The remainder of this section is effective when it becomes law.

SECTION 14.(a) G.S. 105-523, as enacted by Section 31.16.3(f) of S.L. 2007-323, reads as rewritten:

"**§ 105-523. County hold harmless for repealed local taxes.**

(a) Intent. – It is the intent of the General Assembly that each county benefit by at least five hundred thousand dollars ($500,000) annually from the exchange of a portion of the local sales and use taxes for the State's agreement to assume the responsibility for the non-administrative costs of Medicaid.

(b) Definitions. – The following definitions apply in this section:

(1) City hold harmless amount. – The hold harmless amount determined under G.S. 105-522 for the eligible municipalities in a county.

~~(1)~~(2) Hold harmless threshold. – The amount of a county's Medicaid service costs and Medicare Part D clawback payments assumed by the State under G.S. 108A-54 for the fiscal year, less five hundred thousand dollars ($500,000).

~~(2)~~(3) Repealed sales tax amount. – Fifty percent (50%) of the amount of sales and use tax revenue ~~distributed to a county under Article 40 of this Chapter, other than revenue from the sale of food that is subject to local tax but is exempt from State tax under G.S. 105-164.13B.~~ allocated under G.S. 105-486 for distribution to a county.

(c) Requirement. – If a county's repealed sales tax amount plus its city hold harmless amount for a fiscal year exceeds the county's hold harmless threshold for that fiscal year, the State is required to hold the county harmless for the difference by paying the amount of the difference to the county. The Secretary must withhold from sales and use tax collections under Article 5 of this Chapter the amount needed to make the county hold harmless payments required by this section.

(d) Method. – The Secretary must estimate a county's repealed sales tax ~~amount~~ amount, city hold harmless amount, and hold harmless threshold for a fiscal year to determine if the county is eligible for a hold harmless payment. The Secretary must send to an eligible county with the distribution made under G.S. 105-472 for March of that year an amount equal to ninety percent (90%) of its estimated hold harmless payment. At the end of each fiscal year, the Secretary must determine ~~the difference between a county's repealed sales tax amount and its~~ each county's hold harmless ~~threshold~~ payment for that year. The Secretary must send by August 15 the remainder of the county's hold harmless payment for the fiscal year that ended on June 30. The

Secretary of the Department of Human Resources must give the Secretary of Revenue the data needed to determine a county's hold harmless threshold."

SECTION 14.(b) Section 31.16.3(g) of S.L. 2007-323 is repealed.

SECTION 14.(c) Section 31.16.4(c) of S.L. 2007-323 is repealed.

SECTION 14.(d) Section 31.16.4(d) of S.L. 2007-323 is repealed.

SECTION 14.(e) Section 31.16.4(e) of S.L. 2007-323 is repealed.

SECTION 14.(f) Section 14.4 of S.L. 2007-345 is repealed.

SECTION 14.(g) G.S. 105-522(a)(2), as enacted by Section 31.16.3(f) of S.L. 2007-323 and amended by Section 6 of this act, reads as rewritten:

"(2) Hold harmless amount. – ~~Fifty percent (50%) of the~~The sum of the following amounts allocated for distribution to a municipality for a month:

a. The amount of sales and use tax revenue allocated under G.S. ~~105-486 for distribution to a municipality.~~ 105-486. This calculation determines the effect of repealing a one-half percent (½%) sales and use tax distributed on a per capita basis.

b. An amount determined by subtracting twenty-five percent (25%) of the amount of sales and use tax revenue allocated under G.S. 105-472 or Chapter 1096 of the 1967 Session Laws from fifty percent (50%) of the amount of sales and use tax revenue allocated under G.S. 105-486. This calculation determines the effect of distributing a one-quarter percent (.25%) tax on the basis of point of origin instead of on a per capita basis."

SECTION 14.(h) G.S. 105-523(b)(3), as enacted by Section 31.16.3(f) of S.L. 2007-323 and as amended by subsection (a) of this Section, reads as rewritten:

"(3) Repealed sales tax amount. ~~Fifty percent (50%) of the~~ The sum of the following amounts allocated for distribution to a county for a month:

a. The amount of sales and use tax revenue allocated under G.S. ~~105-486 for distribution to a county.~~ 105-486. This calculation determines the effect of repealing a one-half percent (½%) sales and use tax distributed on a per capita basis.

b. An amount determined by subtracting twenty-five percent (25%) of the amount of sales and use tax revenue allocated under G.S. 105-472 or Chapter 1096 of the 1967 Session Laws from fifty percent (50%) of the amount of sales and use tax revenue allocated under G.S. 105-486. This calculation determines the effect of distributing a one-quarter percent (.25%) tax on the basis of point of origin instead of on a per capita basis."

SECTION 14.(i) For fiscal year 2008-2009, the hold harmless amount determined for a municipality under G.S. 105-522 and the repealed sales tax amount determined for a county under G.S. 105-523 is reduced by the amount distributed in October, November, and December of 2008 to the municipality or county on a per capita basis under repealed G.S. 105-520(b).

For fiscal year 2009-2010, the hold harmless amount determined for a municipality under G.S. 105-522 and the repealed sales tax amount determined for a county under G.S. 105-523 is reduced by the amount distributed in October, November, and December of 2009 to the municipality or county on the basis of point of origin under repealed G.S. 105-520(a).

SECTION 14.(j) Subsection (a) of this section become effective October 1, 2008, and applies to distributions for months beginning on or after that date. Subsections (g) and (h) of this section become effective October 1, 2009, and apply to distributions for months beginning on or after that date. The remainder of this section is effective when it becomes law.

OTHER CHANGES

SECTION 15.(a) G.S. 105-113.112 reads as rewritten:

"**§ 105-113.112. Confidentiality of information.**

Information obtained by the Department in the course of administering the tax imposed by this Article, including information on whether the Department has issued a revenue stamp to a person, is confidential tax information and is subject to the following restrictions on disclosure:

(1) G.S. 105-259 prohibits the disclosure of the information, except in the limited circumstances provided in that statute.

(2) The information may not be used as evidence, as defined in G.S. 15A-971, in a criminal prosecution for an offense other than an offense under this Article or under Article 9 of this Chapter. Under this prohibition, no officer, employee, or agent of the Department may testify about the information in a criminal prosecution for an offense other than an offense under this Article or under Article 9 of this Chapter. This subdivision implements the protections against double jeopardy and self-incrimination set out in Amendment V of the United States Constitution and the restrictions in it apply regardless of whether information may be disclosed under G.S. 105-259. This subdivision does not apply to information obtained from a source other than an employee, officer, or agent of the Department. <u>This subdivision does not prohibit testimony by an officer, employee, or agent of the Department concerning an offense committed against that individual in the course of administering this Article.</u> An officer, employee, or agent of the Department who provides evidence or testifies in violation of this subdivision is guilty of a Class 1 misdemeanor."

SECTION 15.(b) This section becomes effective December 1, 2008, and applies to offenses committed on or after that date.

SECTION 16.(a) Part 2D of Article 10 of Chapter 143B of the General Statutes is repealed.

SECTION 16.(b) G.S. 66-58(b)(21) is repealed.

SECTION 16.(c) G.S. 120-123(72) is repealed.

SECTION 16.(d) G.S. 126-5(c1)(20) is repealed.

SECTION 16.(e) G.S. 143B-437.45 reads as rewritten:

"**§ 143B-437.45. Definitions.**

The following definitions apply in this Part:

...

(5) Regional ~~Partnerships. As defined in G.S. 143B-437.21(6).~~ partnership. – Any of the following:

a. The Western North Carolina Regional Economic Development Commission created in G.S. 158-8.1.

b. The North Carolina's Northeast Commission created in G.S. 158-8.2.

c. The Southeastern North Carolina Regional Economic Development Commission created in G.S. 158-8.3.

d. The North Carolina's Eastern Region Development Commission created in G.S. 158-35.

e. The Charlotte Regional Partnership, Inc.

f. The Research Triangle Regional Partnership.

g. The Piedmont Triad Partnership.

..."

SECTION 17. G.S. 105-538 reads as rewritten:

"**§ 105-538. Administration of taxes.**

Except as provided in this Article, the adoption, levy, collection, administration, and repeal of these additional taxes must be in accordance with Article 39 of this Chapter. G.S. 105-468.1 is an administrative provision that applies to this Article. A tax levied under this Article does not apply to the sales price of food that is exempt from tax pursuant to G.S. 105-164.13B. The Secretary shall not divide the amount allocated to a county between the county and the municipalities within the county. Notwithstanding the provisions of G.S. ~~105-467(c),~~ 105-466(c), during the 2008 calendar year a tax levied under this Article may become effective on the first day of any calendar quarter so long as the county gives the Secretary at least 60 days' advance notice of the new tax levy."

SECTION 18.(a) G.S. 105-277.1(a2) reads as rewritten:

"(a2) Income Eligibility Limit. ~~Until~~ For the tax year beginning July 1, 2008, the income eligibility limit is twenty-five thousand dollars ($25,000). For taxable years beginning on or after ~~July 1, 2008,~~ July 1, 2009, the income eligibility limit is the amount for the preceding year, adjusted by the same percentage of this amount as the percentage of any cost-of-living adjustment made to the benefits under Titles II and XVI of the Social Security Act for the preceding calendar year, rounded to the nearest one hundred dollars ($100.00). On or before July 1 of each year, the Department of Revenue must determine the income eligibility amount to be in effect for the taxable year beginning the following July 1 and must notify the assessor of each county of the amount to be in effect for that taxable year."

SECTION 18.(b) This section becomes effective for taxable years beginning on or after January 1, 2008.

SECTION 19. G.S. 158-12.1 reads as rewritten:

"§ **158-12.1. Commission funds secured.**

The Western North Carolina Regional Economic Development Commission, Research Triangle Regional ~~Commission,~~ Partnership, Southeastern North Carolina Regional Economic Development Commission, Piedmont Triad Partnership, North Carolina's Northeast Commission, North Carolina's Eastern Region Development Commission, and Carolinas Partnership, Inc., may deposit money at interest in any bank, savings and loan association, or trust company in this State in the form of savings accounts, certificates of deposit, or such other forms of time deposits as may be approved for county governments. Investment deposits and money deposited in an official depository or deposited at interest shall be secured in the manner prescribed in G.S. 159-31(b). When deposits are secured in accordance with this section, no public officer or employee may be held liable for any losses sustained by an institution because of the default or insolvency of the depository. This section applies to the regional economic development commissions listed in this section only for as long as the commissions are receiving State funds."

MOTOR FUEL TAX LAW CHANGES

SECTION 20. G.S. 105-449.37 reads as rewritten:

"§ **105-449.37. Definitions; tax liability.**

(a) Definitions. – The following definitions apply in this Article:

(1) International Fuel Tax Agreement. – The Articles of Agreement adopted by the International Fuel Tax Association, Inc., as amended as of June 1, 2008.

(2) Motor carrier. – A person who operates or causes to be operated on any highway in this State a motor vehicle that is a qualified motor ~~vehicle under the International Fuel Tax Agreement.~~ vehicle. The term does not include the United States, ~~the State,~~ a state, or a political subdivision of ~~the State.~~a state.

~~(1a)~~(3) Motor vehicle. – ~~A motor vehicle as defined in G.S. 105-164.3 other than special mobile equipment as defined in G.S. 105-164.3.~~Defined in G.S. 20-4.01.

~~(2)~~(4) Operations. – ~~Operations of all motor vehicles described in subdivision (1),~~ The movement of a qualified motor vehicle by a motor carrier, whether loaded or empty and whether or not operated for compensation.

~~(2a)~~(5) Person. – Defined in G.S. 105-228.90.

(6) Qualified motor vehicle. – Defined in the International Fuel Tax Agreement.

~~(3)~~(7) Secretary. – ~~The Secretary of Revenue.~~Defined in G.S. 105-228.90.

(b) Liability. – A motor carrier who operates on one or more days of a reporting period is liable for the tax imposed by this Article for that reporting period and is entitled to the credits allowed for that reporting period."

SECTION 21. G.S. 105-449.38 reads as rewritten:

"§ **105-449.38. Tax levied.**

A road tax for the privilege of using the streets and highways of this State is imposed upon every motor carrier on the amount of motor fuel or alternative fuel used by the carrier in its operations within this State. The tax shall be at the rate established by the Secretary pursuant to G.S. 105-449.80 or G.S. 105-449.136, as appropriate. This tax is in addition to any other taxes imposed on motor ~~carriers~~carriers."

SECTION 22. G.S. 105-449.44 reads as rewritten:

"**§ 105-449.44. How to determine the amount of fuel used in the State; presumption of amount used.**

(a) Calculation. – The amount of motor fuel or alternative fuel a motor carrier uses in its operations in this State for a reporting period is the number of miles the motor carrier travels in this State during that period divided by the calculated miles per gallon for the motor carrier for all qualified motor vehicles during that period.

(b) Presumption. – The Secretary must check reports filed under this Article against the weigh station records and other records of the Division of Motor Vehicles of the Department of Transportation and the State Highway Patrol of the Department of Crime Control and Public Safety concerning motor carriers to determine if motor carriers that are operating in this State are filing the reports required by this Article. ~~The Department may assess a motor carrier for the amount payable based on the presumed mileage. A motor carrier that does either of the following for a quarter is presumed to have traveled in this State during that quarter the number of miles equal to 10 trips of 450 miles each for each of the motor carrier's vehicles:~~ If the records indicate that a motor carrier operated in this State in a quarter and either did not file a report for that quarter or understated its mileage in this State on a report filed for that quarter by at least twenty-five percent (25%), the Secretary may assess the motor carrier for an amount based on the motor carrier's presumed operations. The motor carrier is presumed to have mileage in this State equal to 10 trips of 450 miles each for each of the motor carrier's qualified motor vehicles and to have fuel usage of four miles per gallon.

~~(1) Fails to file a report for the quarter and the records of the Division indicate the carrier operated in this State during the quarter.~~

~~(2) Files a report for the quarter that, based on the records of the Division, understates by at least twenty-five percent (25%) the carrier's mileage in this State for the quarter.~~

(c) Vehicles. – The number of qualified motor vehicles of a motor carrier that is registered under this Article is the number of ~~identification markers~~ sets of decals issued to the carrier. The number of qualified motor vehicles of a carrier that is not registered under this Article is the number of qualified motor vehicles registered by the motor carrier in the carrier's base state under the International Registration Plan."

SECTION 23. G.S. 105-449.47 reads as rewritten:

"**§ 105-449.47. Registration of vehicles.**

(a) Requirement. – A motor carrier that is subject to the International Fuel Tax Agreement may not operate or cause to be operated in this State ~~any vehicle listed in the definition of motor vehicle~~ a qualified motor vehicle unless both the motor carrier and ~~the~~ at least one qualified motor vehicle are registered with the motor carrier's base state

jurisdiction. A motor carrier that is not subject to the International Fuel Tax Agreement may not operate or cause to be operated in this State ~~any vehicle listed in the definition of motor vehicle~~ a qualified motor vehicle unless both the motor carrier and ~~the~~ at least one qualified motor vehicle are registered with the Secretary for purposes of the tax imposed by this Article. This subsection applies to a motor carrier that operates a recreational vehicle that is considered a qualified motor vehicle.

(a1) Registration and ~~Identification Marker.~~ Decal. – When the Secretary registers a motor carrier, the Secretary must issue a registration card for the motor carrier and ~~at least one~~ ~~identification marker~~ a set of decals for each qualified motor vehicle ~~operated by~~ the motor ~~carrier.~~ carrier regisers. A motor carrier must keep records of ~~identification markers~~ decals issued to it and must be able to account for all ~~identification markers~~ decals it receives from the Secretary. Registrations and ~~identification markers~~ decals issued by the Secretary are for a calendar year. All ~~identification markers~~ decals issued by the Secretary remain the property of the State. The Secretary may revoke a registration or ~~an identification marker~~ a decal when a motor carrier fails to comply with this Article or Article 36C or 36D of this Subchapter.

A motor carrier must carry a copy of its registration in each motor vehicle operated by the motor carrier when the vehicle is in this State. A motor vehicle must clearly display ~~an identification marker~~ one decal on each side of the vehicle at all times. ~~The identification marker~~ A decal must be affixed to the qualified motor vehicle for which it was issued in the place and manner designated by the authority that issued it.

(b) Exemption. – This section does not apply to the operation of a qualified motor vehicle that is registered in another state and is operated temporarily in this State by a public utility, a governmental or cooperative provider of utility services, or a contractor for one of these entities for the purpose of restoring utility services in an emergency outage."

SECTION 24. G.S. 105-449.47A reads as rewritten:

"§ **105-449.47A. Reasons why the Secretary can deny an application for a registration and ~~identification marker.~~decals.**

The Secretary may refuse to register and issue ~~an identification marker~~ a decal to an applicant that has done any of the following:

(1) Had a registration issued under Chapter 105 or Chapter 119 of the General Statutes cancelled by the Secretary for cause.

(2) Had a registration issued by another jurisdiction, pursuant ~~to G.S. 105-449.57,~~ the International Fuel Tax Agreement, cancelled for cause.

(3) Been convicted of fraud or misrepresentation.

(4) Been convicted of any other offense that indicates that the applicant may not comply with this Article if registered and issued ~~an identification marker.~~ a decal.

(5) Failed to remit payment for a tax debt under Chapter 105 or Chapter 119 of the General Statutes. The term "tax debt" has the same meaning as defined in G.S. 105-243.1.

(6) Failed to file a return due under Chapter 105 or Chapter 119 of the General Statutes."

SECTION 25. G.S. 105-449.50 is repealed.

SECTION 26. G.S. 105-449.51 reads as rewritten:

"**§ 105-449.51. Violations declared to be misdemeanors.**

Any person who operates or causes to be operated on a highway in this State a qualified motor vehicle that does not carry a registration card as required by this Article, does not properly display ~~an identification marker~~ a decal as required by this Article, or is not registered in accordance with this Article ~~is guilty of~~ commits a Class 3 misdemeanor ~~and, upon conviction thereof, shall be fined~~ and is punishable by a fine of two hundred dollars ($200.00). Each day's operation in violation ~~of any provision~~ of this section ~~shall constitute~~ constitutes a separate offense."

SECTION 27. 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 qualified motor vehicle that either fails to carry the registration card required by this Article or fails to display ~~an identification marker~~ a decal in accordance with this Article. The amount of the penalty is one hundred dollars ($100.00).

(2) Is unable to account for ~~identification markers~~ a decal 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~~ decal for which the carrier is unable to ~~account for.~~ account.

(3) Displays ~~an identification marker~~ a decal on a qualified 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~~ decal unlawfully obtained. Both the licensed motor carrier to whom the Secretary issued the ~~identification marker~~ decal and the motor carrier displaying the unlawfully obtained ~~identification marker~~ decal are jointly and severally liable for the penalty under this subdivision.

(a1) Payment. – A penalty imposed under this section is payable to the agency that assessed the penalty. When a qualified motor vehicle is found to be operating without a registration card or ~~an identification marker~~ a decal or with ~~an identification marker~~ a decal the Secretary did not issue for the vehicle, the qualified motor vehicle may not be driven for a purpose other than to park ~~the motor vehicle~~ it until the penalty imposed under this section is paid unless the officer that imposes the penalty determines that ~~operation of the motor vehicle~~ operating it 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 28. G.S. 105-449.60 reads as rewritten:

"§ 105-449.60. **Definitions.**

The following definitions apply in this Article:

(1) Additive. – A de minimus amount of product that is added or mixed with motor fuel. Examples of an additive include fuel system detergent, an oxidation inhibitor, gasoline antifreeze, or an octane enhancer.

(2) Aviation gasoline. – Fuel blended or produced specifically for use in an aircraft motor.

~~(1)~~(3) Biodiesel. – Any fuel or mixture of fuels derived in whole or in part from agricultural products or animal fats or wastes from these products or fats.

~~(1a)~~(4) Biodiesel provider. – A person who does any of the following:

a. Produces an average of no more than 500,000 gallons of biodiesel per month during a calendar year. A person who produces more than this amount is a refiner.

b. Imports biodiesel outside the terminal transfer system by means of ~~a marine vessel,~~ a transport truck, a railroad tank car, or a tank wagon.

~~(1b) to (1d) Reserved for future codification purposes.~~

~~(1e)~~(5) Blended fuel. – A mixture composed of gasoline or diesel fuel and another liquid, other than ~~a de minimus amount of a product such as carburetor detergent or oxidation inhibitor,~~ an additive, that can be used as a fuel in a highway vehicle.

~~(2)~~(6) Blender. – A person who produces blended fuel outside the terminal transfer system.

(7) Bonded importer. – A person, other than a supplier, who imports by transport truck or another means of transfer outside the terminal transfer system motor fuel removed from a terminal located in another state in one or more of the following circumstances:

a. The state from which the fuel is imported does not require the seller of the fuel to collect motor fuel tax on the removal of the fuel at that state's rate or the rate of the destination state.

b. The supplier of the fuel is not an elective supplier.

c. The supplier of the fuel is not a permissive supplier.

~~(3)~~(8) ~~Bulk end user.~~ Bulk end-user. – A person who maintains storage facilities for motor fuel and uses part or all of the stored fuel to operate a highway vehicle.

~~(4)~~(9) Bulk plant. – A motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

~~(5)~~(10) Code. – Defined in G.S. 105-228.90.

~~(6)~~(11) Destination state. – The state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the purpose of resale or use.

~~(7)~~(12) Diesel fuel. – Any liquid, other than gasoline, that is suitable for use as a fuel in a diesel-powered highway vehicle. The term includes biodiesel, fuel oil, heating oil, high-sulfur dyed diesel fuel, and kerosene. The term does not include jet ~~fuel sold to a buyer who is certified to purchase jet fuel under the Code.~~fuel.

~~(8)~~(13) Distributor. – A person who ~~acquires motor fuel from a supplier or from another distributor for subsequent sale.~~does one or more of the activities listed in this subdivision. The term does not include a person who sells motor fuel only at retail.

a. Produces, refines, blends, compounds, or manufactures motor fuel.

b. Transports motor fuel into a state or exports motor fuel out of a state.

c. Engages in the distribution of motor fuel primarily by tank car or tank truck or both.

d. Operates a bulk plant where the person has active motor fuel bulk storage.

(14) Diversion. – The movement of motor fuel from a terminal to a state other than the destination state indicated on the original bill of lading.

~~(9)~~(15) Dyed diesel fuel. – Diesel fuel that meets the dyeing and marking requirements ~~of § 4082 of the Code.~~as set out in 26 C.F.R. § 48.4082.1.

~~(10)~~(16) Elective supplier. – A supplier that is required to be licensed in this State and that elects to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.

~~(10a)~~(17) Exempt card or code. – A credit card or an access code that enables the person to whom the card or code is issued to buy motor fuel at retail without paying the motor fuel excise tax on the fuel.

~~(11)~~(18) Export. – To obtain motor fuel in this State for sale or other distribution in another state. In applying this definition, motor fuel delivered out-of-state by or for the seller constitutes an export by the seller and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the purchaser.

~~(12)~~(19) Fuel alcohol. – Alcohol, methanol, or fuel grade ethanol.

~~(13)~~(20) Fuel alcohol provider. – A person who does any of the following:

a. Produces an average of no more than 500,000 gallons of fuel alcohol per month during a calendar year. A person who produces more than this amount is a refiner.

b. Imports fuel alcohol outside the terminal transfer system by means of ~~a marine vessel,~~ a transport truck, a railroad tank car, or a tank wagon.

~~(14)~~(21) Gasohol. – A blended fuel composed of gasoline and fuel grade ethanol.

~~(15)~~(22) Gasoline. – Any of the following:

a. All products that are commonly or commercially known or sold as gasoline and are suitable for use as a fuel in a highway vehicle, other than products that have an American Society for Testing Materials octane number of less than 75 as determined by the motor method. The term does not include aviation gasoline.

b. A petroleum product component of gasoline, such as naptha, reformate, or toluene.

c. Gasohol.

d. Fuel alcohol.

~~The term does not include aviation gasoline sold for use in an aircraft motor. "Aviation gasoline" is gasoline that is designed for use in an aircraft motor and is not adapted for use in an ordinary highway vehicle.~~

~~(16)~~(23) Gross gallons. – The total amount of motor fuel measured in gallons, exclusive of any temperature, pressure, or other adjustments.

~~(17)~~(24) Highway. – Defined in G.S. 20-4.01(13).

~~(18)~~(25) Highway vehicle. – A self-propelled vehicle that is designed for use on a highway.

~~(19)~~(26) Import. – To bring motor fuel into this State by any means of conveyance other than in the fuel supply tank of a highway vehicle. In applying this definition, motor fuel delivered into this State from out-of-state by or for the seller constitutes an import by the seller, and motor fuel delivered into this State from out-of-state by or for the purchaser constitutes an import by the purchaser.

~~(19a)~~(27) ~~In-State only~~ In-State supplier. – Either of the following:

a. A supplier that is required to have a license and elects not to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.

b. A supplier that does business only in this State.

(28) Jet fuel. – Kerosene that meets all of the following requirements:

a. Has a maximum distillation temperature of 400 degrees Fahrenheit at the ten percent (10%) recovery point and a final maximum boiling point of 572 degrees Fahrenheit.

b. Meets American Society Testing Materials Specification D 1655 and Military Specifications MIL-T-5624P and MIL-T-83133D, Grades JP-5 and JP-8.

(29) Kerosene. – Petroleum oil that is free from water, glue, and suspended matter and that meets the specifications and standards adopted under G.S. 119-26 by the Gasoline and Oil Inspection Board.

(30) Marine vessel. – A ship, boat, or other watercraft used or capable of being used to move in or through a waterway.

~~(20)~~(31) Motor fuel. – Gasoline, diesel fuel, and blended fuel.

~~(21)~~(32) Motor fuel rate. – The rate of tax set in G.S. 105-449.80.

~~(22)~~(33) Motor fuel transporter. – A person who transports motor fuel by ~~pipeline or who transports motor fuel outside the terminal transfer system by means of a~~ pipeline, transport truck, ~~a~~ railroad tank car, or ~~a~~ marine vessel.

~~(23)~~(34) Net gallons. – The amount of motor fuel measured in gallons when corrected to a temperature of 60 degrees Fahrenheit and a pressure of 14 7/10 pounds per square inch.

(35) Occasional importer. – One or more of the following that imports motor fuel by any means outside the terminal transfer system:

a. A distributor that imports motor fuel on an average basis of no more than once a month during a calendar year.

b. A bulk end-user that acquires motor fuel for import from a bulk plant and is not required to be licensed as a bonded importer.

c. A distributor that imports motor fuel for use in a race car.

~~(24)~~(36) Permissive supplier. – An out-of-state supplier that elects, but is not required, to have a supplier's license under this Article.

~~(25)~~(37) Person. – Defined in G.S. 105-228.90.

(38) Pipeline. – A fuel distribution system that moves motor fuel, in bulk, through a pipe either from a refinery to a terminal or from a terminal to another terminal.

~~(26)~~(39) Position holder. – The person who holds the inventory position ~~in~~ on the motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds the inventory position ~~in~~ on the motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminaling services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.

~~(27)~~(40) Rack. – A mechanism for delivering motor fuel from a refinery, a terminal, or a bulk plant into a transport truck, a railroad tank car, or another means of transfer that is outside the terminal transfer system.

~~(27a)~~(41) Refiner. – A person who owns, operates, or controls a refinery. The term includes a person who produces an average of more than 500,000 gallons of fuel alcohol or biodiesel a month during a calendar year.

~~(27b)~~(42) Refinery. – A facility used to process crude oil, unfinished oils, natural gas liquids, or other hydrocarbons into motor fuel and from which fuel may be removed by pipeline or vessel or at a rack. The term does not include a facility that produces only blended fuel or gasohol.

~~(28)~~(43) Removal. – A physical transfer other than by evaporation, loss, or destruction. A physical transfer to a transport truck or another means of conveyance outside the terminal transfer system is complete upon delivery into the means of conveyance.

~~(29)~~(44) Retailer. – A person who maintains storage facilities for motor fuel and who sells the fuel at retail or dispenses the fuel at a retail location.

~~(30)~~(45) Secretary. – Defined in G.S. 105-228.90.

~~(31)~~(46) Supplier. – Any of the following:

a. A position holder or a person who receives motor fuel pursuant to a two-party exchange.

b. A fuel alcohol provider.

c. A biodiesel provider.

d. A refiner.

~~(32)~~(47) System transfer. – Either of the following:

a. A transfer of motor fuel within the terminal transfer system.

b. A transfer, by transport truck or railroad tank car, of fuel grade ethanol.

~~(33)~~(48) Tank wagon. – A truck that is not a transport truck and is designed or used to carry at least 1,000 gallons of motor fuel.

(49) Tank wagon importer. – A person who imports only by means of a tank wagon motor fuel that is removed from a terminal or a bulk plant located in another state.

~~(33a)~~(50) Tax. – An inspection or other excise tax on motor fuel and any other fee or charge imposed on motor fuel on a per-gallon basis.

~~(34)~~(51) Terminal. – A motor fuel storage and distribution facility that has been assigned a terminal control number by the Internal Revenue Service, is supplied by pipeline or marine vessel, and from which motor ~~fuel~~ fuel, jet fuel, or aviation gasoline may be removed at a rack.

~~(35)~~(52) Terminal operator. – A person who owns, operates, or otherwise controls a terminal.

~~(36)~~(53) Terminal transfer system. – The motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals. The term has the same meaning as "bulk transfer/terminal system" under 26 C.F.R. § 48.4081-1.

~~(37)~~(54) Transmix. – Either of the following:

a. The buffer or interface between two different products in a pipeline shipment.

b. A mix of two different products within a refinery or terminal that results in an off-grade mixture.

~~(38)~~(55) Transport truck. – A ~~semitrailer~~ tractor trailer ~~combination rig~~ designed or used to transport loads of motor fuel over a highway.

~~(39)~~(56) Trustee. – A person who is licensed as a ~~supplier, an elective supplier, or a permissive~~ supplier and who receives tax payments from and on behalf of a licensed ~~distributor.~~distributor or licensed importer for remittance to the Secretary.

~~(40)~~(57) Two-party exchange. – A transaction in which motor fuel is transferred from one licensed supplier to another licensed supplier pursuant to an exchange agreement under which the supplier that is the

position holder agrees to deliver motor fuel to the other supplier or the other supplier's customer at the rack of the terminal at which the delivering supplier is the position holder.

~~(41)~~(58) User. – A person who owns or operates a licensed highway vehicle that has a registered gross vehicle weight of at least 10,001 pounds and who does not maintain storage facilities for motor fuel."

SECTION 29. G.S. 105-449.65 reads as rewritten:

"**§ 105-449.65. List of persons who must have a license.**

(a) License. – A person may not engage in business in this State as any of the following unless the person has a license issued by the Secretary authorizing the person to engage in that business:

(1) A refiner.
(2) A supplier.
(3) A terminal operator.
(4) An importer.
(5) An exporter.
(6) A blender.
(7) A motor fuel transporter.
(8) Repealed by Session Laws 1999-438, s. 20, effective August 10, 1999.
(9) Repealed by Session Laws 1999-438, s. 21, effective August 10, 1999.
(10) A distributor who purchases motor fuel from an elective or permissive supplier at an out-of-state terminal for import into this State.

(b) Multiple Activity. – A person who is engaged in more than one activity for which a license is required must have a separate license for each activity, unless ~~this subsection~~ one of the following subdivisions provides otherwise. ~~A~~

(1) Supplier. – A person who is licensed as a supplier is considered to have a license as a distributor. A person who is licensed as a supplier and is a biodiesel provider is considered to have a license as a blender.

(2) Importer. – A person who is licensed as an occasional importer or a tank wagon importer is not required to obtain a separate license as a distributor unless the importer is also purchasing motor fuel, at the terminal rack, from an elective or permissive supplier who is authorized to collect and remit the tax to the State.

(3) Distributor. – A person who is licensed as a distributor is not required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or a permissive supplier and is not required to obtain a separate license as an exporter.

(4) Transporter. – A person who ~~is licensed as a distributor or a blender~~ has any license issued under this section other than a motor fuel transporter license and who transports ~~fuel is considered to be licensed as a motor fuel transporter.~~motor fuel."

SECTION 30. G.S. 105-449.66 reads as rewritten:

"**§ 105-449.66. ~~Types of importers; restrictions on who can get a license as an importer.~~Importer licensing.**

~~(a)~~ ~~Types.~~ An applicant for a license as an importer must indicate on the application the type of importer license sought. The types of importers are bonded importer, occasional importer, and tank wagon importer. ~~as follows:~~

~~(1) Bonded importer. A bonded importer is a person, other than a supplier, who imports, by transport truck or another means of transfer outside the terminal transfer system, motor fuel removed from a terminal located in another state in any of the following circumstances:~~

~~a. The state from which the fuel is imported does not require the seller of the fuel to collect motor fuel tax on the removal either at that state's rate or the rate of the destination state.~~

~~b. The supplier of the fuel is not an elective supplier.~~

~~c. The supplier of the fuel is not a permissive supplier.~~

~~(2) Occasional importer. An occasional importer is any of the following that imports motor fuel by any means outside the terminal transfer system:~~

~~a. A distributor that imports motor fuel on an average basis of no more than once a month during a calendar year.~~

~~b. A bulk end-user that acquires motor fuel for import from a bulk plant and is not required to be licensed as a bonded importer.~~

~~c. A distributor that imports motor fuel for use in a race car.~~

~~(3) Tank wagon importer. A tank wagon importer is a person who imports, only by means of a tank wagon, motor fuel that is removed from a terminal or a bulk plant located in another state.~~

~~(b)~~ ~~Restrictions.~~ A person may not be licensed as more than one type of importer. A ~~bulk end-user~~ bulk end-user that imports motor fuel from a terminal of a supplier that is not an elective or a permissive supplier must be licensed as a bonded importer. A ~~bulk end-user~~ bulk end-user that imports motor fuel from a bulk plant and is not required to be licensed as a bonded importer must be licensed as an occasional importer. A ~~bulk end-user~~bulk end-user that imports motor fuel only from a terminal of an elective or a permissive supplier is not required to be licensed as an importer."

SECTION 31. G.S. 105-449.68 reads as rewritten:

"**§ 105-449.68. Restrictions on who can get a license as a distributor.**

A ~~bulk end-user~~ bulk end-user of motor fuel may not be licensed as a distributor unless the ~~bulk end-user~~ bulk end-user also acquires motor fuel from a supplier or from another distributor for subsequent sale. This restriction does not apply to a ~~bulk end-user~~ bulk end-user that was licensed as a distributor on January 1, 1996. If a distributor license held by a ~~bulk end-user~~ bulk end-user on January 1, 1996, is subsequently cancelled, the ~~bulk end-user~~ bulk end-user is subject to the restriction set in this section."

SECTION 32. G.S. 105-449.69(c) reads as rewritten:

"(c) Federal Certificate. – An applicant for a license as a refiner, a supplier, a terminal operator, or a ~~blender, or a permissive supplier~~ blender must have a federal Certificate of Registry that is issued under § 4101 of the Code and authorizes the applicant to enter into federal tax-free transactions in taxable motor fuel in the terminal

transfer system. An applicant that is required to have a federal Certificate of Registry must include the registration number of the certificate on the application for a license under this section.

An applicant for a license as an importer, an exporter, or a distributor that has a federal Certificate of Registry issued under § 4101 of the Code must include the registration number of the certificate on the application for a license under this section."

SECTION 33. G.S. 105-449.70(a) reads as rewritten:

"(a) Election. – An applicant for a license as a supplier may elect on the application to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state. The Secretary must provide for this election on the application form. A supplier that makes the election allowed by this section is an elective supplier. A supplier that does not make the election allowed by this section is an ~~in-State only~~ in-State supplier.

A supplier that does not make the election on the application for a supplier's license may make the election later by completing an election form provided by the Secretary. A supplier that does not make the election may not act as an elective supplier for motor fuel that is removed at a terminal in another state and has this State as its destination state."

SECTION 34. G.S. 105-449.74 reads as rewritten:

"**§ 105-449.74. Issuance of license.**

Upon approval of an application, the Secretary must issue a license to the applicant. A supplier's license must indicate the category of the supplier. An importer's license must indicate the category of the importer. A license holder must maintain and display a copy of the license issued under this Part in a conspicuous place at each place of business of the license holder. A license is not transferable and remains in effect until surrendered or cancelled."

SECTION 35. G.S. 105-449.75 reads as rewritten:

"**§ 105-449.75. License holder must notify the Secretary of discontinuance of business.**

A license holder that stops engaging in this State in the business for which the license was issued must give the Secretary written notice of the change and must surrender the license to the Secretary. The notice must give the date the change takes effect and, if the license holder has transferred the business to another by sale or otherwise, the date of the transfer and the name and address of the person to whom the business is transferred.

~~If the~~ The license holder is ~~a supplier,~~ responsible for all taxes for which the ~~supplier~~ license holder is liable under this Article but are not yet ~~due become due on the date of the change.~~ due. If the ~~supplier~~ license holder has transferred the business to another and does not give the notice required by this section, the person to whom the ~~supplier~~ license holder has transferred the business is liable for the amount of any tax the ~~supplier~~ license holder owed the State on the date the business was transferred. The liability of the person to whom the business is transferred is limited to the value of the property acquired from the ~~supplier.~~ license holder."

SECTION 36. G.S. 105-449.81 reads as rewritten:

"§ 105-449.81. **Excise tax on motor fuel.**

An excise tax at the motor fuel rate is imposed on motor fuel that is:

(1) Removed from a refinery or a terminal and, upon removal, is subject to the federal excise tax imposed by § 4081 of the Code.

(2) Imported by a system transfer to a refinery or a terminal and, upon importation, is subject to the federal excise tax imposed by § 4081 of the Code.

(3) Imported by a means of transfer outside the terminal transfer system for sale, use, or storage in this State and would have been subject to the federal excise tax imposed by § 4081 of the Code if it had been removed at a terminal or bulk plant rack in this State instead of imported.

(3a) Repealed by Session Laws 2007-527, s. 38(a), effective January 1, 2008.

(4) Blended fuel made in this State or imported to this State.

(5) Transferred within the terminal transfer system and, upon transfer, is subject to the federal excise tax imposed by section 4081 of the Code.

(6) Transferred within the terminal transfer system to a person that is not licensed as a supplier with the State.

(7) Fuel grade ethanol that meets any of the following descriptions:

a. Is produced in this State, is removed from the storage facility at the production location, and is not delivered to a terminal in this State.

b. Is imported to this State outside the terminal transfer system and is not delivered to a terminal.

c. Is removed from a terminal."

SECTION 37. G. S. 105-449.82(c) reads as rewritten:

"(c) Terminal Rack Removal. – The excise tax imposed by G.S. 105-449.81(1) on motor fuel removed at a terminal rack in this State is payable by the person that first receives the fuel upon its removal from the terminal. If the motor fuel is removed by an unlicensed distributor, the supplier of the fuel is jointly and severally liable for the tax due on the fuel. If the motor fuel is sold by a person who is not licensed as a supplier, as required by this Article, the terminal operator, the person selling the fuel, and the person removing the fuel are jointly and severally liable for the tax due on the fuel. If the motor fuel removed is not dyed diesel fuel but the shipping document issued for the fuel states that the fuel is dyed diesel fuel, the terminal operator, the supplier, and the person removing the fuel are jointly and severally liable for the tax due on the fuel.

If the motor fuel is removed for export by an unlicensed exporter, the exporter is liable for tax on the fuel at the motor fuel rate and at the rate of the destination state. ~~The liability for the tax at the motor fuel rate applies when the Department assesses the unlicensed exporter for the tax.~~ A supplier who sells motor fuel to a unlicensed exporter is jointly and severally liable for the tax due on the fuel at the motor fuel rate."

SECTION 38. G.S. 105-449.83A reads as rewritten:

"§ 105-449.83A. **Liability for tax on fuel grade ethanol.**

The excise tax imposed by ~~G.S. 105-449.81(3a)~~ G.S. 105-449.81 on fuel grade ethanol removed from a storage facility or terminal or imported to the State is payable by the fuel alcohol provider. ~~The excise tax imposed by that subdivision on fuel grade ethanol imported to this State is payable by the importer.~~"

SECTION 39. G.S. 105-449.85 reads as rewritten:

"**§ 105-449.85. Compensating tax on and liability for unaccounted for motor fuel losses at a terminal.**

(a) Tax. – An excise tax at the motor fuel rate is imposed annually on unaccounted for motor fuel losses at a terminal that exceed one-half of one percent (0.5%) of the number of net gallons removed from the terminal during the year by a system transfer or at a terminal rack. To determine if this tax applies, the terminal operator of the terminal must determine the difference between the following:

(1) The amount of motor fuel in inventory at the terminal at the beginning of the year plus the amount of motor fuel received by the terminal during the year.

(2) The amount of motor fuel in inventory at the terminal at the end of the year plus the amount of motor fuel removed from the terminal during the year.

(b) Liability. – The terminal operator whose motor fuel is unaccounted for is liable for the tax imposed by this section and is liable for a penalty equal to the amount of tax payable. Motor fuel received by a terminal operator and not shown on an informational return filed by the terminal operator with the Secretary as having been removed from the terminal is presumed to be unaccounted ~~for.~~ for motor fuel. A terminal operator may establish that it can account for motor fuel received at a terminal but not shown on an informational return as having been removed from the terminal if the motor fuel was lost or part of a ~~transmix and is therefore not unaccounted for.~~ transmix."

SECTION 40. G.S. 105-449.86(b) reads as rewritten:

(b) Liability. – If the distributor of dyed diesel fuel that is taxable under this section is not liable for the tax imposed by this section, the person that acquires the fuel is liable for the tax. The distributor of dyed diesel fuel that is taxable under this section is liable for the tax imposed by this section in the following circumstances:

(1) When the person acquiring the dyed diesel fuel has storage facilities for the fuel and is therefore a ~~bulk end-user~~ bulk end-user of the fuel.

(2) When the person acquired the dyed diesel fuel from a retail outlet of the distributor by using an access card or code indicating that the person's use of the fuel is taxable under this section."

SECTION 41. G.S. 105-449.87(b) reads as rewritten:

"(b) General Liability. – The operator of a highway vehicle that uses motor fuel that is taxable under subdivisions (a)(1) through (a)(3) of this section is liable for the tax. If the highway vehicle that uses the fuel is owned by or leased to a motor carrier, the motor carrier is jointly and severally liable for the tax. If the ~~end-seller~~ end-seller of motor fuel taxable under this section knew or had reason to know that the motor fuel would be used for a purpose that is taxable under this section, the ~~end-seller~~ end-seller is

jointly and severally liable for the tax. If the Secretary determines that a ~~bulk end-user~~ bulk end-user or retailer used or sold untaxed dyed diesel fuel to operate a highway vehicle when the fuel is dispensed from a storage facility or through a meter marked for nonhighway use, all fuel delivered into that storage facility is presumed to have been used to operate a highway vehicle. An ~~end-seller~~ end-seller of dyed diesel fuel is considered to have known or had reason to know that the fuel would be used for a purpose that is taxable under this section if the ~~end-seller~~ end-seller delivered the fuel into a storage facility that was not marked as required by G.S. 105-449.123."

SECTION 42. G.S. 105-449.89 reads as rewritten:

"**§ 105-449.89. ~~Removals by out-of-state bulk end-user.~~Restrictions on removal of motor fuel from terminal.**

(a) By Bulk End-User. – An out-of-state ~~bulk end-user~~ bulk end-user may not remove motor fuel from a terminal in this State for use in the state in which the ~~bulk end-user~~ bulk end-user is located unless the ~~bulk end-user~~ bulk end-user is licensed under this Article as an exporter. An out-of-state ~~bulk end-user~~ bulk end-user that is not licensed under this Article may remove motor fuel from a bulk plant in this State.

(b) To Marine Vessel. – A supplier may not transfer motor fuel from a terminal to a marine vessel unless the person to whom the supplier transfers the motor fuel is licensed as a supplier."

SECTION 43. G.S. 105-449.91 reads as rewritten:

"**§ 105-449.91. Remittance of tax to supplier.**

(a) Distributor. – A distributor must remit tax due on motor fuel removed at a terminal rack to the supplier of the fuel. A licensed distributor has the right to defer the remittance of tax to the supplier, as trustee, until the date the trustee must pay the tax to this State or to another state. The time when an unlicensed distributor must remit tax to a supplier is governed by the terms of the contract between the supplier and the unlicensed distributor.

(b) Exporter. ~~An~~ A licensed exporter must remit tax due on motor fuel removed at a terminal rack to the supplier of the fuel. The time when ~~an~~ a licensed exporter must remit tax to a supplier is governed by the law of the destination state of the exported motor fuel.

(c) Importer. – A licensed importer must remit tax due on motor fuel removed at a terminal rack of a permissive or an elective supplier to the supplier of the fuel. A licensed importer that removes fuel from a terminal rack of a permissive or an elective supplier has the right to defer the remittance of tax to the supplier until the date the supplier must pay the tax to this State.

(d) General. – A person who removes motor fuel at a terminal rack and is not subject to another subsection is this section must remit tax due on the motor fuel to the supplier of the fuel. The time a person must remit tax to a supplier is governed by the terms of the contract between the supplier and the person. The method by which a ~~distributor, a licensed exporter, or a licensed importer~~ person must remit tax to a supplier under this section is governed by the terms of the contract between the supplier and ~~the distributor, exporter, or licensed importer and the supplier.~~ that person.

G.S. 105-449.76 governs the cancellation of a license of a distributor, an exporter, and an importer."

SECTION 44. G.S. 105-449.96 reads as rewritten:

"**§ 105-449.96. Information required on return filed by supplier.**

A return of a supplier must list all of the following information and any other information required by the Secretary:

(1) The number of gallons of tax-paid motor fuel received by the supplier during the month, sorted by type of ~~fuel, seller, point of origin, destination state, and carrier.~~fuel.

(2) The number of gallons of motor fuel removed at a terminal rack during the month from the account of the supplier, sorted by type of ~~fuel, person receiving the fuel, terminal code, and carrier.~~fuel.

(3) The number of gallons of motor fuel removed during the month for export, sorted by type of ~~fuel, person receiving the fuel, terminal code, destination state, and carrier.~~fuel.

(4) The number of gallons of motor fuel removed during the month at a terminal located in another state for destination to this State, as indicated on the shipping document for the fuel, sorted by type of ~~fuel, person receiving the fuel, terminal code, and carrier.~~fuel.

(5) The number of gallons of motor fuel the supplier sold during the month to a governmental unit whose use of fuel is exempt from the tax, ~~any of the following,~~ sorted by type of ~~fuel, exempt entity, person receiving the fuel, terminal code, and carrier:~~fuel.

~~a. A governmental unit whose use of fuel is exempt from the tax.~~

~~b. A licensed distributor or importer that resold the motor fuel to a governmental unit whose use of fuel is exempt from the tax, as indicated by the distributor or importer.~~

~~c. A licensed exporter that resold the motor fuel to a person whose use of fuel is exempt from tax in the destination state, as indicated by the exporter.~~

(6) The amount of discounts allowed under G.S. 105-449.93(b) on motor fuel sold during the month to licensed distributors or licensed importers.

(7) The number of gallons of motor fuel the supplier exchanged during the month with another licensed supplier pursuant to a two-party exchange agreement, sorted by type of ~~fuel, licensed supplier receiving the fuel, and terminal code.~~fuel."

SECTION 45. G.S. 105-449.97(c) reads as rewritten:

"(c) Percentage Discount. – A supplier that sells motor fuel directly to an unlicensed distributor or to the ~~bulk end user,~~ bulk end-user, the retailer, or the user of the fuel may take the same percentage discount on the fuel that a licensed distributor may take under G.S. 105-449.93(b) when making deferred payments of tax to the supplier."

SECTION 46. G.S. 105-449.100 reads as rewritten:

"§ 105-449.100. **Terminal operator to file informational return showing changes in amount of motor fuel at the terminal.**

(a) Requirement. – A terminal operator must file a monthly informational return with the Secretary that shows the amount of motor fuel received or removed from the terminal during the month. A terminal operator must report all motor fuel removed from an out-of-state terminal that has this State as its destination state.

(b) Content. – The return is due on the same date as a monthly return due under G.S. 105-449.90. The return must contain the following information and any other information required by the Secretary:

(1) The number of gallons of motor fuel received in inventory at the terminal during the month and each position holder for the ~~fuel.~~fuel, sorted by type of fuel.

(2) The number of gallons of motor fuel removed from inventory at the terminal during the month and, for each removal, the position holder for the fuel and the destination state of the ~~fuel.~~fuel, sorted by type of fuel.

(3) The number of gallons of motor fuel gained or lost at the terminal during the month.

(4) The number of gallons of motor fuel in inventory at the beginning of each month and at the end of each month.

(c) Due Date. – The return is due on the date a monthly return is due under G.S. 105-449.90."

SECTION 47. G.S. 105-449.102 reads as rewritten:

"§ 105-449.102. **Distributor to file return showing exports from a bulk plant.**

(a) ~~Return.~~ Requirement. – A distributor that exports motor fuel from a bulk plant located in this State must file a monthly return with the Secretary that shows the exports. ~~The return is due on the same date as a monthly return due under G.S. 105-449.90.~~ The return serves as a claim for refund by the distributor for tax paid to this State on the exported motor fuel.

(b) Content. – The return must contain the following information and any other information required by the Secretary:

(1) The number of gallons of motor fuel exported during the month.

(2) The destination state of the motor fuel exported during the month.

(3) A certification that the distributor has paid to the destination state of the motor fuel exported during the month, or will pay on a timely basis, the amount of tax due that state on the fuel.

(c) Due Date. – The return is due on the date a monthly return is due under G.S. 105-449.90."

SECTION 48. G.S. 105-449.105 reads as rewritten:

"§ 105-449.105. **~~Refunds upon application~~ Monthly refunds for tax paid on exempt fuel, lost fuel, and accidental mixes that result in fuel ~~unsalable~~ unsuitable for highway use.**

(a) Exempt Fuel. – An entity whose use of motor fuel is exempt from tax may obtain a monthly refund of any motor fuel excise tax the entity pays on its motor fuel. A

person who sells motor fuel to an entity whose use of motor fuel is exempt from tax may obtain a monthly refund of any motor fuel excise tax the person pays on motor fuel it sells to the entity. A credit card company that issues a credit card to an entity whose use of motor fuel is exempt from tax may obtain a monthly refund of any motor fuel excise tax the company pays on motor fuel the entity purchases using the credit card.

A person may obtain a monthly refund of tax paid by the person on exported fuel, including fuel whose shipping document shows this State as the destination state but was diverted to another state in accordance with the diversion procedures established by the Secretary. An out-of-state bulk end-user is not allowed a refund on fuel exported from a bulk plant unless the bulk end-user is licensed as an exporter.

(b) Lost Fuel. – A supplier, an importer, or a distributor that loses tax-paid motor fuel due to damage to a conveyance transporting the motor fuel, fire, a natural disaster, an act of war, or an accident may obtain a monthly refund for the tax paid on the fuel.

(c) Accidental Mixes. – A person that accidentally combines any of the following may obtain a monthly refund for the amount of tax paid on the fuel:

(1) Dyed diesel fuel with tax-paid motor fuel.
(2) Gasoline with diesel fuel.
(3) Undyed diesel fuel with dyed kerosene.

(d) Repealed by Session Laws 1998-98, s. 29.

(e) Refund Amount. – The amount of a refund allowed under this section is the amount of excise tax paid, less the amount of any discount allowed on the fuel under G.S. 105-449.93."

SECTION 49. G.S. 105-449.105A(a) reads as rewritten:

"(a) Refund. – A distributor who sells kerosene to any of the following may obtain a monthly refund for the excise tax the distributor paid on the kerosene, less the amount of any discount allowed on the kerosene under G.S. 105-449.93:

..."

SECTION 50. G.S. 105-449.105A(a)(1) reads as rewritten:

"(1) The ~~end-user~~ end-user of the kerosene, if the distributor dispenses the kerosene into a storage facility of the ~~end-user~~ end-user that contains fuel used only for one of the following purposes and the storage facility is installed in a manner that makes use of the fuel for any other purpose improbable:

a. Heating.
b. Drying crops.
c. A manufacturing process."

SECTION 51. G.S. 105-449.108(a) reads as rewritten:

"(a) Due Dates. – The due dates of applications for refunds are as follows:

Refund Period	Due Date
Annual	April 15 after the end of the year
Quarterly	Last day of the month after the end of the quarter
Monthly	22nd day after the end of the month
~~Upon Application~~	~~Last day of the month after the~~

~~month in which tax was paid or the event occurred that is the basis of the refund.~~"

SECTION 52. G.S. 105-449.115(b) reads as rewritten:

"(b) Content. – A shipping document issued by a terminal operator or the operator of a bulk plant must contain the following information and any other information required by the Secretary:

(1) Identification, including address, of the terminal or bulk plant from which the motor fuel was received.

(1a) The type of motor fuel loaded.

(2) The date the motor fuel was loaded.

(3) The gross gallons loaded.

(3a) The motor fuel transporter for the motor fuel.

(4) The destination state of the motor fuel, as represented by the purchaser of the motor fuel or the purchaser's agent.

(5) If the document is issued by a terminal operator, the document must be machine printed and it must contain the following information:

a. The net gallons loaded.

b. A tax responsibility statement indicating the name of the supplier that is responsible for the tax due on the motor fuel."

SECTION 53. G.S. 105-449.117(a) reads as rewritten:

"(a) Violation. – It is unlawful to use dyed diesel fuel or other non-tax-paid fuel in a highway vehicle that is licensed or required to be licensed under Chapter 20 of the General Statutes unless that use is allowed under section 4082 of the Code. It is unlawful to use ~~undyed diesel~~ motor fuel or alternative fuel in a highway vehicle that is licensed or required to be licensed under Chapter 20 of the General Statutes unless the tax imposed by this ~~Article~~ Article, Article 36D of this Chapter, or Article 3 of Chapter 119 of the General Statutes has been paid. A person who violates this section is guilty of a Class 1 misdemeanor and is liable for a civil penalty."

SECTION 54. G.S. 105-449.121(b) reads as rewritten:

"(b) Inspection. – The Secretary or a person designated by the Secretary may do any of the following to determine tax liability under this Article:

(1) Audit ~~a distributor or~~ a person who is required to have or elects to have a license under this Article.

(2) Audit a distributor, a retailer, a bulk-end user, or a motor fuel user that is not licensed under this Article.

(3) Examine a tank or other equipment used to make, store, or transport motor fuel, diesel dyes, or diesel markers.

(4) Take a sample of a product from a vehicle, a tank, or another container in a quantity sufficient to determine the composition of the product.

(5) Stop a vehicle for the purpose of taking a sample of motor fuel from the vehicle."

SECTION 55. G.S. 105-449.130 reads as rewritten:

"**§ 105-449.130. Definitions.**

The following definitions apply in this Article:

(1) Alternative fuel. – A combustible gas or liquid that can be used to generate power to operate a highway vehicle and that is not subject to tax under Article 36C of this Chapter.

(1a) ~~Bulk end-user.~~ Bulk end-user. – A person who maintains storage facilities for alternative fuel and uses part or all of the stored fuel to operate a highway vehicle.

(2) Highway. – Defined in ~~G.S. 20-4.01(13).~~G.S. 105-449.60.

(3) Highway vehicle. – Defined in G.S. 105-449.60.

(4) Motor fuel. – Defined in G.S. 105-449.60.

(5) Motor fuel rate. – Defined in G.S. 105-449.60.

(6) Provider of alternative fuel. – A person who does one or more of the following:

a. Acquires alternative fuel for sale or delivery to a ~~bulk end user~~ bulk end-user or a retailer.

b. Maintains storage facilities for alternative fuel, part or all of which the person uses or sells to someone other than a ~~bulk end user~~ bulk end-user or a retailer to operate a highway vehicle.

c. Sells alternative fuel and uses part of the fuel acquired for sale to operate a highway vehicle by means of a fuel supply line from the cargo tank of the vehicle to the engine of the vehicle.

d. Imports alternative fuel to this State, by a means other than the usual tank or receptacle connected with the engine of a highway vehicle, for use by that person to operate a highway vehicle.

(7) Retailer. – A person who maintains storage facilities for alternative fuel and who sells the fuel at retail or dispenses the fuel at a retail location to operate a highway vehicle."

SECTION 56. G.S. 105-449.131 reads as rewritten:

"**§ 105-449.131. List of persons who must have a license.**

A person may not engage in business in this State as any of the following unless the person has a license issued by the Secretary authorizing the person to engage in that business:

(1) A provider of alternative fuel.

(2) A ~~bulk end user.~~bulk end-user.

(3) A retailer."

SECTION 57. G.S. 105-449.133(a) reads as rewritten:

"(a) Who Must Have Bond. – The following applicants for a license must file with the Secretary a bond or an irrevocable letter of credit:

(1) An alternative fuel provider.

(2) A retailer or a ~~bulk end user~~ bulk end-user that intends to store highway and nonhighway alternative fuel in the same storage facility."

SECTION 58. G.S. 105-449.137(a) reads as rewritten:

"(a) Liability. – A ~~bulk end user~~ bulk end-user or retailer that stores highway and nonhighway alternative fuel in the same storage facility is liable for the tax imposed by

this Article. The tax payable by a ~~bulk end user~~ bulk end-user or retailer applies when fuel is withdrawn from the storage facility. The alternative fuel provider that sells or delivers alternative fuel is liable for the tax imposed by this Article on all other alternative fuel."

SECTION 59. G.S. 105-449.138 reads as rewritten:

"**§ 105-449.138. Requirements for ~~bulk end users~~ bulk end-users and retailers.**

(a) Informational Return. – A ~~bulk end user~~ bulk end-user and a retailer must file a quarterly informational return with the Secretary. A quarterly return covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the return.

The return must give the following information and any other information required by the Secretary:

(1) The amount of alternative fuel received during the quarter.

(2) The amount of alternative fuel sold or used during the quarter.

(b) Storage. – A ~~bulk end user~~ bulk end-user or a retailer may store highway and nonhighway alternative fuel in separate storage facilities or in the same storage facility. If highway and nonhighway alternative fuel are stored in separate storage facilities, the facility for the nonhighway fuel must be marked in accordance with the requirements set by G.S. 105-449.123 for dyed diesel storage facilities. If highway and nonhighway alternative fuel are stored in the same storage facility, the storage facility must be equipped with separate metering devices for the highway fuel and the nonhighway fuel. If the Secretary determines that a ~~bulk end user~~ bulk end-user or retailer used or sold alternative fuel to operate a highway vehicle when the fuel was dispensed from a storage facility or through a meter marked for nonhighway use, all fuel delivered into that storage facility is presumed to have been used to operate a highway vehicle."

SECTION 60. G.S. 105-449.139(c) reads as rewritten:

"(c) Lists. – The Secretary must give a list of licensed alternative fuel providers to each licensed ~~bulk end user~~ bulk end-user and licensed retailer. The Secretary must also give a list of licensed ~~bulk end users~~ bulk end-users and licensed retailers to each licensed alternative fuel provider. A list must state the name, account number, and business address of each license holder on the list. The Secretary must send an annual update of a list to each license holder, as appropriate."

SECTION 61. G.S. 119-15 reads as rewritten:

"**§ 119-15. Definitions that apply to Article.**

The following definitions apply in this Article:

(1) Alternative fuel. – Defined in G.S. 105-449.130.

(2) Aviation gasoline. – Defined in G.S. 105-449.60.

~~(1a)~~(3) Dyed diesel fuel. – Defined in G.S. 105-449.60.

~~(1b)~~(4) Dyed diesel fuel distributor. – A person who acquires dyed diesel fuel from either of the following:

a. A person who is not required to be licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and who maintains storage facilities for dyed diesel fuel to be used for nonhighway purposes.

b. Another dyed diesel fuel distributor.

~~(2)~~(5) Gasoline. – Defined in G.S. 105-449.60.

(6) Jet fuel. – Defined in G.S. 105-449.60.

~~(3)~~(7) Kerosene. – Defined in G.S. 105-449.60. ~~Petroleum oil that is free from water, glue, and suspended matter and that meets the specifications and standards adopted by the Gasoline and Oil Inspection Board.~~

~~(3a)~~(8) Kerosene distributor. –A person who acquires kerosene from any of the following for subsequent sale:

a. A supplier licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes.

b. A kerosene supplier.

c. Another kerosene distributor.

~~(3b)~~(9) Kerosene supplier. – Either of the following:

a. A person who supplies both kerosene and motor fuel and, consequently, is required to be licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes.

b. A person who is not required to be licensed as a supplier under Part 2 of Article 36C of Chapter 105 of the General Statutes and who maintains storage facilities for kerosene to be used to fuel an airplane.

~~(4)~~(10) Motor fuel. – Defined in G.S. 105-449.60.

~~(5)~~(11) Person. – Defined in G.S. 105-229.90.

~~(6)~~(12) Terminal. – Defined in G.S. 105-449.60.

~~(7)~~(13) Terminal operator. – Defined in G.S. 105-449.60."

SECTION 62. G.S. 119-18(a) reads as rewritten:

"(a) Tax. – An inspection tax of one fourth of one cent (1/4 of 1¢) per gallon is levied upon all of the fuel listed in this ~~subsection~~ Article regardless of whether the fuel is exempt from the per-gallon excise tax imposed by Article 36C or 36D of Chapter 105 of the General Statutes. The inspection tax on motor fuel is due and payable to the Secretary of Revenue at the same time that the per gallon excise tax on motor fuel is due and payable under Article 36C of Chapter 105 of the General Statutes. The inspection tax on alternative fuel is due and payable to the Secretary of Revenue at the same time that the excise tax on alternative fuel is due and payable under Article 36D of Chapter 105 of the General Statutes. The inspection tax on kerosene is payable monthly to the Secretary by a supplier that is licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and by a kerosene supplier. A monthly report is due on the same date as a monthly return due under G.S. 105-449.90 and applies to kerosene sold during the preceding month by a supplier licensed under that Part and to kerosene received during the preceding month by a kerosene supplier. A kerosene terminal operator must file a return in accordance with the provisions of G.S. 105-449.90.

~~(1) Motor fuel.~~

~~(2) Alternative fuel used to operate a highway vehicle.~~

~~(3) Kerosene.~~"

1 **EFFECTIVE DATE**
2 **SECTION 63.** Sections 20-62 are effective January 1, 2009. Except as
3 otherwise provided, the remainder of this act is effective when it becomes law.
4

BILL ANALYSIS

Draft 2007-SVx-23: Revenue Laws Technical, Clarifying, & Administrative Changes

Committee:	Revenue Laws Study Committee	**Date:**	May 7, 2008
Introduced by:		**Summary by:**	Trina Griffin
Version:	2007-SVz-23		Committee Counsel

SUMMARY: This legislative proposal makes several technical, clarifying, and administrative changes to the revenue laws and related statutes.

BILL ANALYSIS: This draft proposal makes the following technical, clarifying, and administrative changes:

Section	Explanation
911 Technical Changes	
1.(a)	Allows the 911 Board to adjust allocations to ensure local governments receive, at minimum, the same revenues the local government collected in 911 fees for the fiscal year ending June 30, 2007.
1.(b)	Changes from calendar year to fiscal year, the time frame in which the Board can make changes in allocation percentages to conform to the Board's accounting practices.
1.(c)	Clarifies that the Eastern Band of the Cherokee Nation can receive disbursements from the 911 Fund, even though the Nation is exempt from Chapter 159, the Local Government Finance Act.
Work Opportunity Tax Credit Changes	
2.(a)	Clarifies that the credit is limited to 6% of the Federal credit for wages paid in the same taxable year for positions located in North Carolina. Adds a sunset on the credit for taxable years beginning on or after January 1, 2012.
2.(b)	Clarifies that corporations cannot take an additional deduction under G.S. 105-130.5(b)(11) if this credit is taken.
3.(c)	Clarifies that individuals cannot take an additional deduction under G.S. 105-134.6(d)(2) if this credit is taken.
Reform Tax Appeals Changes	
3	Section 10 of SB 242 (S.L. 2007-491) extended by one month the due date for filing a franchise tax return. Section 14 of that act made a corresponding change for corporate income tax returns. Since franchise tax and corporate income tax are reported on the same form, the effective dates must conform. However, the way the act was drafted, the one-month extension for franchise tax would occur in 2008 while the one-month extension for corporate income would take place in 2009. Section 1 of this proposal corrects the inconsistency by repealing Section 10 of SB 242, effective retroactively to January 1, 2008, and by reenacting the provision, effective January 1, 2009. With this change, the one-month extension will take effect for both taxes beginning in 2009. Section 10 of SB 242 also rewrote for clarity the subsection imposing the franchise tax. The rewrite inadvertently omitted existing language requiring a corporation to determine

	its tax liability based on "the books and records of the corporation at the close of the income year." Section 1 puts this language back in the statute.
4	Section 10 of SB 242 added chief financial officers to the list of corporate officers authorized to sign franchise tax returns and deleted the secretary, the assistant secretary, and the assistant treasurer. However, similar changes were not made in the corresponding corporate income tax statute. Since the franchise tax return and the corporate income tax return are on the same form, the statutes need to match. This section makes that conforming change.
5	Under the new administrative review process, the Department is required to take action on a request for a refund within six months after the request has been filed. If the Department denies the request, it must send a notice to the taxpayer, and the taxpayer has 45 days to request a review of the proposed denial. However, if the Department fails to take any action within six months, the request is considered denied, and the taxpayer has 45 days from that point to request review. The purpose of this provision is to allow the taxpayer to move forward in the administrative review process despite inaction by the Department. However, concerns have been raised that the running of this 45-day period without actual notice from the Department may create a potential trap that bars taxpayers from appealing the denial. Section 3.(a) provides that a taxpayer may file a request for review at any time after inaction by the Department is considered a proposed denial of the refund but within 45 days of receiving actual notice of a proposed denial by the Department. This change was requested by the Department.
6	The Department must issue a final determination within nine months after the taxpayer requests a review of a proposed denial of a refund or a proposed assessment of tax. The relevant statute specifically provides that failure to timely issue a notice of final determination does not affect the validity of a proposed assessment but is silent as to the impact on a proposed denial of refund. This section would clarify that the validity of a proposed denial of refund is not affected by failure to timely issue a notice of final determination.
7	This section replaces the word "tax," which is a defined term, with the word "amount" for consistency.
8	This is a conforming change in the motor fuel tax law regarding the new administrative review process.
9	SB 242 made special provisions for contested tax cases heard at the Office of Administrative Hearings. Among them, a law enforcement report may be admitted into evidence without the testimony of personnel from the law enforcement agency. The Motor Fuels Tax Division of the Department has requested that government agency lab reports used in the enforcement of the motor fuel tax laws also be admitted without requiring agency personnel testimony.
Collection Changes	
10	Individual officers and directors of a corporation are usually not liable for corporate debts or obligations. This is in contrast to partnership debts and liabilities, which are chargeable personally to the individual partners. However, by statute, a "responsible officer" of a corporation or a limited liability company may be held personally liable for certain unpaid trust taxes owed by the business entity. These taxes include sales and use, motor fuels, and income withholding taxes. A "responsible officer" is defined as the president, treasurer, and the CFO of a corporation, the manager of a LLC, and any other officer of a corporation or a member of a LLC who has a duty to pay taxes on behalf of

	the entity. The Department is authorized to enforce collection by proposing an assessment against the officer. There is no similar statutory authorization to assess partners for these taxes. Instead, the Department, like any other creditor of a partnership, must sue in order to collect this liability. Once a judgment is obtained, the Department may seek to execute the judgment. The Department has requested that partners and managers of a partnership (who may or may not be a partner) be added to the list of officers or, as rewritten, "responsible persons" whom the Department may assess. This section also rewrites the section for clarity and style and places the statute in a more logical location within the Article.
Sales Tax Changes	
11	This section is a transitional provision for the "Medicaid swap" enacted in the 2007 Session by S.L. 2007-323. Under the swap, the local sales and use tax rate decreases by ¼ cent in 2008-09 and again in 2009-10, and the State sales and use tax rate increases by the same amount. The combined State and local rates do not change; instead, the allocation of the combined rate between the State and the counties changes. The question arises of how to report tax on gross receipts from periodic payments made pursuant to agreements entered into before the effective date of the rate changes. This section specifies how the tax on those receipts is to be reported. Periodic payments consist of lease and rental payments and installment sale payments. Sales and use tax is due on lease and rental payments when the payments are billed. For installment sales, the tax application differs depending on whether the retailer reports on an accrual basis or a cash basis. A retailer on an accrual basis reports all the sales tax due on an installment sale when the sale is made. A retailer on a cash basis reports sales tax when each installment payment is received. This provision requires retailers who receive periodic payments from existing contracts to report them at the current State and local rates. This eliminates confusion about what to report and how to report it. Without this provision, a retailer who receives periodic payments will have receipts from existing contracts that are reportable at State and local rates that differ from the State and local rates that apply to periodic payments from new contracts.
Occupancy Tax Changes	
12.(a)	As the result of an independent audit by at least one county, questions have arisen among local governments and within the tourism industry regarding what constitutes "gross receipts" for occupancy tax purposes. Most local occupancy tax acts state that a county or city may levy a room occupancy tax on "the gross receipts derived from the rental of any room...that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3)." Therefore, if an item of tangible personal property or a fee associated with the rental of an accommodation is subject to sales tax under G.S. 105-164.4(a)(3), then it is also subject to the local occupancy tax. While the Department can offer an interpretation of the State sales tax laws, it does not have statutory authority to offer an interpretation of the application of local occupancy tax laws, which it does not administer. This section provides that an interpretation by the Department of a State sales tax law applies to a local law that refers to the State sales tax law for its application.
12.(b) & (c)	In January of 2008, the Department issued a technical bulletin related to the rentals of accommodations. In that bulletin, the Department clarified that the bundling provisions

	in G.S. 105-164.4D apply to vacation packages. For example, a vacation package may include lodging, meals, and greens fees for one price. The lodging would be subject to sales and local occupancy tax, the meals would be subject only to sales tax, and the greens fees would not be subject to either sales or occupancy tax. The bundling provisions allow a hotel operator to allocate the revenues between taxable and exempt portions of the package. The allocation may be part of a hotel's internal records and is not required to appear on the customer's bill. A "bundled transaction" is defined as a sale that includes at least one taxable item and at least one exempt item. Since the release of the bulletin, the tourism industry has sought clarification of whether the allocation rules apply to vacation packages consisting only of taxable items, since those packages do not otherwise meet the definition of a bundled transaction. The clarification is needed because although the entire vacation package may be subject to *sales* tax, not all items may be subject to *occupancy* tax. The collectors would like the ability to allocate those revenues. This section provides that collectors of occupancy tax may allocate revenues for vacation packages that do not otherwise meet the definition of a bundled transaction.
Medicaid Technical Changes	
13	This section makes two changes. The first change is in G.S. 105-522(a)(2), which is set out in subsection (a) of the section. It is a technical change that describes the hold harmless calculation in a simpler way that does not require a reference to local sales taxes on food. The change in the description does not change the amount of the hold harmless. The local sales taxes on food are administered as if they were State taxes and are included, in part, in the amount distributed under Article 40 but are not part of the amount allocated under G.S. 105-486. The second change, made in the rest of the section, eliminates a potentially circular calculation of the amount of local sales and use tax revenue to be distributed. It does not change the amount of any tax or hold harmless payment. Currently, the law could be construed to calculate the amount of various hold harmless payments on the basis of an amount that includes a deduction for the payment that is attempted to be calculated, which is circular. The hold harmless payments are now both pegged, in part, on amounts distributed under Article 39 of Chapter 105 of the General Statutes and deducted from those amounts. Section 1 resolves this problem by making it clear that the hold harmless payments are calculated on the basis of amounts allocated for distribution before any subtraction for the hold harmless payments. References in Article 39 and Chapter 1096 of the 1967 Session Laws are replaced with a direction in G.S. 105-522(b) to deduct the city hold harmless payment from the amount of local sales and use tax revenue otherwise allocated under those provisions for distribution to a county. Subsection (a) adds an instruction in G.S. 105-522(b) to deduct the payment. Subsection (b) removes the instruction from Article 39 of Chapter 105. Subsection (c) removes the instruction from Chapter 1096.
14	This section makes three changes. First, it inserts the city hold harmless amount into the calculation of the county hold harmless payment, thereby ensuring that the intent of the General Assembly is fulfilled. G.S. 105-523(a) states that each county is to benefit from the "Medicaid swap" by at least $500,000. The current calculation for determining a county's hold harmless payment, however, does not include the amount a county is required to give to its cities in order to hold them harmless from the repealed local sales taxes. Subsection (a) adds the cost of the city hold harmless to the calculation of the county hold harmless payment. Subsections (d) and (f) repeal changes to G.S. 105-523

	that were to take effect in 2009, and subsection (h) reinserts those same changes into the amended G.S. 105-523 while preserving the amendments added by subsection (a). Second, it makes the same technical change to G.S. 105-523(b)(3) that Section 1 makes to G.S. 105-522(a)(2). The technical change describes the hold harmless calculation in a simpler way that does not require a reference to local sales taxes on food. The change in the description does not change the amount of the hold harmless. The local sales taxes on food are administered as if they were State taxes and are included, in part, in the amount distributed under Article 40 but are not part of the amount allocated under G.S. 105-486. Third, it changes the city hold harmless formula and the county hold harmless formula that apply to fiscal years beginning in 2009-2010 to match these formulas to the ones used in the tables that calculated the impact of the swap. The current law incorrectly includes a ¼% tax distributed on the basis of point of origin as one of the elements of the formulas. The "Medicaid swap" is based on the repeal of ½% local sales and use taxes distributed on a per capita basis and the conversion of a ¼% per capita tax to a ¼% point of origin tax. To reflect this, the current reimbursement formula needs to be changed to delete the reference to a ¼% point of origin tax and replace it with a ¼% per capita tax. Subsections (c), (d), and (f) of this section repeal the provisions that contain the incorrect reference and subsections (g) and (h) insert the correct reference in the formulas. Subsections (b), (e), and (i) make conforming changes; they repeal sections that use terminology that does not match the revised reimbursement sections and replace them with a provision that uses terminology that is consistent with the revised sections.
Other Changes	
15	Currently, information obtained under Article 2D (Unauthorized Substance Taxes) is confidential and may not be disclosed, unless the disclosure is made to exchange information with certain law enforcement agencies concerning a tax imposed by the Article. The information may also not be used in a criminal prosecution, other than for a prosecution for a violation of the Article or unless the information is independently obtained. Section 8 would allow an unauthorized substance tax officer to testify in court concerning an offense committed against that individual in the course of administering the Article. The Department has requested this change due to a specific incident involving an officer who was assaulted but was prohibited from testifying about the incident.
16	This section would repeal the North Carolina Rural Redevelopment Authority (NCRRA). The NCRRA is an inactive entity. It was created by S.L. 2000-148 but was never appointed or funded. Creation of the Authority was a recommendation of the 1999 North Carolina Rural Prosperity Task Force, which was established by Governor Jim Hunt and chaired by Erskine Bowles. As envisioned by the Task Force, the Authority would administer a revolving loan fund, the Rural Investment Fund, as well as an investment fund, the Long-Term Rural Development Fund. No money was ever appropriated to these funds. Subsection (a) repeals the statutes that create the Authority and set out its duties. Subsections (b) through (e) make conforming changes. Specifically, subsection (b) repeals the Authority's exemption from the general prohibition against a State agency competing with private enterprise. Subsection (c) deletes the Authority from the list of boards and commissions on which legislators may not serve. Subsection (d) repeals the Authority's exemption from the State Personnel Act. Subsection (e) changes a cross-

	reference to a definition of "regional partnership" that is now set out in a statute that is repealed in subsection (a); it replaces the cross-reference with the substance of the definition and updates the definition to reflect the accurate names of the regional economic development partnerships. The Department of Commerce has no objections to this provision.
17-19	These sections make other technical changes.
Motor Fuel Tax Law Changes	
20	Makes clarifying and conforming changes and numbers the definitions sequentially. Adds the definition of words commonly used, such as 'International Fuel Tax Agreement' and 'qualified motor vehicle'. Under IFTA, a 'qualified motor vehicle' is one used, designed, or maintained for transportation of persons or property that meets one or more of the following conditions: has two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds; has three or more axles regardless of weight; or has a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds when it is combined with another vehicle.
21	Corrects a punctuation error.
22	Changes the statute to reflect current practice. Provides that the Department may include information received from the State Highway Patrol when determining the potential liability of a motor carrier. The SHP used to be located within the DMV. Incorporates the definition of defined terms.
23	Incorporates the definition of defined terms. Clarifies that recreational vehicles that are qualified motor vehicles under the IFTA would need to be registered. Also, the use of the defined term 'qualified motor vehicle' means that special mobile equipment would need to be registered. Although the current law's definition of 'motor vehicle' arguably includes special mobile equipment, the Department has not been requiring the registration of special mobile equipment. However, other IFTA states do require the registration of special mobile equipment.
24	Incorporates the commonly used term 'decal' for 'identification marker'.
25	Repeals an unnecessary statute. G.S. 105-252 and G.S. 105-254 give the Secretary the authority to prepare the appropriate forms and require the necessary information on those forms.
26	Incorporates the commonly used term 'decal' for 'identification marker'. Modernizes the language.
27	Incorporates the commonly used term 'decal' for 'identification marker'.
28	Revises the definitional statute to add definitions of commonly used terms, to incorporate definitions from other statutes, and to refer to federal regulations. It numbers the definitions sequentially.
29	Clarifying change; it identifies all license types that transport motor fuel. It also restricts a supplier from transferring fuel to a marine vessel unless the receiver of the fuel is licensed as a supplier. There is currently little control over who can bring a ship or barge to the North Carolina coastline and load fuel.
30	Conforming and grammatical change. It removes definitions that have been incorporated into the definitional statute and it corrects the spelling of the term 'bulk end-user'.
31	Corrects the spelling of the term 'bulk end-user'.
32	Conforming change. It incorporates the defined term 'supplier'.
33	Conforming change. It incorporates the defined term 'in-State supplier'.
34	Conforming change. Provides that an importer's license must indicate the category of the importer, just like a supplier's license must indicate the category of the supplier.
35	Clarifying change. It identifies the payment responsibilities of all license holders.

36	It identifies the point of taxation for fuel that is not taxed by the Code by adding a new subdivision (6). It provides that fuel grade ethanol would be taxed at the rack.
37	Provides that the supplier who sold motor fuel to an unlicensed exporter is jointly and severally liable for the tax imposed on that fuel. The statute provides similar joint and several liability for motor fuel sold to an unlicensed distributor; for motor fuel sold by an unlicensed supplier; and for dyed diesel fuel.
38	Conforming change. (See section 17)
39	Corrects a grammatical error.
40	Corrects the spelling of the term 'bulk end-user'.
41	Corrects the spelling of the term 'bulk end-user' and 'end-seller'.
42	Corrects the spelling of the term 'bulk end-user'.
43	It identifies the tax responsibility of purchasers to the supplier.
44	It removes the requirement to sort the fuel by type on the reporting form; the requirement is not longer necessary due to electronic filing – it provides the Department with the ability to sort.
45	Corrects the spelling of the term 'bulk end-user'.
46	Conforming change to administrative practice. It provides that terminal operators who are required to be licensed in this State must report transactions from out-of-state terminals with this State as its destination. It also changes the structure of the statute for uniformity purposes.
47	Conforming change. It changes the structure of the statute for uniformity purposes.
48	Clarifying change. It changes the catchline of the statute to more accurately reflect the contents of the statute. It specifies that the refunds are monthly refunds; this change reflects current practice. It also provides that an out-of-state bulk end-user must be registered as an exporter if requesting a refund for exports from a North Carolina bulk plant.
49	Specifies that the refund is a monthly refund; this change reflects current practice.
50	Corrects the spelling of the term 'end-user'.
51	Deletes the provisions for refunds filed upon application because all refunds are filed on an annual basis, a quarterly basis, or a monthly basis.
52	Clarifies the content of the shipping document.
53	Conforming change to administrative practice and terminology.
54	Uses the defined term 'person'; that term incorporates a distributor.
55	Corrects the spelling of the term 'bulk end-user'. Cross-references the definition of highway to the defined term in the definitional statute.
56-60	Corrects the spelling of the term 'bulk end-user'.
61	Conforming change. It cross references the defined terms in the definitional statute and renumbers the subdivisions sequentially.
62	Provides that the inspection tax is imposed on the fuel listed in the Article. This change reflects administrative practice.

2007-SVz-17-SMSV

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

Friday, December 14, 2007
Room 544, Legislative Office Building
9:30 a.m.

I. **Welcoming Remarks and Introductions**

II. **Overview of 2007 Tax Law Changes and Fate of the Revenue Laws Study Committee's Recommendations to the 2007 General Assembly**

Cindy Avrette and Trina Griffin, Research Division

III. **Overview of 2007 Property Tax Legislation**

Martha Walston, Fiscal Research Division
Dan Ettefagh, Legislative Drafting Division

Comments from Interested Parties

- Pete Rodda, Forsyth County Tax Assessor/Tax Collector
- Stan Duncan, Henderson County Tax Assessor and Chair of the Exemptions/Use Value Committee of the NC Association of Assessing Officers
- Paul Meyer, Senior Associate General Counsel for the NC Association of County Commissioners

IV. **Property Tax Issues for 2008**

- **Revaluations**

  Overview – Dan Ettefagh, Legislative Drafting Division

- **Liens on Mobile Homes**

  Overview – Martha Walston, Fiscal Research Division

- **Comments from Interested Parties**

V. **Adjournment**

Next Meeting Date: January 25, 2008
All meetings in Room 544, LOB, at 9:30 a.m.

REVENUE LAWS STUDY COMMITTEE AGENDA

Sen. John Kerr Rep. Paul Luebke

Wednesday, March 5, 2008
Room 1228, Legislative Building
9:30 a.m.

I. Approval of the Minutes from the December 14, 2007 Meeting

II. Work Opportunity Tax Credit

- Heather Fennell, Research Division

III. IRC Update

- Trina Griffin, Research Division
- Barry Boardman, Fiscal Research Division

IV. Gift Tax

- Overview
  – *Cindy Avrette, Research Division*
- Discussion of Proposed Revisions
  – *Bill Kratt, Gift Tax Subcommittee of the Legislative Committee of the Estate Planning and Fiduciary Law Section of the NC Bar Association*

V. Revenue Laws Technical & Administrative Changes

- Trina Griffin, Research Division

VI. Adjournment

Future Meeting Dates: April 2 and April 30
All meetings in Room 544, LOB, at 9:30 a.m.

REVENUE LAWS STUDY COMMITTEE AGENDA

Sen. John Kerr Rep. Paul Luebke

Wednesday, April 2, 2008
Room 544, Legislative Office Building
9:30 a.m.

I. **Approval of the Minutes from the March 5 Meeting**

II. **Sales Tax Exemption for Disaster Assistance** - *Legislative Proposal*

Cindy Avrette, Research Division

III. **Modify Estate Tax Law** – *Legislative Proposal*

- Cindy Avrette, Research Division
- Barry Boardman, Fiscal Research Division

IV. **Refunds of Unconstitutional Taxes**

- Trina Griffin, Research Division

V. **Property Tax Issues**

- *Circuit Breaker Tax Modifications* - Dan Ettefagh, Bill Drafting Division
- *Quadrennial Revaluations and Mobile Home Liens* – Dan Ettefagh, Bill Drafting Division, and Martha Walston, Fiscal Research Division
- *Simplify Ownership of PUV Property* – Martha Walston, Fiscal Research Division

VI. **Review of Tax Credits that Expire in 2008-2009**

- Trina Griffin, Research Division

VII. **Video Programming Legislation (S.L. 2006-151)**

- Overview of 2006 Legislation and Revenue Implications
  Cindy Avrette, Research Division
  Rodney Bizzell & Sandra Johnson, Fiscal Research Division
- Comments from the League of Municipalities
  Karl Knapp, Research & Policy Manager, NC League of Municipalities
- Report from Attorney General's Office, Consumer Protection Division
  Gary R. Govert, Acting Senior Deputy Attorney General, Consumer Protection Division, North Carolina Department of Justice
- Comments from the Southeast Association of Local Government

Next Meeting Date: April 30, 2008
LOB Room 544 at 9:30 a.m.

Telecommunications Officers & Advisors (SEATOA)
Michael Williams, Cable Administrator, Public Affairs Department, City of Raleigh

VII. Video Programming Legislation (S.L. 2006-151), continued

- Comments from the Video Programming Industry
  Dwight Allen, Allen Law Offices, AT&T
  Mark Prak, Brooks Pierce, Time Warner Cable

VIII. IRC Update

- Trina Griffin, Research Division
- Barry Boardman, Fiscal Research Division

IX. Motor Fuel Tax Issues – *Legislative Proposal*

- Cindy Avrette, Research Division

X. Adjournment

Next Meeting Date: April 30, 2008
LOB Room 544 at 9:30 a.m.

REVENUE LAWS STUDY COMMITTEE AGENDA

Sen. John Kerr Rep. Paul Luebke

Wednesday, April 30, 2008
Room 544, Legislative Office Building
9:30 a.m.

I. **Approval of the Minutes from the April 2 Meeting**

II. **Extension of Sunset for Credit for Reinvestment and Establishment of Sunset for Credit for Investing in Major Recycling Facility**

- Johnny Jacobs, Controller for Nucor Steel Corp.

III. **Franchise Tax Loophole Closings – *Legislative Proposal***

- Cindy Avrette, Research Division
  - LLCs that elect to be taxed as S Corporations
  - Captive REITS

IV. **Publicly Traded Partnerships – *Legislative Proposal***

- Cindy Avrette, Research Division

V. **Tax on Heavy Equipment Short-Term Rental Agreements – *Legislative Proposal***

- Martha Walston, Fiscal Research Division

VI. **Class Actions – *Legislative Proposal***

- Trina Griffin, Research Division

VII. **Motor Fuel Tax Changes – *Legislative Proposal***

- Cindy Avrette, Research Division

VIII. **Simplify Ownership of PUV Property – *Revised Legislative Proposal***

- Martha Walston, Fiscal Research Division

IX. **911 Technical Corrections – *Legislative Proposal***

- Heather Fennell, Research Division

X. **Video Programming – *Legislative Proposal***

- Cindy Avrette, Research Division

- Sandra Johnson, Fiscal Research Division

XI. IRC Update – *Legislative Proposal*

- Trina Griffin, Research Division

XII. Work Opportunity Tax Credit – *Legislative Proposal*

- Heather Fennell, Research Division

XIII. Revenue Laws Technical Changes: Part II – *Legislative Proposal*

- Trina Griffin, Research Division

XIV. Review Proposals Tentatively Approved by Committee

- *Circuit Breaker Tax Modifications*
- *Quadrennial Revaluations & Mobile Home Liens*
- *Modify Estate Tax Law (Stowe* case*)*
- *Sales Tax Exemption for Disaster Assistance*
- *Extend Expiring Tax Credits*
  - *R&D credit*
  - *State Ports Tax Credit*
  - *Credit for Small Business Employee Health Benefits*

XV. Approval of Final Report

XVI. Adjournment

APPENDIX C

DISPOSITION OF COMMITTEE'S RECOMMENDATIONS TO THE 2007 SESSION OF THE 2007 GENERAL ASSEMBLY

SHORT TITLE	SENATE SPONSORS	HOUSE SPONSORS	BILL #	FINAL STATUS*
Conservation Tax Credit Modifications	Clodfelter, Dalton, Hartsell, Hoyle, and Kerr	Luebke	HB 463 SB 241	Enacted* SL 2007-309 (HB 463)
IRC Update	Clodfelter, Dalton, Hartsell, Hoyle, and Kerr	Carney	HB 458 SB 240	Enacted SL 2007-323, Sec. 31.1 (Budget Bill)
Modify Tax on Property Tax Contract	Kerr, Clodfelter, Hartsell, Hoyle, and Dalton	Wainwright	SB 238 HB 262	Enacted* SL 2007-250 (SB 238)
Reform Tax Appeals	Clodfelter, Dalton, Hartsell, Hoyle, and Kerr		SB 242	Enacted* SL 2007-491
Revenue Laws & Motor Fuels Tax Technical Changes	Hartsell, Clodfelter, Dalton, Hoyle, and Kerr	Wilkins	HB 258 SB 540	Enacted* SL 2007-527 (SB 540)
Streamlined Sales Tax Changes	Kerr, Clodfelter, Dalton, Hartsell, and Hoyle	Hill	HB 257 SB 239	Enacted* SL 2007-244 (HB 257)

* Bills were modified prior to enactment.

DeAnne Mangum (Finance CA)

From: Jennifer Spiker [spikerje@meredith.edu]

Sent: Thursday, May 01, 2008 11:00 AM

To: Blinda Edwards (Rep. Wainwright); Cindy Coley (Rep. Brubaker); DeAnne Mangum (Finance CA); Delta Prince (Senate LA Office); Gennie Thurlow (Rep. Hill); Gerry Johnson (Sen. Hartsell); Joyce Harris (Rep. Luebke); Judy Lowe (Rep. McComas); 'Leonard Jones (E-mail'; 'Leslie Bevacqua Coman'; 'Michael Houser'; 'Mike Pate (E-mail'; Penny Williams (Sen. Hoyle); Rep. Becky Carney; Rep. William C. McGee; Rep. Danny McComas; Rep. Dewey Hill; Rep. Harold "Bru" Brubaker; Rep. Jennifer Weiss; Rep. Paul Luebke; Rep. William Wainwright; 'Robert O. Wells'; 'Sen. Clodfelter'; Sen. Daniel Clodfelter; Sen. David Hoyle; Sen. John Kerr; Sen. Peter Brunstetter; Sen. Walter Daiton; Shirlyn MacPherson (Rep. Gibson); Sylvia Sears (Sen. Kerr); Tazra Mitchell (Rep. Carney); Wanda Joyner (Sen. Clodfelter); Sylvia Sears (Sen. Kerr)

Cc: 'Williams, Michael'; 'catharine Rice'; rsepe@nc.rr.com; 'Bingham, Laura'; 'Newsome, Dr. Clarence G.'; larry_nielsen@ncsu.edu; James Oblinger; 'Suber, Dianne B.'; Maureen Hartford

Subject: Why the SEATOA PEG amendments are important to Raleigh colleges

Dear Members of the Revenue Laws Study Committee:

On May 7th you'll be looking at the NCLM, e-NC and SEATOA PEG amendments for local cable system public access television programming, and we urge you to support what those groups are requesting. Our college and university consortium is one of the PEG programming providers. We have been providing 24-hour educational programming to Time Warner Cable subscribers in Wake, Johnston and Franklin Counties as a public service for 14 years. We offer college courses and other educational programming as an important part of our five campuses' public outreach. Our partnership is with the City of Raleigh's public access television network, and these amendments are important to clarify the ambiguous language in the new law, which has caused unease and concern about continued commitment to these important public access channels.

We want to continue to serve the public with educational programs they can get in no other way. Thank you in advance for keeping these vital local resources alive.

Jenny Spiker
Director, Cooperating Raleigh Colleges (CRC)
919-760-8538

On behalf of our CRC member campuses:
Meredith College
North Carolina State University
Peace College
Saint Augustine's College
Shaw University

DeAnne Mangum (Finance CA)

From: Michael Folliett [thewallpaperproject@charter.net]
Sent: Monday, May 05, 2008 10:39 AM
To: Blinda Edwards (Rep. Wainwright)
Subject: Re: With the link this time

Revenue Laws
Committee

I produce a show on Asheville URTV public access station- I love the ability to create content for this station and stations like it...

please vote out the PEG amendments so that they can be scheduled on the House and Senate calendar

best

michael folliett

DeAnne Mangum (Finance CA)

From: Chad Johnston [johnston@thepeopleschannel.org]
Sent: Monday, May 05, 2008 2:20 PM
To: Blinda Edwards (Rep. Wainwright); Cindy Coley (Rep. Brubaker); DeAnne Mangum (Finance CA); Delta Prince (Senate LA Office); Evelyn Hartsell (Sen. Kerr); Gennie Thurlow (Rep. Hill); Gerry Johnson (Sen. Hartsell); Joyce Harris (Rep. Luebke); Judy Lowe (Rep. McComas); Leonard Jones (E-mail); Leslie Bevacqua Coman; Michael Houser; Mike Pate (E-mail); Penny Williams (Sen. Hoyle); Rep. Becky Carney; Rep. William C. McGee; Rep. Danny McComas; Rep. Dewey Hill; Rep. Harold "Bru" Brubaker; Rep. Jennifer Weiss; Rep. Paul Luebke; Rep. William Wainwright; Robert O. Wells; Sen. Clodfelter; Sen. Daniel Clodfelter; Sen. David Hoyle; Sen. Fletcher Hartsell, Jr.; Sen. John Kerr; Sen. Peter Brunstetter; Sen. Walter Dalton; Shirlyn MacPherson (Rep. Gibson); Sylvia Sears (Sen. Kerr); Tazra Mitchell (Rep. Carney); Wanda Joyner (Sen. Clodfelter)
Subject: Header: Please Support NCLM, e-NC, and SEATOA's PEG Amendments on May 7th

Good day,
Please support NCLM, e-NC, and SEATOA's PEG Amendments in the Revenue Laws Study Committee on May 7th. Despite what industry would like you to believe, these channels are our schools, local governments, and community groups. PEG channels are held to very high standards by local governments and are not "third party" unregulated money hungry organizations. Please visit:
http://www.telvue.net/gallery/v/PSAs/PEGAccess to learn more about PEG channels and how they serve our communities.
These amendments are not a request for more money or for less accountability, as the cable industry wants you to believe. The amendments simply clarify ambiguous language in the law so that PEG financing is distributed to the folks who program these channels, and require state franchised cable operators to provide the channels as the law requires. E-nC's amendment just makes e-NC's PEG Grant process work more smoothly so more of the PEG channels that are currently operating can apply for e-NC financial support. Thank you in advance for your help in keeping these vital local resources alive.
Please do not hesitate to contact me if you have any questions regarding the PEG community here in NC or across the nation.
Sincerely,

--
Chad A. Johnston - Executive Director
The Peoples Channel
300AC South Elliott Road
Chapel Hill, NC 27514
919.960.0088
www.thepeopleschannel.org

Donate to The Peoples Channel Online!
http://www.thepeopleschannel.org/donations.htm

Board Member
The Alliance for Community Media
Washington, DC
www.alliancecm.org

"Be ashamed to let it die!"
Save Antioch College!
www.antiochians.org

"So, in the infinitely nobler battle in which you are engaged against error and wrong, if ever repulsed or stricken down, may you always be solaced and cheered by the exulting cry of triumph over some abuse in Church or State, some vice or folly in society, some false opinion or cruelty or guilt which you have overcome! And I beseech you to treasure up in your hearts these my parting words: Be ashamed to die until you have won some victory for humanity."
Horace Mann, the closing paragraph of his last Baccalaureate Sermon.
It was given to the students of Antioch College in 1859

"Life without dead time."
Graffito, Paris 1968

DeAnne Mangum (Finance CA)

From: Robert Howland [kcwaters2@kcwaters.com]
Sent: Monday, May 05, 2008 9:36 PM
To: Delta Prince
Cc: DeAnne Mangum (Finance CA)
Subject: Public Access TV funding

Please make sure PEG gets scheduled on the regular senate calender so that it will get to the full floor. I produce the K.C. Waters Show for URTV in Asheville. My show has aired in Anchorage, AK. for almost 14 years on their public access station. Please make sure public access TV gets fully funded for years to come.

DeAnne Mangum (Finance CA)

From: nur christopher fryar [nurchrisfryar@gmail.com]

Sent: Tuesday, May 06, 2008 12:55 PM

To: Blinda Edwards (Rep. Wainwright); Cindy Coley (Rep. Brubaker); DeAnne Mangum (Finance CA); Delta Prince (Senate LA Office); Evelyn Hartsell (Sen. Kerr); Gennie Thurlow (Rep. Hill); Gerry Johnson (Sen. Hartsell); Joyce Harris (Rep. Luebke); Judy Lowe (Rep. McComas); Leonard Jones (E-mail); Leslie Bevacqua Coman; Michael Houser; Mike Pate (E-mail); Penny Williams (Sen. Hoyle); Rep. Becky Carney; Rep. William C. McGee; Rep. Danny McComas; Rep. Dewey Hill; Rep. Harold "Bru" Brubaker; Rep. Jennifer Weiss; Rep. Paul Luebke; Rep. William Wainwright; Robert O. Wells; Sen. Clodfelter; Sen. Daniel Clodfelter; Sen. David Hoyle; Sen. Fletcher Hartsell, Jr.; Sen. John Kerr; Sen. Peter Brunstetter; Sen. Walter Dalton; Shirlyn MacPherson (Rep. Gibson); Sylvia Sears (Sen. Kerr); Tazra Mitchell (Rep. Carney); Wanda Joyner (Sen. Clodfelter)

Subject: PEG amendments

Dear Representatives,

Please vote out the PEG amendments so that they can be scheduled on the House and Senate calendar.

Public access programming is fostering a diverse and positive media culture here in Asheville. URTV, Asheville's public access TV station, afforded me the opportunity to learn film making; thanks to their start, I am now producing my own feature length non-profit documentary on Autism that is bringing awareness to a public concern, jobs, and vitality to a burgeoning media industry in Western North Carolina. Please remember to support Public Access!

Thank you,
Chris Fryar

DeAnne Mangum (Finance CA)

From: sandy cloey [scloey@yahoo.com]

Sent: Tuesday, May 06, 2008 1:38 PM

To: Blinda Edwards (Rep. Wainwright); Cindy Coley (Rep. Brubaker); DeAnne Mangum (Finance CA); Delta Prince (Senate LA Office); Evelyn Hartsell (Sen. Kerr); Gennie Thurlow (Rep. Hill); Gerry Johnson (Sen. Hartsell); Joyce Harris (Rep. Luebke); Judy Lowe (Rep. McComas); Leonard Jones (E-mail); Leslie Bevacqua Coman; Michael Houser; Mike Pate (E-mail); Penny Williams (Sen. Hoyle); Rep. Becky Carney; Rep. William C. McGee; Rep. Danny McComas; Rep. Dewey Hill; Rep. Harold "Bru" Brubaker; Rep. Jennifer Weiss; Rep. Paul Luebke; Rep. William Wainwright; Robert O. Wells; Sen. Clodfelter; Sen. Daniel Clodfelter; Sen. David Hoyle

Subject: Public Access TV

Please "vote out the PEG" so it can go to the senate and house to be voted on. Public Access is such an important part of our community and other communities, as well. This type of media brings communities together and involvement from the individuals.

Be a better friend, newshound, and know-it-all with Yahoo! Mobile. Try it now.

DeAnne Mangum (Finance CA)

From: Amina Marie Spengler [amina@main.nc.us]
Sent: Saturday, May 10, 2008 12:15 PM
To: amina@main.nc.us
Subject: Revenue Laws Committee, please put PEG amendments on the House and Senate calendar

Greetings, I am writing to you, as a member of Revenue Laws Committee, to ask you to vote out the PEG amendments so that they can be scheduled on the House and Senate calendar.

Public access TV is a vital tool for a community to foster understanding between its citizens, provide a place for community members to develop skills that augment their creativity and ability to communicate, and perhaps to find a job. I believe it is a vital tool to withstand the assaults on our constitutional rights to freedom of speech at this time. Thanks for your consideration.

Amina Marie Spengler

MEMORANDUM

To: Revenue Laws Study Committee

From: Gene Laviner, Securities Division

Date: September 25, 2007

Subject: **Qualified Business Registration 2007 Annual Report**

Enclosed for your review is the Qualified Business Registration 2007 Annual Report pursuant to §105-163.013(g). The report has been created in an Excel spreadsheet format. 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 919-733-3924.

REPORT TO THE REVENUE LAWS STUDY COMMITTEE

Qualified Business Registration 2007 Annual Report

(As of October 2007*)

Number of Registrations	**150**
Number of Minority Owned Businesses	**7**
Number of Jobs Created	**1031**
Total Average Wages Paid	**$40,210.98**

*These figures reflect the time period from October 2006 to October 2007, 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)

Attachment A

Business Name	Type	Authorized Representative	Place of Business	Address 2	City	State	Zip
A Bunch of Us Productions, LLC	QBV	Terry J. Lineham, Manager	517 Charlotte Ave.		Carolina Beach	NC	28428
Addrenex Pharmaceuticals, Inc.	QGB	Mr. Moise Khayrallah, President	113 Glenspring		Morrisville	NC	27560
Advanced Digital Systems, Inc.	QBV	Ms. Carolee E. Nail, VP Opperations	P.O. Box 12076	2 Davis Drive	RTP	NC	27709
Advanced Liquid Logic Inc.	Grantee	Mr. Richard M. West, President & CEO	615 Davis Drive, Suite 800	P O Box 14025	RTP	NC	27709
Affinergy, Inc.	Grantee (formly QBV)	Mr. Jonathan Gindes, President	617 Davis Drive	PO Box 14650	RTP	NC	27709
Agile Sciences, Inc.	QBV	Mr. Christian Melander	3309 Milton Road		Raleigh	NC	27609
Aldagen, Inc.	QBV	Mr. Ed Field, Chief Operating Officer	2810 Mendian Parkway	Suite 148	Durham	NC	27713
Alpha Theory, LLC	QBV	Mr. Cameron Hight, President	2201 Coronation Blvd	Suite 1400	Charlotte	NC	28227
Arbor Pharmaceutical, Inc.	QBV	Mr. Jarrett Disbrow, President & CEO	3741 Falls River Ave.		Raleigh	NC	27614
Arbovax, Inc.	QBV	Mr. Malcolm Thomas, President &CEO	6024 Drumquin Drive		Raleigh	NC	27614
ArtusLabs, Inc.	QBV	Ms. Robin Smith, President	1407 Shasta Ave.		San Jose	CA	95125
Asklepios Biopharmaceutical, Inc.	Grantee	Ms. Sheila A. Mikhail, CEO	870 Martin Luther King Jr. Boulevard		Chapel Hill	NC	27514
Aurora Enrichment Fund, L.L.C.	Grantee	Mr. B. Jefferson Clark/Manager	2525 Meridian Parkway	Suite 220	Durham	NC	27713
Aurora Ventures IV, L.L.C.	Grantee	Mr. B. Jefferson Clark/Manager	2525 Meridian Parkway	Suite 220	Durham	NC	27713
Aurora Ventures V, L.P.	Grantee	Mr. B. Jefferson Clark/Manager	2525 Meridian Parkway	Suite 220	Durham	NC	27713
AvidXchange, Inc.	QBV	Mr. Michael Praeger, Secretary & CEO	4421 Stuart Andrew Blvd.	Suite 200	Charlotte	NC	28217
Bald Eagle Technologies of NC, LLC	QBV	Mr. Michael K. Linville, President	305 W. Fourth Street	Suite 1-C	Winston-Salem	NC	27101
Beroe, Inc.	QBV	Mr. Amudhanvel Dhinagaravel, President & CEO	2054 Kildaire Farm Rd	PMB 430	Cary	NC	27518
BioMarck Pharmaceuticals, Ltd. (From QBV to Grantee) (No F/ S Required)	Grantee	Mr. Mark W. Mueller	7200 Falls of Neuse Rd., Suite 202		Raleigh	NC	27615
Bioptigen, Inc.	QBV	Mr. Eric L. Buckland, President, CEO	112 Mariners Point Lane		Hickory	NC	28601
BioResource International, Inc.	QBV	Dr. Giles C. Shih, President	627 Davis Drive	Suite 600	Morrisville,	NC	27560
Blue Ridge Analytics, Inc.	QBV	Mr. Michael Detwiler, CEO	101 W. Worthington Ave.	Suite 206	Charlotte	NC	28203
Blue Ridge BioFuels, LLC	QBV	Mr. Briam Winslett	109 Roberts Street		Asheville	NC	28801
BrandPort, Inc.	QBV	Mr. Kivin Varghase, CEO	2 Davis Drive		RTP	NC	27709
Bright Door Systems, Inc.	QBV	Mr. Deven K. Spear, President & CEO	6501 Weston Parkway	Suite 320	Cary	NC	27513
Bright View Technologies, Inc.	QBV	Mr. David Reed, Vice President	5151 McCrimmon Parkway	Suite 200	Morrisville	NC	27713
BUILDERadius, Inc.	QBV	Mr. William S. Ward, President &CEO	16 Biltmore Avenue	Suite 300	Asheville	NC	28801
BuildLinks, Inc.	QBV	Mr. Mark Hahn, CFO	3800 Paramount Parkway	Suite 100	Morrisville	NC	27560
Buzz Off Insect Shield, LLC	QBV	Mr. Richard A. Lane, President	814 W. Market Street	P.O. Box 10129	Greensboro	NC	27401
C° Change Surgical LLC	QBV	Mr. Patrick Kammer, President/CEO	101 N. Chestnut Street	Suite 301	Winston-Salem	NC	27101
Capitol Broadband, LLC	QBV	Mr. Glen D. Lang, Manager	111 Corning Road	Suite 250	Cary	NC	27518
Charlotte Angel Partners, LLC	Grantee	Mr. W. Brent Kulman, Fund Executive	1907 Baytree Drive		Greensboro	NC	27455
Chesson Laboratory Associates, Inc.	QBV	Mr. David R. Terry, President & CEO	607 Ellis Road		Durham	NC	27703
Civatech Oncology, Inc.	QBV	Mr. Robert D.Black, President	301 Village Crossing Drive	PO Box 2347	Chapel Hill	NC	27515
CleanTechnics International, Inc.	QBV	Mr. Ritchie C. Russell, CEO,Treasurer	3807 Buncombe Drive	PO Box 77621	Greensboro	NC	27417
ClickBrick, Inc.	QBV	Mr. Timothy L. Mercer, President	405 Hawkins Avenue	PO Box 4214	Sanford	NC	27330
Clinical Ink, LLC	QBV	Mr. Douglas Edward Pierce, Jr. CEO	301 N. Main Street	Suite 2481	Winston-Salem	NC	27101
Companioncabinet Software, LLC	QBV	Mr. Chris Mele, Manager	8701 Mallard Creek Rd.		Charlotte	NC	28203
Consolidated Asset Recovery Systems, Inc.	QBV	Mr. Steve Norwood, President & CEO	8300 Falls of Neuse Rd.	Suite 108	Raleigh	NC	27615
Critical Point Group, Inc.	QBV	Mr. Kenneth Long, Sr , CEO	2201 Coronation Blvd	Suite 210	Charlotte	NC	28227
Damascus, LLC	QBV	Mr. R. Keith Harris, President	1242 Pamilco Dr.		Greensboro	NC	27408
Dara BioSciences, Inc.	QBV	Mr. Richard A Franco, President	4505 Falls of Neuse Road	Suite 125	Raleigh	NC	27609
D & F Designs, LLC	QBV	Mr. Mike Davis, President	1371 E. Garrison Blvd	Suite B	Gastonia	NC	28054
Effipharma Inc.	QBV	Mr/ Alan L. Dow, President & CEO	2018 N Lakeshore Drive		Chapel Hill	NC	27514
Electronic Document Logistics, Inc.	QBV	**Mr. Richard D. Bowlin, President & CEO**	4905 Green Road	Suite 105	Raleigh	NC	27616
Endacea, Inc. (fka Link Technology, Inc.)	Grantee	Mr. Donald H. Wilson, III, Pres./CEO	2 Davis Drive	PO Box 12076	RTP	NC	27709
Entegrion, Inc.	QBV	**Mr. Richard E. Martin, VP & CFO**	79 TW Alexander Drive, Suite 200	4401 Research Commons	RTP	NC	27709
ESP Systems LLC	QBV	**Mr. Scott Boutware, Vice President**	401 N. Tryon street, 10th floor	Suite 1085	Charlotte	NC	28202
EXPLORE! Creative Learning Centers, Inc.	QBV	Mr. Mark Clifford, CEO	3708 Benson Drive		Raleigh	NC	27609
Eyeborgs, LLC	QBV	Mr. Charles J. Peller, VP & CFO	110 Livingston Court		Clemmons	NC	27012
Field2Base, Inc.	QBV	Mr. Robert McKenzie, Treasurer	101 J Morris Commons Lane	Suite 115	Morrisville	NC	27560
FloLogic, Inc.	QBV	Mr. Charles R. De Smet	7413-130 Six Forks Road		Raleigh	NC	27615
F-Origin, Inc.	QBV	Mr. Merrill M. Mason, Secretary	1004 Pinehurst Drive		Chapel Hill	NC	27514
For Patients, Inc.	QBV	Ms. Carol Walborn, President/CEO	1289 Fordham Blvd.	Suite E-3	Chapel Hill	NC	27514
Found Films, LLC	QBV	Mr. Anthony Haney, President/Director	12 Caledonia Rd.		Asheville	NC	28803
Foundery Pictures 1, LLC	QBV	Mr. John P. Jackman, President	7846 Beech Forest Rd.		Lewisville	NC	27023
Gentris Corporation	QBV	Ms. Karen G. Nield, Treasurer	133 Southcenter Ct.	Ste. 400	Morrisville	NC	27560
Get Interactive	QBV	Mr J Phillips L. Johnston, Sr, Chairman & CFO	221 West 4th Street		Winston-Salem	NC	27101
Harbinger/Aurora Venture Fund, L.L.C.	Grantee	B. Jefferson Clark, Manager	2525 Meridian Parkway	Suite 220	Durham	NC	27713
Hatteras Venture Partners II, LP	Grantee	Mr. Clay B. Thorp, General Partner	1822 E. Hwy 54	Suite 250	Durham	NC	27713
Hatteras Venture Affiliates III, L.P.	Grantee	Mr. John C. Crumpler, Manager	1822 E. Hwy 54	Suite 250	Durham	NC	27713
Hope Stout, LLC	QBV	Mr. Bert C. Hesse, Manager	1318 Central Avenue	Suite A-2	Charlotte	NC	28205
Horticultural Asset Management, Inc.	QBV	Mr. Douglas W Cowles, President,&CEO	107 Edinburgh South Drive	Suite 205	Cary	NC	27511
Inception Micro Angel Fund LLC	Grantee	Mr. Timothy R. Janke, Organizer	4149 Chatham Hill Drive		Winston-Salem	NC	27104

Attachment A

Idea Fund 1. L.P.	Grantee	Mr. Jon Cambier, General Partner	4505 Emperor Blvd.	Suite 130	Durham	NC	27703
IFAN Corporation	QBV	Mr. J Ralph Johnson, President	PO Box 396		Hendersonville	NC	28793
IMAF-WEST, LLC	Grantee	Mr. Timothy R. Janke, Organizer	1959 N. Peace Haven Road	Suit 111	Winston-Salem	NC	27106
InfoStrength, Inc.	QBV	Ms. Margaret E. Geiger, President/CEO	4220 NC Highway 55,	Suite 200	Durham	NC	27713
Insite Analytics, LLC	QBV	Mr. David Bunten, CEO	1216 Hedgelawn Way		Raleigh	NC	27615
3-C Institute For Social Development, Inc.	Grantee	Ms. Melissa E. DeRoiser, President	1903 N. Harrison Avenue	Suite 101	Cary	NC	27513
Inneroptic Technology, Inc.	Licensee	Mr. Kurtis Keller, President	P.O Box 824		Chapel Hill	NC	27514
Intercede, Inc.	QBV	Mr. Jerry M. Overcash, President&CEO	212 South Tryon Street,	Suite 1550	Charlotte	NC	28281
International Garment Technologies, L.L.C.	QBV	Mr. Richard A. Lane, President	814 W. Market Street	P.O Box 10129	Greensboro	NC	27401
International IT Services, Ltd.	QBV	Mr. Kimthanh Do Le, Chief Operating Officer	9205 Baileywick Road	Suite 203	Raleigh	NC	27615
Intersouth Affiliates V, L.P.	Grantee	Mr. Mitchell Mumma, Member Manager	406 Blackwell Street	Suite 200	Durham	NC	27701
Intersouth Partners V, L.P.	Grantee	Mr. Mitchell Mumma, Member Manager	406 Blackwell Street	Suite 200	Durham	NC	27701
Intersouth Partners VI, L.P.	Grantee	Mr. Mitchell Mumma, Member Manager	406 Blackwell Street	Suite 200	Durham	NC	27701
Intersouth Partners VII, L.P.	Grantee	Mr. Mitchell Mumma, Member Manager	406 Blackwell Street	Suite 200	Durham	NC	27701
Intervolve, Inc.	QBV	Mr. David P. Razzo, CEO	319 Wsest Martin Street		Raleigh	NC	27601
Joseph Charles, LLC	QBV	Mr. Charles Alexander, Manager	2 Terrace Way	Suite c	Greensboro	NC	27403
Klein Decisions LLC	QBV	Mr. Robert L. Padgette, Managing Director	801 Jones Franklin Road	Suite 200	Raleigh	NC	27606
Krenitsky Pharmaceuticals, Inc.	QBV	Mr. Wayne R. Eberhardt, Vice President	Four University Place	4611 University Drive	Durham	NC	27707
Laamscience, Inc.	QBV	Mr. Thomas H. Roberg, President &CEO	2108 Prescott Place		Raleigh	NC	27615
Learning Management Systems, Inc.	QBV	Mr. John Carl Zeigler, President, CEO	101 Hawthorne Avenue		Swannanoa	NC	28778
Linwood, Inc. (Renewl due 10/15/07 with F/S)	QBV	Mr. Daniel L. Timberlake, Secretary	3979 Old Linwood Road		Lexington	NC	27292
Liquidia Technologies, Inc.	QBV	Mr. Bruce Boucher, President	627 Davis Drive	Ste 500	Morrisville,	NC	27560
Listingbook, LLC	QBV	Mr. Randll R. Kaplin, Chairman	123 S. Elm Street		Greensboro	NC	27401
Live Cargo, Inc.	QBV	Mr. Doug Young, CEO	6520 Airport Center Drive	Suite 102	Greensboro	NC	27409
Longleaf Films, LLC	QBV	Mr. Samuel B. Froelich	1519 Baker Road		High Point	NC	27263
Magnus Health Technology, Inc.	QBV	Mr. Charles R. Scarantino, President	920 Main Campus Drive		Raleigh	NC	27612
Mediplay, Inc.	QBV	Mr. Robert James R. LeLiever	526 Pylon Drive		Raleigh	NC	27606
MD Scientific, LLC	QBV	Mr. Shade Mecum, President/ CEO	2815 Coliseum Centre Drive	Suite 250	Charlotte	NC	28217
MediWave Star Techology Inc.	QBV	Mr. Thomas R. Sloan, Treasurer	705 Sunset Drive		Greensboro	NC	27408
Microphase Coatings Inc.	QBV	Mr. William Simendinger, President	170 Donmoor Ct.		Garner	NC	27529
Modality, LLC	QBV	Mr. Stephen Mark Williams, Manager	905 W. Main Street	Suite 23C, Box #2	Durham	NC	27701
Moving Midway, LLC	QBV	Mr. John Jesse Spain, Manager	411 Kinsey Street	P.O. Box 50157	Raleigh	NC	27650
MyBode, Inc.	QBV	Mr. Jeffrey M. Johnston, President	3009 Montgomery Street	P.O. Box 51759	Durham	NC	27705
NanoLume, Inc.	QBV	Dr. James Daniel Johansen, President	11301 Penny Road	Suite D	Cary	NC	27518
Near-Time, Inc.	QBV	Mr. Reid Conrad, CEO	1289 N. Fordham Blvd	Suite A-410	Chapel Hill	NC	27514
Neurisys, LLC	QBV	Ms. Kim B. Russell, CEO	1500 Pinecroft Road	Suite 212	Greensboro	NC	27407
OroBridge, Inc.	QBV	Mr. Raif O. Onvural, President, CEO	3600 Glenwood Ave.	Suite 107	Raleigh	NC	27612
Oryel, Inc. (Renewl due 9/15/07 F/S due 11/30/07)	QBV	Mr. Scott Secor, President	100 St. Albans Dr.	Suite 104	Raleigh	NC	27609
Oy Vey My Son Is Gay Productions LLC	QBV	Mr. Heath Franklin, Agent	1901 Blue Clay Road	Suite G2	Wilmington	NC	28405
Paladin Laboratories, LLC	QBV	Dr. James B. Powell, Manager	1573 York Place		Burlington	NC	27215
Patriot Software Systems, Inc.	QBV	Mr. Jeff L. Reese, President & CEO	104 Kalida Court		Cary	NC	27513
Paula Lee Haller Productions LLC	QBV	Ms. Paula Lee Haller, Manager	PO Box 1042		Wrightsville Beach	NC	28480
Piedmont Angel Network LLC	Grantee	Ms. Lou Anne Flanders-Stec, Fund Executive	2007 Yanceyville Street	Suite 119	Greensboro	NC	27405
Piedmont Angel Network TWO LLC	Grantee	Mr. W.B. Rodman Davis, Manager	701 Green Valley Road	Suite 100	Greensboro	NC	27408
Piedmont Pharmaceuticals LLC	QBV	Mr. Roland Johnson, Manager/President	204 Muirs Chapel Road	Suite 200	Greensboro	NC	27410
Pogo Health LLC (From LLC to Inc.)	QBV	Ms. Alicia Paladin, President	710 Morehead Avenue		Durham	NC	27707
Qualyst, Inc. (fka ADMETech, Inc.)	Grantee	Mr. Scott E. Neuville, President & CEO	5410 Trinity Road	Suite 108	Raleigh	NC	27607
RadarFind Corporation	QBV	Mr. B. Bobby Bahram, President	Two Davis Drive, P. O. Box 13169		RTP	NC	27709
Realserv, LLC	QBV	Mr. William DePriest, Coperat Officer	84 W Walnut Street, P.O. Box 18830	Suite 202	Asheville	NC	28802
Regado Biosciences, Inc.	QBV	Mr. Chris Courts, Controller	324 Blackwell Street	Suite 420	Durham	NC	27701
Resource4Realtors, LLC	QBV	Mr. Ronald R. Rogers, Manager	1229 Pinehurst Drive		Chapel Hill	NC	27707
Respirics, Inc.	QBV	Mr. Gilbert S Mott, Jr., President & CEO	6008 Triangle Drive	Suite 101	Raleigh	NC	27617
Roy G Biv Networks, Inc.	Grantee	Mr. Timothy B. Horan, President	514 Daniels Street	Suite 175	Raleigh	NC	27605
rPath, Inc.	QBV	Mr. David B. Welker, II, Sect./Treasurer	1121 Situs Court	Suite 290	Raleigh	NC	27606
Run Lightning 1956, LLC	QBV	Mr. Thomas B. Hubbard III, CFO	915 Old Orchard Rd		Chapel Hill	NC	27517
SCP Distribution, LLC	QBV	Mr. Raymond E Lopez, Manager	3200 Northline Avenue	Suite 130	Greensboro	NC	27408
Sequentric Energy Systems, LLC	QBV	Mr Daniel Flohr, Manager	8 Cedar Island		Wilmington,	NC	28409
Sicel Technologies, Inc.	Grantee	Ms. Jennifer Pierce, Controller	3800 Gateway Centre Boulevard	Suite 308	Morrisville	NC	27560
Southern Capitol Technology Fund II, LP	Grantee	Mr. Benjamin T. Brooks, III	21 Glenwood Avenue	Suite 105	Raleigh	NC	27603
Southeast Techinventures, Inc. (From QBV to QGB) Must file (F/S)	Grantee	Ms. Karen LeVert, President	7030 Kit Creek Rd,	Suite 250	Morrisville	NC	27560
Specialty Wood Components, Inc.	QBV	Mr. Blane E. Rockafellow, CEO	7405 Kemp Road		Raleigh	NC	27613
Starta Development, Inc.	QBV	Mr. Gordon Blackwell, Jr, President	13200 Strickland Road	Suite 114-106	Raleigh	NC	27613
Synermed Select Partners, Inc.	QBV	Mr. Ernest A. Knesel, Jr., President	1100 Revolution Mill Drive	Suite 1	Greensboro	NC	27405
Syntherica Corporation	Grantee	Mr. D. Joe Smith, CEO	4727 University Drive	Suite 700	Durham	NC	27707
Table Rock Springwater Co.	QBV	Mr. Walter G. Church, Jr., President	305 Third Street SW		Hildebran	NC	28637
Textile Film Initiative L.L.C.	QBV	Mr. Doug Adams, Manager	2424 N. Davidson Drive	Suite 103	Charlotte	NC	28205
The Elevator Channel, Inc.	QBV	Mr. C. Rudy Alexander, Pres./CEO	1930 Camden Road	Suite 2050	Charlotte	NC	28203

Attachment A

The List Productions, LLC	QBV	Mr. Robert Whitlow, President of Torch Media, Inc.	301 South McDowell Street	Suite 410	Charlotte	NC	28204
Trana Discovery, Inc.	Licensee	Mr. Michael A. Gallucci, Jr. Treasurer & CFO	113 Lochinvar Ct		Cary	NC	27511
Tri-State Investment Group IV, LLC	Grantee	Mr. Stephen Clossick, Administrator	405 Tramore Drive		Chapel Hill	NC	27516
Triad Specialty Products LLC	QBV	Mr. Roland Johnson, Manager	204 Muirs Chapel Road	Suite 200	Greensboro	NC	27410
Triumfant, Inc. (fks Chorus Systems, Inc)	QBV	Ms. Brenda Jellicorse, Treasurer	79 TW Alexander Drive	Suite 205	RTP	NC	27709
U.S. Environmental Protection Service, LLC	QBV	Mr. Albert J. Allen, Manager	3300 Battleground Ave.	Suite 305	Greensboro	NC	27410
Versatile Premium Products, LLC	QBV	Mr. James Larry Gates, Manager	1905 Old Batten Rd.		Selma	NC	27576
Vtflex, Inc.	QBV	Mr. Samir Hakooz, President	105 Lion's Gate Drive		Cary	NC	27511
Virtual Heroes, Inc.	QBV	Mr. Jeremiah S. Heneghan, President	1000 Darrington Drive	Suite 200	Cary	NC	27513
Visitar, Inc.	QBV	Mr. Steve Wallace, Vice President & CFO	215 Southport Drive	Suite 1400	Morrisville	NC	27560
Voyager Pharmaceuticl Corporation	QBV	Mr. David J. Corcoran Vice Pres & CFO	8540 Colonnade Center Drive	Suite 501	Raleigh	NC	27615
Wilmington Pharmaceuticals, LLC	QBV	Mr. Eugene T. Haley, CEO	1213 Culbreth Drive	Suite 230	Wilmington	NC	28405
Women's Edge, Inc.	QBV	Ms. E. Slee Arnold	6008 Wild Orchid Trail		Raleigh	NC	27613
Yap, Inc.	QBV	Mr. Igor Jablokov, CEO	1410 West Morehead Street	Suite 100	Charlotte	NC	28208
ZellComp, Inc.	QBV	Ms. Meg G. Richards, Secretary	3020 Pickett Rd.	Suite 327	Durham	NC	27705
Zenph Studios, Inc.	QBV	Mr. John Q. Walker, II, President	9660 Falls of Neuse Road	Suite 138-145	Raleigh	NC	27615
ZyCare, Inc.	QBV	Ms. Sandra E. Cummings, President	3804 Sweeten Creek Road		Chapel Hill	NC	27514

Attachment B

Business Name	Number of Jobs Created	Average Wages Paid	Minority Business
A Bunch of Us Productions, LLC	4	$1,081.25	no
Addrenex Pharmaceuticals, Inc.	n/a	n/a	no
Advanced Digital Systems, Inc.	0	$0.00	no
Advanced Liquid Logic Inc.	9	$63,778.00	no
Affinergy, Inc.	1	$71,958.00	no
Agile Sciences, Inc.	n/a	n/a	no
Aldagen, Inc.	0	$0.00	no
Alpha Theory, LLC	0	$0.00	no
Arbor Pharmaceutical, Inc.	1	$0.00	no
Arbovax, Inc.	n/a	n/a	no
ArtusLabs, Inc.	n/a	n/a	no
Asklepios Biopharmaceutical, Inc.	5	$48,300.00	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, Inc.	15	$75,000.00	no
Bald Eagle Technologies of NC, LLC	6	$35,000.00	no
Beroe, Inc.	1	$92,000.00	no
BioMarck Pharmaceuticals, Ltd. (From QBV to Grantee) (No F/ S Required)	0	$0.00	no
Bioptigen, Inc.	5	$78,000.00	no
BioResource International, Inc.	0	$0.00	no
Blue Ridge Analytics, Inc.	6	$50,989.00	no
Blue Ridge BioFuels, LLC	4	$10,000.00	no
BrandPort, Inc.	n/a	n/a	Yes
Bright Door Systems, Inc.	n/a	n/a	no
Bright View Technologies, Inc.	15	$78,677.00	no
BUILDERadius, Inc.	29	$57,000.00	no
BuildLinks, Inc.	9	$64,000.00	no
Buzz Off Insect Shield, LLC	0	$0.00	no
C° Change Surgical LLC	2	$120,000.00	no
Capitol Broadband, LLC	70	$49,038.00	no
Charlotte Angel Partners, LLC	n/a	n/a	no
Chesson Laboratory Associates, Inc.	2	$100,000.00	no
Civatech Oncology, Inc.	n/a	n/a	no
CleanTechnics International, Inc.	1	$60,000.00	no
ClickBrick, Inc.	0	n/a	no
Clinical Ink, LLC	0	n/a	no
Companioncabinet Software, LLC	7	$45,360.00	no
Consolidated Asset Recovery Systems, Inc.	n/a	n/a	no
Critical Point Group, Inc.	4	$60,000.00	no
Damascus, LLC	n/a	n/a	no
Dara BioSciences, Inc.	0	$0.00	no
D & F Designs, LLC	0	$0.00	no
Effipharma Inc.	0	$0.00	no
Electronic Document Logistics, Inc.	3	$18,666.00	no
Endacea, Inc. (fka Link Technology, Inc.)	1	$40,000.00	no
Entegrion, Inc.	1	$100,000.00	no
ESP Systems LLC	6	$75,000.00	no
EXPLORE! Creative Learning Centers, Inc.	14	$28,000.00	no
Eyeborgs, LLC	200	$550,000.00	no

Attachment B

Field2Base, Inc.	1	$120,000.00	no
FloLogic, Inc.	1	$30,000.00	no
F-Origin, Inc.	0	$0.00	no
For Patients, Inc.	1	$5,000.00	Yes
Found Films, LLC	57	$57,000.57	no
Foundery Pictures 1, LLC	0	$0.00	no
Gentris Corporation	20	$26,357.00	no
Get Interactive	12	$750,000.00	no
Harbinger/Aurora Venture Fund, L.L.C.	n/a	n/a	no
Hatteras Venture Partners II, LP	n/a	n/a	no
Hatteras Venture Affiliates III, L.P.	n/a	n/a	no
Hope Stout, LLC	2	$50,000.00	no
Horticultural Asset Management, Inc.	3	$39,140.00	no
Inception Micro Angel Fund LLC	n/a	n/a	no
Idea Fund 1. L.P.	n/a	n/a	no
IFAN Corporation	n/a	n/a	no
IMAF-WEST, LLC	n/a	n/a	no
InfoStrength, Inc.	4	49,625.00	YES
Insite Analytics, LLC	n/a	n/a	no
3-C Institute For Social Development, Inc.	n/a	n/a	no
Inneroptic Technology, Inc.	n/a	n/a	Yes
Intercede, Inc.	5	$57,700.00	no
International Garment Technologies, L.L.C.	45	$20,653.00	no
International IT Services, Ltd.	4	$75,000.00	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	$64,250.00	no
Joseph Charles, LLC	n/a	n/a	no
Klein Decisions LLC	0	$0.00	no
Krenitsky Pharmaceuticals, Inc.	0	$0.00	no
Laamscience, Inc.	2	$55,000.00	no
Learning Management Systems, Inc.	5	$18,000.00	no
Linwood, Inc. (Renewl due 10/15/07 with F/S)	95	$27,352.00	no
Liquidia Technologies, Inc.	9	$100,533.00	no
Listingbook, LLC	15	$42,250.00	no
Live Cargo, Inc.	11	$79,545.00	no
Longleaf Films, LLC	0	$0.00	no
Magnus Health Technology, Inc.	n/a	n/a	no
Mediplay, Inc.	2	$35,750.00	no
MD Scientific, LLC	6	$98,667.00	no
MediWave Star Techology Inc.	4	$53,247.00	no
Microphase Coatings Inc.	0	$0.00	no
Modality, LLC	n/a	n/a	no
Moving Midway, LLC	7	$10,596.21	no
MyBode, Inc.	4	$50,000.00	no
NanoLume, Inc.	6	$68,500.00	no
Near-Time, Inc.	n/a	n/a	
Neulsys, LLC	10	$69,665.00	no
OroBridge, Inc.	2	$65,000.00	no
Oryel, Inc. (Renewl due 9/15/07 F/S due 11/30/07)	2	$32,000.00	no
Oy Vey My Son Is Gay Productions LLC	n/a	n/a	no
Paladin Laboratories, LLC	4	$48,196.00	no

Attachment B

Patriot Software Systems, Inc.	0	$0.00	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 (From LLC to Inc.)	n/a	n/a	no
Qualyst, Inc. (fka ADMETech, Inc.)	2	$57,500.00	no
RadarFind Corporation	2	$110,000.00	no
Realserv, LLC	n/a	n/a	no
Regado Biosciences, Inc.	7	$770,000.00	no
Resource4Realtors, LLC	n/a	n/a	no
Respirics, Inc.	0	$0.00	no
Roy G Biv Networks, Inc.	n/a	n/a	no
rPath, Inc.	18	$83,521.50	no
Run Lightning 1956, LLC	0	$0.00	no
SCP Distribution, LLC	24	$45,000.00	no
Sequentric Energy Systems, LLC	0	$0.00	no
Sicel Technologies, Inc.	7	$86,948.00	no
Southern Capitol Technology Fund II, LP	2	$20,000.00	no
Southeast Techinventures, Inc. (From QBV to QGB) Must file (F/S)	n/a	n/a	no
Specialty Wood Components, Inc.	0	$0.00	no
Starta Development, Inc.	0	$0.00	no
Synermed Select Partners, Inc.	3	$45,000.00	no
Syntherica Corporation	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.	3	$47,000.00	no
The List Productions, LLC	129	$3,809.47	no
Trana Discovery, Inc.	0	$0.00	no
Tri-State Investment Group IV, LLC	n/a	n/a	no
Triad Specialty Products LLC	0	$0.00	no
Triumfant, Inc. (fks Chorus Systems, Inc)	12	$115,875.00	no
U.S. Environmental Protection Service, LLC	2	$54,000.00	no
Versatile Premium Products, LLC	0	$0.00	no
Vtflex, Inc.	0	$0.00	no
Virtual Heroes, Inc.	10	$77,002.44	no
Visitar, Inc.	14	$102,643.00	no
Voyager Pharmaceuticl Corporation	0	$0.00	no
Wilmington Pharmaceuticals, LLC	0	$0.00	no
Women's Edge, Inc.	0	$0.00	no
Yap, Inc.	3	$80,000.00	no
ZellComp, Inc.	1	$60,000.00	YES
Zenph Studios, Inc.	2	$50,000.00	no
ZyCare, Inc.	8	$60,000.00	no

7	Minority
1031	# of Jobs Created
$6,031,647.44	Wages divided b Reporting
$40,210.98	Average Wages

Attachment C

Business Name	Brief Description of Business Activity
A Bunch of Us Productions, LLC	Engaged in the development, financing, production, distribution, and exploitation of motion pictures.
Addrenex Pharmaceuticals, Inc.	The business is engaged in the development and commercialization of pharmaceuticals.
Advanced Digital Systems, Inc.	Provide personal information management software by developing a pen-on-paper-based user-interface.
Advanced Liquid Logic Inc.	The company is in the business of design, development, manufacture and sale of equipment to manipulate fluids at the nanoscale.
Affinergy, Inc.	The company has developed the innovative technology of "interfacial biomaterials" or IFBMs.
Agile Sciences, Inc.	Providing services to manufacturing, selling or distributing antimicrobial agents, or conducting research and development with regard thereto.
Aldagen, Inc.	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.
Alpha Theory, LLC	Engaged in financial software who use the application to manage portfolio for investments.
Arbor Pharmaceutical, Inc.	The company is primarily focused on commercialization of pharmaceutical and related technology and intellectual property.
Arbovax, Inc.	An early stage research and development company that will commercialize a vaccine targeting mosquito-borne diseases.
ArtusLabs, Inc.	Technology company providing scientific data mamagement software and service for research based businesses.
Asklepios Biopharmaceutical, Inc.	Development and production of vector based delivery vehicles for genes and gene products for therapeutic applications.
Aurora Enrichment Fund, L.L.C.	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.
Aurora Ventures IV, L.L.C.	The company will operate as a venture capital fund formed to invest primarily in seed and early stage investments.
Aurora Ventures V, L.P.	The company will invest primarily in seed, and early stage and follow on investments in information technology and life sciences .
AvidXchange, Inc.	Provides software that lets organizations know how bills are electronically routed for approval within the company.
Bald Eagle Technologies of NC, LLC	Engaged primarily in the service-related industry of installing, supporting and servicing computer networksm hardware and software.
Beroe, Inc.	It researches commodities and analyzes their performance worldwide using proprietary software.
BioMarck Pharmaceuticals, Ltd (From QBV to Grantee) (No F/S Required)	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, Inc.	Bioptigen is developing Optical Coherence Tomography instrumentation for imaging of humans and small animals for pre-clinical research .
BioResource International, Inc.	Research and development of industrial enzymes for animal feed applications.
Blue Ridge Analytics, Inc.	Provide a new Internet based outsourcing option for employers.
Blue Ridge BioFuels, LLC	Waste oil is converted into biodiesel fuel at production facility.
BrandPort, Inc.	A startup enterprise positioning itself a leader in digital marketing and product message delivery.
Bright Door Systems, Inc.	Developing and marketing software and web-based software applications.
Bright View Technologies, Inc.	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.
BUILDERadius, Inc.	Develops and markets software for building departments and building contractors.
BuildLinks, Inc.	Provider of integrated web-based and wireless/mobile software applications for the homebuilding industry.
Buzz Off Insect Shield, LLC	Developer of a proprietary process for the treatment of garments with a specialized finish which protects the wearer from insects and insect bites.
C° Change Surgical LLC	A medical device company engaged in research, design, production, assembly and sales of a line of surgical patient temperature management products.
Capitol Broadband, LLC	Builder and operator of a low-cost wireless broadband internet infastructure to be used in multi-family dwelling communities.
Charlotte Angel Partners, LLC	Venture capital investments.
Chesson Laboratory Associates, Inc.	Decover, develop and commercialize therapeutic pharmaceutical systems and products
Civatech Oncology, Inc.	Will develop and manufacture a medical device which will allow radiation therapy for the treatment of cancer.
CleanTechnics International, Inc.	Sell, market, manufacture, warehouse & distribute technology in fluid filtration.
ClickBrick, Inc.	Will manufactory and distribute a thin brick panel assembly panelof brick and plastic componants.
Clinical Ink, LLC	Clinical Ink. Will develop data capture software for use in clinical trials.
Companioncabinet Software, LLC	This is a software package for the cabinet industry.
Consolidated Asset Recovery Systems, Inc.	Consolidated Asset Recovery Systems operates an internet portal for industry for the financial service industry to reduce cost.
Critical Point Group, Inc.	The business is to create revenues and profit from outsourced use of its proprietary technology platform and full service.
Damascus, LLC	Damascus, LLC is a motion picture production company that will be engaged in the manufacturing of a feature film called Damascus Road.
Dara BioSciences, Inc.	Is focused on the treatment of metabolic diseases and central nervous system disorders.
D & F Designs, LLC	Designs and imports various Christmas products for wholesale to U.S. retailers.
Effipharma Inc.	Start-up business focusing on the development of novel pharmaceutical compounds targeting brain therapeutics
Electronic Document Logistics, Inc	To provide online software applications to automated real estate transactions for mortgage lending industry.
Endacea, Inc. (fka Link Technology, Inc.)	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.	Entegrion, Inc is engaged in the research & development of biological products for the treatment of blood or other conditions.
ESP Systems LLC	The ESP Systems has patented, pioneered and commercialized a state of the art wireless system for technology.
EXPLORE! Creative Learning Centers, Inc.	To provide academic instruction and cultural enrichment courses for Home Schooled children.
Eyeborgs, LLC	A North Carolina based corporation specializing in the production of an original feature film for motion pictures.
Field2Base, Inc.	Offers a highly mobile communications solution to its end users via use of the Tablet PC and certain proprietary software.
FloLogic, Inc.	Directs the design, development, manufacture and markets an automatic fluid shutoff valve for installation.
F-Origin, Inc.	Engages in research, development and commercialization of software and hardware relating to portable handheld devices.
For Patients, Inc.	Researches and develops, and out sources manufacturing and distribution of wholesale medical products.
Found Films, LLC	This was formed to produce a feature film, to be shot in Asheville, and hire local people.
Foundery Pictures 1, LLC	To develop, produce and subsequently arrange distribution of a motion picture based on the true story of John Wesley.
Gentris Corporation	Engaged in the R & D and commercialization of proprietary clinical pharmacogenomic product and services.
Get Interactive	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
Harbinger/Aurora Venture Fund, L L.C.	Operate a venture capital fund formed to invest primarily in information technology and life science companies.
Hatteras Venture Partners II, LP	Prinicpal purposes are to locate, analyze and invest in equity or debt securities of privately held businesses generally considered to be venture capital investments
Hatteras Venture Affiliates III, L.P.	Intended to be a venture capital fund to invest primarily in companies engaged in the biotechnology, medical device and similar related industries.
Hope Stout, LLC	The applicant business engages in the financing, production, distribution and exploitation of motion pictures.
Horticultural Asset Management, Inc.	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.
Inception Micro Angel Fund LLC	Angel investor investment fund focusing on the Piedmont triad area.
Idea Fund 1, L.P.	Idea fund 1, is an early-stage venture capital fund that will invest in other companies.

Attachment C

IFAN Corporation	Manufacture and Distribution of electronic sports related merchandise in this marketing area.
IMAF-WEST, LLC	A investor investment fund which will invest in growth companies for technology opportunities.
InfoStrength, Inc.	Produces software for life science companies to manage their intellectual property, key processes, quality and regulatory needs
Insite Analytics, LLC	To provide Consulting services and software to restaurant and retail operators to assist them in forcasting sales performance in their businesses.
3-C Institute For Social Development, Inc.	A research and development company devoted to promotion positive mental health and adaptive functions of children and families through evidence based on educational materials.
Inneroptic Technology, Inc.	Inneroptic is engaed in the research and development of advanced visualization product for minimally-invasiver surgery
Intercede, Inc.	Corporate human resources consulting, software development and training.
International Garment Technologies, L L.C.	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.
International IT Services, Ltd.	Provides information technology services to other businesses in areas such as eCommerce, web application, quality assurance testing, etc.
Intersouth Affiliates V, L.P.	Venture capital firm focusing on early stage investments in the high technology and life sciences industries.
Intersouth Partners V, L.P.	Venture capital firm focusing on early stage investments in the high technology and life sciences industries.
Intersouth Partners VI, L.P.	Venture capital firm focusing on early stage investments in the high technology and life sciences industries.
Intersouth Partners VII, L.P.	Venture capital firm focusing on early stage investments in the high technology and life sciences industries.
Intervolve, Inc.	Development, marketing and sale of customized solutions for the information technology needs of the beverage
Joseph Charles, LLC	The company is engaged in the business of arranging for the design and production of various products and services.
Klein Decisions LLC	Engaged in the manufacture, production, sales and service of web-based decision software for the financial services industry
Krenitsky Pharmaceuticals, Inc.	Engaged in the discovery and early development of drugs that provide new therapies or improve existing ones and lower overall medical costs.
Laamscience, Inc.	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
Learning Management Systems, Inc	Provides distance learning technology and professional services.
Linwood, Inc. (Renewl due 10/15/07 with F/S)	Will design, engineer, manufacture, assemble, finish, warehouse, distribute and sell at wholesale to other manufacturers/retailers wood components to make furniture
Liquidia Technologies, Inc.	Research and development of chemical compounds
Listingbook, LLC	Software solutions for real estate agents and their customers.
Live Cargo, Inc.	A Secure Messaging software company that provides products and services to transfer, store, and ensure secure delivery of digital documents.
Longleaf Films, LLC	Is engaged in financing, production, distribution and exploitation of a motion picture.
Magnus Health Technology, Inc.	The business is developing a system for the organization, storage and distribution of health records
Mediplay, Inc.	Providing digital marketing solutions for health care professionals.
MD Scientific, LLC	Engaged in research and development to improve healthcare through commercialization of medical innovations developed by physicians.
MediWave Star Techology Inc.	Research and development of technology and devices which incorporate such technology, for use in the field of medical diagnostics.
Microphase Coatings Inc.	Engaged in marine vessel coating development
Modality, LLC	Modality is the developer of technology used to transform and distribute handheld devices, allowing mobile access to trusted content.
Moving Midway, LLC	The applicant business is engaged in the financing,production,distribution and explitation of a motion picture.
MyBode, Inc.	Developing, marketing, and selling proprietary Internet applications to the real estate industry.
NanoLume, Inc.	Engaged in nanotechnology research and development , specializing in nanoscale semiconductor materials and products.
Near-Time, Irtc.	Near-Time is a software development and sales company committed to delivering the best systems available to businesses.
Neuisys, LLC	The company engages in the business of distributing medical equipment at wholesale.
OroBridge, Inc.	The company has designed and intends to manufacture solid-state thermoelectric heating devices to produce electricity from heat.
Oryel, Inc (Renewl due 9/15/07 F/S due 11/30/07)	Provides web-based human capital management solutions including payroll, human resources, benefits administration employee/manager self-service
Oy Vey My Son Is Gay Productions LLC	The production of a movie in New Hanover County.
Paladin Laboratories, LLC	Engaged in the refurbishment and sale of new and refurbished medical equipment and instruments.
Patriot Software Systems, Inc.	Engaged in research and development of computer software.
Paula Lee Haller Productions LLC	The business is engaged in the development, financing, production, distribution and exploitation of motion pictures.
Piedmont Angel Network LLC	Invests in capital stock or debt instruments of growth companies, including but not limited to, early stage privately-held companies.
Piedmont Angel Network TWO LLC	Will invest in capital stock or debt instruments of growth companies, including but not linited to early stage, privately-companies.
Piedmont Pharmaceuticals LLC	Pharmaceutical research & development
Pogo Health LLC (From LLC to Inc.)	Primarily engaged in providing a service & products business to business getting them to offer as part of companies hmo's.
Qualyst, Inc. (fka ADMETech, Inc.)	Developing ADMET technologies to be licensed to the life sciences industry.
RadarFind Corporation	Developing an asset tracking system for hospitals and care centers. "Indoor GPS system" for mobile medical devices used in hospitals (beds, infusion pumps, incubators).
Realserv, LLC	To gather data, process, then evaluate,package and sell this data to businesses.
Regado Biosciences, Inc	Is a biopharmaceutical company developing antidote-controlled therapeutics, focusing on the acute care antithrombotics market.
Resource4Realtors, LLC	Engaged in the research and development of internet-based software applications to assist agents and buyers in the real estate industry.
Respirics, Inc.	Respincs is a respiartory drug delivery and development company serving pharmaceutitial biotechnology and diagnostic industries.
Roy G Biv Networks, Inc.	The company provides online service that connects people, neighborhoods and communities.
rPath, Inc.	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.
Run Lightning 1956, LLC	Business is producing a single movie, "Run Lightning", and will exploit it in all available markets.
SCP Distribution, LLC	The company warehouses and distributes purified water, it expects to manufacture and process water in the future.
Sequentric Energy Systems, LLC	Sequentric Energy Systems has developed and has a patent for management control system for business customers.
Sicel Technologies, Inc.	A medical device company focused on systems, monitors, and software for cancer treatments.
Southern Capitol Technology Fund II, LP	Venture capital investments.
Southeast Techventures, Inc. (From OBV to OGB) Must file (F/S)	They are a technology accelerator focused on migrating technologies from universities into commercial marketplace
Specialty Wood Components, Inc.	Research, development, manufacturing and marketing of treated wood products
Starta Development, Inc.	An internet based service that manages date and documents for the development of affordable-housing apartments.
Synermed Select Partners, Inc.	Refurbish medical equipment and instruments.
Syntherica Corporation	The company is engaged in activities related to the research & development of a proprietary surrogate antibody technology.
Table Rock Springwater Co.	Manufactures and distributes bottled water.
Textile Film Initiative L.L.C.	Engages in the financing, and exploitation of motion pictures.
The Elevator Channel, Inc.	Uses patented technology to reach consumers through high-resolution displays that can be deployed inside elevators

The List Productions, LLC	Formed to participate in the financing, production, distribution and exploitation of a feature-length motion picture.
Trana Discovery, Inc.	The company is engaged in research and development drug discovery technology.
Tri-State Investment Group IV, LLC	Acquires capital stock or debt instruments of growth companies, including but not limited to early stage privately-held companies.
Triad Specially Products LLC	Will function as an animal pharmaceutical company.
Triumfant, Inc. (fks Chorus Systems, Inc)	Developing and dilivering automated computer support software for personal computers.
U.S. Environmental Protection Service, LLC	Develops and produces proprietary erosion controlled processes, products, and systems.
Versatile Premium Products, LLC	Engages in the manufacturing of a Facia System known as Clip-Eze for commercial and other applications.
Vtflex, Inc.	Design, enginer, manufacture, market VT Flex therapeutic exercise devices for consumers, hospitals, and physical therapy clinics.
Virtual Heroes, Inc.	Company is focused on research and development of interactive software solutions and commercial game development.
Visitar, Inc.	Provides software solutions to increse sales and improve customer service.
Voyager Pharmaceuticl Corporation	Voyager pharmaceutical is dedicated to finding cures for major age-related diseases. Initial focus is Alzheimer's disease.
Wilmington Pharmaceuticals, LLC	A research and development company of user-friendly dosage forms for established prescription pharmaceutical products.
Women's Edge, Inc.	Magazine publication, advertising and event sponorship for professional women.
Yap, Inc.	Develops and markets speech and voice-enabled mobile software.
ZellComp, Inc.	Researching, developing, manufacturing and commercializing innovative fiber-reinforced products for a variety of uses.
Zenph Studios, Inc.	Development of software to create, analyze and record music.
ZyCare, Inc.	Engages in research and development with a primary focus in cost effective clinical management of insulin-requiring diabetes mellitus.

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