2012

REVENUE LAWS STUDY COMMITTEE

MINUTES

NORTH CAROLINA GENERAL ASSEMBLY
REVENUE LAWS STUDY COMMITTEE
Wednesday, January 4, 2012
Room 544, Legislative Office Building
9:30 a.m.

The Revenue Laws Study Committee met at 9:30 a.m. on Wednesday, January 4, 2011, in room 544 of the Legislative Office Building. Twenty-two members attended the meeting. The following Senators were present: Senator Blue, Senator Brunstetter, Senator Clodfelter, Senator Harrington, Senator Hartsell, Senator McKissick, Senator Rabon, Senator Rucho, Senator Rouzer and Senator Stevens. The following Representatives were present: Representative Howard, Representative McComas, Representative Alexander, Representative Blust, Representative Brubaker, Representative Hill, Representative Lewis, Representative Moffitt, and Representative Starnes. Representative Danny McComas presided as chair.

The North Carolina Estate Tax

Greg Roney, a tax attorney with the Research Division, was recognized. He provided an overview of North Carolina's estate tax. He explained North Carolina's link to federal laws, provided collection amounts from previous years and a comparison of what other states are doing. He concluded with a summary on the uncertain future of the federal estate tax and its effect on North Carolina. A copy of his power point presentation is attached.

Dick Patten, President of the American Family Business institute, was recognized. He explained the "2012: Year of Class Warfare" and gave an example of the Occupy DC movement as part of the rising political rhetoric that will stay through 2012. He went into detail regarding class warfare and the estate tax, offering demographic polling information on the repeal of the estate tax. He provided information on congressional action on the repeal of the federal estate tax and the possible positive effects on the job market and economy. He concluded by bulleting the negatives of estate taxes. A copy of his power point presentation is attached.

Edwin McLachlan, a public policy analyst with the NC Budget and Tax Center, was recognized to briefly speak in favor of the estate tax.

Update on ESC Issues

At this point in the meeting, Senator Rucho chaired the remainder of the meeting.

Lynn Holmes, Division of Employment Security was recognized. She was sworn in by Rebecca LeClair, Worley Reporting, who transcribed Ms. Holmes' remarks (a copy is attached). A copy of Ms. Holmes' power point presentation is attached.

Secretary Keith Crisco, Department of Commerce, was recognized. He provided a review of the objectives of the merger of the Division of Employment Security with the Department of Commerce; workforce development, policy research strategic

planning/labor market info activity and statues of contracts and savings achievement. A copy of his power point presentation is attached.

The meeting adjourned at 12:36 p.m.

Representative Danny McComas
Presiding Chair

Senator Bob Rucho
Presiding Chair

DeAnne Mangum
Committee Assistant

DRAFT

REVENUE LAWS STUDY COMMITTEE AGENDA

Rep. Julia Howard *Rep. Danny McComas* *Sen. Bob Rucho*

Wednesday, January 4, 2012
Room 544, Legislative Office Building
9:30 a.m.

I. Approval of Minutes from the December 7, 2011 Meeting

II. The North Carolina Estate Tax

- **Overview**
  Greg Roney, Research Division
- **Comment**
  Dick Patten, President, American Family Business Institute

III. Update on ESC Issues

- *Lynn Holmes, Assistant Secretary, Division of Employment Security*

IV. Adjournment

Next Meeting Date: February 1, 2012
in Room 544, LOB, at 9:30 a.m.

NC Estate Tax Overview

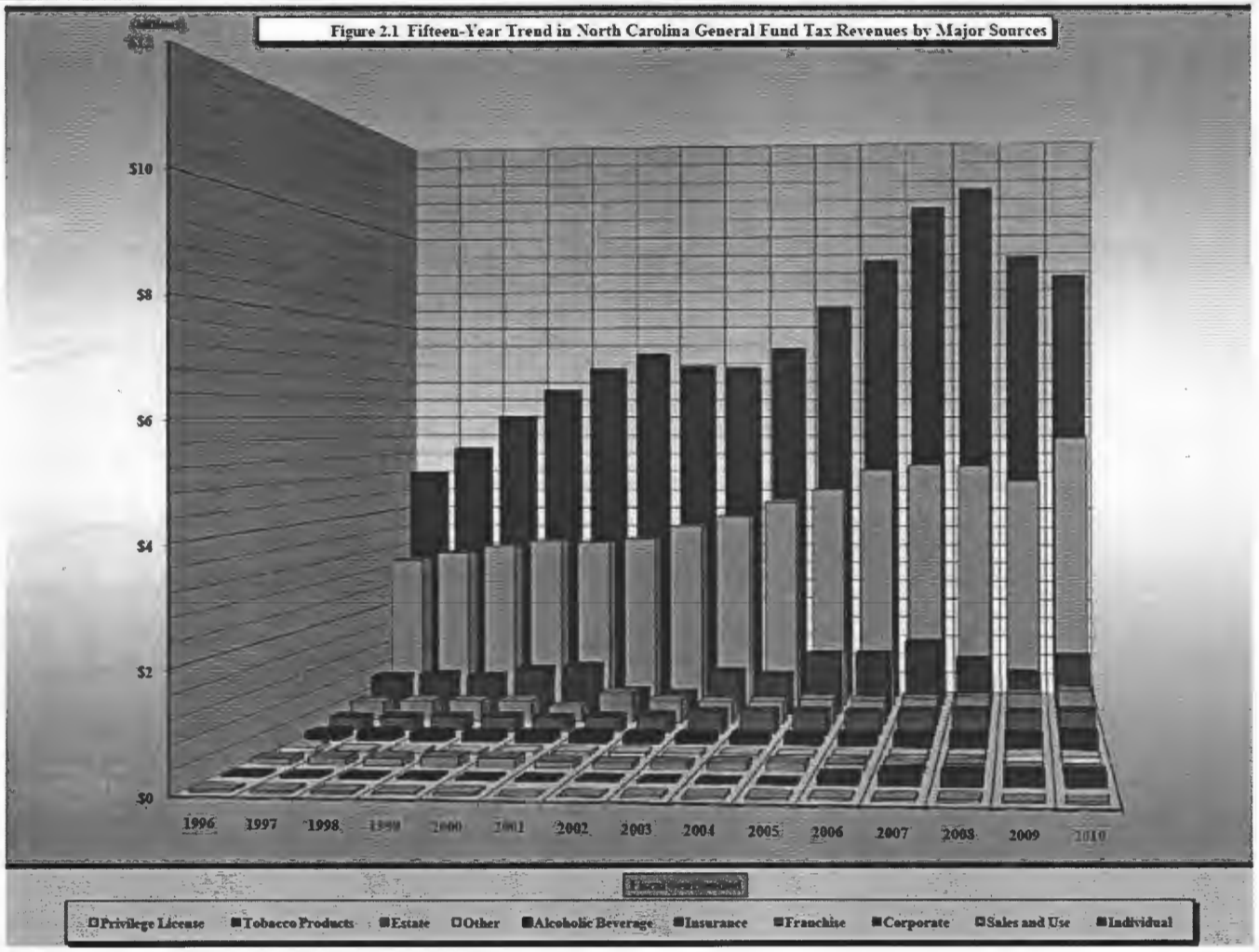
Revenue Laws Study Committee

January 4, 2012

Greg Roney, Research Division

NC Estate Tax: 0.39% General Fund Tax Revenue in 2009-2010

Source and Chart: NC Department of Revenue



Estate Tax Applies at Death

- Tax on Past Activity (Accumulated Savings)
  - Wealth Transfer Tax - Estate Tax
- Tax on Ongoing Economic Activity
  - Income Taxes
    - Individual Income Tax
    - Corporate Income Tax
  - Consumption Taxes
    - Sales and Use Tax
    - Alcohol, Tobacco

NC Estate Tax Collections and Projections

Year	Collections (*=Projected) in millions
2001-2002	$104.7
2002-2003	$112.5
2003-2004	$128.4
2004-2005	$135.2
2005-2006	$133.3
2006-2007	$161.5
2007-2008	$158.7
2008-2009	$104.2
2009-2010	$71.9
2010-2011	$23.8
2011-2012	$64*
2012-2013	$92.2*

Other States: 22 States and DC Impose Estate Tax or Inheritance Tax

Source: CCH, a Wolters Kluwer business

Federal Estate Tax - History

- Federal wealth transfer taxes date to 1797
  - Historically imposed to fund wars
- NC estate tax law has followed federal law changes
- Federal estate tax laws have changed yearly since 2001

2001 - Federal Estate Tax

- Exemption: $675,000
- Top Rate: 55%
- Property received basis stepped-up to FMV
- Federal estate tax shared revenue with States with 100% credit for State estate tax
  - Estates paid state estate tax then received fully offsetting federal credit
  - All 50 States and DC imposed State estate tax

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA)

- EGTRRA Phased Out Estate Tax
  - During 2001-2009, federal estate tax phased out
  - For 2010, federal estate tax repealed
  - For 2011, federal estate tax returns to 2001 rates
- EGTRRA Phased Out Revenue Sharing
  - For 2002-2004, credit phased out
  - For 2005-2009, 100% deduction for State estate tax where estate receives federal deduction that partially offsets State estate tax

2010 – No Federal Estate Tax

- No compromise reached before 1/1/10
- Federal estate tax allowed to lapse for 1 year
  - EGTRRA applied estate tax in 2011
- Estate tax would later be retroactively applied on an elective basis

Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010

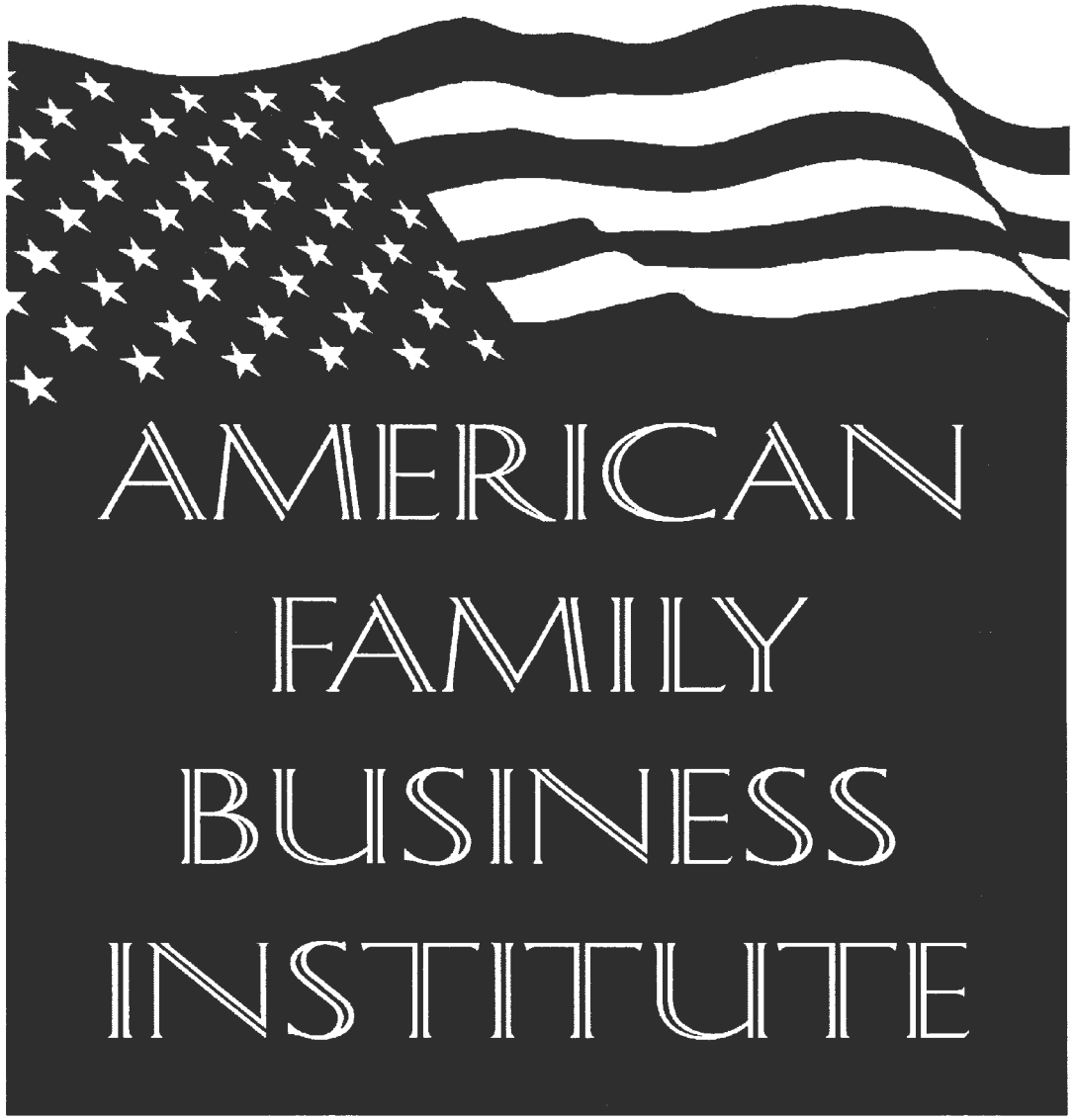
- 2010 Tax Relief Act
  - Imposes federal estate tax in 2011 and 2012
    - 100% deduction for State estate tax applies
    - Exemption: $5 million with portability between spouses
    - Top Rate: 35%
    - Property received basis stepped-up to FMV
    - Estates could elect to apply the estate tax under EGTRRA or the estate tax under 2010 Tax Relief Act
  - For 2013, federal estate tax returns to 2001 rates

NC Estate Tax – Base and Rate

- When is a NC Estate Tax imposed?
  - For deaths in 2010, no estate tax
  - For deaths in 2011-2012, estates over $5 million (NC only State with full $5 million exemption)
  - For deaths in 2013, estates over $1 million
- What is the tax rate?
  - Graduated rates from 0.8% to 16%
  - 16% applies to estates over $10 million

Summary and Uncertain Future of Federal Estate Tax

	2010	2011-2012	2013 and later (same as 2001)
Federal Exemption	N/A – No Tax	$5 million	$1 million ($675,000 in 2001 increased by Taxpayer Relief Act of 1997)
Top Federal Rate	N/A – No Tax	35%	55%
Portability of Exemption between Spouses	N/A – No Tax	Yes	No
Basis of Property Received	Modified Carryover Basis	Stepped-Up Basis	Stepped-Up Basis
State Estate Tax Credit or Deduction	N/A – No Tax	100% Deduction	100% Credit
NC Estate Tax	N/A – No Tax	Yes	Yes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2012: Year of Class Warfare

- Occupy DC
- Campaign Rhetoric
- Media

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The Politics of "Covetousness"

- 99% vs. 1%
- "heroes" vs. "villains"
- 1% "villains":
  - Family farmers
  - Family business owners
  - Entrepreneurs

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Class Warfare & Death Tax

" The abolition of all right of inheritance."

-**Karl Marx**, Communist Manifesto

Point #3 of 10

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Estate Tax & Polling

- 2/3+ Americans: Repeal Estate Tax
- Oregon: 58% repeal vs. 14% keep the Estate Tax
- Demographic & Death Tax: -$30,000

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Jobs

57% of jobs come from America's family businesses.

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Jobs

Federal Estate Tax repeal will:

- Add **1,500,000** jobs to the American economy
- Add **42,669** jobs to North Carolina's economy

-Dr. Douglas Holtz-Eakin former Director Congressional Budget Office

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Let's Talk About Congress

Election:

- ★ 500+ pledge signers
- ★ 278 primary winners
- ★ 131 elected pledge signers

Results:

- ★ 12 Senators
- ★ 119 House Members

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House

- ★H.R. 1259
- ★Brady-Ross Bill
- ★193 Cosponsors
- ★Bipartisan

Senate

- Sen. John Thune, R-South Dakota
- Possible votes

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White House

- President Obama: 45% with $3.5
- Presidential Death Tax Repeal Pledges:
  - Michelle Bachman
  - Newt Gingrich
  - Gary Johnson
  - Rick Perry
  - Mitt Romney
  - Rick Santorum

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State Death Tax battles

- 29 States have no Death Tax
- 21 States have either:
  - Estate Tax
  - Inheritance Tax
  - Both
- **Ohio:** 2011 Estate Tax repeal victory

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State Death Tax battles: 2012

- Oregon
- Nebraska
- Indiana
- Minnesota
- Tennessee

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State Death Tax battles Tennessee study

The Economic Consequences of Tennessee's Gift and Estate Tax

By Arthur Laffer, Ph.D. & Wayne Winegarden, Ph.D. November, 2011

"Tennessee's gift and estate tax is the single greatest reason why wealthy people don't want to live in Tennessee. Many leave the state and few move into Tennessee. They take all their jobs, entrepreneurship, spending, homes and wealth with them. This is the single greatest detriment to Tennessee's growth and Tennessee's ability to raise sufficient tax revenues. If Tennessee's gift and estate tax were repealed or greatly reduced Tennessee's state tax revenues would increase, not decrease."

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State Death Tax battles Tennessee study

- Had Tennessee repealed their Estate Tax 10 years ago:
  - Tennessee economy: 14% larger
  - 200,000+ more jobs
  - $7+ billion in more tax revenue

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State Death Tax Studies

- Connecticut
  - Out-Migration of people & capital
  - People: $446,000, average income
  - Capital: $7,500,000, average capital/person

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State Death Tax Studies

- Rhode Island
  - Estate Tax brought in: +$27 million
  - Out-migration due to the Estate Tax cost: ($111 million) of tax revenues
  - 4 to 1 ration: $4 lost vs. $1 tax revenue

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Conclusion

In a time of political Class Warfare:

- ★ Estate Taxes were originally created not as a source of revenue but as a wealth redistribution tool.
- ★ Estate Taxes are a very minor source of tax revenue
- ★ Estate Taxes drive out productive people, their income, spending, jobs creation and capital.
- ★ Estate Taxes are a net negative in overall tax revenue

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"No taxation without respiration!"

www.nodeathtax.org

NORTH CAROLINA GENERAL ASSEMBLY

REVENUE LAWS STUDY COMMITTEE

UPDATE ON ESC ISSUES

TRANSCRIPT OF THE PROCEEDINGS, EXCERPT
(TESTIMONY OF COMMERCE SECRETARY KEITH CRISCO AND
ASSISTANT SECRETARY LYNN HOLMES)

In Raleigh, North Carolina
Legislative Office Building, Room 544
Wednesday, January 4, 2012, 10:10 a.m.
Reported by Rebecca R. LeClair, CVR

Worley Reporting
P.O. Box 91447
Raleigh, NC 27675
919-870-8070

CO-CHAIRMAN MCCOMAS: We're going to move in now with Part III. Will the Committee stand at ease for just a minute? We've got a few procedural issues to take care of.

(RECESS, 10:11 A.M. - 10:15 A.M.)

CO-CHAIRMAN RUCHO: Okay. Well, let's move forward to the next item of business.

As an effort for the Committee to comprehend and understand the actions and what's taking place regarding the Employment Security Commission, the transfer over to the Department of Commerce, which we applaud, I know Secretary Crisco is a good partner in trying to get this problem with ESC resolved. I hope today they can probably show us the problem that exists, some recommendations, and then subsequently Assistant Secretary Holmes will be recognized to give a report. And then there'll be some additional questions subsequently.

Secretary Crisco, welcome to us. Happy New Year to you, sir.

SECRETARY CRISCO: Thank you.

CO-CHAIRMAN RUCHO: Good to have you with us. And the podium is yours.

SECRETARY CRISCO: Thank you very much.

Well, again, thank you for this opportunity to give you an update on what is now officially called the Employment Security Division of the Department of Commerce.

My first and important task is to give a very big, sincere voice of appreciation to Undersecretary Dale Carroll, who in December made a wonderful presentation, I understand, and stood in for the other fellow over there, the tall, bald guy, who was not around. And so he was able to, I think, give a good update on what was going on at that time. And I have some more progress to report.

You'll be getting a lot of slides, so I hope you're in good position to see what we're-- what we're going to be talking about.

Let me first of all review with you, if I might, kind of the objectives of the merger and what we're trying to do.

And number one is to improve customer service for both employers seeking employees and also for employees seeking work, so, again, it's a double objective: implement the merger with minimal impact on our customers; then consolidate and improve the workforce-development efforts, and

there are many facets of that within our state; and then leverage the labor-market data, which has been around for a long time, to enhance our economic-development efforts; and lastly and -- but very importantly, to maximize savings not only to the state, but, yes, federal resources, also.

Our implementation has taken really four -- up to date, four main efforts: one -- and I'll go into some detail on each of these -- is the workforce and employment services area, policy research and strategic planning and labor-market info, and human resources and financial management.

First, and a very, very important area, workforce development, employment services. You may have seen that we made an announcement in December that we have consolidated the entire workforce area, formerly in what was called the Employment Security Commission, in the Department of Commerce, under a man, Roger Shackleford.

Roger was heading the Department of Commerce workforce effort and has been in this industry and doing this kind of work for 25 to 30 years. He's a real leader. I hope you know him. If you haven't met him, you need to meet him. He's viewed by the industry, so to speak, and by other

states in the nation as a real leader.

One of the most heartwarming comments was made by Roger. Now, you and I are going through this consolidation, and we see other consolidations in state government and federal government, and there are bumps in the roads, and there's some of them are smooth. Roger came to us and said, "I've been waiting for something like this to happen for 15 years. We've needed it for 15 years." So, you should take some satisfaction in that we probably did something right in -- and -- in getting this group together, the consolidation and the focus and the -- and the actual combined work will be great.

We have formed five teams underneath Roger to study, come back, as we get deeper in the weeds, so to speak, within those two organizations, and how to pull it -- pull it together: workforce WIA funds, policy and programs, technology integration, which is a whole, again, world unto itself, staff development, what kind of people we need, what's the best type people for this merged organization, and brand development -- that is, what we call ourselves, what we need to be focusing on, and what's -- what is our brand, and how do we combine services.

There's about 70 people working on these several committees. They have additional antennas out to local workforce commissions, to many stakeholder presentations before them, so -- and the goal is, by mid-February, which is now only about six weeks away, to have a presentation for the total integration of how we move forward. But those teams are working, have been working. They have -- we have a leader assigned. And so I'm very pleased to report where we are on that.

And again, as Roger said, they've all been waiting around for somebody finally to do this, and we finally did it. And so thank you for helping us achieve that.

The other area that we would -- we have taken specific leadership initiative is the general area of policy research and strategic planning, labor-market-info activity. You remember that Labor Market was within the historical Employment Security Commission, and the Policy Research was for the Commerce. One had certain data; the other had other data. And again, we believe the merger will have a more honed-down, more-complete information available.

Stephanie McGarrah has been appointed to

head that group, and she in turn has also assigned five focus groups -- you have those on the slide -- Bureau of Labor Statistics programs, which we think will be a separate department; Economic Analysis, which was historically in Commerce, but how that can be updated, be more complete; Occupational and Policy Analysis. And the Workforce Research will be part of helping Roger in his work, so -- and how we deliver our information more efficiently and more appropriately with some of the federal standards.

So, those five groups are meeting. They have the same timeline as far as reporting back and getting an actual ongoing organization.

I know we're all interested in the status of contracts that we have and the savings achievement. The next speaker will speak a little more to some of the contract situation, but as far as the view out there, the study, we've talked about many times on the UI debt and fund solvency. RFP was initiated. We're in the process of reviewing that, the results of that RFP. And we hope to have something very soon on that. But it was within the state purchasing procedure; we're proceeding at -- under the time frame of -- that's

dictated there.

There were some budgeted savings for both '11-'12 and '12-'13. We have certified the budget, have identified those savings meeting the criteria of the 251,000 and 377,000.

Let me informally say that -- again, we certified that -- we hoped that it would be greater than that, but that was at least -- we certified the budget, that we will achieve those savings.

So, again, that's very quickly going through kind of the status generally. The biggest thing that we've done, I think, is to appoint an Assistant Secretary for Unemployment Insurance. And that Assistant Secretary is Lynn Holmes. And Lynn is here today.

We're very pleased to have Lynn. Her background in both the private sector and government, both in -- and her work at the Employment Security Commission since early 2010 gives her a good background to do this work. And we're working closely with Lynn, and Lynn's working very closely with us as we move forward.

And I'm going to ask Lynn to come forward now --

CO-CHAIRMAN RUCHO: Mr. Secretary?

SECRETARY CRISCO: Yes.

CO-CHAIRMAN RUCHO: Before we just do that, may we ask if the Committee has any questions of you?

SECRETARY CRISCO: That'd be fine.

CO-CHAIRMAN RUCHO: Okay.

SECRETARY CRISCO: I'll be -- both now and after Lynn's done.

CO-CHAIRMAN RUCHO: Yeah. Yeah. Right.

SECRETARY CRISCO: If there's some for me afterwards.

CO-CHAIRMAN RUCHO: Okay. I mean, based on --

SECRETARY CRISCO: Both. Both.

CO-CHAIRMAN RUCHO: -- on the Secretary's comments up to this point, because we have a more in-depth report coming on ESC, but Representative Lewis.

REPRESENTATIVE LEWIS: Thank you, Mr. Chairman. And I thank you, Mr. Secretary. I was trying to write. You talk much faster than I can write, and I --

SECRETARY CRISCO: I'm a Southerner --

REPRESENTATIVE LEWIS: -- apologize for that.

SECRETARY CRISCO: -- so I can't talk too fast.

REPRESENTATIVE LEWIS: Well, there's some of us from the South actually say things twice, to make sure people get them.

SECRETARY CRISCO: Right.

REPRESENTATIVE LEWIS: But I missed the amount of certified save -- the amount of certified --

SECRETARY CRISCO: Thank you. I'll be glad to give you that.

REPRESENTATIVE LEWIS: -- savings that you said.

SECRETARY CRISCO: Roughly $251,000 in this budget year and two -- 251,376, and in '12-'13, $377,064. And those were the initial projected numbers. We have now certified those and put them in the official budget. So, that's on forecast, a businessman would say.

REPRESENTATIVE LEWIS: Thank you.

CO-CHAIRMAN RUCHO: Follow-up?

REPRESENTATIVE LEWIS: Yes, sir, Mr. Chairman. Thank you, again, Mr. Secretary. I don't know if the next presenter will get into this. Did you want to go into, or will the next

presenter go into, how you met these goals? Or is that a little bit further in the weeds than the Chairman wants to go at this time? I'll be glad to --

SECRETARY CRISCO: Well --

REPRESENTATIVE LEWIS: -- withdraw that question if that's not where we want to go with it.

CO-CHAIRMAN RUCHO: Mr. Secretary, are you comfortable with that question, or are you -- do you --

SECRETARY CRISCO: Well, it's -- very frankly, it's in -- it's some personnel -- it's in some assumed personnel changes. We don't have all the details worked out yet, but we'll -- we will make those -- the savings.

CO-CHAIRMAN RUCHO: Representative Lewis, we can have the Secretary back another time as--

SECRETARY CRISCO: Yeah, we --

CO-CHAIRMAN RUCHO: -- as he proceeds forward with that.

SECRETARY CRISCO: Yeah.

CO-CHAIRMAN RUCHO: Okay. Additional questions?

SECRETARY CRISCO: Additional questions.

CO-CHAIRMAN RUCHO: Yes, sir, Senator

McKissick.

SECRETARY CRISCO: Yes, sir.

SENATOR MCKISSICK: Sure. A couple, Mr. Secretary. I know during our last meeting, the Lucas Group was identified as a company that met all of the obligations for being considered awarded, you know, the contract that was contemplated under Senate Bill 99.

SECRETARY CRISCO: Right.

SENATOR MCKISSICK: And I was wondering if this was the same group that was used in South Carolina to do a similar evaluation, and if so, what kind of findings came out of there that might -- that -- or is it going to be close, or analogous, or similar to what --

SECRETARY CRISCO: Well --

SENATOR MCKISSICK: -- we're looking for, or what?

SECRETARY CRISCO: As to your first question --

SENATOR MCKISSICK: Yes.

SECRETARY CRISCO: -- the Lucas Group you talked about is the same group that did the study in South Carolina. The Lucas Group -- the South Carolina situation was a bit different than--in

several ways -- than North Carolina. I think they should be considered.

And again, we're going through the RFP submissions right now to look at how that would fall out. But they are someone who have been in this field, they've done it for many years, and they've done -- worked more than just in South Carolina. But they were the ones in South Carolina. Again, you've got to make sure you're apples and apples, and that's what we're trying to do here.

SENATOR MCKISSICK: Sure. A quick follow-up?

CO-CHAIRMAN RUCHO: Follow-up?

SENATOR MCKISSICK: Yeah. What findings came out of South Carolina? If you are aware of those or --

SECRETARY CRISCO: Well, I don't have all the facts in front of me today, but they had multiple issues, both in taxation and what I -- and what I -- and also in the impact on -- the solvency was an issue there, also. So, they had many similar issues, but they had some other issues that --

SENATOR MCKISSICK: Quick follow-up?

CO-CHAIRMAN RUCHO: Follow-up?

SENATOR MCKISSICK: Yeah. And let me ask you this. I know last week I was reading the N&O, and they mentioned this $200 million in savings. And I guess it goes to some of the same issues that were just posed by Representative Lewis. I mean, do we know at this point in time where those savings will occur? And do we anticipate layoffs? And if so, to what kind of magnitude do we think those layoffs would be?

SECRETARY CRISCO: I don't -- I don't have those.

SENATOR MCKISSICK: Okay. Quick follow-up?

CO-CHAIRMAN RUCHO: Follow-up question?

SENATOR MCKISSICK: Yeah. Before we went down this path, did the U.S. Department of Labor provide any kind of guidance on whether they thought this type of merger would be -- did they look at it favorably? Did they feel there were problems associated with it? Or what kind of guidance did they provide, if we sought that?

SECRETARY CRISCO: I invite you to discuss that also with the Assistant Secretary, who was obviously very involved with the Department of

Labor more than I was during my -- prior to this merger. But my understanding is, these type mergers have taken place in many states, so -- which they've been involved both in helping and advising. And I would certainly hope that they would be doing that now.

It's hard -- I think the image of these mergers being cookie-cutter, meaning the same in each state, is wrong. And the Department of Labor has been involved in many, many of them, and has supported many of them. But again, it's -- it does vary a bit by state. It's not a cookie-cutter situation.

SENATOR MCKISSICK: Okay. And I guess kind of a last follow-up, here.

CO-CHAIRMAN RUCHO: Last follow-up.

SENATOR MCKISSICK: In terms of the Board of Review that's contemplated, has it been established -- has it --

SECRETARY CRISCO: It has not been established. And the one issue we have on the -- that we've reviewed with some of the leadership is, it's still some legislative work we feel needs to be done to give us the ability to have board review. We've -- we encourage that to proceed,

because we need -- for full, full implementation, we need a Board of Review in place.

SENATOR MCKISSICK: Is there money involved --

CO-CHAIRMAN RUCHO: Thank you.

SENATOR MCKISSICK: -- for that? Funds allocated at this time, or do we -- do you know?

SECRETARY CRISCO: Well, you know, that's a budgetary issue for this body to determine.

SENATOR MCKISSICK: Thank you, Mr. Secretary.

SECRETARY CRISCO: Thank you.

CO-CHAIRMAN RUCHO: Thank you. Representative Howard?

CO-CHAIRMAN HOWARD: Thank you. Mr. Secretary?

SECRETARY CRISCO: Yes.

CO-CHAIRMAN HOWARD: Under the -- following up with Senator McKissick's question: When do you anticipate that the study will begin? The RFP has been let. It's --

SECRETARY CRISCO: We are in final stages. You know, it's hard for me to give you a date, because, again, the State's purchasing issue's got to be reviewed. But we're at -- we're

at the end part of that review. But soon, whatever that means. I mean --

CO-CHAIRMAN HOWARD: Soon?

SECRETARY CRISCO: Soon. I mean, yeah. Hopefully, I'm not going to be standing here again without this stuff. But I've -- sorry.

CO-CHAIRMAN HOWARD: And just one other question --

SECRETARY CRISCO: Yes.

CO-CHAIRMAN HOWARD: -- regarding that study.

CO-CHAIRMAN RUCHO: Follow-up?

CO-CHAIRMAN HOWARD: Will that also study tax issues and also the responsibilities of the Department? What was actually --

SECRETARY CRISCO: Actually, the first --

CO-CHAIRMAN HOWARD: -- included in that?

SECRETARY CRISCO: Actually, this RFP, at the end of the day, when we -- finally a submission was -- was on the financial stability of the fund only, but there's anticipation that there will be a study on organization and responsibility, et cetera, because we need in place some of our advisor groups, which we've talked about would help us with that, also.

CO-CHAIRMAN HOWARD: Okay.

CO-CHAIRMAN RUCHO: Any other questions from members of the -- Senator Hartsell?

SENATOR HARTSELL: Thank you, Mr. Chairman. Just fairly quickly, going back to this Board of Review question.

SECRETARY CRISCO: Yes, sir.

SENATOR HARTSELL: The statute -- the session law that we adopted identified that we have that Board of Review in place by the 1st of November '11.

SECRETARY CRISCO: Right.

SENATOR HARTSELL: And I understand it is not in place.

SECRETARY CRISCO: It is not in place. And the reason -- you want me to give you a specific --

SENATOR HARTSELL: Please.

SECRETARY CRISCO: -- don't mean to interrupt -- is that there was no stipulation for a salary, what they should be paid. And it's basically a full-time position. And we need to -- we need clarification in order to identify staff. We understand this body needs to establish the salaries. And as soon as that's done, we're ready

to go.

SENATOR HARTSELL: Follow-up?

CO-CHAIRMAN HOWARD: Follow-up?

SENATOR HARTSELL: In which case this reduction of roughly $300,000 in the two fiscal years, as you identified, is still subject to probably an additional appropriation associated with those salaries, would it not be, so we don't have that kind of reduction?

SECRETARY CRISCO: Well, yes. But let's don't assume that --

SENATOR HARTSELL: Okay.

SECRETARY CRISCO: -- till we get into it. Plus, it's about $500,000, or 250 -- it's about 600,000 in the--in the two years. It's 250 and 370, in two successive years.

CO-CHAIRMAN RUCHO: Members of the Committee, any other questions? Just a comment, Mr. Secretary?

SECRETARY CRISCO: Yes.

CO-CHAIRMAN RUCHO: I'm -- I do applaud your work on the job training. I remember, back when we -- when I was here the first time, we made an effort to consolidate. Big step forward. I hope you'll work with the community colleges --

SECRETARY CRISCO: Yes.

CO-CHAIRMAN RUCHO: -- also in that effort. I think it's time that we can really help out the workers in preparing them for the jobs of the future.

SECRETARY CRISCO: We've already been in communication with the community colleges, with the president, and we anticipate doing that.

Now, let me -- again, as I said I would do -- introduce Assistant Secretary Lynn Holmes. And she will continue our presentation. There'll be questions, I'm sure, of her, and I'll be glad to come back up. Thank you very much.

CO-CHAIRMAN RUCHO: Thank you, Mr. Secretary. Ms. Holmes, welcome. Happy New Year.

ASSISTANT SECRETARY HOLMES: Happy New Year.

CO-CHAIRMAN RUCHO: And you've got a presentation now in regards to questions that have been represented. Correct?

ASSISTANT SECRETARY HOLMES: Yes. Thank you.

CO-CHAIRMAN RUCHO: Thank you, ma'am.

ASSISTANT SECRETARY HOLMES: Good morning. Good morning, Senator Rucho -- Chairman

Rucho, Representative McComas, and Representative Howard. Good morning, members of the Committee.

I'm happy to be here this morning to discuss the questions forwarded to me by the Committee staff with reference to the Employment Security Commission/Division of Employment Security.

Let me say at the outset that I have the utmost respect for this body. Some of you know that I was a lobbyist here at one point in my career. And at the Division of Employment Security and -- first at the Division of Employment Security, as well as Employment Security Commission, we have done our best to be responsive to this body.

So, we had a good meeting with Senator Rucho and Representative Howard, Secretary Crisco and I, yesterday. And so we look forward to continuing to work with this Committee. It has been our goal to always be responsive, and so I wanted to at least get that out at the outset.

Secretary Crisco has covered several of the questions that -- the first three questions, in fact -- that were sent to us by the Committee. And I -- it's my task to cover the vast majority of the

rest of them.

And so you have in front of you a very large deck, a fairly thick deck. And we'll try to go through this as soon -- as quickly as possible. And to the extent that you have questions, we'll be happy to answer them. Secretary Crisco and I talked earlier. If there are questions of both of us even after this presentation, we'll be here as long as we need to be to answer questions.

So, we will start with the deck. I want--I wanted to start with at least context, because many times, I think, there's some misunderstanding about what we do at the former Employment Security Commission as well as the Division of Employment Security, just to give you some sense of the vastness, the volume, of the organization.

Before the merger, the Commission employed 1900 individuals in 100 service locations. It's principally federally funded, and so, Senator Hartsell, when you asked the question about board review, it's likely that those positions would be federally funded, given what the work is. So, I'm not sure we'll have any general-fund impact once these allocations are -- they'd have to be

allocated, but they may not have any general-fund impact.

The federal funding is about $250 million in federal administrative funding, about $19.5 million in state appropriations, 25 direct federal program grants. And I think it's important to mention the program grants, because they're not just grants that you can put anybody on in terms of doing the actual work. Anybody who does work on federal program grants has to be working on the work of the grant. For example, if you're working on unemployment insurance, you have to be able to do that. So, there's not very many opportunities for split funds -- split funding, split positions.

The major programs in addition to unemployment insurance was the Employment Service, which is funded by the Wagner-Peyser grants. Of course, with the new changes at Department of Commerce, that's also going to be with Wagner-Peyser as well as the Workforce Investment Act funds.

And then finally, Labor Market Information, and those -- that particular program is funded by the Bureau of Labor Statistics.

So, those are the major programs that

were part of the Employment Security Commission before the--before the merge.

Once again, on the next page, other overview information: Over the last year, the organization paid out $1.4 billion in regular unemployment benefits, paid $3.8 billion in total UI benefits. And the distinction is that total UI benefits includes all of the Emergency Unemployment Compensation funds, extended benefits.

We paid unemployment benefits to--in 2010--682,073 individuals. And that represents people who got at least one unemployment-insurance check. There are over 195,000 liable employers, employers who are -- who have to pay unemployment-insurance taxes in this state. And we served, over the last year, between July 2010 and June 2011, 883,544 registered applicants, adjudicated over 100,000 claims in 2010, and held 53,565 appeals hearings in 2010.

So, I wanted to give you a sense of -- a sense of the context of what we do, serve several customers -- a whole range of customers, employers, job seekers, dislocated workers, veterans. We've listed all of them on that page.

I wanted to also give you a sense of,

once again, the context. I think agencies like ours have all been pressured over the last three years. This is the longest recession in a long, long time. And many of the agencies have never been -- were never prepared to deal with not only the volume but certainly the length of this recession. So, when you see -- when you look at the comparison of before the recession and the kind of volume in terms of claims and benefits and appeals cases, you see that many cases between 2007 and, say, 2009, you're seeing a 100-percent increase just in the volume of work.

And let me just say this, as well, that there -- we have a really good team of people, public servants, at the Division of Employment Security, many of whom have worked tirelessly, really, over the last two or three years to serve the citizens of this state, employers and employees, job seekers, people who've lost their jobs.

You probably recall or continue to hear in the news about the various tiers, the various extensions in benefits. The regular benefits, state benefits, is about 26 weeks -- well, 26 weeks of unemployment insurance. And then since 2008,

there have been four tiers -- and they're highlighted here on this slide -- four tiers of Emergency Unemployment Compensation, and also extended benefits.

And you hear about 99 weeks. Some people may be eligible. Everyone is not eligible to receive 99 weeks of benefits. But that is how you get to the 99.

Let me also mention that -- when you look at the tiers and the -- and the various tiers over the last several years, another challenge, in addition to just responding to the volume, has been just the information-technology challenges associated with implementing the tiers.

In our agency, the information-technology capacity really was launched in the 1980s. Some of you may remember the late Betsy Justus, who was one of my predecessors in this role. She was the one who worked -- and you know she had an information-technology background -- she was the one who launched our system.

We have not had a new system since 1980. And so one of the additional challenges is -- has been to implement benefits, adding tiers, adding extended benefits, going back and changing dates.

And that has been a huge challenge certainly not only for our agency but for agencies like ours who have aged and dated systems. The states that had newer systems fared a lot better during this period.

I've listed the questions again so you can see. Secretary Crisco answered the first three. And the balance of them are ours. What we tried to do was to put the questions together as they made sense, so we don't plan to go down the list.

One thing I do want to mention -- and this says "Question 6," but I wanted to get this out at the outset. And I think as one of our handouts we've given you a summary of -- really, a comprehensive summary of all of the appearances that representatives from the Employment Security Commission and the Division of Employment Security have made over the last several years.

The -- what you have at your desk is much more comprehensive. What we've put in the slide just really begins at 2005, just to give you some sense of, leading up to the recession, the kinds of information that we brought to the General Assembly, to at least begin to sound the alarm that

we were headed toward insolvency.

My predecessor, Chairman Moses Carey, started in this job in January 2009. And I think he had only been here 30 days when our trust fund became insolvent. And so we have been working in that environment since February of 2009.

In addition to these discussions, we-- obviously, we've had a lot of informal discussions with--and member inquiries, confidential member inquiries, other informal discussions. There have been press accounts that talked about the trust fund, as well.

The next slide just gives you more more-recent presentations to the Committee. As a matter of fact, Kevin Carlson, who is here -- he's our chief financial officer at the Division -- was here in this space last year, January 5th, talking about trust-fund issues, as well.

I wanted to really look at Questions 8 and 7. The questions are an analysis -- Number 8 is, "An analysis of the number of North Carolinians unemployed, the average number of weeks a person receives UI benefits, the average amount of UI benefits a person receives, the number of people who work part-time and receive UI benefits," and

also, "A description of how North Carolina's unemployment numbers are derived."

You'll see this is just a snapshot to give you some sense of what the labor force looks like. And we've shown you the difference, or the -- yeah, some of the differences between last year, November 2010, and this year. And that's the latest. These are the -- this is the latest data that we have available.

We've also included -- and if you -- you also have on -- at your desk an "NC Today." Our Labor Market Information Division does a wonderful job in putting together data and maps. And we wanted to give you the first representation, just to give you some sense of the trust fund -- trust-fund regular benefits paid by county between July 2008 and June 2011. That doesn't lay completely down with the technical dates for the recession. The recession actually started in December 2007, although in North Carolina the impact -- we lagged a little behind.

And so we wanted to show you just the amount of benefits in that time period. You can see here counties here. And of course over that period, there were -- there was $6.2 billion in

statewide benefits.

The other thing I'd like to mention--and I know many of you have seen this statistic--the U.S. DOL mentions this quite a bit. There was a study commissioned by the U.S. DOL under the Bush Administration that said for every dollar spent on unemployment benefits, two dollars are paid back into the economy, into the local economy. So, in addition to providing support for North Carolinians, benefits provide stimulus back into the counties of our state.

This is another map, which gives the total for all programs. And that includes the various tiers that I mentioned, as well as extended benefits. And over that same period, we're looking at $13.3 billion in benefits.

The next one is just a year--same--similar map. Just wanted to give you a year's representation: 1.4 regular benefits, 3.8 total benefits.

The next question relates to calculating the unemployment rate. And I'm a little out of order with the slides, here. Okay. Yeah. And it's really Question 7. It's Question 7, "A description of how North Carolina's unemployment

numbers are derived." And I think this question, as I understand it, came up in the last meeting.

First of all, I need to say that the unemployment rate is calculated by the Bureau of Labor Statistics. It is not calculated here in North Carolina. That has been the case since about, as I understand it, 1989, as Web-based applications, Internet applications began to take off. So, the Bureau of Labor Statistics actually does the calculation of the unemployment rate.

And the way that it happens--I think we have it here on the slide--at the national level, the rate is computed from data collected through a monthly national survey, a Web-based application. It's called the "Current Population Study." People call it the "Household Study." Approximately 6000 households are surveyed nationwide and the responses are utilized in the development of statistical estimates.

And I think "estimates" is the key word. Many times, we get wrapped around some of the estimates, because they do change; they get revised from month to month. But that's part one of how the rate is calculated.

The second part of the rate is the--the

second part of the whole process--the rate is calculated by using another survey, called the "Local Area"--"LAUS" is the short word, and I've lost the--I've lost the full text, here. But it's the Local Area Unemployment Statistics, LAUS.

And we work with the Bureau of Labor Statistics. We put in sub-state information, based on claims, into a BLS Web-based model. And those two surveys taken together, BLS then takes all of that information and determines what the rate is. And they approve--they approve it and go through the whole process. So, it's not a process that's generated here in North Carolina; it's really run by the Bureau of Labor Statistics.

Which was--we put this slide in because so many people wanted to know the distinction between "seasonally adjusted" and "nonseasonally adjusted." And I think I showed an earlier slide with that distinction. This gives you the explanation about the seasonal adjustment.

Back on Question 8, the ones that I read, the average duration for regular UI benefits over the last year was 16.3 weeks. And we wanted to give you some comparison, so the average duration for the first quarter 2008 was 13.7 weeks. It was

just as North Carolina was being impacted by the recession. At probably the height of the recession, in 2010, the average duration was 18.2 weeks. So, you see the difference. Obviously, we're, hopefully, moving in the right direction with a fewer number of weeks.

In November 2011, the average weekly regular-UI-benefit amount was $278.33. In January 2008, just as a way of comparison, the average weekly regular-UI-benefit amount was $265.77.

The next few slides deal with part-time employment. And I don't want to go into any detail, but the bottom line to all of this is that our current law provides that part-time claimants can indeed get UI benefits. Obviously, they don't get the same level of benefits as persons who have worked full time, but the current law provides for that.

And I guess let me add at this point, too--and I hope we have a chance to talk about different questions. And we talked about this a little bit yesterday with Senator Rucho.

Our role in this--in this process has really been to implement the law as we have found it. We--there are--there are regulations, there

are other rules, but what we do is--particularly on the unemployment-insurance side--is very much driven by the statute. And so we try to respond to whatever the General Assembly says we ought to do. And so when you see some of these--some of these issues, these are issues that we have responded to, as the agency that implements the Employment Security law, Chapter 96.

Question 9, "Steps the Division of Employment Security takes to help unemployed people find work and help businesses who have a shortage of employees find trained or qualified workers": Senator Rucho just mentioned the community colleges. What we do at the Division of Employment Security is really just part of the whole Workforce Development system.

As you--most of you know, we have local offices in most of the counties here in the state, and so we provide--kind of on the ground, we're kind of the first face for many people. We do offer reemployment services, as you see on this slide.

We offer services--we've begun to offer services for people who have exhausted their benefits. One of the downsides of this recession

is that we're seeing more and more people who are on unemployment insurance for a longer period of time and may or may not be eligible for benefits for an extended period of time. So, we have worked with some of the other agencies in the state to make sure that we--to make sure that people know other options and other alternatives as they're looking for work.

We work closely with the--with the community colleges. We work closely with what had been Roger Shackleford's group at the Division of Workforce Development.

And I clearly agree. When I first came to this role, I went to Atlanta, to our regional U.S. DOL office, to ask them, "What are the states that do this right? What are the states that are--that are the leaders, in essence, in work for development?"

And they mentioned to me that those states that have combined the Division of Workforce Development, the WIA--Workforce Investment Act--programs/activities with the Wagner-Peyser group. You'll know the Workforce Investment funds your local--local Workforce Development boards. And so I think that we'll get some good synergy with the

consolidation of those two--those two groups.

We also do employer outreach. We do--we have a yearly Job Order Surge Campaign where we work with employers to help them in their needs to find workers.

In January of 2011, we launched a Web-based application called NC JobConnector. This had been--the process had begun a long time ago, but we were able to get it off the ground, and it's--it was a good partnership, frankly, with employers. Employers came to us and asked us how can we help them find the right kind of workers. Sometimes, in some of the big job boards, it's catch as catch can. But we were able to work with them and work with our IT group and come up with a NC JobConnector. And we've gotten quite a bit of positive response, particularly from employers.

Also, the workforce--Work Opportunity Tax Credit program, as well as we have a very extensive Veterans Employment Service program that's also funded by U.S. DOL, their Veterans and Employment Training group.

Next, we'll go to Questions 5 and 6, "Trust Fund Analysis." This is a slide that we use quite a bit, once again, just to give you a current

graphical representation of the trust-fund money flow from the various funds that make up what we do to Total Benefits Paid. You'll see at the bottom, "Total Benefits Paid," but it shows you the federal benefits, which is--which really is the bucket that includes Emergency Unemployment Compensation, extended benefits, the federal loans--which we have been using since February 2009--employer contributions, as well as trust-fund interest and the--and the large trust fund.

So, all those funds contribute to the cash flow--current cash flow. Obviously, this is not the optimum, but this is the current monetary flow.

As I mentioned, we have 195,000 or so liable employers. We've given the breakdown there. There are reimbursable employers that don't pay into the--into the trust fund. Those typically are nonprofits and government entities.

This gives you a sense of the--where we are with the experience-rated accounts. "Experience-rated" in this state means those employers that we--they're taxed based on their layoff history, their experience with layoffs. And so that's--that gives you a sense of that.

The annual tax computation is computed every July 31st. And this is the current--this shows you the shake-out of the current tax rates.

We only have about 25 percent of our liable employers that would see higher rates in 2012, 36 percent lower, and 74,000, or 38 percent, that would have no change in their taxes.

There are--and this is something that as you talk about what happened with our trust fund, I think there are several, several issues that you can point to. And I think this slide just pretty much lays out the convergence of several issues that I think we were dealing with in this state.

One is the short recovery period between recessions. We had a recession in the 2002-to-2004 time frame, and we in fact--our trust fund was insolvent during that period, and we had to borrow, and ended up paying back with tax-anticipation notes. And then this recession, which came fairly quickly, really didn't give, under the current system, time for the trust fund to recover.

Also, an increase in the average duration of weeks: This recession, as we've pointed out, there were--there were longer weeks of people on unemployment insurance, just to give you some

sense. I think we showed you the difference, but I think even in pre-recession, we were looking at maybe 10, 11, 12 weeks of duration at most.

The severity of this recession, and frankly, the length of this recession, and also tax-law changes--and I'm going to talk a little bit more about that, but these were the contributing factors that ultimately led, we believe, to insolvency in 2009.

And I'm not going to go over these. Many of you--some of you were here when this--when these--some of these things took place. And we weren't any different from any other states during this time period. But there were several tax-law changes that impacted our trust fund.

I see former Chairman Payne here. I think he was here for some of that time. But you'll see that these are the--and you can go back when you want to, to look at this more carefully. But this gives you a bit of history of the tax-law changes that took place leading up to the 2009 insolvency.

This shows you, between 1995 and 2004, as we were having the tax-law changes, how that impacted--this shows you more clearly how this

impacted the trust fund. This slide does not reflect any interest earned during that period, but once again, does give you a good sense of the impact.

This is another slide that we use fairly--quite a bit, as a matter of fact, just another graphical representation that shows the difference the--the difference in the trends with tax collections and benefits paid out. You'll see the 2002-through-'4 time frame, that spike there, and then of course the spike in the current recession, see that the tax collections have certainly lagged behind.

Another graphic representation just shows the same thing.

This slide just gives the quote from Title XII of the Social Security Act. The Unemployment Insurance Act is part of the Social Security Act. And the Social Security at Title XII "provides for state advances"--most people call them "loans"--"when a state determines their Unemployment Fund will not have adequate funding to allow for the payment of Unemployment Benefits."

As I mentioned, in February of 2009, when Chairman Carey was here, our fund became insolvent,

and a decision was made--and it was not a decision just only with the Commission; I think there were several conversations that went on, discussions with the current governor, with members of the General Assembly, leaders of the General Assembly at that time, to make a determination that in order to pay benefits that were entitled to people who were--who were--who needed benefits, that the state would have to begin to borrow money. Our current loan balance is $2.6 billion.

Senator Rucho had asked me--and of course the staff--in this--in the list of questions, wanted us to talk about some of the--some of the options that would--that we could recommend or that other states are looking at. And other states have begun to take a look at what they could do to begin looking at their unemployment insurance. Admittedly, we're one of 27, 28 states that currently had outstanding loans. And so other legislatures, just like ours, are looking for ways to begin to start the process, to begin to make sure that we're headed in the right direction.

One of the things that we were able to do that we started the process--shortly after I arrived in August of 2010, we formed an internal

committee to really look at tax policy. We didn't look at anything beyond tax policy, just for that short period of time, just to begin doing some modeling.

We had U.S. DOL recommend staff to us, who came down to North Carolina many times to help us run a model, to run a benefit-financing model, to begin giving us some idea about what was going to be expected with respect to the tax side. Of course, the tax side is just one part of the process. But we had begun a process to begin looking at it. It started in the summer of 2010. And we pulled together staff, internal staff, both from the--in the tax and benefits and legal department, to begin looking at some of the options.

We put together a report that came out in February. As a matter of fact, I think in March of 2011, Deputy Chairman Clegg came over to the Senate Finance Committee and talked about our internal committee and the options that we looked at. And these were the four options that came out of that study: adjust the taxable wage base; we looked at a new employer tax rate; modify existing tax schedule; and eliminate zero-tax rate. And once

again, this was to begin the process of discussion about what kinds of things we should be looking at.

The current taxable wage base in North Carolina is indexed annually. And you can see it represented in the--in the statutory authority here. And the thinking is that if we adjust that, that there--that could be another way to begin--to begin recovering our trust fund.

At the current payout, we would need an additional $700 million in tax collections over the next seven years to reach solvency. And so you see that we will have to begin looking at some hard issues and hard questions to begin to--to get our trust fund back to solvency.

Adjust the standard beginning rate for new employees, and you'll see--you'll see here--and I don't go into a lot of the details. Here in North Carolina, we have a 1.2-percent new-employer rate for the first two years of liability. And there are only a few states--I think we're maybe one of three states that still have a rate that low. So, one of the suggestions from the Committee was to perhaps change the new-employer rate from 1.2 percent to 2.7 percent.

The other was, eliminate the zero-percent

tax rate. Only 11 states still have zero percent on their highest-tax-rate schedule.

And the other was to adjust the tax rates for debit-ratio employers.

I also wanted to include other options that states are looking at to deal with solvency. Obviously, U.S. DOL has been a part of the process, too. They are continuing to look at legislation, regulations to encourage states to plan better, frankly, to plan to be prepared for the next recession, which we know is surely coming.

But one is, "Impose new penalty unemployment insurance contribution rates on employers who are out of compliance due to failure to file or failure to pay." New York, Ohio, and Pennsylvania have begun to do that.

"Impose temporary solvency surcharges": 18 states have begun to impose that. And the--just as a sidebar, although we have--we had to have Title XII advances, we were prepared in this state without any temporary solvency surcharges because we did have a state surcharge already in place, and that provided the interest payments, which--we had to make the first one in 2011, at the end of the federal fiscal year, of about $70 million. So, we

were prepared in that regard.

"Impose a tax on employees": Alaska, New Jersey, and Pennsylvania have done that.

"Participate with the IRS in the Questionable Employment Tax Practice initiative." And this is a program that helps identify employer tax fraud.

These are some other options that we know. Other states are looking at "Eliminate non-charging of charges for UI benefits"; "Adjust the maximum number of weeks"--some states have begun to do that; "Adjust the minimum and maximum weekly benefit amounts," and we've listed what the current minimum and maximums are in North Carolina.

Question 5 on the list is a comparison of North Carolina to other states as it relates to the UI tax structure, UI debt levels, UI benefits, and UI appeals processes and decisions.

We discovered a report the Tax Foundation--some of you may be familiar with the Tax Foundation based in Washington. It's a nonpartisan group. And they have done a really, really good study that I would commend to you, if you really want to get into these details, on the options and just the state of unemployment

insurance.

And so these are some of the findings from the Tax Foundation report that I think could be helpful as we move forward in looking at what some of the options are. And I'm going to go over these one-by-one, but this gives you--it aligns with some of the things we've mentioned before. But this is a nonpartisan report that also lays out some of the issues.

This is just additional information on employer taxes. I mentioned earlier that they're experience-rated here in this state and computed annually. Our tax-rate schedule is set forth each year in accordance with Chapter 96-9(b)(3)(d).

Also, "Experience Rating of Employers": Some are--some states have--are reserve-ratio states, which we are one. And the other states are benefit-ratio. And I have the distinction here.

I wanted to put this in the slide because some states have also issued bonds in trying to pay back their debt. And we've taken a look at Texas, one state. Illinois just passed a law to begin to issue bonds.

There is a--and the Treasurer's Office knows more about this, because we've had some

conversations with them, and we would have to take some additional--do some additional study to make the determination about the difference between issuing bonds with a reserve-ratio state and a benefit-ratio state. I think there is a distinction. I think the benefit-ratio states are in a better position to let bonds.

The next few slides show you a comparison of the taxable wage base. And the--and we pulled out the 10 largest states, of which we are one. But this shows you that--the difference between the taxable wage, the lowest tax, the highest tax, the new-employer rate, which I think gives you a good view of how we compare with other large states.

The next slide--or the second thing would be the benefit amounts for the same 10 largest states. Once again, it gives you a good sense of the distinction.

Let me also mention--and we didn't have a slide specifically for this, but note--Question Number 10 is the "Recommendations on what North Carolina could do to reduce its unemployment rate by reforming the eligibility process and UI benefit structure."

We think that answer was embodied in what

we've gone through. I'm not sure that there's necessarily a connection between the eligibility process and the unemployment rate. But clearly, there's a distinction--there's a connection between reforming the eligibility process and the UI benefits structure and our trust fund. So, some of those issues that we discussed, I think, are responsive to that question.

This is, once again, the 10 largest states, and it shows the debt by comparison. Illinois just passed a bill, so they have not paid off their debt. But I think they intend to do so soon, but because--as I recall, I think they intend to--their target date is sometime in 2012.

The next slide shows the appeals process, the 10 largest states. And that's still part of Question 5. You'll see that there's a mix of appeals entities: Some have appeals boards; some have commissions; some have board reviews, as in our new law.

The next slide shows how--under our current law, the new law, how claims are adjudicated.

This slide gives you--gives you some sense of appeals in 2010. We have not collated all

of the 2011 data, but this gives you a bit of a graphic representation of first-level appeals. I think it's significant that the first-level appeals are pretty much evenly split in terms of the decisions between the claimant and the employer.

The second-level appeals, that percentage is what percentage is affirmed on the next level. What we did not have, and I can provide for you later, with--but I think it's an interesting statistic that even beyond the second-level appeals, the ones that--the appeals that--decisions that a court--what our success rate is at the--at the next level, at the judicial level.

Finally, Question 4, which is really the first question for us on this. You probably saw in the news maybe 60 days or so--90 days or so ago, there was a huge Wall Street Journal article about a U.S. DOL report on improper payments.

"Improper payments" is really the term of art, because it includes not only overpayments but underpayments, as well. The U.S. Department of Labor produces an annual report of U.S.--of unemployment-insurance benefit integrity. And they look at a sampling of cases. In North Carolina, they sample about 520 cases, and they use a

benefit-accuracy measurement.

The $549 million that was listed in the latest report covers a three-year period, 2008 to 2011. Just to give you some context, over that same period, I think you'll--you saw it in one of the earlier slides--there was about 13 billion, 14 billion dollars in benefits, total benefits, paid out during that same period.

So, while 549 million is a big number, compared to the--to the context of how much was spent out of benefits, it's not as big of a number. Nevertheless, it is an important issue for us at the Employment Security Commission, at the Division of Employment Security.

Our--on the next page, you'll see that the Benefit Accuracy Measure also includes what's called an "improper payment rate based on the review of randomly selected cases."

And our improper-payment rate in North Carolina for that three-year period was 8.8 percent, lower than the national average, which was 11 percent. And we pulled out some neighboring states to give you some sense of their improper-payment rates.

Once again, when you look at the volume--

that's why I wanted to start the presentation kind of giving you a sense of the volume over the last several years. We're hopeful that as we move out of the impact of this recession, that there can be a lot of improvements made with benefit accuracy.

We are also--I'm going to have it on a later slide. We're also in a consortium to improve our system. Benefit-payment systems are not systems you can just go to Best Buy and pull off the shelf. There's a long process involved. U.S. DOL underwrites it.

As a matter of fact, this is--we're kind of in one of the first consortiums, because they know, with the federal funding, that they will not be able to underwrite new systems for every state, so they have encouraged states to work together to try to begin to plan for a system. We're already in that process. It started, I think, in the 2009-2010 time frame. But in addition to our new system, certainly the wave receding a bit, I think, will help us.

On the next page, it gives the various causes of improper payments. And these are the three major causes. These are the causes that were put in the U.S. DOL report.

"Benefit Year Wages": "claimant continues to claim and receive benefits after returning to work." And I think it's just, in many cases, a misunderstanding. So, we are--have already worked on improving communication, improving information for people getting claims.

"Separation Issues": "Employers or their third party administrators"--because many employers use third-party administrators to submit their separation information. Sometimes, that's not given to our organization timely.

And also "Work Search": "Claimants fail to register with the state's Employment Service."

So, those are the three major causes of improper payments.

I'd also like to add that we have a very vigorous effort in recovering improper payments. And so we--the Benefit Payment Group has lead responsibility for doing that.

The "Improper Payment Rate," I've mentioned before. These are the--some large states, and it shows you their improper-payment rate. Ours is 8.86 percent for that period, for that report.

We have done several things to begin to

get at this whole issue of "UI Benefits Integrity." We have--we are--we participate in a national collaborative with 10 other states with U.S. DOL as a--kind of a pilot group where we formed a cross-section group--

(A STAFF MEMBER HANDS A CUP OF WATER TO ASSISTANT SECRETARY HOLMES.)

ASSISTANT SECRETARY HOLMES: Thank you--take a timeout, right? Thank you.

We've begun to implement weekly--and we had not done this weekly, but we now implement weekly cross-matches with the National Directory of New Hires and develop automated processes to immediately notify UI claimants when you get a, quote, unquote, hit. So, we are part of the pilot program with 10 states.

We are also planning to implement the State Information Data Exchange System, and also we have--we had begun to--as part of this collaborative, we have a Cross-Functional Integrity Task Force.

We've also--and I don't think we had it on this slide. In the last 60 days, we have formed a new UI Integrity Group, where we've put the fraud team--UI Integrity Team together to really have a

more focused effort with respect to UI benefits integrity.

I also wanted to mention, as we're ending up, some other initiatives that we've been working on over the last--certainly, since I've been there, in the last couple of years, although one or two of these issues had begun under Chairman Carey's watch.

I mentioned the consortium, which is called "SCUBI." This is the acronym. We're part of four Southeastern states: North Carolina, South Carolina, Georgia, and Tennessee. Tennessee's the lead state. We've already gone through what is called the "feasibility study phase," and we are now headed toward the RFP phase. And so this--it's quite an undertaking.

U.S. DOL has provided funds for this whole process. We are one of two consortiums in the nation. There's one in the West--I think Wyoming, Colorado, Arizona--I think they're called WyCAN, so somewhere out there--Nevada, maybe.

But this, we think, will put us--once we get a new system, will put us on a good path toward improving some of the improper-payment issues that we've had over the last several years.

Also, we have a pilot program--and Senator Hartsell knows about this--Opportunity North Carolina. We--it's a pilot program. You've heard in the national news about a program called Georgia Works. And this is very similar to Georgia Works, where you--we provide--we work with employers to provide a--we call it an "extended job interview."

We did a launch in Concord working with one of the employers there. And they've been really one of the success stories. We're looking at trying to expand that over the next several months, because it is a program that at least, even on a small scale, begins to match up unemployed workers with possible job situations.

And finally, these are other things that--other accomplishments and initiatives that we've been working on. And I don't want to go over all of them, but in addition to just trying to keep the trains running, with benefits, and responding to the fires, we've also tried to improve our operations. And so we've listed some of those issues on this--on this last slide.

I'm happy to answer any questions that you have.

CO-CHAIRMAN RUCHO: Ladies and gentlemen of the Committee, we had a preliminary meeting yesterday with Secretary Crisco and Assistant Secretary Holmes, described to them the agenda that we'd move forward to. We will be going into the question-and-answer period. And under that circumstance, we are going to have the court reporter swear in Ms. Holmes, and then we'll open up the questions to the Committee.

COURT REPORTER: Ms. Holmes, would you please place your left hand on the Bible and raise your right hand.

CO-CHAIRMAN RUCHO: Oh, you might want to have that microphone on.

ASSISTANT SECRETARY HOLMES: You said left hand on the Bible?

COURT REPORTER: Yes, ma'am, left hand on the Bible and raise your right hand.

Whereupon,

Lynn R. Holmes

was duly sworn.

CO-CHAIRMAN RUCHO: Thank you. All right. Very comprehensive report. I know there

are a number of questions that we--that we have regarding the report and also some of the history. All right.

Okay. Ladies and gentlemen of the Committee, is there someone who would like to ask questions first? Representative Lewis.

REPRESENTATIVE LEWIS: Thank you, Mr. Chairman. I'd like to start--and I'm sorry; we kind of skipped around with the slides, so I'm--but I'd like to start a little bit on the $549 million in overpayments, or whatever the correct terminology I should use there is.

The first question that I had, towards the end of your remarks, Assistant Secretary, you referenced that there was a considerable amount of effort put forth to recover funds that were paid in error. And I wonder if you could elaborate on that some, please.

ASSISTANT SECRETARY HOLMES: When we--when we find out or discover, as a general matter, payments that have--that are--have been paid to people who are not eligible for the payments, we contact those people. We go through a process. There is a process in place to recover the money in the next payments. We don't have garnishment

authority, but we do have authority, if they are federal funds, federal refunds, that we can recover moneys that way if there are no eligible funds later.

REPRESENTATIVE LEWIS: Mr. Chairman?

CO-CHAIRMAN RUCHO: Follow-up?

REPRESENTATIVE LEWIS: Assistant Secretary, you just said that you did not have garnishment authority. Is that something that perhaps you would suggest that the General Assembly review, or is there some kind of federal restriction on that?

ASSISTANT SECRETARY HOLMES: I don't know, Representative Lewis, that there's a federal restriction, but certainly that's something we ought to look into. There might be a federal restriction; I don't know. But that is the process in place that we have today.

REPRESENTATIVE LEWIS: Pass the witness.

CO-CHAIRMAN RUCHO: Okay. So, you pass to Senator McKissick.

SENATOR MCKISSICK: Yeah, a couple of questions. First, Ms. Holmes, I was just curious: Have you or anyone from your staff met with employers to discuss this insolvency issue and its

ramifications, and discuss perhaps strategies for addressing it? I know we're going to issue a contract to a consultant who's going to provide us with their opinions, but I think sometimes we can seek opinions through more-traditional sources that can also be insightful. So, if--have those efforts been done? Because I've heard about this contract for, I'd say, a good six months now.

ASSISTANT SECRETARY HOLMES: Yes, that is--Senator McKissick, that's a good question. We have had conversations with--some of our people have met with the North Carolina Chamber. We have a very active tax group that goes out and meets with employers fairly regularly to interact with them. We're all part of major groups of people like us who also meet with employers to get feedback and to get insight about what kinds of things we might do.

You know, Secretary Crisco and I have talked extensively about some sort of group that we could put together, including employers and representatives from the worker community, to begin talking about this.

I know the states who have--who are little farther down the path in coming up with

recommendations have done that. I was just reading an article the other day about Illinois, and they put together a working group of employers and workers and people representing U.S. DOL to begin to come up with recommendations, which ultimately led to their passing legislation for them to let bonds, in addition to some other changes.

SENATOR MCKISSICK: Follow-up?

CO-CHAIRMAN RUCHO: Follow-up--follow-up? Yes, sir.

SENATOR MCKISSICK: Yeah. I'm just curious: Last year, when this whole process was evolving and Senate Bill, I guess, 532 was coming through, were you--did you participate in that process or have any input or--I mean, at what point in time were you--did you become involved in this or did the Department become involved with this?

ASSISTANT SECRETARY HOLMES: With respect to 532, we were not as involved as, I think, we wanted to be. I think I came to one committee meeting, but the bill was taken off the agenda. And I think Commerce was really taking the lead on 532, so to the extent that we could give input to them, we were part of that process, but we were not as actively involved in the 532 process as it moved

through the General Assembly.

SENATOR MCKISSICK: Follow-up?

CO-CHAIRMAN RUCHO: Follow-up.

SENATOR MCKISSICK: With the Board of Review issue, which I asked Secretary Cisco--Crisco about, can you provide any further insight in terms of where that's headed? I know you mentioned, when you first came to the podium, that you thought the federal government would cover the cost and expense of that. But to what extent has the failure of us to have a Board of Review impacted the way that we review and handle claims and other matters that will become before the group that previously existed?

ASSISTANT SECRETARY HOLMES: It has--I think, as a general matter, it has not negatively impacted the work that we do, certainly, with claims-taking.

As we were getting toward the November 1st time frame, Secretary Crisco and I worked with the Governor's Office, governor's lawyers, the attorney general's lawyers, U.S. DOL to make sure that we had a process in place in the interim until we could get the Board of Review issues worked out. So, we believe we have not missed a step, as it

were. But clearly, we want to be in compliance with the law that was passed here. And so, I think, when the General Assembly has an opportunity to make some of those changes, they will be helpful changes.

SENATOR MCKISSICK: Follow-up?

CO-CHAIRMAN RUCHO: Follow-up.

SENATOR MCKISSICK: Yeah. And I'm just curious: With the bill that was passed, the direction that we're moving in, we're working with the U.S. Department of Labor, I assume, in terms of resolving issues. But has there been any things that have come to light that have become particularly problematic in this transition period?

ASSISTANT SECRETARY HOLMES: Well, clearly, the Board of Review is one that you--that you mention. I also think as--I mean, it's only been about 30 to 45 days in the process, and I think all of us are still trying to work through some of the operational issues.

Clearly, we're funded differently than many of the Commerce agencies, and so working through the financial-allocation issues, working through some of the operational issues, I think, is something that we continue to try to deal with. We

have not had U.S. DOL as involved as I think I--they need to be, given that they are the principal funder for some of the grants and programs. But I think we're headed in the right direction to make sure that this goes as seamlessly as possible.

SENATOR MCKISSICK: Follow-up?

CO-CHAIRMAN RUCHO: Follow-up?

SENATOR MCKISSICK: Once this contract is let--and maybe you can give us some idea of when you anticipate the contract will be let--what is the anticipated time frame for the study to be conducted and for, I guess, preliminary findings, at least, to come back to you, and at what point will we as members of the General Assembly be provided with the benefit of their analysis?

ASSISTANT SECRETARY HOLMES: And I'm looking at Secretary Crisco because he is the lead person on the--on the study. So, perhaps--Mr. Chairman, is he permitted to answer?

CO-CHAIRMAN RUCHO: Yes, sir, you can--have you an answer to the question? We've been holding our breath patiently to get the result of the study.

SECRETARY CRISCO: We have. And it's taken too long, but we--again, I'm in a bit of an

awkward position because of the purchasing process. I'm told I can't tell you exactly what--give you an exact date of when that's done.

But let's assume for a moment that the purchasing process is done today. The guidelines that we gave is to have 45 to 60 days. We'll have--we'll have an interim report in about that time, and then two to three months, we'll have the final report.

Again, but I'm not saying it'll be in that time, because of that state purchasing process that we're going through right now. But if it were today, that's the timing we're talking about.

SENATOR MCKISSICK: Let me--quick follow-up--

CO-CHAIRMAN RUCHO: Quick follow-up?

SENATOR MCKISSICK: --just so that I understand. So, if we were to let that contract the next 30 days--

SECRETARY CRISCO: Within 90 days, you'll have the final report.

SENATOR MCKISSICK: We'd have the final report.

SECRETARY CRISCO: Under the way this RFP and the scope that we defined in this RFP.

SENATOR MCKISSICK: And are you comfortable, Mr. Secretary, that that's sufficient time for the work to be performed and--

SECRETARY CRISCO: Again, there was a-- this scope was defined looking at the debt obligation and if it did not have organizational or other issues in this scope. But within the scope of this RFP, again, if we were starting today, that would be the expected timing.

SENATOR MCKISSICK: Okay. Quick follow-up.

CO-CHAIRMAN RUCHO: Follow-up?

SENATOR MCKISSICK: Would this 2.4 billion in debt that we're addressing--

SECRETARY CRISCO: I think it's 2.6 now.

SENATOR MCKISSICK: --six--excuse me--2.6 billion. I think I've heard it commented at some point that it would take seven years if we were somehow getting in an extra 700 million a year? Now--

SECRETARY CRISCO: I think I've seen that.

SENATOR MCKISSICK: Okay. And that's just addressing the debt. What does it do in terms of our capacity to have an adequate trust fund in

the interim that would be capable of addressing the routine claims plus any exceptional claims that might come if the euro goes--

SECRETARY CRISCO: I guess--

SENATOR MCKISSICK: --south and we end up in another crisis here in America?

SECRETARY CRISCO: Well, this, of course, is the meat of the study. And I can give you a hypothetical answer, but that's what it would be. We would be a--clearly, it would be--under your assumption, under that example, it would be additional time to get to that point.

SENATOR MCKISSICK: Okay.

CO-CHAIRMAN RUCHO: All set?

SENATOR MCKISSICK: Yeah. I just--

CO-CHAIRMAN RUCHO: Excuse me, Assistant Secretary, would you like to comment?

SECRETARY CRISCO: I'll sit--yeah, excuse me.

ASSISTANT SECRETARY HOLMES: I would like to comment. In addition to that--and that's why we gave a whole range of--range of options, because I think if we do nothing, that was pretty much what I was saying, if we just made some changes around the edges of our taxes, but we would have to have a

range of things to look at to get us back to solvency.

And there have been a--quite a few proposals in Washington just to get at this--at this very issue, because it--in fact, one of the--one of the proposals is to make sure that states have enough in their--in their fund, going forward, or they may not be eligible for Title XII funds, going forward. And that's way down the road, but that's just the kind of example, to give you that people are talking about in Washington.

SENATOR MCKISSICK: Okay. One quick follow-up, and--

CO-CHAIRMAN RUCHO: Last follow-up, here.

SENATOR MCKISSICK: Sure. I guess my greatest concern is that we not only address that debt but that we do craft a system that is capable of handling the level of claims that would not only be routinely filed but those that might be filed in a--perhaps not as severe a recession like we just experienced, but certainly one that was a moderate-type recession, because otherwise, I think, we're doing ourselves and this system an injustice.

And then the last question was this: I know that you were not here at the last meeting.

And I know there was a subpoena issued. And I just observed today they put you under oath. Would you like to comment about why you were not here, or what the--or the circumstances? I mean, I want to thank you for providing a very thorough and a very complete report that was quite insightful. But I can't recall seeing people sworn in before they testified before us in the past, unless it was some exceptional circumstance.

ASSISTANT SECRETARY HOLMES: Right. And thank you for the opportunity to talk about that. We talked about it a little bit yesterday.

I think we just had a miscommunication. When you're consolidating agencies, you have different people, different moving parts, and as I understood the request from the Committee, I was not on to present; I was not asked to present; I was not on the agenda until I had a personal matter that the Secretary knew about and--as well as the Deputy Secretary. The Deputy Secretary always was going to make the presentation at the last meeting.

At the very last--maybe a couple of days before the actual hearing was when I did hear from staff directly about us coming with the Deputy Secretary. But at that point, I could not resolve

my personal conflict. So, it was unfortunate. I regret it. But I have spent a lot of time sitting in the back, and so I regret that it was that kind of thing, that we had to have a subpoena.

I think when we talked to staff yesterday, I think there has--there has never been any other person who's been sworn in in this kind of situation. But in any event, I'm happy that I'm here today and able to answer any questions that could be asked of me.

SENATOR MCKISSICK: Thank you very much.

CO-CHAIRMAN RUCHO: Senator McKissick, just for your edification, approximately two to three weeks prior to this, as we do normally when we ask, we asked for the head of the Division to come here to give us that information. And Assistant Secretary was appointed and therefore should have been the person delivering this information to us, to answer your question. Okay. I've got Senator Stevens.

SENATOR STEVENS: Thank you, Mr. Chairman. I've got a series of questions, if that's okay.

CO-CHAIRMAN RUCHO: Yes, sir.

SENATOR STEVENS: Let's start with the

$2.6 billion loan. The state has made one loan payment, interest payment, already.

ASSISTANT SECRETARY HOLMES: Yes.

SENATOR STEVENS: When is the next interest payment due, and what is the source of funds for these interest payments?

ASSISTANT SECRETARY HOLMES: The next interest payment--I'm looking back at my financial person--is at the end of the fiscal year 2012, which would be September 30th, would be the due date.

And the funds is what we--one of the funds that I think I showed in the bucket of funds--we have a state reserve fund, which--I can't recall the year that it was implemented by the General Assembly. But it's--it has a--it's a 20-percent surcharge on employers. It's that state reserve fund from which the interest payment is paid every year.

SENATOR STEVENS: And what is the amount of the next payment?

ASSISTANT SECRETARY HOLMES: It's calculated--I think we just saw the rate at about two--somewhere in the range of 2.9 percent. What we paid in September 30th, 2011, was approximately

$70 million.

SENATOR STEVENS: Going forward, Mr. Chairman?

CO-CHAIRMAN RUCHO: Yes, sir. Follow-up?

SENATOR STEVENS: On your Slide 32, which was labeled "Experience Rated Accounts"--

ASSISTANT SECRETARY HOLMES: Uh-huh.

SENATOR STEVENS: --you showed that in 2012--well, I'm sorry--they anticipate in 2012 that 25 percent of employers will have a higher cost, 36 percent will have a lower, and--

ASSISTANT SECRETARY HOLMES: Rate--

SENATOR STEVENS: --38 percent--

ASSISTANT SECRETARY HOLMES: A rate--

SENATOR STEVENS: --will have no change.

ASSISTANT SECRETARY HOLMES: Correct.

SENATOR STEVENS: What's the dollar amount of those that will have higher? How much more will those higher ones pay? How much will the lower ones? So, what's the net of all that?

ASSISTANT SECRETARY HOLMES: Senator, I don't--I don't have that off the top of my head, but I'm certainly happy to get that for you.

SENATOR STEVENS: Just kind of--that's important. There's a lot said publicly--not by

your office but by the Governor's Office and others--about how much more employers are going to have to pay if we do certain things through the General Assembly. But it looks like maybe a lot of folks paying the same or less.

CO-CHAIRMAN RUCHO: Senator Stevens, also--and you might want to talk with the Secretary--is there's going to be a federally mandated increase because of the debt that we have. Maybe the Assistant Secretary might help you with that one.

SENATOR STEVENS: Could you address that?

ASSISTANT SECRETARY HOLMES: Yes. And this is part of the--and I probably should have had it in a slide.

As part of the process for Title XII loans, if the--if the debt is not paid back by, I think, November after the first two Januarys of having the loan, if the--if the principal is not paid, then, the following January, employers will see a .3 percent--.3-percent increase in their--in their taxes. And this is something that has been--when we first started to--as--in 2009, I'm sure, was communicated to employers. But that's the--that's the effect of the debt.

SENATOR STEVENS: Going forward, Mr. Chairman?

CO-CHAIRMAN RUCHO: Yes, sir. Follow-up?

SENATOR STEVENS: You have Slide Number 64 on "Improper Payment Causes"?

ASSISTANT SECRETARY HOLMES: Uh-huh.

SENATOR STEVENS: Were those federal or, you know, countrywide, or was that North Carolina's causes?

ASSISTANT SECRETARY HOLMES: Country-wide--

SENATOR STEVENS: Do you--

ASSISTANT SECRETARY HOLMES: --generally.

SENATOR STEVENS: Do you have similar information for North Carolina's causes?

ASSISTANT SECRETARY HOLMES: Oh, the three causes are the countrywide course--causes. The percentages are the North Carolina percentages.

SENATOR STEVENS: Just a detail question: On Slide 60, you talked about appeals?

ASSISTANT SECRETARY HOLMES: Yes.

SENATOR STEVENS: There were 53,000 appeals?

ASSISTANT SECRETARY HOLMES: Uh-huh.

SENATOR STEVENS: 37,000--I mean, I

didn't understand the percentages. It says 49.3 ruled in favor of the claimant; 54.6 ruled in favor of the employer?

ASSISTANT SECRETARY HOLMES: Correct.

SENATOR STEVENS: That adds up to 103.9 percent.

ASSISTANT SECRETARY HOLMES: I guess we probably need to check those--

SENATOR STEVENS: And likewise--

ASSISTANT SECRETARY HOLMES: --percentages.

SENATOR STEVENS: --in the second-level appeals--

ASSISTANT SECRETARY HOLMES: The 19.3 percent is the percentage of claims that are affirmed in the second level, so those weren't probably going to add up.

SENATOR STEVENS: Those will not add up.

ASSISTANT SECRETARY HOLMES: Right.

SENATOR STEVENS: Okay. Could you check on the 103 percent--

ASSISTANT SECRETARY HOLMES: I will.

SENATOR STEVENS: --and have that done? And lastly, I don't know anything other than what I've read in the media about this, but I understand

there's some allegation of early release of unemployment data. Can you enlighten us on that issue and tell us what's going on with that and what you can share with us?

ASSISTANT SECRETARY HOLMES: Right. What I can share with you is, I guess, in the media there's been some discussion about our office sharing embargoed data with the Governor's Office. It is our practice, and has been the practice even before I came, and probably with previous administrations, to share embargoed data--"embargoed" is the key word--with the Governor's Office.

What you saw in the press was that--and in that--what you saw in the press was that there was--there was concern that the governor talked about the embargoed data and--in the August time frame.

So, that is what I know about it. When we found out about it in the press, we contacted the Bureau of Labor Statistics. The person who was over Labor Market Information at the time, Dr. Betty McGrath, called the Bureau of Labor Statistics. And so that's the general context of the story.

SENATOR STEVENS: I don't have any questions at this time, Mr. Chairman.

CO-CHAIRMAN RUCHO: Okay. I have Representative Blust.

REPRESENTATIVE BLUST: Thank you, Mr. Chairman. Ms. Holmes, you said something earlier, and I'd heard that same assertion before, so I thought I'd ask you about it.

You said--and cited some authority, I thought--that for every one dollar of unemployment insurance paid, we generate two dollars of economic activity. And when I hear that, I wonder why the policy isn't being advocated that we should have even more unemployment, pay more benefits, and create an economic boom in that capacity.

ASSISTANT SECRETARY HOLMES: The source was a U.S. DOL report--and I got this right off of the U.S. DOL Web site. And the reference was it was a study during the Bush Administration. Other--I can--I'm not--is that a question that you're asking me?

REPRESENTATIVE BLUST: Yeah. I'm--it's really just trying, I guess, to point out the absurdity of the argument. I mean, obviously, the--unemployment insurance is not an economic

stimulus. If it were, we'd see a lot different results in the economy now that we've had several extensions of the payment of the unemployment insurance, so that I don't think that assertion can be borne by what we see in the actual world.

CO-CHAIRMAN RUCHO: I'm sorry. Okay. That was a statement. It's too many questions, there. Okay. Sorry. All set with your answers, Representative Blust? Okay. Representative Howard--Chairman Howard?

CO-CHAIRMAN HOWARD: Thank you, Ms. Holmes. I want to go back to Senate Bill 532. And I know there was some--I'm wanting--I don't know if I want to use the word "misinformation," but maybe that's the only word I can come up with--that was presented to us after the bill passed regarding the impact of Senate Bill 532 on the tax rates for North Carolina employers. But also, there were four provisions in that bill that were deemed of concern from--I don't know if it was from your office or U.S.--

ASSISTANT SECRETARY HOLMES: U.S. DOL.

CO-CHAIRMAN HOWARD: Would you be able to--we want to get this right when we go back into this with the Review Committee and--et cetera.

Would you be amenable to provide us, the Committee, this Committee, with all of the written correspondence that your office had with the Department of Labor regarding their concerns and how we might be able to rectify those concerns in--

ASSISTANT SECRETARY HOLMES: Sure.

CO-CHAIRMAN HOWARD: --in the bill? If you would do that, I would--

ASSISTANT SECRETARY HOLMES: We--

CO-CHAIRMAN HOWARD: --appreciate that.

ASSISTANT SECRETARY HOLMES: We will do that. U.S. DOL has already given letters, but we can provide more information for you.

CO-CHAIRMAN HOWARD: Purposefully, we would like to have the--how to fix this--

ASSISTANT SECRETARY HOLMES: Okay.

CO-CHAIRMAN HOWARD: --and how to address those concerns. And another--

CO-CHAIRMAN RUCHO: Follow-up?

CO-CHAIRMAN HOWARD: --question, Mr. Chairman?

CO-CHAIRMAN RUCHO: Yes, ma'am.

CO-CHAIRMAN HOWARD: On the overpayments or the inappropriate payments that were made--and you gave us a list, a good list, of the--of changes

that you were making. Could you tell us, these changes, these--on these improper payments, are they changes that have been made since the findings of the--in, I believe you said, 2011?

ASSISTANT SECRETARY HOLMES: 2008 to 2011.

CO-CHAIRMAN HOWARD: '11?

ASSISTANT SECRETARY HOLMES: Yes.

CO-CHAIRMAN HOWARD: So, I'm assuming that the audit was done and you determined this sometime in 2011, 2011?

ASSISTANT SECRETARY HOLMES: The report came out in two--in 2011, but we had already begun some of the processes before that. Many of them did happen in 2011. The collaborative--the federal collaborative that we're a part of with 10 other large states did take place in 2011.

CO-CHAIRMAN RUCHO: You might need to speak a little--I'm sorry--into that microphone, because they couldn't hear you back--

ASSISTANT SECRETARY HOLMES: I will. Some of the changes--

CO-CHAIRMAN HOWARD: You don't have to look at me. Just--

ASSISTANT SECRETARY HOLMES: --okay; all

right--did take place in 2011. And--but we had begun looking at some of the UI integrity issues even before then.

CO-CHAIRMAN HOWARD: Okay. And is there a mechanism in place--and I'm--I guess I'm following up on Representative Lewis's question--to recoup those funds that were--that were paid out in error? Is there a process, or do you need legislation in order to recoup those funds?

ASSISTANT SECRETARY HOLMES: No. There is a process in place that we use every day.

CO-CHAIRMAN HOWARD: And it's in place now and--

ASSISTANT SECRETARY HOLMES: Yes.

CO-CHAIRMAN HOWARD: I guess, just to clarify my question: You're in the process now of trying to recapture the funds that were paid out inappropriately.

ASSISTANT SECRETARY HOLMES: Yes. And we had already begun to do that.

CO-CHAIRMAN HOWARD: Okay. Thank you.

CO-CHAIRMAN RUCHO: All set? Senator Hartsell.

SENATOR HARTSELL: Thank you, Mr. Chairman. I've got a couple of statements and sort

of a series of questions, just--

CO-CHAIRMAN RUCHO: Okay, Senator Hartsell.

SENATOR HARTSELL: But to go back into that last question asked by Chair Howard, in going back and actually following up on Representative Lewis's question, in North Carolina, my understanding is that the only thing that we can garnish wages for is child support and tax collection.

So, my question is: In going back to try to collect these overpayments, are--is there any effort being made to utilize garnishment in that context or to re--to collect these overpayments--

ASSISTANT SECRETARY HOLMES: I don't--

SENATOR HARTSELL: --just as a--

ASSISTANT SECRETARY HOLMES: I believe, yes.

SENATOR HARTSELL: Okay. Okay. Secondly, I have a vague recollection that sometime in the late '90s--and this is long before your term of service with Employment Security--there was an oversight commission named either by the governor, by the General Assembly, or something, to look at--and it had to do with some legislation that was

utilized to cut some of these unemployment tax rates. But there was an oversight commission for Employment Security named in the late '90s that included legislators and some other folks.

CO-CHAIRMAN RUCHO: Okay.

SENATOR HARTSELL: My question is, are you aware of that commission, and has anybody ever--does it still exist? It obviously hasn't met, but I--do you have any idea about that?

ASSISTANT SECRETARY HOLMES: That--I'm not aware--I'm not aware, but I do know that it does not still exist.

SENATOR HARTSELL: Okay. If we could have somebody check back into that, Mr. Chair. I'm--

CO-CHAIRMAN RUCHO: You may have--you may have stumped the panel, but we're going to get you some info--

SENATOR HARTSELL: The only reason I know something about it: I think I was a member of it. But there was some--but I'm getting old, and I forget, too.

CO-CHAIRMAN RUCHO: We will get that information for you, sir.

SENATOR HARTSELL: Next, one thing I want

to mention is, in looking at your presentation--you mentioned Opportunity North Carolina. Without getting into any of those things and being critical, I want to just simply say thank you again for finally initiating this project or this initiative, which, as Ms. Pickett over there knows, we've been trying to get implemented by a series of legislation and others for at least now--we're going into the eighth year and we finally have it.

And I want to simply say thanks, because I'm fully convinced that the best way to get people back to work is to provide them the experience necessary and to help the employers who coordinate this. And I'm glad we've started it, and I think it's well overdue, as I think some of these others are.

But let me go back--and I want to thank you again--and also the appointment of Roger Shackleford on the workforce piece. And I have to go back and--to the circumstances surrounding the closure of Pillowtex. And the efforts that were undertaken by, actually, Employment Security and Department of Commerce in dealing with that very, very significant issue were herculean and done very well. And I'm glad to see that this coordination

may be able to utilize again only however--eight years later. But thank you again.

There is in--as I understand it, in the Employment Security Strategic Plan for '11 through '15, there's a provision to provide high-quality--one of the goals is to provide high-quality services that meet federal standards and exceed customer expectations. But--and I know that there's this major interplay between employment--former Employment Security and the Department of Labor, a fact which I've had to deal with--there are others of us who've had to deal with it with some substitute teachers and some of these qualifications and whether they apply or not. And it's been a rather frustrating experience in having to go through a couple of pieces of legislation on something, anyway.

But my question is: I assume, when the Department of Labor adopts these standards or you have to--you're looking to do that, could you provide us with the performance-level evaluations over time, over the last, say, eight to 10 years, of the Department of Labor--what their evaluations were of local Employment Security with information regarding the claims process, appeals,

overpayments, tax-fraud recovery? Are there--are there such evaluations? And if so, can you provide them?

ASSISTANT SECRETARY HOLMES: Yes, there are evaluations, and we can provide them.

SENATOR HARTSELL: And in so doing, if you would advise us also of Department of Labor's analysis of what the standard is for the various states, as applied, I mean, because--so that we can compare ourselves apples and--apples and oranges and oranges and that sort of thing if we might.

And this is switching subjects a little bit, Mr. Chairman.

CO-CHAIRMAN RUCHO: Follow-up?

SENATOR HARTSELL: And Secretary Crisco mentioned a moment ago that the merger was going to result in the target of roughly 300,000 a year in savings. Can you provide us with a detailed breakdown--or can the Secretary--with a breakdown of positions and items that constitute those savings?

SECRETARY CRISCO: We can.

SENATOR HARTSELL: Okay.

SECRETARY CRISCO: We will.

SENATOR HARTSELL: Okay. And I'm not

sure whether this is appropriate for you, Ms. Holmes, or the Secretary, but in December, the Secretary advised new leadership appointments for local Employment Security offices and other Labor Market Information. Can you tell us of what--of that roughly 300,000, what cost savings or improvements come from these modifications, if you know? Or do you--could you provide us with a--with that information?

SECRETARY CRISCO: I think the best approach is to give you a detailed response--

CO-CHAIRMAN RUCHO: Can you press the button and identify yourself, Mr. Secretary?

SECRETARY CRISCO: All right. Keith Crisco, Secretary. I think the best approach is to let us give you a complete report on that, including local--how's this?

CO-CHAIRMAN HOWARD: That's good.

SECRETARY CRISCO: Thank you. I just got a course. I think the best approach is to let us do a complete--give you a complete report on the savings in detail, including the local--if you need local--

SENATOR HARTSELL: Okay.

SECRETARY CRISCO: --and statewide.

SENATOR HARTSELL: Follow-up--

CO-CHAIRMAN RUCHO: Follow-up?

SENATOR HARTSELL: --relating to that.

CO-CHAIRMAN RUCHO: Yes, sir.

SENATOR HARTSELL: Is Commerce, Mr. Secretary, Madam Assistant Secretary, looking at ways to merge finance and personnel functions of the two agencies for cost savings?

SECRETARY CRISCO: Both effectiveness and cost savings.

SENATOR HARTSELL: Okay.

CO-CHAIRMAN RUCHO: All set, Senator Hartsell?

SENATOR HARTSELL: Yeah, I got--

CO-CHAIRMAN RUCHO: Okay.

SENATOR HARTSELL: --just a couple more.

CO-CHAIRMAN RUCHO: Oh, I'm sorry. Okay.

SENATOR HARTSELL: You've--Madam Secretary, you've spoken about the reserve fund which has been used to pay that interest payment was done recently. That fund, as I understand it, has been used in the past to supplement local Employment Security office expenses. I--that's my understanding from some other indications. With the money in that fund now being used to--for

interest on the debt, will the local Employment Security offices be impacted?

ASSISTANT SECRETARY HOLMES: Senator, no, it's my understanding that they won't be impacted.

SENATOR HARTSELL: Okay. And so I assume that means there'll be no request--or will there be a request for a general fund--from the general fund for the agency relating to the local offices? Do we have any?

ASSISTANT SECRETARY HOLMES: We don't anticipate--

SENATOR HARTSELL: That--

ASSISTANT SECRETARY HOLMES: We don't anticipate that.

SENATOR HARTSELL: Okay. I think that it's for me.

CO-CHAIRMAN RUCHO: Briefly. Thank you. Representative Starnes?

REPRESENTATIVE STARNES: Thank you, Mr. Chairman. Let me ask you a couple of questions, but I'll follow up on what Senator Hartsell said on the reserve fund.

You anticipate using the money from the reserve fund to make the interest payments, which will be due in September.

ASSISTANT SECRETARY HOLMES: Correct.

REPRESENTATIVE STARNES: How much money is in your reserve fund currently?

ASSISTANT SECRETARY HOLMES: About 70--it's at 70 million? I'm looking back at Kevin Carlson. About $70 million today.

REPRESENTATIVE STARNES: And the--and the interest payment that's due in September is about 70 million?

ASSISTANT SECRETARY HOLMES: It will be determined closer to the time. We can't say today what the interest payment's going to be, but we believe that we--that the--what's in the reserve fund will be adequate to pay the interest.

REPRESENTATIVE STARNES: And the reserve fund is set up so that--so that it will continue to accumulate from now till that payment is made in September, or is that fund static?

ASSISTANT SECRETARY HOLMES: No, it's set up to continue to pay.

REPRESENTATIVE STARNES: So, you don't know how much money comes into the fund every month?

ASSISTANT SECRETARY HOLMES: I don't know, but I'm looking at someone back there who

does know.

CO-CHAIRMAN RUCHO: Yes.

ASSISTANT SECRETARY HOLMES: Senator?

CO-CHAIRMAN RUCHO: Would you come to the microphone and identify yourself, if you have an answer to that question, please.

MR. CARLSON: My name is Kevin Carlson, and I'm the chief financial officer for Division of Employment Security.

The state reserve fund is--the taxes on the state reserve fund are collected on a quarterly basis, and last year, it generated roughly $180 million. And so that will continue to generate roughly $180 million, given our current tax structures.

REPRESENTATIVE STARNES: So--

CO-CHAIRMAN RUCHO: Senator--okay.

REPRESENTATIVE STARNES: So, the balance in the fund currently, after the payment in September, is about a hundred million, or 180 million?

MR. CARLSON: No, sir. After the September payment of $78 million, we began to continue to accrue, and we currently have roughly $70 million in the fund, and we will continue to

accrue between now and September of 2012. Excuse me.

CO-CHAIRMAN RUCHO: Follow-up?

REPRESENTATIVE STARNES: I want to go in a different direction.

CO-CHAIRMAN RUCHO: Okay. Thank you, sir.

REPRESENTATIVE STARNES: Thank you for that.

CO-CHAIRMAN RUCHO: Appreciate you coming.

REPRESENTATIVE STARNES: Now, when we're talking about the trust-fund balance--and of course, we're in negative reserves right now--does the federal government set a target that we need to maintain for our trust fund, or is this a target that we set in North Carolina?

ASSISTANT SECRETARY HOLMES: As I understand, U.S. DOL works with us. And I think I mentioned when we--when I was talking to Senator McKissick about some of the policy discussions that are going on right now. I think, going forward, U.S. DOL is looking more toward making more-prescriptive recommendations about what we ought to have in our fund. But I think currently it's left

to the states to put--to pass laws to make sure that our fund remains solvent.

REPRESENTATIVE STARNES: So, just looking at the charts that you had provided on the trust-fund balance, I guess historically we're, what, at one and a half billion dollars in our trust fund? Or does the Department have a target level that--under--in--under normal employment that they set?

CO-CHAIRMAN RUCHO: Yes. Again, please, identify yourself when you come to the podium.

MR. CARLSON: Kevin Carlson, chief financial officer for Division of Employment Security.

To answer your question, there is not a target. However, the U.S. DOL has issued a--federal regulations. They are not coded into law yet. But the federal regulations are stipulating that states--in order to borrow from--Title XII of the Social Security Act--in order to borrow from the federal government, going forward, if these regulations are implemented, and allow a state to borrow interest-free, then you will have to have a certain targeted-figure balance in your trust fund.

So, yes, there is a suggested targeted balance that you should get to in order to be able

to borrow from the federal government interest-free.

ASSISTANT SECRETARY HOLMES: And I think I had mentioned that. Going forward, there--I think they call it a average high-cost multiple.

MR. CARLSON: That's correct.

ASSISTANT SECRETARY HOLMES: And it has to be at a certain level going forward.

MR. CARLSON: It takes into your three highest year--the average of your three highest years over a period of time.

REPRESENTATIVE STARNES: And what do you anticipate the target level to be for North Carolina?

MR. CARLSON: Based upon our last three years, I would recommend roughly 2.5 billion.

REPRESENTATIVE STARNES: Okay. That'll be more than we historically budgeted, then.

And you talked about the employers' rate will increase--or there'll be a forced rate increase to the employers by the federal government. It was two years after this targeted--when--

ASSISTANT SECRETARY HOLMES: Correct.

REPRESENTATIVE STARNES: When did--has

that kicked in now, or when will it--

ASSISTANT SECRETARY HOLMES: Started in--

REPRESENTATIVE STARNES: --kick in?

ASSISTANT SECRETARY HOLMES: Started this January.

REPRESENTATIVE STARNES: The higher rate is in effect now.

ASSISTANT SECRETARY HOLMES: Yes.

REPRESENTATIVE STARNES: Will that rate gradually go up until the loan is repaid?

ASSISTANT SECRETARY HOLMES: Yes.

REPRESENTATIVE STARNES: And will the rate remain high until we reach the two-and-a-half-billion-dollar target?

CO-CHAIRMAN RUCHO: Yes, sir, you can answer that question.

MR. CARLSON: The rate will go back down as soon as the loan is repaid.

REPRESENTATIVE STARNES: Okay. So, the federal government will require us to maintain a target, but they will not require us to maintain a higher rate until the target is reached?

MR. CARLSON: That is correct. On the FUTA tax increase, the FUTA tax increase is only as long as you borrow. Once the borrowing goes down,

then that .3-percent increase will go back down to the normal FUTA tax rate of .6 percent.

REPRESENTATIVE STARNES: And under the current scenario, how long will it take us to pay off the loans that we have?

MR. CARLSON: We have not looked at or estimated that at this point in time.

REPRESENTATIVE STARNES: Okay. I'd like to change directions one other time.

CO-CHAIRMAN RUCHO: Follow-up question?

REPRESENTATIVE STARNES: Well, I was a little bit curious about some of the things that we read about the early release or the misuse of the unemployment data that comes from the Bureau of Labor Statistics. How does your office receive this? Does it come by e-mail, or fax, or do you get a overnight package the day before it's released? How do you receive the information?

ASSISTANT SECRETARY HOLMES: No, it-- Representative Starnes, I'm really not sure. I suspect it's principally by e-mail, by some sort of secure e-mail. I can certainly find that out. I hadn't thought about that question, but I suspect that it comes by e-mail from BLS.

As I mentioned in my comments, there's a

Web-based application that our--that the people who do this work that--it's a model that they're involved in. So, I'm assuming some of that is Web-based.

REPRESENTATIVE STARNES: But you receive the information. It comes to you as the head of the Employment Security Commission, the unemployment rate, when it comes down from the--

ASSISTANT SECRETARY HOLMES: The--

REPRESENTATIVE STARNES: --Bureau of Labor Statistics?

ASSISTANT SECRETARY HOLMES: Not immediately. Not immediately. It does not come to the head of the agency. Immediately, it goes to those people within the Labor Market Information Unit who do the actual work with BLS.

REPRESENTATIVE STARNES: Well, what would be the flow chart? When the--when the statistics come out of Washington, who gets it first?

ASSISTANT SECRETARY HOLMES: The unit that gets it first--and then of course, we're moving the boxes around, but it would be the Labor Market Information Unit. Each state has what's called an employment-statistics director. That person is currently Dr. Betty McGrath, at the

Division of Employment Security, or now in the new policy group. She and her team work with that data with BLS. So, that's the initial flow.

Once the estimates are done, once the final estimates are done, then I do get a copy of it as the head of the--head of the Division. But before that, I do not.

REPRESENTATIVE STARNES: So, when--by the time you get the statistics, it's not coming directly to you from Washington; it's coming from someone that's under you?

ASSISTANT SECRETARY HOLMES: Yes.

REPRESENTATIVE STARNES: So, the information flows up rather than down.

ASSISTANT SECRETARY HOLMES: Correct.

CO-CHAIRMAN RUCHO: Representative--excuse me; I'm sorry. No, I've got Representative Folwell had a question.

REPRESENTATIVE FOLWELL: Thank you, Mr. Chairman and members of the Committee. Just a brief, quick question: Do you recognize this unemployment credit card that people--

ASSISTANT SECRETARY HOLMES: Debit card?

REPRESENTATIVE FOLWELL: --people receive?

ASSISTANT SECRETARY HOLMES: The debit card?

REPRESENTATIVE FOLWELL: Yes.

ASSISTANT SECRETARY HOLMES: Yes.

REPRESENTATIVE FOLWELL: Okay. And follow-up?

CO-CHAIRMAN RUCHO: Follow-up?

REPRESENTATIVE FOLWELL: And this gets reloaded every week, based on your ability to answer four questions either by telephone or on a computer. Would that be correct?

ASSISTANT SECRETARY HOLMES: I'm really not sure about that, but I assume so.

REPRESENTATIVE FOLWELL: Okay. So, my question really goes to Slide Number 16, where you talk about--excuse me--Page 9. In order for people to continue to get this card loaded, that they have to prove that every--"sometime"--the word "sometime"--"during the 4-week period" that they have to show that they looked for employment. That was on the slide.

ASSISTANT SECRETARY HOLMES: Yes.

REPRESENTATIVE FOLWELL: So, my follow-up question would be: If someone walks into the Midtown Cafe and asks for an employment application

and runs out before the person can ever offer them a job, would that satisfy the requirement to get this reloaded every week?

ASSISTANT SECRETARY HOLMES: Senator, I don't know.

REPRESENTATIVE FOLWELL: Okay.

ASSISTANT SECRETARY HOLMES: Based on that scenario, I don't know.

REPRESENTATIVE FOLWELL: And one last question, Mr. Chairman.

CO-CHAIRMAN RUCHO: Last question.

REPRESENTATIVE FOLWELL: Thank you.

CO-CHAIRMAN RUCHO: Follow-up.

REPRESENTATIVE FOLWELL: On Slide 9, you talk about that--the inference of Slide 9 is that everyone who employs people in North Carolina is not equally paying into the unemployment-insurance system. What percentage of people who employ people in this state are not paying into the system because of the option they have to opt out of it? And if everybody was paying who employed people, wouldn't we be in a lot better shape right now?

ASSISTANT SECRETARY HOLMES: I think the answer to the second part of your question is, yes, we'd be in better shape. But I'll have to get back

to you to find out those exact numbers, the exact data that you requested.

REPRESENTATIVE FOLWELL: And one small follow-up, Mr. Chairman.

CO-CHAIRMAN RUCHO: Last follow-up.

REPRESENTATIVE FOLWELL: Thank you. Secretary Crisco, if a company was thinking about coming to North Carolina and they saw this huge burden that we have of $2.6 billion, and knowing these taxes are going to go up, how does that bring any level of certainty or comfort to anyone who is thinking about coming to this state to relocate if they knew they were going to have to pay into this system?

SECRETARY CRISCO: Uncertainty is not attractive to anybody looking at any state. But I think states are--we need to address it, and if we can give certainty, I think we can overcome the issue of having to pay into it. Certainty is more discouraging than having to pay.

REPRESENTATIVE FOLWELL: Thank you, Mr. Chairman.

CO-CHAIRMAN RUCHO: Yeah, thank you. Representative Howard.

CO-CHAIRMAN HOWARD: Ms. Holmes, if we

could look at--go back to Slide 6. I just want to be sure that I, for one, understand this process. We start with "State Benefits." And that's normal 26 weeks.

ASSISTANT SECRETARY HOLMES: Correct.

CO-CHAIRMAN HOWARD: Now, under the next category, all the "Federal Benefits," which were enacted in 2008, is it my understanding that those are--there's no state dollars that go into these?

ASSISTANT SECRETARY HOLMES: Yes, that's correct. And it's the federal part? Correct. The Tier I through--Tiers I through IV, as well as the 100-percent federally funded extended benefits.

CO-CHAIRMAN HOWARD: Okay.

CO-CHAIRMAN RUCHO: Follow-up?

CO-CHAIRMAN HOWARD: There was just--yeah--yes, thank you, for follow-up. There was just a number that didn't match. And I'll have to go through my sheet, here, and--

ASSISTANT SECRETARY HOLMES: A number--

CO-CHAIRMAN HOWARD: --and find it. But they--

ASSISTANT SECRETARY HOLMES: Are you saying a number on this page?

CO-CHAIRMAN HOWARD: No, ma'am. And I'm

going to have to find it. Don't worry about that. That if we had paid out--and I'll find it, Mr. Chairman, and go back to it. But if we had paid out--yes, it's--maybe I just don't understand it. Obviously not. Slide 3: We paid 1.4 billion in regular unemployment. That's my understanding. Those are state benefits.

ASSISTANT SECRETARY HOLMES: Correct.

CO-CHAIRMAN HOWARD: And then we paid 3.8, which is a difference of $2.4 billion, which is about what we owe. Explain to me--maybe privately if it's too complicated--if all of the extended benefits are federal, then how are we in--that number just doesn't jibe with me, so perhaps you could have one of your finance people explain that to me. I--just doesn't--even later, if you'd just get back with me.

ASSISTANT SECRETARY HOLMES: We can do that, because it relates to the tax--how much taxes we'd taken out, how much benefits go out--

CO-CHAIRMAN HOWARD: I understand.

ASSISTANT SECRETARY HOLMES: --on a basic ratio.

CO-CHAIRMAN HOWARD: And then another follow-up, Mr. Chairman?

CO-CHAIRMAN RUCHO: Follow-up?

CO-CHAIRMAN HOWARD: On Slide 43, Ms. Holmes, you gave us four examples of how to stabilize the fund. But I don't see anything--any suggestions in regards to benefit adjustments. Have you looked at those benefit adjustments and perhaps in comparison with other states, or are we online with those, or are we out of kilter?

ASSISTANT SECRETARY HOLMES: Well, Representative Howard, I think I said as we went through these slides that our internal committee, the focus really was just on taxes at the time. In the meantime, as you know, Senate Bill 99 was passed, and we didn't think we needed to duplicate efforts.

I also mention in here some Tax Foundation recommendations, as well as we pulled options from other states. And I think I said, at the time, that we just looked at taxes, but obviously, they are--there's a whole range of options that can be looked at to get at this issue.

CO-CHAIRMAN HOWARD: Okay. Thank you, ma'am. I look forward to working with you on getting some numbers from your office that will perhaps jibe with some things that we need to look

at in regards to adjustment of benefits.

ASSISTANT SECRETARY HOLMES: Okay.

CO-CHAIRMAN HOWARD: Thank you.

CO-CHAIRMAN RUCHO: I had Senator Blue. He's not here right now. We'll skip him, and we'll get him coming back. I've got Senator Hartsell.

SENATOR HARTSELL: Thank you, Mr. Chairman. Just fairly quickly. It may be tangential, but I'm not sure. The Workforce Investment Act funds are--are they block-granted to the state Department of Commerce for the Workforce Development boards? Is that the way that works? I'm not--

ASSISTANT SECRETARY HOLMES: I think so, yes. It's a pass-through, in essence--

SENATOR HARTSELL: Okay.

ASSISTANT SECRETARY HOLMES: --to the--

SENATOR HARTSELL: Are they integrated in any fashion with unemployment compensation?

ASSISTANT SECRETARY HOLMES: I don't think so.

SENATOR HARTSELL: Okay. Can we get from Commerce an explanation or a detailed--I don't know--outline of how we expend those funds and where they are expended?

ASSISTANT SECRETARY HOLMES: The WIA, the Workforce--

SENATOR HARTSELL: The WIA funds.

ASSISTANT SECRETARY HOLMES: Workforce Investment Act funds?

SENATOR HARTSELL: Okay.

SECRETARY CRISCO: (Nods affirmatively.)

SENATOR HARTSELL: And final question, I hope: Is there any way in which they're--for these funding mechanisms, is there any kind of waiver process that exists, for instance, in other areas of federal funding where we can go and essentially create a managed operation that we put together as opposed to the detailed strings associated with the federal strings, as it were?

ASSISTANT SECRETARY HOLMES: I don't know, Senator. But as you mentioned, I've had a couple of people in my agency who have raised that same question and really want us to take a look at that. But we--

SENATOR HARTSELL: Because I have some vague recollection that the State of Michigan may have initiated something of that sort. And I think I read that some--but I'm not sure. And I think that it may--if we can, that kind of--what in

effect becomes a managed operation might be something useful to look into.

CO-CHAIRMAN RUCHO: All set? Okay. Representative Lewis?

REPRESENTATIVE LEWIS: Thank you, Mr. Chairman. I've got a few areas I'd like to explore. And I'll just throw this out there for the Assistant Secretary or the gentleman in the back, or whomever can reply to this. I'm very curious about this 3-percent surcharge, or whatever the correct terminology is, that you're--that I understood you to say has now been assessed on North Carolina employers.

ASSISTANT SECRETARY HOLMES: .3 percent, yes, sir.

REPRESENTATIVE LEWIS: .3?

ASSISTANT SECRETARY HOLMES: Yes.

REPRESENTATIVE LEWIS: Where does that money go?

ASSISTANT SECRETARY HOLMES: Let you answer that.

CO-CHAIRMAN RUCHO: Please identify yourself again.

MR. CARLSON: Kevin Carlson, chief financial officer for Division of Employment

Security.

The FUTA tax itself goes to the federal government to fund the UI administration grants themselves, as well as some of the extended federal programs that we're currently implementing, such as the UC. The .3-percent increase that we're talking about is on top of the regular FUTA tax, and it goes directly to payment of the debt. So, whatever taxes is collected on that .3 percent will go directly to pay off whatever portion of the debt we currently have.

CO-CHAIRMAN RUCHO: Follow-up?

REPRESENTATIVE LEWIS: Yes. So do we have an idea what that .3 percent should be this year?

MR. CARLSON: The estimate is about $84 million.

REPRESENTATIVE LEWIS: If I could, Mr. Chairman, just to go forward, trying to understand the state reserve fund: We seemed to have talked around this a couple of times. I believe I've come to the understanding that a certain percentage--and I believe it's 20 percent of unemployment insurance that our employers pay into the state goes into the state reserve fund. Is that right? Did I say that

correctly?

MR. CARLSON: It's in addition. It's a 20-percent addition.

REPRESENTATIVE LEWIS: Okay. Thank you. And just to go forward with that, I understood you to say that that 20--that that fund, that reserve fund, accumulates about 180 million a year?

MR. CARLSON: That is correct.

REPRESENTATIVE LEWIS: Okay. Mr. Chairman, if I may?

CO-CHAIRMAN RUCHO: Follow-up?

REPRESENTATIVE LEWIS: If we're going to--and I believe it was Senator Hartsell who asked--currently, part of that money is being used to run services through ESC, or DES, but we're now going to use 70 million to pay interest.

I don't understand if--if we've--if this money has been sitting there growing, if you will, at whatever rate per year--and we've obviously used it for something; it's going somewhere--if we're now using it--and I believe you said the figure was 76 million that we were going to use to pay interest--where is that money--where is that--what hole or pot is that 76 million going to come from?

MR. CARLSON: Sir, the--you are correct.

In the $180 million that we collected this year, $78 million was used for the interest payment. There was $20 million used for the appropriation to the--19.5 million to the Employment Security Commission for the operation of the local offices. The remainder amount of money that is in the state reserve fund is used to pay benefits, which reduces the amount of money that we have to borrow from the federal government.

REPRESENTATIVE LEWIS: So, Mr. Chairman--and I apologize for not being able to recall the gentleman's name, but just to be sure, the--it is--it is the intent of DES to continue to use the 19.5 million, or 19 whatever it was, out of the state reserve fund to operate the DES field offices.

MR. CARLSON: The consolidation with Division of Workforce Development and the Employment Service Division in that consolidation effort--it will be discussed whether we will need to have that $19.5 million appropriation again this year.

CO-CHAIRMAN RUCHO: Follow-up?

REPRESENTATIVE LEWIS: Thank you, Mr. Chairman. Just a--actually, just a real quick inquiry, because the curiosity has gotten the best

of me.

Several of us have asked about--and you've done a very good job of trying to explain the--that we have identified how we mispaid--or the three main reasons that we may have mispaid the 549 million. We've also said that we're going--that we've begun steps to try to reclaim some of that. Do you know how much we have reclaimed? And where does that money go?

ASSISTANT SECRETARY HOLMES: I can get the actual figure for you, Representative Lewis. But it goes back into our trust fund when we recover it. And you're looking for how much we reclaimed over that same three-year period? Is that your question?

REPRESENTATIVE LEWIS: Yes.

ASSISTANT SECRETARY HOLMES: We can get that for you.

REPRESENTATIVE LEWIS: Well, just--and also, Mr. Chairman, we began to discuss this last time, but we've got the folks here who can answer this. The very first slide, Slide 2, indicates that DES has 1900 employees as of November 30th, 2011. I was just curious if we knew what that figure was for November 30th, 2010.

ASSISTANT SECRETARY HOLMES: I can get that. I don't know the exact number. It was--it was likely a little higher a year ago, but the exact number I can get.

REPRESENTATIVE LEWIS: Thank you. And, Mr. Chair, if I could?

CO-CHAIRMAN RUCHO: Follow-up?

REPRESENTATIVE LEWIS: To the Secretary--and I'll preface this by apologizing if I--if it's just somehow not gotten through my head. I understood--and wrote down--you to say that there was $251,216 worth of savings in the 2011-2012 budget, that you had certified that. I was curious who you had--or how you had certified that.

SECRETARY CRISCO: It's dealing with the state Budget Office and our allocations. It's paying out--I don't know if my public person's here--about when it was done, but it--I've been told it was certified, which means that we identified it and it is--it will be saved in this budget. I don't have the details here today.

REPRESENTATIVE LEWIS: So, Mr. Chairman, if I could.

CO-CHAIRMAN RUCHO: Follow-up? Yes, sir.

REPRESENTATIVE LEWIS: Just to be clear--

and I--please, this is not intended to be confrontational, but I--it appears to me that what you're saying is a lot like the same certification that I've made with Charles Barkley and Weight Watchers that I'm going to--that I'm going to lose weight at some point this year.

SECRETARY CRISCO: I made the same certification, sir.

REPRESENTATIVE LEWIS: But I've not--but I've not lost the weight yet.

SECRETARY CRISCO: Well--

REPRESENTATIVE LEWIS: Is that right?

SECRETARY CRISCO: To be fair, you're right, but the year is not over. So, again, it's for the year ending June 30th, '12. So, we've got--it's in a--the complete Commerce budget has many items that--in our certified budget will get enact--we'll--we've got to balance; that's the law. When we get down to the end, we'll--I can tell you an actual number by account. Sitting here, I can tell you projected items by account.

CO-CHAIRMAN RUCHO: You all set? Okay. Let's see. Senator McKissick.

SENATOR MCKISSICK: Two points of concern, and the first is this: I know earlier I

raised this question about the $700 million that would have to be paid in over seven years to get the debt paid down. And if my math's correct, we would end up paying back 4.9 billion on the 2.6 billion debt. I mean, is that a correct assumption to reach? Because if that's true on a $2.6 billion debt, we're paying 2.3 billion in interest. And I'm trying to make sure my math is right, or maybe there's some way that--

ASSISTANT SECRETARY HOLMES: We could probably--

SENATOR MCKISSICK: --somebody could--

ASSISTANT SECRETARY HOLMES: --get that for you.

SENATOR MCKISSICK: Can you reconcile that for me?

ASSISTANT SECRETARY HOLMES: We can.

SENATOR MCKISSICK: All right. Secondly, I know there's a lot of concern I've heard articulated here about mistakenly paid claims. I hope that when you bring back data to us, that it's broken into at least two categories, one where there might have been some active fraud on behalf of the claimant who is seeking compensation for benefits they were not entitled to, and a separate

category for those who were mistakenly paid claims due to no fault of their own but just due to a misinterpretation of their eligibility.

Because for those who have committed a fraud, I want to go through the--I want to go after them with due diligence and with speed, but for poor folks who really didn't know that they were getting overpaid and it was some sort of interpretation that led to them being paid mistakenly, I've got concerns about going after those folks.

And those are not people that I think necessarily we need to zealously pursue, because that's something that we should be able to accept responsibility for and to move on. And I think that's just a matter of being respectful and compassionate.

CO-CHAIRMAN RUCHO: Thank you. All right. I had Representative McComas had a question. Mr. Chairman?

CO-CHAIRMAN MCCOMAS: Thank you, Mr. Chairman. Ms. Holmes, do you maintain a database, or do you know or do you--or perhaps maybe classify the claimants according to their background, whether they come from a labor pool that's

construed to be a labor shortage?

ASSISTANT SECRETARY HOLMES: I'm not--I don't know, Representative McComas. I can find that out. I--could you help me understand--

CO-CHAIRMAN MCCOMAS: Would anybody on your staff here know?

ASSISTANT SECRETARY HOLMES: I'm looking back over there. No. But that's something we can certainly find out.

CO-CHAIRMAN MCCOMAS: If you would, I'd very much appreciate it. Thank you.

CO-CHAIRMAN RUCHO: All right. We're--I--okay. Representative Lewis.

REPRESENTATIVE LEWIS: Thank you, Mr. Chairman. I'd like to start out by saying a word of thanks to the Assistant Secretary for trying to explain how the BLS information comes about.

I'll make a brief comment, in that it still seems archaic and absurd to me that we make some--that somehow this entity makes 60,000 phone calls or contacts to--all across the nation of 114 million households and that that produces some kind of extrapolation of really accurate data. I can't help but believe there's not a more efficient way.

But I--be that as it may, as that is our

system, as that is the accepted way that things are done, I think it has got to be asked--and we've kind of danced around and around it a bit. We talked about--well, just to get to the point: Do you know if anyone in your department, be it when it was the ESC or now that it's the DES, provided information to the executive branch prior to the agreed-to release date of the BLS information?

ASSISTANT SECRETARY HOLMES: Representative, I think we've said earlier that, yes, the information was provided to the executive branch, but with the proper restrictions around it; the data was embargoed. So, it was--it was before the release date, but it was not published before the release date.

REPRESENTATIVE LEWIS: Okay. This--if I may, Mr. Chairman.

CO-CHAIRMAN RUCHO: Yes. Follow-up question?

REPRESENTATIVE LEWIS: And I'm not familiar with this. I actually came across it online, like so much of the stuff that we have to find out. This investigation, if you will, that is being conducted by the U.S. House of Representatives has--to what extent are you or your

board--or are you or your--the staff that you supervise involved with that, or have you been asked to be involved with that?

ASSISTANT SECRETARY HOLMES: We have been involved to the extent that we have--that it--if you've seen the letter, you probably saw it online, from the U.S. Congress. They're looking for any e-mails, any dealings of--to the extent they're data requests, we are--we are participating and cooperating with that.

REPRESENTATIVE LEWIS: Thank you.

CO-CHAIRMAN RUCHO: Okay. All right. No other questions? I want to finish. I've got just two quick ones myself, if I may.

Madam Secretary, I think some of the concerns that many of us have had--and that's with the--beginning with Senate Bill 99--was to get the study going to try to get a problem resolved. And as you've alluded to earlier, in 2009, you called that a period of insolvency. And I know you say you came here in August of 2010. Is that correct?

ASSISTANT SECRETARY HOLMES: March of 2010.

CO-CHAIRMAN RUCHO: March of 2010. Okay. During that period of time--and recognizing the

insolvency--you have a list of visits that were made to the General Assembly. It's not you, but the--your Department. And some of it is under your time period and some of it is prior to that, where Chairman Carey was there.

At what point--and I--and I did request this information along with Senator Berger when we first found that this $2.5 billion was--there was a big hole in the ESC that no one seemed to be totally aware of. At what point did the ESC through any of its representatives, Mr. Clegg and other ones that came to visit here, actually make recommendations and throw the red flag up that we have a problem here, and why--and we need to have these things done to help us not get into the $2.6 billion hole?

ASSISTANT SECRETARY HOLMES: Senator Rucho, it's my understanding certainly since I've been here we've attempted to come in and appear before committees and raise the flag. And as a matter of fact, I think I mentioned that just a year ago, as part of this process, Kevin Carlson came before this Committee.

I also understand that even prior to 2009 there were visits, both formal visits and informal

visits, to talk about the--raising the red flag that insolvency was certainly on the--on the horizon. We did put together that document, that big stack of information, that we went back to show many of the times--pretty much formal times--where we came over.

CO-CHAIRMAN RUCHO: Follow-up question to you, then: Under that circumstance, you surely may have said, "Hey, there's a problem here," but do you not think that as the leader of ESC that you would have come forward either to the Governor's Office or to the General Assembly leadership or the--or any of the committees and say, "Folks, we're in the hole. We need to increase taxes, or we need to do benefit reductions"? Don't you think that should have been part of the responsibility of the ESC, since y'all manage it and therefore the leader of that should have taken the responsibility there?

ASSISTANT SECRETARY HOLMES: Oh, absolutely, I agree. And in fact, I think we did do that, and had been doing that. We had talked to the Governor's Office. I think I mentioned our internal study that we launched shortly after I got there.

We've made some recommendations. We've talked to the Governor's Office. We've come over here. Maybe the situation as far as you're concerned is not--has not been as coordinated. But I think we have at least made some attempts to not only raise the flag but to talk about the issues that we think we ought to deal with going forward.

CO-CHAIRMAN RUCHO: The--I guess some of the concern that many of us had when Senate Bill 99 was put forward was, there really wasn't a concerted effort to solve this problem once it was identified, and it only seemed to get worse, month to month, as we were bleeding.

But, you know, you talk about communicating with the Governor's Office and maybe some legislators. You know, in the future, don't you think it'd be a good idea to be a little bit forceful in saying, "Hey, folks, we got a problem here that we need to fix now"?

ASSISTANT SECRETARY HOLMES: I don't disagree, Senator.

CO-CHAIRMAN RUCHO: Okay. Question. It's a follow-up question now. In discussion with the issues dealing with the embargoed information, there was an article that I read in the paper

regarding a press conference or event in Asheville, Buncombe County, where the information was shared prior to the embargo date in a report by the governor. Is--are you aware of any of that--excuse me. Are you aware of any of that activity, and were you provided any information to that effort?

ASSISTANT SECRETARY HOLMES: Yes, I was aware. I think Senator Stevens asked that question earlier. I had--I was aware of that.

CO-CHAIRMAN RUCHO: Okay. Well, seeing no additional questions--oops. Senator--Representative Starnes.

REPRESENTATIVE STARNES: I apologize. Just quickly. Has the bleeding stopped, or are we still borrowing money to pay unemployment insurance?

ASSISTANT SECRETARY HOLMES: We're still borrowing.

REPRESENTATIVE STARNES: And at what rate? How much per month?

ASSISTANT SECRETARY HOLMES: I think quarterly it's--I'm looking back at Mr. Carlson.

MR. CARLSON: Kevin Carlson, Division of Employment Security.

Currently, the last fiscal year that just

ended was about $260 million worth of borrowing. So, our benefit payments are decreasing, and our taxes have increased, but we are still borrowing at roughly 260, 250 million dollars right now.

REPRESENTATIVE STARNES: Per quarter?

MR. CARLSON: Per year.

REPRESENTATIVE STARNES: Per year.

MR. CARLSON: Yes.

CO-CHAIRMAN RUCHO: Okay. I see no additional questions. Anything else you'd like to say, Ms. Holmes?

ASSISTANT SECRETARY HOLMES: Senator, thank you for the opportunity to come. And I look forward to working with you all.

CO-CHAIRMAN RUCHO: Yes, ma'am. Thank you for being here.

And, ladies and gentlemen, we hope that we recognize the problem with ESC, and we look forward to working with the Secretary and Assistant Secretary to resolve it.

That concludes the meeting. And the next meeting is scheduled for February 1st, 2012. This meeting is adjourned.

(WHEREUPON, THE MEETING WAS ADJOURNED AT 12:34 P.M.)

North Carolina Revenue Laws Committee

Lynn R. Holmes
Assistant Secretary

January 4, 2012

North Carolina Department of Commerce
Division of Employment Security

DES Overview Pre-Merger

- Employs 1,900 Individuals in over 100 Service Locations

  October 31, 2011 - 1,387 permanent employees; 651 intermittent

  November 30, 2011 - 1,369 permanent employees; 593 intermittent

  - Central Office, Local Offices, Branch Offices and other service locations
- Funding
  - $250 Million Federal Administrative Funding
  - $19.5 million State Appropriation (State Reserve Fund) for local office support and operations
  - 25 Direct Federal Program Grants
  - Over 200 State and Local contracts to operate programs
    - Food Stamp, JobLink, Work First
- Major Programs
  - Unemployment Insurance
  - Employment Service
    - Veterans Employment Programs
    - Trade Act Programs
  - Labor Market Information

DES Overview

- Paid $1.4 Billion in Regular Unemployment (UI) Benefits December 2010 to November 2011
- Paid $3.8 Billion in Total UI Benefits December 2010 to November 2011
- Paid UI Benefits to 682,073 Individuals in 2010
- Over 195,000 Liable Employers
- Served 883,544 Registered Applicants July 2010 to June 2011
- Adjudicated over 100,000 claims in 2010
- Held 53,565 appeals hearings in 2010

Customers

- Employers
- Job Seekers
  - Dislocated Workers
  - Veterans
  - Agricultural Workers
  - Older Workers
  - Disabled Workers
  - Students
  - Ex-Offenders
- Educational Professionals
- Economic Developers
- Workforce Development Professionals
- Government Officials
- Researchers
- Media

Pre-Recession and Now

	2006	2007	2008	2009	2010	2011*
Individuals Receiving at least one UI check	298,401	298,504	414,992	675,300	682,073	593,023
Benefits (million)	$830.50	$896.30	$1,313.60	$2,727.40	$2,000.00	1,293.90
Lower Appeals Cases	41,643	35,354	40,592	59,343	53,565	49,654
Unemployment Rate	4.7%	5.0%	8.5%	11.3%	9.80%	10.0%

Recession is defined as occurring between December 2007 – June 2009

* Does not include December data

Unemployment Compensation Maximum Potential Eligibility

Individuals may be eligible for up to 99 weeks of benefits

State Benefits

- Regular Unemployment Insurance
  - UI – 26 weeks

Federal Benefits 2008 - Present

- Extended Benefits –
  - EB – 20 weeks
- Extended Unemployment Compensation Tier I
  - (EUC Tier I) – 20 weeks
- Extended Unemployment Compensation Tier II
  - (EUC Tier II) – 14 weeks
- Extended Unemployment Compensation Tier III
  - (EUC Tier III) – 13 weeks
- Extended Unemployment Compensation Tier IV
  - (EUC Tier IV) – 6 weeks

Specific Questions Requested

1. The merger of the NC Employment Security Commission into Department of Commerce
2. Status of any contracts related to recommendations on how to achieve savings through employment security reforms
3. Status of steps taken to achieve savings through ESC organizational reforms

Specific Questions Requested

4. Analysis of how the ESC overpaid $549 million in unemployment benefits and the steps that have been implemented to ensure such overpayments do not occur in the future
5. A comparison of NC to other states as relates to UI tax structure, UI debt levels, UI benefits, and UI appeals process and decisions
6. An analysis of the trust fund's solvency issue; dates and venues in which the ESC informed the GA of the solvency issue; and recommendations on how to address the solvency issue
7. A description of how NC's unemployment numbers are derived

Specific Questions Requested

8. An analysis of the number of North Carolinians unemployed, the average number of weeks a person receives UI benefits, the average amount of UI benefits a person receives, the number of people who work part-time and receive UI benefits
9. Steps the Division of Employment Security takes to help unemployed to help unemployed people find work and to help businesses who have a shortage of employees find trained or qualified workers
10. Recommendations on what NC could do to reduce its unemployment rate by reforming the eligibility process and UI benefit structure

Trust Fund Discussions

Question 6

- **March - August 2005**: ESC appeared before various NCGA Committees and Subcommittees to explain the importance of the passage of Senate Bill 757. During which the NCGA was informed that there was a need to replenish the UI Trust Fund due to the 2001 recession and aftermath and SB 757 would be the "fix". However, before the "fix" totally worked, the 2008 recession struck.
- **2004-2006** Report on the Biennium: Deficits in the Fund and the borrowing the ESC had to do in order to pay unemployment insurance benefits were described.
- By letter dated **January 14, 2009**: Chairman Moses Carey, Jr. informed Governor Beverly Perdue UI Trust Fund may contain insufficient funds to pay benefits as early as the last week of January 2009. Subsequently the Governor's request to the US Secretary of Labor for repayable advances from the FUA was approved.
- By letter dated **March 19, 2009**: Chairman Carey recommended a method to repay the loan advances that "will minimize the amount of borrowing the State will incur."
- **January 20, 2010**: Chairman Carey and Deputy Chairman Clegg appeared before the Joint Legislative Commission on Governmental Operations, presentation included an extensive analysis of the Trust Fund.

Trust Fund Discussions
Question 6

- Presentations to Committees on Trust Fund
  - January 20, 2010 – Joint Legislative Committee on Government Operations
  - March 16, 2010 – Joint Legislative Committee on Government Operations (Treasurer Presentation)
  - October 25, 2010 – Meeting with Governor's Staff
  - September 29, 2010 – Briefing of Fiscal Research Staff
  - January 5, 2011 – Revenue Laws Study Committee
  - February 16, 2011 – Joint Committee on Commerce and Job Development
  - March 9, 2011 – Senate Finance
  - March 17, 2011 – Joint Appropriations Subcommittee on Natural and Economic Resources

- Request – March 17, 2011 - Senator Berger request for all communications and presentations relating to Trust Fund Solvency

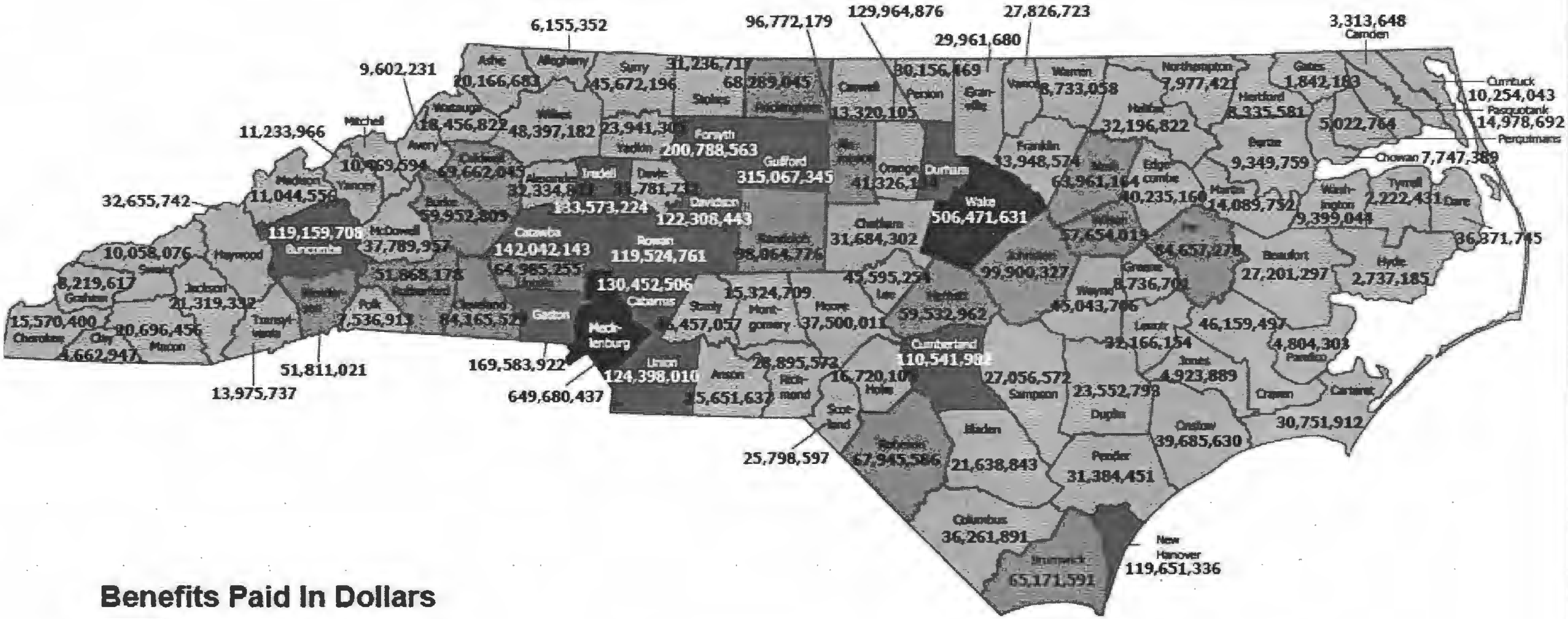
- Briefings
  - Fiscal Staff
  - Bill Sponsors
  - Confidential Member Requests

NC Labor Force View

	2011 November	2011 October	2010 November
Seasonally Adjusted			
Labor Force	4,502,639	4,506,202	4,463,915
Employed	4,051,226	4,038,404	4,024,717
Unemployed	451,413	467,798	439,198
Unemployment Rate	10%	10.4%	9.8%
Not Seasonally Adjusted			
Labor Force	4,496,387	4,510,783	4,464,897
Employed	4,069,246	4,071,114	4,022,183
Unemployed	427,141	439,669	442,714
Unemployment Rate	9.5%	9.7%	9.9%

Source: Labor Market Information

North Carolina
Trust Fund Regular Benefits Paid by County
July 2008-June 2011



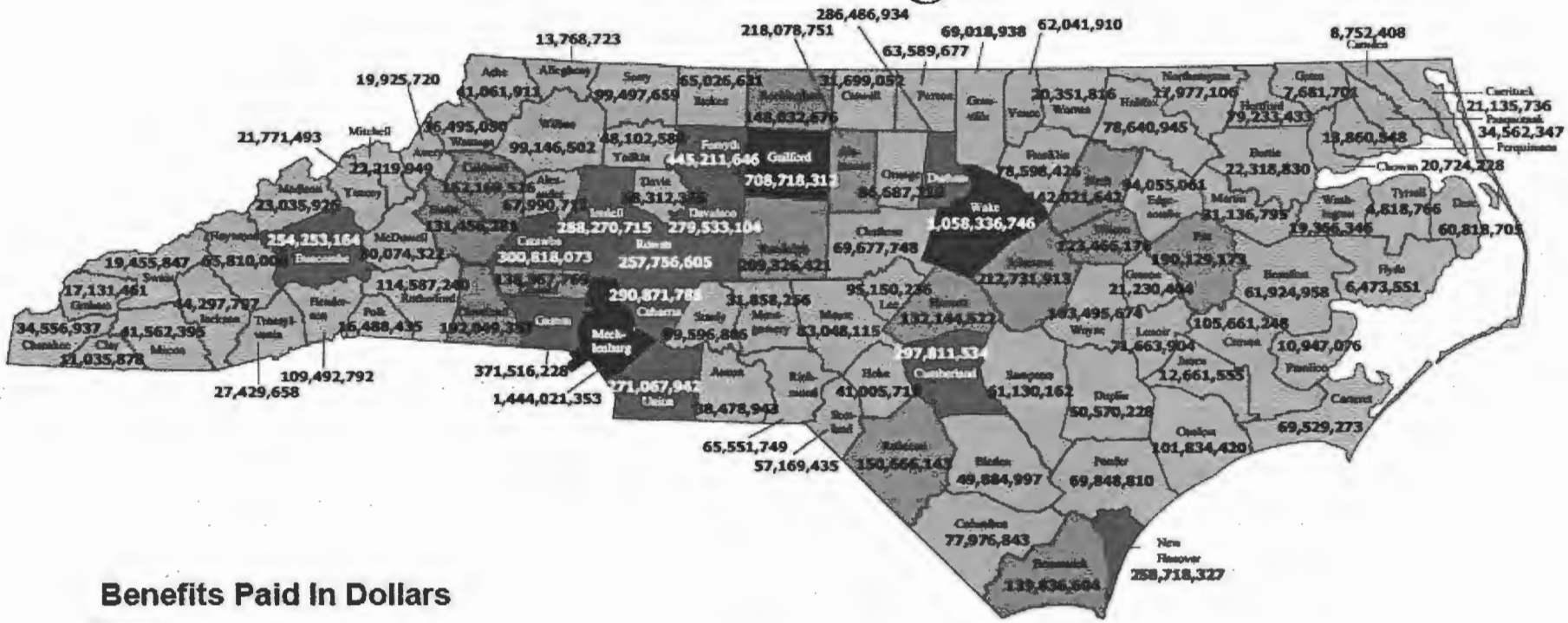
Benefits Paid In Dollars

- 1,800,000 - 21,600,000
- 21,600,001 - 51,800,000
- 51,800,001 - 110,500,000
- 110,500,001 - 315,100,000
- 315,100,001 - 649,700,000

Statewide $6,218,573,946

Source: ETA Reporting
Prepared by the Labor Market Information Division, Employment Security Commission of North Carolina 8_2011
Note: Extended benefits are not included in totals.

North Carolina
UI Benefits Paid by County
July 2008-June 2011
Total All Programs



Benefits Paid In Dollars

- 4,500,000 - 50,600,000
- 50,600,001 - 114,600,000
- 114,600,001 - 218,100,000
- 218,100,001 - 708,700,000
- 708,700,001 - 1,444,100,000

Statewide $13,369,149,152

Note: All programs include Regular Unemployment Insurance (UI), Emergency Unemployment Compensation Tier I (EUCI), Emergency Unemployment Compensation Tier II (EUCII), Emergency Unemployment Compensation Tier III (EUCIII), Emergency Unemployment Compensation Tier IV (EUCIV), Extended Benefits (EB) and Federal Additional Compensation (FAC). County data does not sum to statewide total.

Source: Employment Security Commission of North Carolina (ESC), Information Systems (IS)

Prepared by the Labor Market Information Division, Employment Security Commission of North Carolina 8_2011

North Carolina
Trust Fund Regular Benefits Paid by County
December 2010-November 2011

Benefits Paid In Dollars

- 456,679 - 7,000,000
- 7,000,001 - 16,000,000
- 16,000,001 - 34,000,000
- 34,000,001 - 71,000,000
- 71,000,001 - 146,200,000

Statewide $1,415,602,767

Note: Extended benefits are not included in totals. County data does not sum to statewide total.
Source: WRER, North Carolina Department of Commerce, Division of Employment Security
Prepared by North Carolina Department of Commerce, Division of Employment Security 12_2011

North Carolina
UI Benefits Paid by County
December 2010-November 2011
Total All Programs

Benefits Paid In Dollars

- 1,472,874 - 16,000,000
- 16,000,001 - 43,000,000
- 43,000,001 - 91,000,000
- 91,000,001 - 205,000,000
- 205,000,001 - 421,000,000

Statewide $3,827,898,143

Note: All programs include Regular Unemployment Insurance (UI), Emergency Unemployment Compensation Tier I (EUCI), Emergency Unemployment Compensation Tier II (EUCII), Emergency Unemployment Compensation Tier III (EUCIII), Emergency Unemployment Compensation Tier IV (EUCIV), Extended Benefits (EB) and Federal Additional Compensation (FAC) County data does not sum to statewide total.

Source: WRER, North Carolina Department of Commerce, Division of Employment Security

Prepared by North Carolina Department of Commerce, Division of Employment Security 12_2011

Calculating the Unemployment Rate
Question 8

Employed:

People are classified as *employed* if they did any work at all as paid employees during the reference week; worked in their own business, profession, or on their own farm; or worked without pay at least 15 hours in a family business or farm. People are also counted as employed if they were temporarily absent from their jobs because of illness, bad weather, vacation, labor-management disputes, or personal reasons.

Unemployed:

People are classified as *unemployed* if they meet all of the following criteria: they had no employment during the reference week; they were available for work at that time; and they made specific efforts to find employment sometime during the 4-week period ending with the reference week. Persons laid off from a job and expecting recall need not be looking for work to be counted as unemployed.

Civilian Labor Force:

The *civilian labor force* is the sum of employed and unemployed persons. Those not classified as employed or unemployed are *not in the labor force*.

Unemployment Rate:

The *unemployment rate* is the number unemployed as a percent of the labor force

Calculating the Unemployment Rate

National Unemployment Rate

- **Current Population Survey (CPS)**
  - Monthly Survey of 60,000 households nationally
  - Conducted by the US Census for the Bureau of Labor Statistics (BLS)
  - Statistical Estimates are derived from CPS
    - Civilian Noninstitutional Population 16 years and over
    - Employed, Unemployed, Not in the Labor Force
    - Both Seasonally Adjusted and Not Seasonally Adjusted Estimates

State Unemployment Rate

- **Federal State Cooperative Program (BLS and States)**
  - Local Area Unemployment Statistics (LAUS)
  - BLS is responsible for the concepts, definitions, technical procedures, validation, and publication of the estimates
  - CPS is reliable at the national level, sample is too small to provide acceptable reliable estimates as the State and Sub-State Levels

- **Stat Unemployment Rate**
  - **BLS Calculates State Estimates**
    - Utilizes statistical models to derive estimates
    - State staff input monthly claims information and employment estimates from BLS's Current Employment Statistics Program
    - BLS statistical models combine current and historical data from
      - CPS, CES and State UI Claims information
    - BLS provides final estimates including employed, unemployed, Labor Force and Unemployment Rate to States
    - Both Seasonally Adjusted and Not Seasonally Adjusted Estimates
- **Sub-State Unemployment Rates**
  - **State staff calculate monthly sub-state estimates utilizing BLS methods, standards & procedures via BLS application systems.**
    - "Handbook method" - Utilizes data from several sources
      - including CPS, CES, State UI and census,
    - State staff use BLS systems and review generated estimates to ensure accuracy and validity.
    - Estimates are sent to BLS for review and approval

Seasonal Adjustment

- Over the course of a year, the size of the nation's labor force and the levels of employment and unemployment undergo regularly occurring fluctuations.
- These events may result from seasonal changes in weather, major holidays, and the opening and closing of schools.
- The effect of such seasonal variation can be very large. Because these seasonal events follow a more or less regular pattern each year, their influence on the level of a series can be tempered by adjusting for regular seasonal variation.
- Without seasonal adjustment it is difficult to determine if the monthly level of economic activity has actually declined or is just a result of typical seasonal variation.

NC Unemployed
Question 8

- Average duration for regular UI benefits during October 2010-September 2011 was **16.3 weeks**
- Avg. duration 1st Qtr. 2008 – 13.7 weeks
  - Avg. duration 4th Qtr. 2010 – 18.2 weeks
    - In three years, the average duration went up 4.5 weeks
- November 2011 average weekly regular UI benefit amount was **$278.33**
- January 2008 average weekly regular UI benefit amount was **$265.77**

NC Unemployed
Question 8

- G.S. 96-8(10) defines when "an individual shall be deemed unemployed" for the purpose of establishing a benefit year and filing a weekly continued claim for unemployment insurance benefits and contains no limitation or definition of what is full-time work.
- The Employment Security Law is intended to provide unemployment insurance protection to those who are unemployed through no fault of their own. ESC Interpretation No. 256, "Unemployment of Part-time Claimants" (1982.)
- All state UI laws permit workers facing reduced hours to work to draw "partial" or "underemployment" UI benefits while working part time.

NC Unemployed
Question 8

- Part-time Claimants:
  - The N.C. General Assembly specifically added and amended G.S. §§96-8(29 & 96-13(a)(6) in 2003 and 2009, respectively, to protect an individual from being held ineligible or disqualified for benefits because of his/her part-time employment status.
  - For the most part, UI weekly benefits will be lower for unemployed part-time workers because part-time earnings are lower than full-time earnings.
  - In addition, part-time workers tend to remain unemployed for shorter periods than full-time workers

NC Unemployed
Question 8

- Attached Claimants
  - ESC Regulation No. 9 permits employers to file weekly "claims for benefits" for an individual who continues to be attached to its payroll and meets the requirement of being unemployed.
- November 2007, 58.3% of all initial claims were filed for or on behalf of attached claimants.
- November 2011, 49.19% of all initial claims were filed for or on behalf of attached claimants.
  - This decrease in attached claims signifies less short-term unemployment and more long-term or permanent separation from employment

Employment Service (ES) Reemployment Efforts Question 9

- Pathways to Employment
  - Create an expectation with ES staff that claimants in danger of exhausting UI benefits are given a higher priority of service in job development, job referral and job readiness efforts.
  - Increase UI claimant awareness of available ES services (like our reemployment program).
  - Develop local community resource guides that ensure ES staff can refer customers to other local services for help as they exhaust benefits.
- Reemployment Services
  - A new job classification was created in each ES local office called a "Job Coach". (ARRA funded).
  - Responsible for reemployment efforts in each office. Focus is to get UI claimants into the office for orientation, job readiness workshops and one-on-one job search planning and job development interviews.
  - DES continues to operate the program and have now opened it up to any ES customer, not just UI claimants.
  - NC also operates a separate and more structured Reemployment Eligibility and Assessment program through a competitive UI grant awarded by USDOL in 2009.
  - ES operates the two programs in tandem to ensure participants can get the benefit of both programs if needed.

Employment Service (ES) Re-employment Efforts Question 9

- Employer Outreach
  - Employer marketing plan to promote ES services to employers.
  - Convene an employer advisory group for provide feedback on local ES initiatives and to ensure a strong partnership with the employer community
  - Host quarterly educational seminars for employers to disseminate information on relevant topics.
  - Increase ES staff outreach visits to local employers.
  - A state level ES Employer Relations Coordinator develops policy/materials and provides guidance and training to support the local offices' employer relations activities.
- Job Order Surge Campaign
  - For two years ES has conducted a statewide "Job Order Surge Campaign" to do a high level of employer outreach in a two-week period during the month of May.
  - Over 14,000 North Carolina employers received information about ES employment services.
  - In May 2011, these contacts generated over 3,500 new job openings for the ES job bank.

Employment Service (ES) Reemployment Efforts
Question 9

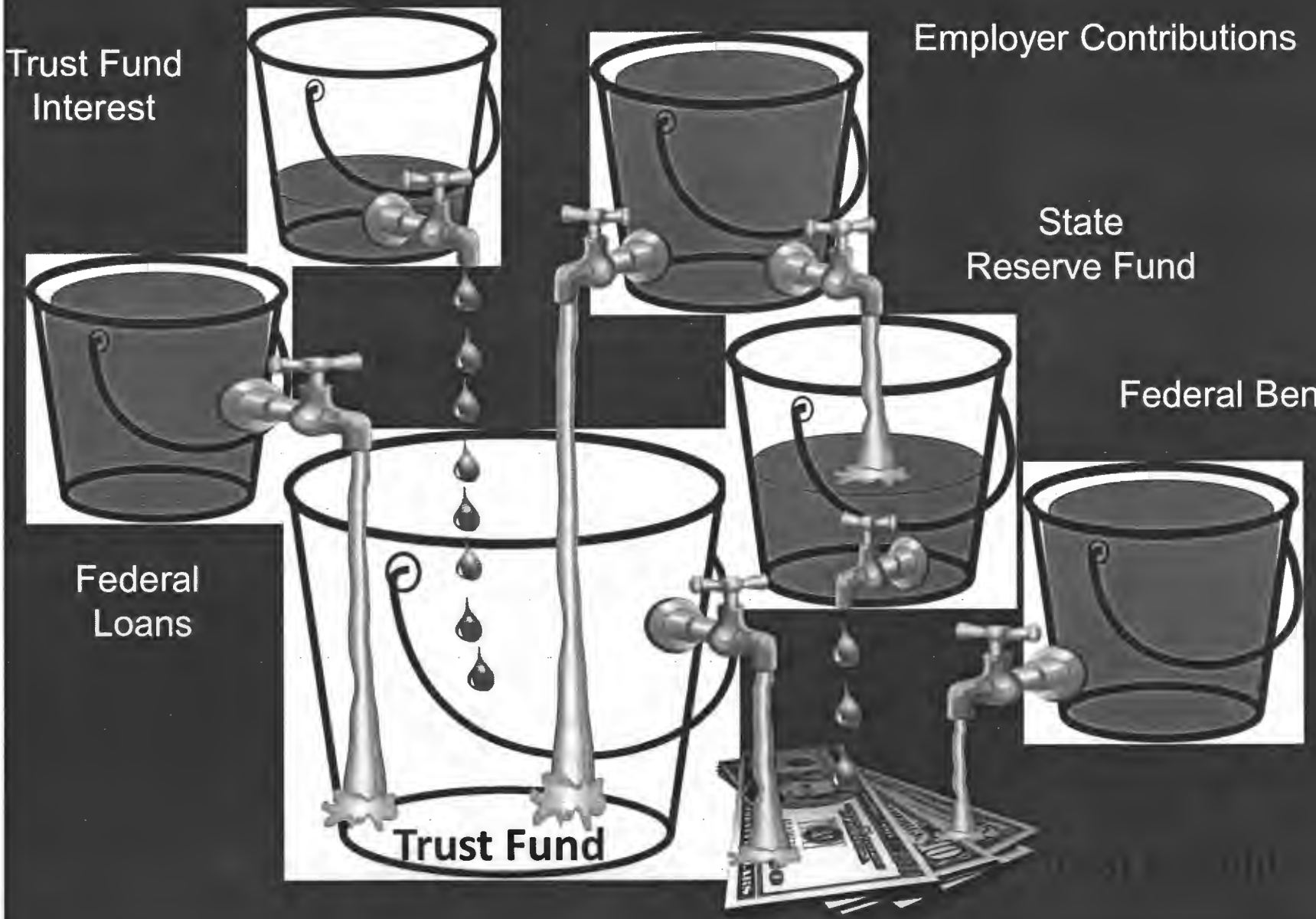
- NC JobConnector
  - Launched January 2011
  - New web-based ES operating system that features an "Automatch" capability in real-time.
  - Compares a new jobseekers work history with available job openings and generates an immediate list of job matches.
  - Job seekers and employers can enter their own profiles or job orders directly into this system and get immediate matches.
  - Allows an incredible amount of detail to be included and can generate very close matches.
  - Has levels of suppression built in to protect employer and job seeker confidentiality to the degree they choose.
  - Continue to refine the system to ensure the job seeker/employer information is complete.

Employment Service (ES) Reemployment Efforts Questions

- Work Opportunity Tax Credit (WOTC) program
  - A federal tax credit program administered jointly by USDOL and IRS.
  - An incentive program, available to employers who hire new employees with employment barriers from various Congress approved target groups that have historically had difficulties with finding employment development, job referral and job readiness efforts.
  - Current target groups include: IV-A (welfare) recipients, Veterans (living in a household receiving food stamps), Veterans with a Service-Connected Disability, Ex-Felons, Vocational Rehabilitation recipients, Food Stamp recipients, Supplementary Security Income recipients and Long-term welfare recipients. customers to other local services for help as they exhaust benefits.
- Veterans Employment Service program
  - ES receives an annual grant from the USDOL, Veterans Employment and Training (USDOL-VETS) to provide services to veterans in all ES local offices using two different staff classifications, the Disabled Veterans Outreach Specialist (DVOS) and Local Veterans Employment Representatives (LVER).
  - Approximately 100 ESC staff are currently funded by this grant and are assigned to local offices based on the population of veterans in each county, and the demand for services in each local office.

Questions 5 & 6
Trust Fund Analysis

North Carolina Trust Fund Monetary Flow



Employer Accounts
Question 6

- 195,665 Liable Employers
  - 19,495 Employers with the highest capped tax rate of 6.84%
    - ERA balance on July 31, 2011 - <1,995,866,807>
  - 25,223 Employers with 0% tax rate
  - 0% Tax rate is available to employers who have a credit ratio of 4% or greater
- Reimbursable Employers
  - Non Profits – Must maintain either a 1% balance equal to the previous years taxable payroll, or provide a surety bond equal to the same
  - Government entities
- Sent an annual bill for unemployment charges
  - $25,704,751 in charges to reimbursable benefits
  - $72,292,199 to State and Local Government

Experience Rated Accounts
Question 6

- Annual Computation July 31
- 2012 Tax Rates
  - 195,665 Experience Rated Employers
    - 48,916 Higher (25%)
      - 13,640 came off New Employer Tax rate
    - 70,439 Lower (36%)
    - 74,352 No Change (38%)

Factors Impacting Trust Fund Solvency

- Short recovery period between recessions
  - Recession 2002-04
  - Recession 2008-10
- Increase in the average duration of weeks
- Severity of the recession
- Tax Laws Changes

Tax Changes
Question 6

- March 1994: (Senate Bill 151 – Extra Session 1994)
  - 50% tax rate reduction when fund balance equals or exceeds $800m
  - Employers with a credit ratio of 6.4% or more received a tax rate of .01%
  - Also reduced new employer tax rate from 2.25% to 1.8%
- February 1995: (Senate Bill 13 – 1995 Session)
  - Employers with a credit ratio of 5% or more received a tax rate of 0%
- July 1995: (Senate Bill 180 – 1995 Session)
  - Imposed a 60% overall tax rate reduction on employers with a credit ratio when the fund ratio was equal to 5.0% or greater

Tax Law Changes
Question 6

- February 1996: (Senate Bill 2 – Extra Session 1996)
  - Provided a tax moratorium for all credit ratio employers for 1996
  - Also lowered new employer tax rate from 1.8% to 1.2%
- July 1999: (House Bill 275 – 1999 Session)
  - Training and Reemployment Contribution provided a 20% reduction in employer tax rates while imposing a corresponding 20% contribution for Department of Community College training programs and ESC reemployment services
  - Expanded 0% tax rate to employers with credit ratios of 4% or greater
  - Lowered new employer tax rate from 1.2% to 1.0%
  - Repealed 1-1-2011

Tax Law Changes

Question 6

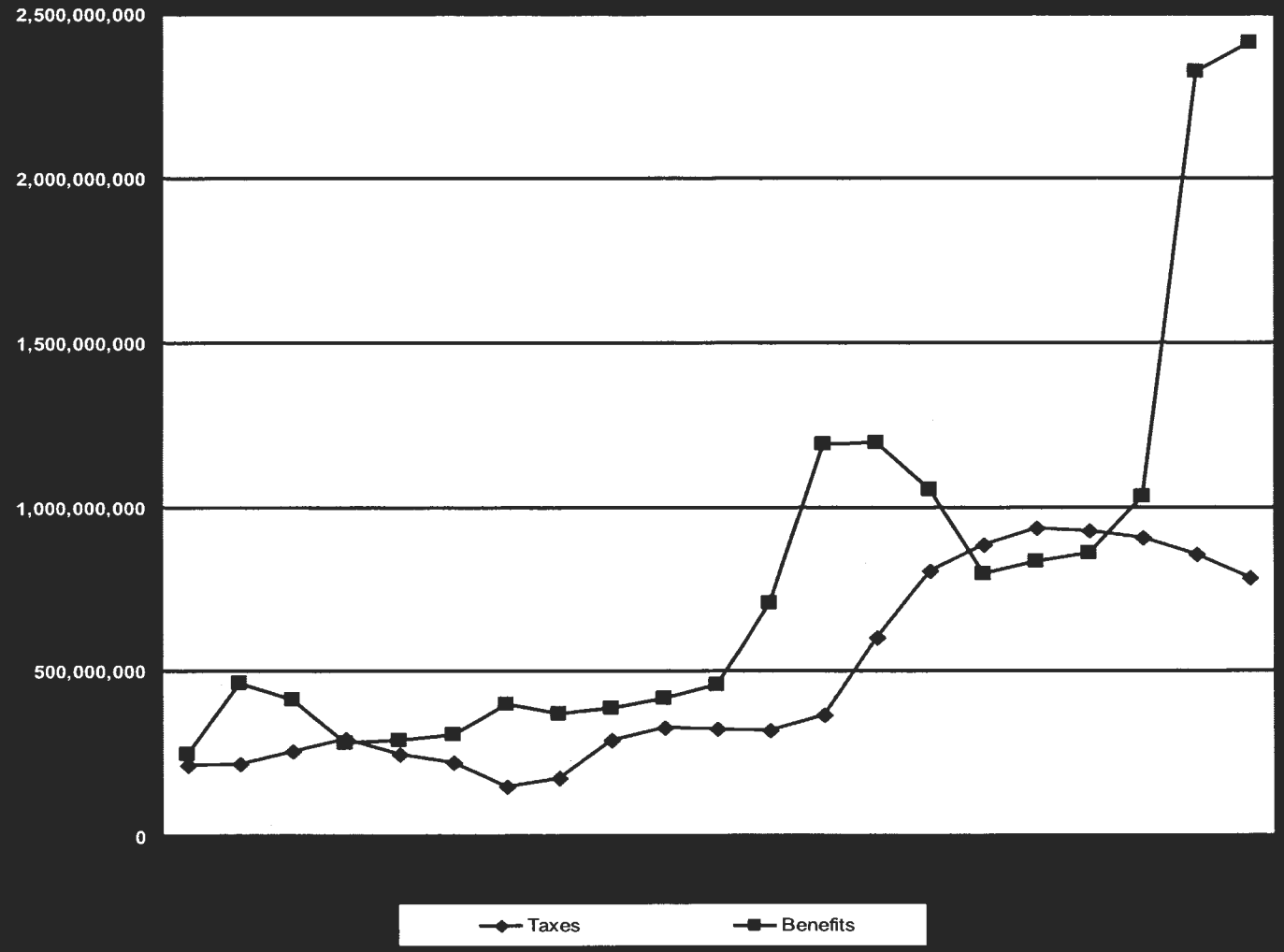
- July 2003: (HB 1241 – 2003 Session) Imposed a delay in collection of 20% unemployment surtax for one year.
- 2003 – NC issued $172 million in Tax Anticipation Notes (TAN) to pay Federal Loans.
- 2004 – NC issued $269 million in TANs to pay additional borrowing. These bonds were repaid in 2005.
- August 2005: (SB 757 – 2005 Session) Raised trigger for 50% tax reduction from $800 million to 1.95% of gross taxable wages reported to ESC.

Benefits vs. Tax Collections

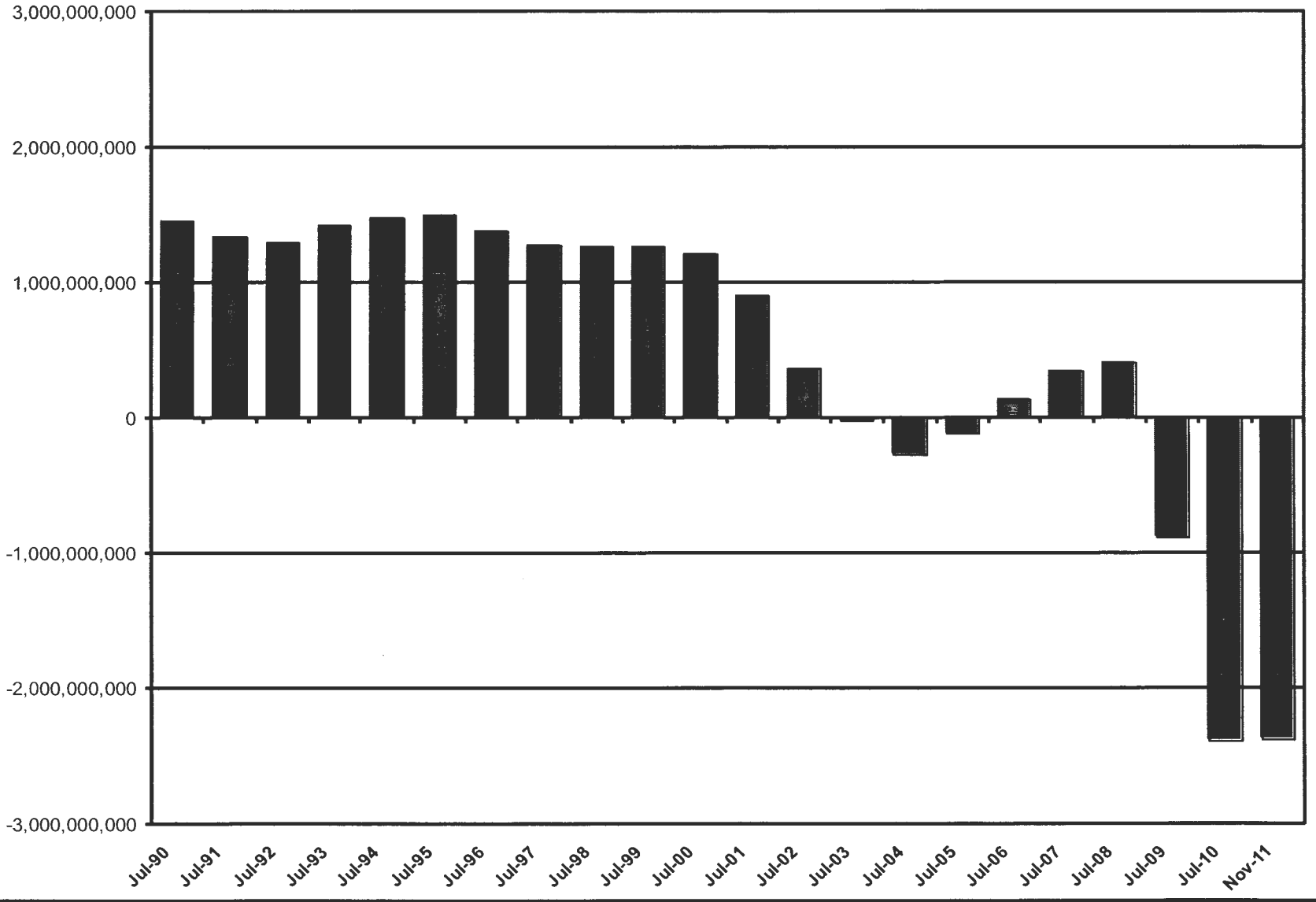
(Thousands)

Year	Tax Collections	Benefits	Trust Fund
1995	$225,540	$307,804	$1,499,887
1996	$150,656	$398,847	$1,383,604
1997	$177,130	$371,708	$1,279,586
1998	$291,593	$385,790	$1,272,798
1999	$327,527	$419,319	$1,267,232
2000	$326,670	$459,685	$1,219,353
2001	$319,337	$706,494	$ 906,711
2002	$367,970	$1,192,915	$ 368,517
2003	$602,211	$1,196,798	$ <23,433>
2004	$803,674	$1,056,019	$<273,232>

UI Trends - Taxes and Benefits



UI Trends - Trust Fund Balance



Title XII of Social Security Act

- "…provides for state advances (loans) when a state determines their Unemployment Fund will not have adequate funding to allow for the payment of Unemployment Benefits."

- Current loan balance: $2.6 B

State Options to Address Solvency Issue

Question 6

Tax Policy Review Committee

- Internal Committee formed in August 2010 to provide recommendations on tax policy for forward funding the unemployment trust fund
  - Utilized USDOL staff assistance as well as the Benefit Financing Model developed to analyze and improve solvency
- Report completed February 21, 2011
- Presentation to Senate Finance Committee on March 9, 2011

Internal Committee Options

- Adjust Taxable Wage Base
- New Employer Tax Rate
- Modify Existing Tax Schedule
- Eliminate 0% Tax Rate

Taxable Wage Base
Question 6

- Taxable Wage Base in North Carolina is indexed annually to the average annual insured wage.
  - G.S. 96-9(a)(5) sets the formula at 50% of the Average yearly insured wage rounded to the nearest multiple of $100.
- Average yearly insured wage – $40,787.07 x 50%
  - Taxable Wage Base for 2012 - $20,400.00
  - Taxable Wage Base for 2011 - $19,700.00

Internal Committee Recommendations Question 6

- Incrementally increase Taxable Wage Base
  - 60% - 2012; 70% - 2013; 80% - 2014
    - Cost to employers:
      - $10 - $20 million – Year 1
      - $30 - $40 million – Year 2
      - $30 - $40 million – Year 3
- Require approximately $700 million in collections

Adjust Existing Statutes
Question 6

- Adjust Standard Beginning Rate for New Employers
  - New Employers in North Carolina have a 1.2% new employer rate for the first two years of liability
    - Only Oklahoma and South Dakota have rates at or below 1.2%
  - Change the Standard Beginning Rate from 1.2% to 2.7%
    - Generate additional $37 million annually
- Eliminate 0% Tax Rate
  - 19,009 employers have a 0% tax rate for 2012
    - Only 11 states provide 0% on their highest tax rate schedule
- Adjust the tax rates for Debit Ratio Employers
  - Debit Ratio Employers are employers that have a negative balance in their employer account on the computation date
  - Current Rates are 2.9% - 5.7%
    - Approximately 49,000 employers have a deficit balance in their ERA
    - 19,495 employers are subject to the highest tax rate allowable
      - 13,332 of these employers had charges to their account last year totaling almost $560 million
      - The cumulative balance in the employer accounts for the 19,495 employers on July 30 was <$1,995,866,807>

Options by Other States to Address Solvency

- Impose new penalty unemployment insurance contribution rates on employers who are out of compliance due to failure to file or failure to pay
  - New York, Ohio, Pennsylvania
- Impose temporary solvency surcharges
  - 18 states
- Impose a tax on employees
  - Alaska, New Jersey, and Pennsylvania
- Participate with the IRS in the Questionable Employment Tax Practice (QETP) initiative
  - This is a program that helps identify employer tax fraud

Options by Other States to Address Solvency

- Eliminate non-charging of charges for UI benefits
  - Employers are not liable for benefits paid for substantial fault cases
    - Approximately $3 million in non-charging benefits are paid a year
- Adjust maximum number of weeks
  - South Carolina and Missouri – 20 weeks
  - Arkansas – 25 weeks
- Adjust the minimum and maximum weekly benefit amounts
  - $45 minimum
  - $521 maximum

Question 5
Comparison of North Carolina With Other States

Tax Foundation Report
Robert D. Hinchman October 2011

- Six states (Arkansas, Florida, Illinois, Michigan, Missouri, and South Carolina) have reduced the maximum period of state benefits below the previously-universal 26 weeks.
- Three states adopted significant packages of UI reforms.

Florida Reduced Benefit Weeks and Tightened Eligibility Requirements

Rhode Island Reduced Average Weekly Benefit and Tightened Eligibility Requirements

South Carolina Dramatically Expanded Experience Rating and Disqualifies Seasonal Employees

Tax Foundation Report

Robert D. Hinchman October 2011

Reductions in Weeks of Benefits

- Arkansas (25 weeks, effective March 2011)
- Florida (a sliding scale of 12 to 23 weeks, effective January 2012)
- Illinois (25 weeks, effective January 2012)
- Michigan (20 weeks, effective January 2012)
- Missouri (20 weeks, effective April 2011)
- South Carolina (20 weeks, effective June 2011)

Tax Foundation Report

Robert D. Hinchman October 2011

- 25 states increased their taxable wage base; the average base in the United States has risen each year: $11,696 in 2008, $12,241 in 2009, $12,970 in 2010, and $13,451 in 2011.
- A number of states have also increased minimum and maximum tax rates (20 states in 2010), increased rates for new employers (13 states in 2010), imposed surcharges on all employers (11 states in 2010), and changed maximum and minimum benefits.
- Indiana, Georgia, Massachusetts, New Jersey, and South Carolina passed bills canceling or delaying scheduled UI tax increases.
- Idaho and Texas have borrowed from private sources to pay benefits rather than from the federal government, "replacing federal borrowing costs with (potentially lower) costs of the private bond market, but...not addressing structural financing issues."

Employer Taxes

- Employer tax rates are experience rated and computed annually
  - Beginning year balance + taxes paid – contributions = Ending balance
  - Ratio of the ending balance to the last three years of taxable payroll for the last three years
- Tax Rate Schedule is set each year in accordance with 96-9(b)(3)(d)
  - Establishes a ratio of trust fund balance to total annual taxable wages
    - Been at the highest tax schedule for 9 years

Experience Rating of Employers

- Reserve Ratio - Rates are based on the ratio of the employer's account balance to taxable payroll (32 states including NC)
- Benefit Ratio – Rates are calculated without consideration of contributions and relates benefits paid directly to payroll. (18 states)

Comparison of Taxable Wage Base
10 Largest States

	Taxable Wage Base	Lowest Tax Table		Highest Tax Table		New Employer Rate
California	$ 7,000	0.10%	5.40%	1.50%	6.20%	3.40%
Texas	$ 9,000	0.00%	6.00%	0.00%	6.00%	2.7, or Ind. Avg.
New York	$ 8,500	0.00%	5.90%	0.90%	8.90%	2.70%
Florida	$ 7,000	0.10%	5.40%	0.10%	5.40%	2.70%
Illinois	$ 12,520	0.20%	6.40%	0.30%	9.60%	3.35%, or Indust. Avg.
Pennsylvania	$ 8,000	0.30%	7.70%	0.30%	7.70%	3.7030%, 10.2626% Construction
Ohio	$ 9,000	0.00%	6.30%	0.30%		2.7%, 7.0% Construction
Michigan	$ 9,000	0.06%	10.30%	0.06%	10.30%	2.7%, 7.9% Construction
Georgia	$ 8,500	0.01%	5.40%	0.03%	7.29%	2.70%
North Carolina	$ 19,700	0.00%	5.70%	0.00%	5.70%	1.20%

2011 Benefit Amounts 10 Largest States

	Minimum and Maximum Benefits Amount		Wages for Maximum Weekly Benefit Amount	
	Lowest	Highest	High Qtr.	Base Period
California	$40	$450	$11,675	$14,594
Texas	$60	$415	$10,363	$15,337
New York	$64	$405	$10,517	$15,776
Florida	$32	$275	$7,150	$10,725
Illinois*	$51/$77	$376/$461	$8,484	$10,605
Pennsylvania*	$35/$43	$573/$581	$14,898	$22,840
Ohio*	$108	$387/$524		$15,480 in 20 weeks
Michigan*	$117/$147	$362	$8,830	$13,245
Georgia	$44	$330		$13,860 in 2 Qtrs
North Carolina	$43	$506	$13,156	$13,156

* Benefit amount is adjusted for a dependent allowance

State Unemployment Debt
10 Largest States

States	Debt (12/15/2011)
California	**$9,566,716,796.27**
Texas	**Issued Bonds Nov. 2010**
New York	**$3,296,438,637.36**
Florida	**$1,722,700,000.00**
Illinois	**$2,033,904,566.93**
Pennsylvania	**$3,123,737,549.04**
Ohio	**$2,113,387,131.00**
Michigan	**$3,208,954,991.15**
Georgia	**$721,080,472.00**
North Carolina	**$2,630,428,535.91**

27 States and the Virgin Islands are currently borrowing

Appeals Process
10 Largest States
Question 5

	Appeals Filing Deadline (days)		Appellate Entity	Number of Members
	1st Level	2nd Level		
California	20	20	Appeals Board	7
Texas	14	14	Appeals Commission	3
New York	30	20	Appeals Board	5
Florida	20	20	Appeals Commission	3
Illinois	30	30	Board of Review	5
Pennsylvania	15	15	Board of Review	3
Ohio	21	21	Review Commission	3
Michigan	30	30	Board of Review	5
Georgia	15	15	Board of Review	3
North Carolina	15	10	Board of Review	3

Appeals
G.S. 96-15
Question 5

- Claim Adjudicated
- Appeals Referee - Aggrieved Party may appeal the adjudicator's decision within 30 days of the date of notification or mailing of conclusion. DES – Aggrieved Party may appeal the referee's decision within 13 days of the date of notification or mailing of the decision rendered in the appeals hearing.
- Court System – Aggrieved Party may appeal the DES decision to Superior Court within 30 days of notification of DES decision

Appeals Decisions Rendered
2010
Question 5

First Level Appeals		53,565	
Claimant			37,407
Ruled in Favor	49.3%		
Employer			16,158
Ruled in Favor	54.6%		
Second Level Appeals		10,576	
Claimant			7,926
Ruled in Favor	19.1%		
Employer			
Ruled in Favor of Claimant	19.4%		2,650

Question 4
Improper Payment
USDOL Report

USDOL Report on Improper Payments

- US Department of Labor
  - Produces an annual report on US benefit integrity
    - Reviews 24,000 cases nationally; 520 in North Carolina
    - Uses a Benefit Accuracy Measurement to establish a percentage of Improper Payments based on the last three years and assigns a rate
    - Rate is applied to total benefit payments

Unemployment Benefit Integrity

- Benefit Accuracy Measure (BAM)
  - Reviews about 520 cases annually
    - Establishes a improper payment rate based on the review of randomly selected cases.
    - Rates and Improper Payment amounts are based on a three year average from July 1, 2008 – June 30, 2011
    - North Carolina's rate is 8.86%
      - US – 11.05%
      - Virginia – 17.77%;
      - S.C. – 17.90%
      - Tennessee – 14.47%
      - Georgia – 6.94%

Improper Payments Causes

- Benefit Year Wages
  - The claimant continues to claim and receive benefits after returning to work (45%)
    - Improving the Continued Claims Process
    - Improving methods to detect Return To Work
- Separation Issues
  - Employers or their third party administrators do not submit timely or accurate separation information (34%)
    - Timeliness of Determinations
    - Enhancing Adjudication Decision Capabilities
- Work Search
  - Claimants fail to register with the state's Employment Service (ES) as dictated by state law (10%)

Improper Payment Rate

State	Rate
California	6.51%
Texas	12.66%
New York	8.27%
Florida	6.86%
Illinois	12.84%
Pennsylvania	10.51%
Ohio	16.37%
Michigan	8.86%
Georgia	6.94%
North Carolina	8.86%

IPIA Improper Payment Rate — This is the improper payment rate for the UI program that the U.S. Department of Labor reports to the Office of Management and Budget, as required by the Improper Payments Information Act (IPIA). The IPIA improper payment rate is based on results of the BAM statistical survey, and includes both overpayments and underpayments.

UI Benefits Integrity

- Implements weekly cross matches with NDNH (National Directory of New Hire) and develop automated process to immediately notify UI claimants when you get a "hit"
  - Joined the pilot program with 10 other states to start a weekly cross match to reduce improper payments
- Implement SIDES (State Information Data Exchange System)
- Implement a Cross-Functional Integrity Task Force

Southeastern Consortium for Unemployment Benefit Integration

- SCUBI
  - Consortium of 4 Southeastern States
  - Tennessee is the lead state, along with NC, SC and GA
  - $8 million feasibility study funded by US DOL in 2009
  - Focus on determining if a multi state-shared UI benefits system is possible and cost effective for the delivery of UI benefits and related programs
  - Focus on gathering information regarding UI benefits systems and business process
  - Identify strengths and weaknesses
  - Focus on UI system attributes, features and requirements
  - Deliverables will include detailed system requirements that can be used to develop new UI benefit payment system

Opportunity North Carolina

- For FY 2011-12, the N.C. General Assembly approved an appropriation of $1 million to fund ONC.
- Piloted in six DES offices, plans include expansion to other DES offices.
- Provides individuals up to 24 hours of on-the-job training for up to 6 weeks.
- Employers have no costs, except the time spent training a UI recipient. Workers' Compensation coverage is provided by ONC.
- 49 Employers have volunteered; 73 recipients have had at least one week of training; 37 have been employed after participation; 275 weeks have been completed.

Accomplishments and Initiatives

- Created State Employee Career Transition Office to Assist Unemployed Government Workers
- Opened New Remote Service Center: Facility Designed to Enhance Teamwork, Increase Productivity and Create a Higher Level of Customer Service.
- Secured a $205 Million Federal Grant for Modernization of UI Computerized Benefit System
- Processed Over $1 Million in Federal Disaster Unemployment Assistance Claims for Citizens who Became Unemployed as a Direct Result of Tornados and Hurricane Irene.
- Strengthened Internal Audit and Compliance
- Enhanced Security of Local Offices and Raleigh Central Office
- Joined Southeastern Consortium for Unemployment Benefits Integrity (SCUBI) to Work with Neighboring States in Developing a Cost Effective System for UI Benefit Delivery
- Eight ESC Employees Earn Governor's Awards for Outstanding State Government Service and Outstanding Public Service
- National Jobs for Veterans Website Designed by ESC Contractors

Commerce Update
Revenue Laws Study Committee
January 4, 2012

J. Keith Crisco

Secretary of Commerce

THRIVE in NORTH CAROLINA

Merger Objectives

- Improve customer service for:
  - employers seeking employees
  - employees seeking work
- Implement merger with minimum impact on customers.
- Consolidate and improve workforce development efforts.
- Leverage labor market data to enhance economic development.
- Maximize savings in state and federal resources.

THRIVE in NORTH CAROLINA

Merger Implementation

- Continue transition from the strategic aspects of the merger to tactical aspects within:
  - Workforce Development / Employment Services
  - Policy Research Strategic Planning / Labor Market Info
  - Human Resources
  - Financial Management

THRIVE in NORTH CAROLINA

Workforce Development / Employment Services Activity

- Roger Shackleford has been named to lead the consolidated workforce development efforts for Commerce
- Oversight Team continues to steer implementation of the merger of the Workforce Development and Employment Services.
- 5 workgroups formed focusing on 5 key merger goals.
  - Workforce Investment Act (WIA) and Trade Adjustment Assistance (TAA) Integration
  - Programs and Policies Integration
  - Technology Integration
  - Staff Development and Training
  - Brand Development for Integrated Services
- Workgroups consist of close to seventy (70) representatives of state and local staff, state and local partner representation, stakeholder representation, and content experts.
- Final recommendations by mid-February.

THRIVE in NORTH CAROLINA

Policy Research Strategic Planning / Labor Market Info Activity

- Stephanie McGarrah has been named to lead efforts to leverage labor market data to enhance economic development.
  - 5 teams have been formed focusing on:
    - Bureau of Labor Statistics Programs
    - Economic Analysis
    - Occupational and Policy Analysis
    - Workforce Research and Evaluation
    - Information Delivery

THRIVE in NORTH CAROLINA

Status of Contracts & Savings Achievement

- Study of UI Debt and Trust Fund Solvency is currently in review stage of procurement process.
- Budget reductions required by current appropriations act have been achieved:
  - $251,376 in FY 11-12
  - $377,064 in FY 12-13

THRIVE in NORTH CAROLINA

NORTH CAROLINA GENERAL ASSEMBLY
REVENUE LAWS STUDY COMMITTEE
Wednesday, February 1, 2012
Room 544, Legislative Office Building
9:30 a.m.

The Revenue Laws Study Committee met at 9:30 a.m. on Wednesday, February 1, 2012, in room 544 of the Legislative Office Building. Seventeen members attended the meeting. The following Senators were present: Senator Blue, Senator Harrington, Senator Hartsell, Senator McKissick, Senator Rabon, Senator Rucho, Senator Rouzer and Senator Stevens. The following Representatives were present: Representative Howard, Representative McComas, Representative Blust, Representative Brubaker, Representative Carney, Representative Hill, Representative Lewis, Representative Moffitt, and Representative Starnes. Senator Bob Rucho presided as chair.

Local Privilege License Tax Authority

Christopher McLaughlin, Assistant Professor of Public Law and Government, UNC School of Government, was recognized. He defined privilege tax, explained how it is a significant local-level revenue source, and discussed how random the rates are. A copy of his power point presentation is attached.

Andy Ellen, NC Retail Merchants' Association's President and General Counsel, was recognized. He discussed how the privilege license tax has affected business owners and manufacturers. It is viewed as inequitable and an impediment to business growth and employment. Mr. Ellen shared an email from Mark Yambor which details Mr. Yambor's frustration at the tax. A copy of the email is attached.

Kelli Kukura, League of Municipalities – Director of Government Affairs, was recognized. She agreed with Mr. Ellen, seeing the need for equitable reform while keeping business support services provided by municipalities. She explained that municipalities' license offices direct businesses on where else in town to go for help with other licensure and other issues.

Jim Ahler, NC Association of CPAs' Executive Director, was recognized. He lauded Mecklenburg County for hiring a firm to study equitable privilege license taxes, but stated that Charlotte has created a problem for CPAs with vague authority of what it may tax. A copy of correspondence with Charlotte's counsel is attached regarding Charlotte's authority and definition of who/what is taxable is attached.

Jonathan Tart, an analyst with the Fiscal Research Division, was recognized to further explain the privilege license tax in the terms of a flat tax versus a tax based on gross receipts.

Property Tax Valuation of Business Personal Property

Ken Joyner, lecturer in Public Finance and Government, UNC School of Government was recognized. He provided a brief review of how the government treats property and appraises it. There are three approaches to value property: cost, income, sales comparison. All 100 counties use the same method for an equitable process.

Mack McLamb, manager – Carlie C's grocery chain, was recognized. He explained the problem of trying to value purchases of used, old property with no ability to provide original owner's purchase receipts and use and maintenance records. These requests are causing problems and leading to costly appeals. A copy of his statement is attached.

David Baker, Local Government Division director – Department of Revenue, was recognized. He reiterated what Ken Joyner stated on the valuation of property and the issues of appraisal. A copy of his power point presentation is attached.

Property Tax Appeals Process

Cindy Avrette, a staff attorney with the Research Division, was recognized. She outlined the process of appeals, local all the way up to the court system. She also explained that similar property is taxed the same regardless of ownership. A copy of her power point presentation is attached.

Pat Goddard, Johnston County Tax Assessor, was recognized to describe how the appeals process works on the local level. She provided that 97% of Johnston County's settled appeals received some type of relief with an average of 16.3% reduction in value. A copy of her power point is attached.

David Baker was again recognized. He briefly outlined the NC Property Tax Commission's tax appeal process. Janet Shires, legal counsel to the Commission, was recognized to answer questions.

The meeting adjourned at 11:56 a.m.

Senator Bob Rucho Presiding Chair	DeAnne Mangum Committee Assistant

REVENUE LAWS STUDY COMMITTEE AGENDA

Rep. Julia Howard *Rep. Danny McComas* *Sen. Bob Rucho*

Wednesday, February 1, 2012
Room 544, Legislative Office Building
9:30 a.m.

I. Approval of Minutes from the January 4, 2011 Meeting

II. Local Privilege License Tax Authority

- *Christopher McLaughlin, Assistant Professor of Public Law and Government, UNC School of Government*
- *Andy Ellen, President and General Counsel, NC Retail Merchants' Association*
- *Jim Ahler, Executive Director, NC Association of CPAs*

III. Property Tax Valuation of Business Personal Property

- *Ken Joyner, Lecturer in Public Finance and Government, UNC School of Government*
- *Mack McLamb, Manager, Carlie C's grocery store*
  Jason Wenzel, Counsel, Narron, O'Hale, and Whittington, P.A.
- *David Baker, Director, Local Government Division, Department of Revenue*

IV. Property Tax Appeals Process

- *Cindy Avrette, Research Division*
- *Pat Goddard, Johnston County Tax Assessor*
- *David Baker, Director, Local Government Division, Department of Revenue*

V. Repeal North Carolina Estate Tax

- *Legislative Proposal, Jonathan Tart, Fiscal Research Division*
- *Edwin McLenaghan, Public Policy Analyst, NC Budget & Tax Center*
- David Heinen, Director of Public Policy and Advocacy, N.C. Center for Nonprofits

VI. Adjournment

Next Meeting Date: March 7, 2012
in Room 544, LOB, at 9:30 a.m.

September 7, 2011

Ms. Julie Berger, Deputy Director
Mecklenburg County Office of the Tax Collector
700 E. Stonewall St.
Charlotte, North Carolina 28202

Re: Charlotte Privilege License Tax

Dear Julie:

On August 26, 2011, we received from Thomas E. Powers III, Assistant City Attorney for the City of Charlotte, a response to the public records requests we had previously submitted through counsel to the Mecklenburg County Office of the Tax Collector (the "OTC"), relating to the OTC's attempt to collect Charlotte's privilege license tax from certain accounting firms having offices in Charlotte. We have reviewed with our counsel the documents included in the response, and want to provide you with our present view of the matter in hopes of facilitating future discussions.

As you know, subsection (h) of section 105-41 of the North Carolina General Statutes states that counties and cities may not levy any license tax on "the business or professions" taxed under that section. The profession of public accountant is one of the professions taxed under section 105-41. Specifically, subsection (c) provides that "[e]very person engaged in the public practice of accounting as a principal, or as a manager of the business of public accountant, shall pay for such license fifty dollars ($50.00), and in addition shall pay a license of twelve dollars and fifty cents ($12.50) for each person employed who is engaged in the capacity of supervising or handling the work of auditing, devising or installing systems of accounts." Since the profession of public accountant is taxed under N.C.G.S. § 105-41(c), the imposition of Charlotte's privilege license tax on firms engaged in the public practice of accounting would violate N.C.G.S § 105-41(h) and is therefore not permitted.

We received a copy of the memorandum from Mr. Powers to OTC Director Neal Dixon dated July 20, 2011, regarding the imposition of privilege license taxes upon businesses and professions listed under N.C.G.S. 105-41. That memorandum (the "City Attorney's Memorandum") states, without citing authority, that N.C.G.S. § 105-41(h) only prohibits local governments from "levying privilege license taxes upon any 'activity' listed in North Carolina General Statute §§ 105-41(a), and -41(c)" and that a business or profession that conducts "a separate 'activity' ... cannot shield itself from the levy of a [local privilege license tax]." However, there is no reference in N.C.G.S. § 105-41(h) to "separate activities" (or "activities" at all, for that matter). In our view, a firm engaged in the public practice of accounting may not be subjected to local privilege license tax at all.

Even if Charlotte were permitted to levy its privilege tax on accounting firms that engage in activities beyond the "public practice of accounting," we would be surprised to learn that any of the accounting firms to which the OTC has directed its inquiries engage in any such activities,

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given the broad scope of the discipline. In our view, any service performed by an accounting firm that is subject to the oversight or disciplinary authority of the State Board of Certified Public Accountant Examiners (the "Board") certainly falls within the scope of the "public practice of accounting" for this purpose. The Board is an agency of the State of North Carolina. Its powers and duties include formulating rules for the examination of applicants for CPA licenses, for the continuing professional education of persons holding CPA licenses, and for report review and peer review of audits, reviews, compilations, and other reports issued on financial information in the public practice of accountancy. The Board is also authorized by statute to adopt rules of professional ethics and conduct to be observed by certified public accountants in the state.

We presume from the City Attorney's memorandum and other materials produced in response to our records requests that the OTC potentially views "consulting services" as being outside of the scope of the public practice of accounting. However, we note that the Board has defined the "public practice of accountancy" to include the performance of certain consulting or management advisory services and has issued rules prohibiting certified public accountants from rendering consulting services unless they comply with the Statements on Standards for Consulting Services issued by the American Institute of Certified Public Accountants (the "AICPA"). See 21 N.C.A.C. 08A.0307 and 08N.0304. The AICPA's Statements on Standards for Consulting Services define "consulting services" broadly to include consultations (including the review of client business plans), advisory services (including the performance of operational reviews and improvement studies and assistance with strategic planning), implementation services (including computer system installation and support), transaction services (including valuation services, analyses of potential mergers and acquisitions, and litigation services), staffing and other support services (including trusteeship and controllership activities), and product services (including the sale and delivery of packaged training programs and the sale and implementation of computer software).

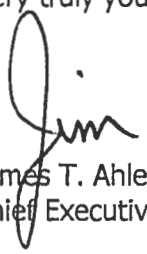
Since the performance of consulting services is regulated by the Board, the performance of such services by accounting firms falls within the scope of the "public practice of accounting" for purposes of N.C.G.S. § 105-41(c). Thus, the imposition of local privilege license taxes on those services is prohibited by N.C.G.S. § 105-41(h).

If the OTC believes accounting firms in Charlotte are performing consulting services that are outside the scope of the Board's regulatory authority, we would appreciate receiving from the OTC a description of those services. We assume the OTC is not taking the untenable position that all consulting services performed by accounting firms are subject to Charlotte's privilege license tax. If this assumption is correct, the OTC should clarify its position by describing with some degree of specificity the types of consulting services it believes Charlotte has the authority to the tax. We expect such a clarification would foster more productive discussions between the OTC and the NC Association of CPAs (and between the OTC and individual accounting firms).

Finally, we note that local taxes are required to be uniform under the Constitution of the State of North Carolina. It seems possible that the OTC's application of Charlotte's privilege license tax ordinances to accounting firms could violate the requirement of uniformity. However, this would likely depend on the types of services the OTC purports to be subject to tax, which, as indicated above, remains unclear.

We hope that you will find this letter helpful. We would be happy to meet with the OTC to discuss this matter further. As you know, the views of the association on this matter are not necessarily the views of all of the members of the association. However, we are in communication with our members and are sharing our views. I hope you agree that our role in communicating with our member firms has been beneficial to you and that you will continue to delay enforcement efforts with individual firms until we have an opportunity to fully present our views in a face-to-face meeting with you and others.

Very truly yours,



James T. Ahler
Chief Executive Officer

cc: Debbie Lambert, CPA, Chair, NCACPA Board of Directors
Jay Lesemann, Jr., CPA, Chair Elect, NCACPA Board of Directors
Bo Biggs, CPA, Chair, NCACPA Government Relations Committee
Thomas E. Powers III, Esq., Assistant City Attorney
B. Davis Horne, Jr., Esq., Legal Counsel for the association with Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP
Joshua D. Bryant, Esq., Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP

APPEALS OF LOCAL GOVERNMENT ASSESSMENTS

Pat Goddard

Johnston County Tax Administrator

February 1, 2012

APPEALS AT THE LOCAL LEVEL

- How does a citizen know how to appeal?
  - Notice on local tax listing forms
  - Notice on the county websites
  - Notice in the local newspaper
    - Board of Equalization and Review Meetings
    - Required NCGS 105-105-322 (f) notice of date, hours, place, and purpose. Published at least 3 times with the first notice at least 10 days prior to the first meeting.

APPEALS AT THE LOCAL LEVEL

- What can be appealed?
- Real estate, personal property, registered motor vehicles, acceptance of late applications, value, situs, taxability
- Real estate is appealed in April when the Board of Equalization and Review meets
- Personal property values can be appealed within 30 days of the tax notice(bill)
- Registered motor vehicle values can be appealed within 30 days of the tax notice (bill)

APPEALS AT THE LOCAL LEVEL

- How does a citizen appeal at the local level?
  - Contact the local tax office and request an appeal form
  - Provide documentation to the tax office that demonstrates why the value is incorrect
  - Request the tax office review the property
  - Many tax offices handle most of the appeals at this “informal” level without going to the Board of Equalization and Review

APPEALS AT THE LOCAL LEVEL

- If the informal appeal does not get the desired result from the tax office?
- Appeal to the Board of Equalization and Review
- The Board of E and R can be elected county commissioners or a special board appointed by the county commissioners
- County Commissioners decide membership, qualifications, terms of office, and filling of vacancies

APPEALS AT THE LOCAL LEVEL

- Board of Equalization and Review hearings are public meetings
- Board members hear testimony/evidence from the taxpayer and the county tax office
- Notices of Decision are mailed on a NCDOR prescribed form to notify the taxpayer of the Board Decision
- Notices include detailed information on how to appeal to the state Property Tax Commission

APPEALS AT THE LOCAL LEVEL

- Appealing at the local level has no required costs or fees to the taxpayer
- Costs could be incurred by hiring an appraiser, an attorney, or a real estate professional to appear and speak at the Board hearing
- Evidence presented at hearings may include appraisals, comparable sales, pictures of problems with the property, etc.

APPEALS AT THE LOCAL LEVEL

- In a revaluation year, the Board of E and R typically hears more appeals than in non-revaluation years.
- The number of appeals is trending up in non-revaluation years

APPEALS AT THE LOCAL LEVEL

- Johnston County Example
- 2010 7th year of revaluation cycle
  - 650 real estate appeals
  - Many vacant lot value appeals from real estate developers
- 2011 revaluation year
  - 9515 informal appeals
  - 1199 withdraw after speaking with tax office
  - 4616 no change in value
  - 3560 value decreased
  - 140 value increased

APPEALS AT THE LOCAL LEVEL

- Johnston County Example
- Formal Appeals to the Board of Equalization and Review 2011 revaluation year
- 1026 parcels were appealed by submitting an appeal form
- Only 345 taxpayers appeared for hearings
- Appealed to the Property Tax Commission 12 appellants with 21 parcels

APPEALS AT THE LOCAL LEVEL

- When decisions are appealed to the state level the county attorney or contracted attorney represents the tax office
- Costs may be incurred by the taxpayer based on whether or not they appear Pro Se or hire an attorney
- Property Tax Commission staff acts as the liaison between the county and the appellants

APPEALS AT THE LOCAL LEVEL

- Statutes are in place to provide due process for taxpayers
- Costs for appealing values do vary but can be very inexpensive to the taxpayer

Property Tax Appeal Process

Cindy Avrette

Revenue Laws Study Committee

February 1, 2012


Courts
Property Tax Commission
Board of Equalization & Review
Informal Appeals to Tax Assessor

First Level of Appeal ...

LOCAL

Local Level – Informal Meeting

- Informal Process
  - 30 days after notice of value
  - Assessor arranges conference with taxpayer
  - Final decision within 30 days
  - If agreement not reached, 30 days to appeal

Local Level – Board of E&R

- Board of Equalization and Review = Board of County Commissioners **OR** special board of equalization and review
- Adopt resolution creating special board
  - Resolution provides for the membership, qualifications, and terms of office; no statutory requirements
  - Resolution *may* provide for an appeal of its decision to the board of county commissioners
- Time of meetings set by statute
- Board of County Commissioners has limited ability to review and change decisions of the Board of E&R
- If taxpayer not satisfied with decision, may appeal within 30 days after the notice of the board's decision to the State Board of Equalization and Review

Next Level of Appeal ...

PROPERTY TAX COMMISSION

Property Tax Commission

- State Board of Equalization and Review
- Creation and Membership
  - No statutory requirements or qualifications
  - Five appointments
    - Three by the Governor
    - Two by the General Assembly
  - Governor designates the chair
  - Four-year terms, expire on June 30
- Current Commission members
  - Terry Wheeler, Chair
  - Aaron Plyler, Vice-Chair
  - Georgette Dixon
  - Paul Pittman
  - William Peaslee

Property Tax Commission

- Meets at least quarterly
- Staff provided by the Local Government Division of Department of Review
- Cost borne by local governments
- A staff valuation specialist makes contact with each property owner who appeals
- Functions as a trial court and follows the Rules of Evidence
- Hearings are "de novo"
- If taxpayer not satisfied with the Commission's decision, may appeal within 30 days of the entry of the final decision to the North Carolina Court of Appeals

Final Level of Appeal ...

COURT OF APPEALS & NC SUPREME COURT

Courts

- North Carolina Court of Appeals
  - Appeals are based on the record made at the Property Tax Commission hearing
  - Notice of appeal must be made to the Property Tax Commission within 30 days after the entry of the final decision or order of the Commission
  - Notice must include exceptions which set for the specific grounds upon which the party is appealing
  - The court may choose not to hear the case
- North Carolina Supreme Court
  - A taxpayer who is not satisfied with the decision of the Court of Appeals may file a motion for review in the NC Supreme Court
  - The court may choose not to hear the case

Reappraisals
February 1, 2012
Revenue Laws

David Baker, Director
Local Government Division
N.C. Department of Revenue
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Appeal Process

- Informal Appeals
- Board of Equalization and Review
- North Carolina Property Tax Commission

Property Tax Commission Appeals

2011-- 1263 appeals filed

Year	#	Year	#	Year	#	Year	#
2010	997	2000	431	1990	502	1980	235
2009	1015	1999	587	1989	379	1979	109
2008	912	1998	306	1988	339	1978	77
2007	1114	1997	507	1987	318	1977	113
2006	421	1996	312	1986	342	1976	131
2005	728	1995	599	1985	144	1975	262
2004	614	1994	719	1984	185	1974	55
2003	816	1993	650	1983	365	1973	89
2002	746	1992	1099	1982	138	1972	79
2001	564	1991	415	1981	261	1971	100
Avg.	**793**		**563**		**297**		**125**

Property Commission Appeals

Total Appeals Filed Since August 2000	8692
Pending	1214
Resolved	7478

Property Commission Appeals

Total Appeals Resolved since August 2000	7478	
Late Filing	755	10.09%
No Application for Hearing Filed	2253	30.13%
Withdrawn By Taxpayer	1435	19.19%
Settlement Reached Between Parties	2774	37.10%
Heard by Property Tax Commission	261	3.49%

Settled Appeals

(2011 Started to track the changes in value)

	No Change In Value	Value Increased	Value Decreased	Totals
Closed	66	0	0	66
Settled	10	3	391	404
Withdrawn	8	0	0	8
Totals	**84**	**3**	**391**	**478**

Settled Appeals

97% of the settled appeals received some type of relief.

Of the settled appeals there was on average a 16.3% reduction in value.

Business Personal Property
February 1, 2012
Revenue Laws

David Baker, Director
Local Government Division
N.C. Department of Revenue
919-733-7711
David.baker@dornc.com

Fair Market Value

- N.C.G.S. 105-283: Requires "true value in money"

- Three approaches to value:

- Cost Approach
- Sales Approach
- Income Approach

- The counties use the cost approach to appraise business personal property, and in using the cost approach, the appraiser must determine four critical elements:

  1. The original (historical) installed cost
  2. The current replacement cost new (RCN)
  3. The useful economic life of the property
  4. The loss in value (Depreciation)

- Trend the historical cost to reach today's cost.

- Example: original cost of $10,000 in 2008, trend factor determined to be 1.06 (2% increase each year). 2011 RCN would be $10,000 x 1.06 = 10,600.

- If the property has a 10-year life and is four years old the amount of depreciation is 40% or $4,240.00 and the value would be $10,600 - $4,240 = $6,360.

Historical vs. Allocated Costs

- Historical cost is the cost of the property when it was first placed into service by its original owner
- Allocated cost or Acquisition cost is the price paid for an asset when acquired by the present owner

NC Department of Revenue's Recommendation and General Rule

- The cost figures reported should be historical cost, that is the original cost of an item when first purchased, even if it was first purchased by someone other than the current owner.

Any time the new book cost is substantially more or less than the previous year's appraisal, the appraiser should **ask why.** In these situations the following questions should be asked:

1. Does the price paid represent fair market value?
2. Were all of the assets purchased from the prior owner?
3. Have any of the assets been sold by the new owner since the purchase?
4. Were the reported costs of the prior owner ever audited?
5. What is the purchase price allocation based on?
6. Was an appraisal made of the property prior to the sale?
7. Was an appraisal made of the property after the sale?
8. How many business locations were involved in the purchase?

Amp Inc v. Guilford County
NC Supreme Court, 287 NC 547 (1975)

- "In this State there is no statutory authority that permits the county tax supervisor, as a per se rule, to equate "book value" with true value in money as a uniform measure of assessment for purposes of ad valorem tax valuation."

Edwards Valves, Inc. v. Wake Co.,
117 NC App. 484, 493, 451 S.E. 2d 641, 647
(1995)

- The Court of Appeals held that the tax was illegal when the assessment methodology was based upon:

  "an improper distinction between taxpayers who owned the same class of property, self created intangibles, that have been sold and similar intangibles that have not been sold."

Historical Cost

Sum of Cost	Column Labels			
Row Labels	Computers	Equipment	Furinture/Fixtures	Grand Total
1994			$ 23,318	$ 23,318
1995		$ 1,657		$ 1,657
2002	$ 283,314	$ 14,770	$ 4,268	$ 302,351
2003	$ 298,925	$ 17,101	$ 21,025	$ 337,050
2004	$ 275,195	$ 8,905	$ 467	$ 284,566
2005	$ 1,603,963	$ 49,625	$ 93,216	$ 1,746,803
2006	$ 49,752	$ 16,349	$ 3,775	$ 69,875
2007	$ 175,018	$ 7,184	$ 19,514	$ 201,715
2008	$ 286,146	$ 30,695	$ 27,690	$ 344,531
2009	$ 1,848		$ 778	$ 2,626
Grand Total	$ 2,974,160	$ 146,285	$ 194,049	$ 3,314,493

These numbers reflect original historical cost ($3,314,493) and year acquired of the assets included in the purchase. (This is the basic information required on all Business Personal Property Listings)

Historical Cost - Continued

The column headers represent the asset class which is required to determine which of the trending tables to apply.

Sum of Cost	Column Labels		
Row Labels	Computers	Equipment	Furinture/Fixtures

After applying the trending tables the total assessed value of the assets listed above as of January 1, 2010 would be:

	Assessed Value	
Computers	$	489,746
Equipment	$	78,376
Furniture/Fixtures	$	103,603
Grand Total	**$**	**671,725**

Estimated Value - Wake

Sum of Fair Value	Column Labels			
Row Labels	Computers	Equipment	Furinture/Fixtures	Grand Total
⊞2009	$ 895,800	$ 55,900	$ 86,900	$ 1,038,600
Grand Total	$ 895,800	$ 55,900	$ 86,900	$ 1,038,600

These numbers represent the allocation of the estimated value ($1,038,600) to each category of assets as of the purchase date of October 1, 2009.

This is how Wake County would record the estimated value if historical cost data was not available. We would then apply the trend tables to these numbers.

Estimated Value – Wake
Continued

Using this approach the assessed value as of January 1, 2010 would be:

	Assessed Value	
Computers	$	627,060
Equipment	$	50,310
Furniture/Fixtures	$	78,210
Grand Total	**$**	**755,580**

Daycare Example

- Total Historical Costs: $102,917
- 2007 Value: $ 34,172

- 2008 New purchases Price: $449,140
  - Allocation as follows:
    - Data Handling Equipment: $156,140
    - Furniture: $150,000
    - Good Will $143,000
    - 2008 Value: $275,526

Appraisal Question

- Starting Point – DOR recommendation
- Recognized by the courts
- Other States have the same practice.
- Does it work?
- When to go away from it?
- Current Practice works most of the time
- Property owners and County Assessors work together to reach “fair market value”

CHARLOTTE.

CITY OF CHARLOTTE
OFFICE OF THE CITY ATTORNEY

December 22, 2011

North Carolina Association of CPAs
C/O Jim Ahler, Chief Executive Officer
3100 Gateway Centre Boulevard
Morrisville, NC 27560

Mr. Ahler,

The question before the Mecklenburg County Tax Office ("Tax Collector") and the City of Charlotte ("City") is whether CPA firms can perform consulting services and continue to be exempt under North Carolina General Statutes § 105-41?

After reviewing materials submitted by your organization and gathering additional information, the City and the Tax Collector conclude that CPA firms may perform consulting services and continue to be exempt under North Carolina General Statutes § 105-41 from the City's privilege license tax.

Yet, a business must meet all of the following requirements to fall within the state exemption under North Carolina General Statutes § 105-41:

(i) Be a CPA firm; and,
(ii) Be registered with the North Carolina State Board of CPA Examiners as a CPA firm pursuant to 21 N.C.A.C. 08 et seq.; and,
(iii) Be registered with the North Carolina Secretary of State as an accounting or consulting services type of business.

However, if a business fails to satisfy all of the aforementioned requirements, then the state exemption under North Carolina General Statutes § 105-41 would not prevent the City from levying its privilege license tax upon that business.

If you have further questions, then you or your counsel may contact me at your convenience to discuss.

Respectfully,

Thomas E. Powers III

Thomas E. Powers III
Assistant City Attorney

CC: Neal Dixon, Mecklenburg County Tax Collector
Joshua D. Bryant, Smith Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P
Dave Horne, Smith Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P

INSTRUCTIONS -- Listings due By January 31.

Commonly Asked Questions

Who must file a listing, and what do I list?

Individual(s) or business(es) owning or possessing personal property used or ...ected with a business or other income producing purpose on January 1. Temporary ...sence of personal property from the place at which it is normally taxable shall not affect this rule. For example, a lawn tractor used for personal use, to mow the lawn at your home is not listed. However, a lawn tractor used as part of a landscaping business in this county must be listed if the lawn tractor is normally in this county, even if it happens to be in another state or county on January 1.

NCGS §105-308 reads that .."any person whose duty it is to list any property who willfully fails or refuses to list the same within the time prescribed by law shall be guilty of a Class 2 misdemeanor. The failure to list shall be prima facie evidence that the failure was willful." A class 2 misdemeanor is punishable by imprisonment of up to 60 days.

When and where to list?

Listings are due on or before January 31. They must be filed with the County Tax Department. DO NOT FILE THIS FORM WITH THE NORTH CAROLINA DEPARTMENT OF REVENUE. This form will not be accepted by the NC Department of Revenue.

A list of county tax office addresses can be found at the NC Department of Revenue's Website. http://www.dor.state.nc.us/publications/property.html

As required by state law, late listings will receive a penalty. An extension of time to list may be obtained by sending a written request showing "good cause" to the County Assessor by January 31.

How do I list? -- Three important rules:

(1) Read these INSTRUCTIONS for each schedule or group. Contact your county tax office if you need additional clarification.
(2) If a Schedule or Group does not apply to you, indicate so on the listing form, DO NOT LEAVE A SECTION BLANK, DO NOT WRITE "SAME AS LAST YEAR". A listing form may be rejected for these reasons and could result in late listing penalties.
(3) Listings must be filed based on the tax district where the property is physically located. If you have received multiple listing forms, each form must be completed separately.

INFORMATION SECTION

Complete all sections at the top of the form, whether or not they are specifically addressed in these INSTRUCTIONS. Attach additional sheets if necessary.

(1) Other N.C. Counties where personal property is located: If your business has property normally located in other counties, list those counties here.
(2) Contact person for audit: In case the county tax office needs additional information, or ...rify the information listed, list the person to be contacted here.
...ysical address: Please note here the location of the property. The actual physical ...n may be different from the mailing address. Post Office Boxes are not acceptable.
...rincipal Business in this County: What does the listed business do? For example: Tobacco Farmer, Manufacture electrical appliances, Laundromat, Restaurant. The SIC or NAICS code may help describe this information, if you do not know the SIC or NAICS code, please write "unknown".
(5) Complete other requested business information. Make any address changes.
(6) If out of business: If the business we have sent this form to has closed, complete this section and attach any additional information regarding the sale of the property.

Schedule A

The year acquired column: The rows which begin "2011" are the rows in which you report property acquired during the calendar year 2011. Other years follow the same format.

Schedule A is divided into eight (8) groups. Each is addressed below. Some counties may have the column "Prior Years Cost" pre-printed. This column should contain the cost information from last year's listing. If it does not, please complete this column, referring back to your last year's listing. List under "Current Year's Cost" the 100% cost of all depreciable personal property in your possession on January 1. Include all fully depreciated assets as well. Round amounts to the nearest dollar. Use the "Additions" and "Deletions" column to explain changes from "Prior Yr. Cost" to "Current Yr. Cost". The "Prior Year's Cost" plus "Additions" minus "Deletions" should equal "Current Years Cost" If there are any additions and/or deletions, please note those under schedule G, Acquisitions and Disposals Detail. If the deletion is a transferred or paid out lease, please note this, and to whom the property was transferred.

COST - Note that the cost information you provide must include all costs associated with the acquisition as well as the costs associated with bringing that property into operation. These costs may include, but are not limited to invoice cost, trade-in allowances, freight, installation costs, sales tax, expensed costs, and construction period interest.

The cost figures reported should be historical cost, that is the original cost of an item when first purchased, even if it was first purchased by someone other than the current owner. For example, you, the current owner, may have purchased equipment in 2003 for $100, but the individual you purchased the equipment from acquired the equipment in 1998 for $1000. You, the current owner, should report the property as acquired in 1998 for $1000.

Property should be reported at its actual historical installed cost IF at the retail level of trade. For example, a manufacturer of computers can make a certain model for $1000 total cost. It is typically available to any retail customer for $2000. If the manufacturer uses the model for business purposes, he should report the computer at it's cost at the retail level of trade, which is $2000, not the $1000 it actually cost the manufacturer. Leasing companies must list property they lease at the retail trade level, even if their actual cost is at the ...ufacturer or wholesaler level of trade.

Group (1) MACHINERY & EQUIPMENT

This is the group used for reporting the cost of all machinery and equipment. This includes all store equipment, manufacturing equipment, production lines (hi-tech or low-tech), as well as warehouse and packaging equipment. List the total cost by year of acquisition, including fully depreciated assets that are still connected with the business.

For example, a manufacturer of textiles purchased a knitting machine in October 2006 for $10,000. The sales tax was $200, shipping charges were $200, and installation costs were $200. The total cost that the manufacturer should report is $10,600, if there were no other costs incurred. The $10,600 should be added in group (1) to the 2006 current year's cost column.

Group (2) Construction In Progress (CIP)

CIP is business personal property which is under construction on January 1. The accountant will typically not capitalize the assets under construction until all of the costs associated with the asset are known. In the interim period, the accountant will typically maintain the costs of the asset in a CIP account. The total of this account represents investment in personal property, and is to be listed with the other capital assets of the business during the listing period. List in detail. If you have no CIP, write "none".

Group (3) Office Furniture & Fixtures

This group is for reporting the costs of all furniture & fixtures and small office machines used in the business operation. This includes, but is not limited to, file cabinets, desks, chairs, adding machines, curtains, blinds, ceiling fans, window air conditioners, telephones, intercom systems, and burglar alarm systems.

Group (4) Computer Equipment

This group is for reporting the costs of non-production computers & peripherals. This includes, but is not limited to, personal computers, midrange, or mainframes, as well as the monitors, printers, scanners, magnetic storage devices, cables, & other peripherals associated with those computers. This category also includes software that is capitalized and purchased from an unrelated business entity. This does not include high tech equipment such as proprietary computerized point of sale equipment or high tech medical equipment, or computer controlled equipment, or the high-tech computer components that control the equipment. This type of equipment would be included in Group (1) or "other".

Group (5) Improvements to Leased Property

This group includes improvements made by or for the business to real property leased or used by the business. The improvements may or may not be intended to remain in place at the end of the lease, but they must still be listed by the business unless it has been determined that the improvements will be appraised as real property by the county for this tax year. Contact the appropriate county to determine if you question whether these improvements will be appraised as real property for this tax year. If you have made no improvements to leased property write "none". Do not include in this group any Store Equipment- Group (1) or Office Furniture and Fixtures-Group (3).

Group (6) Expensed Items

This group is for reporting any assets which would typically be capitalized, but due to the business' capitalization threshold, they have been expensed. Section 179 expensed items should be included in the appropriate group (1) through (4). Fill in the blank which asks for your business' "Capitalization Threshold." If you have no expensed items write "none".

Group (7) Supplies

Almost all businesses have supplies. These include normal business operating supplies. List the cost on hand as of January 1. Remember, the temporary absence of property on January 1 does not mean it should not be listed if that property is normally present. Supplies that are immediately consumed in the manufacturing process or that become a part of the property being sold, such as packaging materials, or raw materials, for a manufacturer, do not have to be listed. Even though inventory is exempt, supplies are not. Even if a business carries supplies in an inventory account, they remain taxable.

Group (8) Other

This group will not be used unless instructed by authorized county tax personnel.

SCHEDULE B VEHICULAR EQUIPMENT - ATTACH ADDITIONAL SCHEDULES IF NECESSARY

Motor Vehicles registered with the NC Department of Motor Vehicles as of January 1 do not have to be listed. Please answer the questions on the form to determine if you should complete and attach separate schedules B-1 for certain other vehicles, B-2 for Watercraft or Watercraft engines, B-3 for Mobile Homes or Mobile Offices, or B-4 for Aircraft.

SCHEDULE C PROPERTY IN YOUR POSSESSION, BUT OWNED BY OTHERS

If on January 1, you have in your possession any business machines, machinery, furniture, vending equipment, game machines, postage meters, or any other equipment which is loaned, leased, or otherwise held and not owned by you, a complete description and ownership of the property should be reported in this section. This information is for office use only. Assessments will be made to the owner/lessor. If you have already filed the January 15th report required by §105-315, so indicate. If you have none, write "none" in this section. If property is held by a lessee under a "capital lease" where there is a conditional sales contract, or if title to the property will transfer at the end of the lease due to a nominal "purchase upon termination" fee, then the lessee is responsible for listing under the appropriate group.

SCHEDULE D, E, F, G, AND H, please answer the questions provided on the form to determine if you need to complete and attach separate schedules E-1, G-1, or H-1 to the main business personal property listing form.

AFFIRMATION

If the form is not signed by an authorized person, it will be rejected and could be subject to penalties. This section describes who may sign the listing form.

Listings submitted by mail shall be deemed to be filed as of the date shown on the postmark affixed by the U.S. Postal Service. Any other indication of the date mailed (such as your own postage meter) is not considered and the listing shall be deemed to be filed when received in the office of the tax assessor.

Any person who willfully attempts, or who willfully aids or abets any person to attempt, in any manner to evade or defeat the taxes imposed under this Subchapter (of the Revenue Laws), whether by removal or concealment of property or otherwise, shall be guilty of a Class 2 misdemeanor. (Punishable by imprisonment up to 6 months)

February 1, 2012

Revenue Study Commission presentation

Carlie C's of Hope Mills, LLC ["Hope Mills"] and
Carlie C's of Owen Drive, LLC ["Owen Drive"] (collectively, "Taxpayer")

Presenters:

Mack McLamb, President of Carlie C's (parent corporation) and Manager of the Taxpayer.

Jason W. Wenzel, special counsel for Carlie C's, Narron, O'Hale & Whittington, P.A.

Subject of Presentation:

Methodology of conducting business personal property appraisals for county ad valorem taxes. Specifically, the use of historical cost of personal property assets in determining taxable values when a new owner has purchased such assets from a non-related third party in an arm's length transaction.

Basis for Presentation:

Audit by Cumberland County Tax Administrator of the business personal property assets owned by the Taxpayer for tax years 2005 to 2010.

The Taxpayer appealed the audit findings to the Board of Equalization and Review, which affirmed the audit methodology of the county's tax appraisers. The Taxpayer has appealed that decision to the Property Tax Committee.

Statutory Authority:

"§ 105-283. Uniform appraisal standards.

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* [*emphasis added*]. 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.

§ 105-317.1. Appraisal of personal property; elements to be considered.

(a) Whenever any personal property is appraised it shall be the duty of the persons making appraisals to consider the following as to each item (or lot of similar items):

(1) The replacement cost of the property;
(2) The sale price of similar property;
(3) The age of the property;
(4) The physical condition of the property;
(5) The productivity of the property;
(6) The remaining life of the property;
(7) The effect of obsolescence on the property;
(8) The economic utility of the property, that is, its usability and adaptability for industrial, commercial, or other purposes; and
(9) Any other factor that may affect the value of the property.

(b) In determining the true value of taxable tangible personal property held and used in connection with the mercantile, manufacturing, producing, processing, or other business enterprise of any taxpayer, *the persons making the appraisal shall consider any information as reflected by the taxpayer's records and as reported by the taxpayer to the North Carolina Department of Revenue and to the Internal Revenue Service for income tax purposes [emphasis added]*, taking into account the accuracy of the taxpayer's records, the taxpayer's method of accounting, and the level of trade at which the taxpayer does business.

Specific Issue for Discussion:

The Taxpayer contends that the instructions for the applicable Business Personal Property Listing form fails to implement the statutory authority that a tax administrator is to consider. Per the Instructions to the Business Personal Property Listing Form, Schedule A, Cost, second paragraph:

> "The cost figures reported should be historical cost, that is the original cost of an item when first purchased, even if it was first purchased by someone other than the current owner. For example, you, the current owner, may have purchased equipment in 2003 for $100, but the individual you purchased the equipment from acquired the equipment in 1998 for $1000. You, the current owner, should report the property as acquired in 1998 for $1000."

A copy of the instructions are attached hereto as **Exhibit 1**, such exhibit being incorporated fully herein by reference.

Discussion:

Based upon the testimony of the county tax appraisers before the Board of Equalization and Review that the historical cost basis is the primary characteristic used for all taxpayers in determining the taxable value of business personal property, it is clear that county tax administrators are putting a disproportionate emphasis on the historical cost basis, in large part due to the instructions of the Business Personal Property Listing form.

As highlighted in italics in the Statutory Authority section, above, personal property is to be taxed at its true value: what a willing buyer would pay a willing seller. There can be no better evidence of true value that what property actually sells for. Here, the Taxpayer purchased its business personal property from a third-party in two separate transactions in 2005.

The Taxpayer, both prior to its appeal to the Board of Equalization and Review and then as part of such appeal, submitted voluminous information from its actual purchase of the business personal property in question, to include specifically but not to be limited to: bills of sale, seller's certificates, closing statements, depreciation schedules, and income tax schedules.

Requiring a taxpayer to acquire the "historical cost" of business personal property from a seller is cumbersome, costly, unreliable, and unduly burdensome. It is cumbersome because it increases the time and costs associated with negotiating

and closing an open-market deal. It is costly in that the cost reported would be different that the cost as shown on the taxpayer's books, thus requiring two different sets of books and records (one for income tax cost and another for personal tax listing cost). It is unreliable because a seller may be unwilling or unable to provide such information to a buyer. It is unduly burdensome in that such information is neither readily available nor a public record that would allow a prospective buyer the ability to verify such information independently prior to closing.

Moreover, in the Taxpayer's case, it was neither aware of nor had access to the historical cost data going back to 1992 that was being used by the tax administrator. This information was only made available to the Taxpayer during the audit. To allow two decade-old information to trump current market data makes no sense.

Under N.C. Gen. Stat. § 105-322(g)(1)(c), and (d), the Board of Equalization and Review has the power and duty to:

"(c) Increase or reduce the appraised value of any property that, in the board's opinion, has been listed or appraised at a figure that is below or above the appraisal required by G.S. 105-283…;

(d) Cause to be done whatever else is necessary to make the lists and tax records comply with the provisions of this Subchapter."

Requiring a taxpayer to have to appeal a county's reliance on historical cost basis because its tax assessors have failed to consider material, relevant, and timely evidence submitted by such taxpayer, is unreasonable, arbitrary and capricious, especially in light of the statutorily proscribed uniform appraisal standard (§ 105-283) and personal property appraisal elements that are to be considered (§ 105-317.1). Furthermore, substantial deference is given by county Boards of Equalization and Review to the testimony of the county's tax appraisers, especially when they can simply reference that they are following the instructions of the Business Personal Property Listing Form.

Conclusion:

Given the importance that county tax appraisers give to the instructions associated with the Business Personal Property Listing Form, those instructions should be revised to reference the statutorily proscribed uniform appraisal standard (§ 105-283) and personal property appraisal elements that are to be considered (§ 105-317.1) to ensure undue weight is not given to historical cost basis.

Local Privilege License Taxes

Chris McLaughlin
Assistant Professor, UNC School of Government
mclaughlin@sog.unc.edu
919.843.9167

February 2012

UNC SCHOOL OF GOVERNMENT

www.sog.unc.edu

Privilege License Taxes

- A tax on the privilege of doing business within a jurisdiction
- Not a property tax or an income tax
- Not a regulatory scheme

PLT Collections 2009-10

($ millions)

Total: $102.5 million

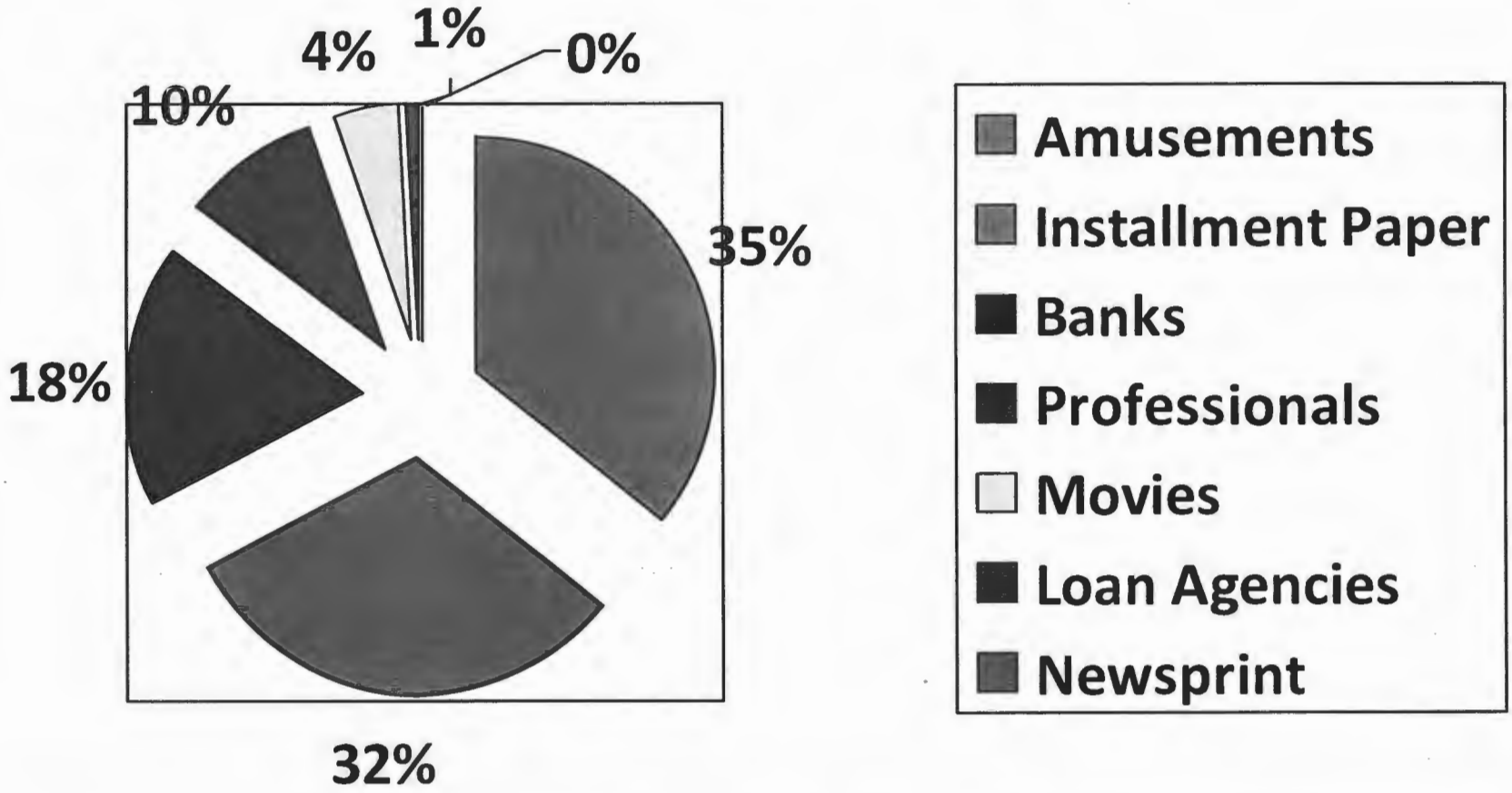
State Privilege License Taxes

- All but 7 state PLTs were repealed in 1997

Current State PLTs

Amusements	3%
Motion Picture Shows	1%
Professionals	$50
Installment Paper Dealers	.277% of face value of obligations/quarter
Loan agencies, check cashers, pawnbrokers	$250 per location
Banks	$30 for each $1 million in assets
Newsprint publishers	$15 on each ton that fails to meet the applicable content percentage

State PLT Collections 2010-11
$41,800,000

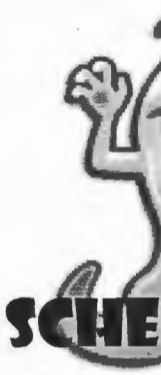


Local PLT's Since 1997

- **Municipalities**
  - Broad authority to levy PLT's on all businesses except as limited by 30 repealed Schedule B provisions
  - §160A-211

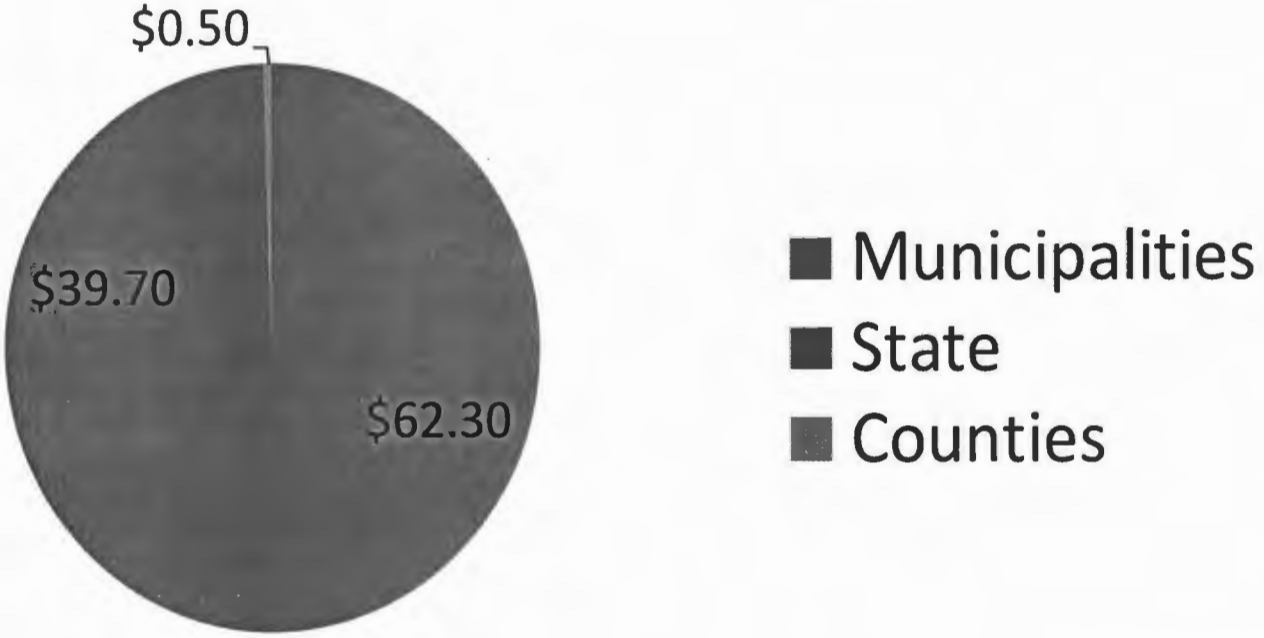
Local PLT's Since 1997

- **Counties**
  - Limited authority to levy PLT'S on certain businesses except as permitted by 11 repealed Schedule B provisions
  - §153A-152



PLT Collections 2009-10

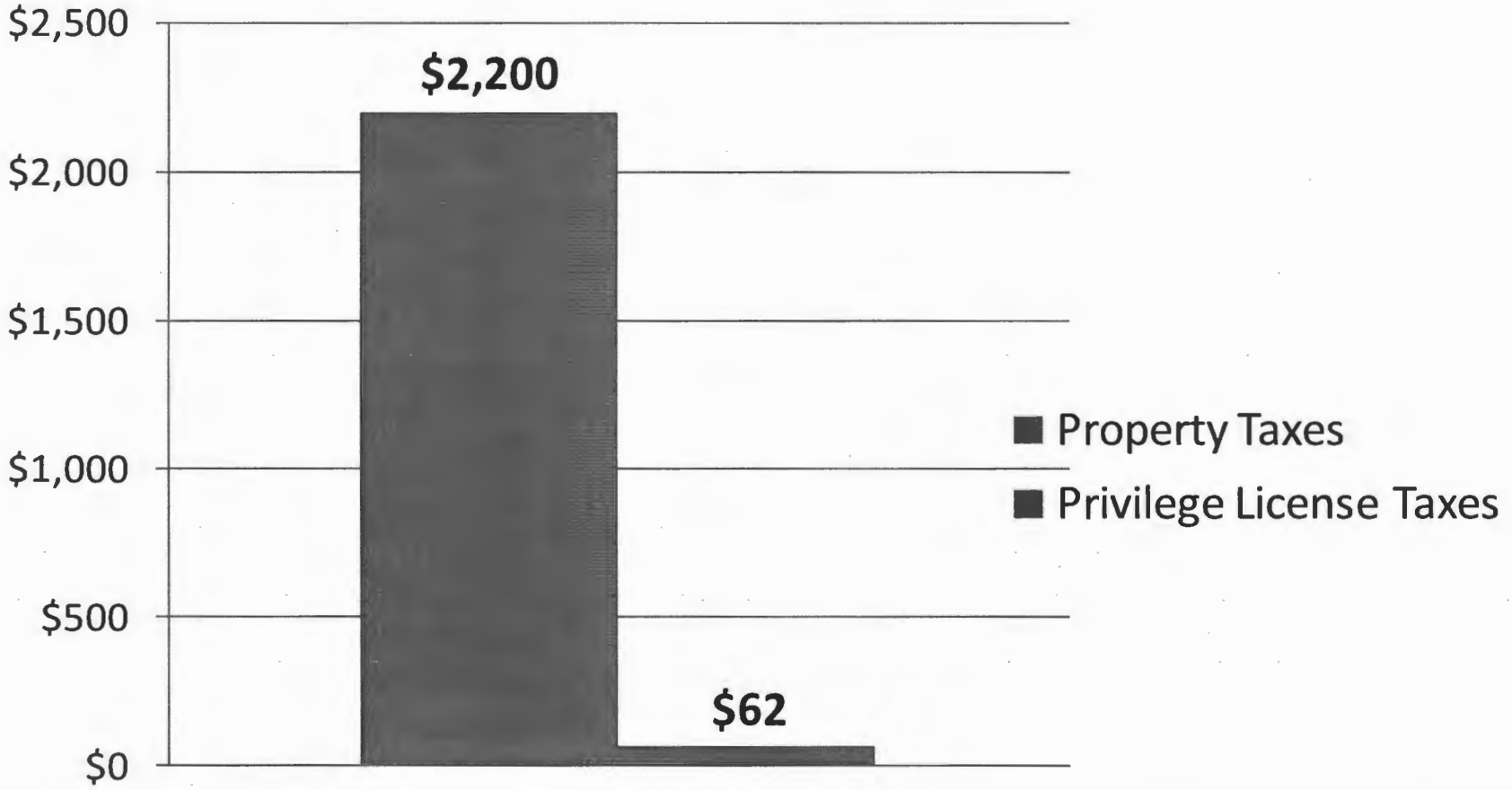
($ millions)



Total: $102.5 million

Municipal PLTs v. Property Taxes

($ millions, 2009-10)



300 Cities Levy PLTs

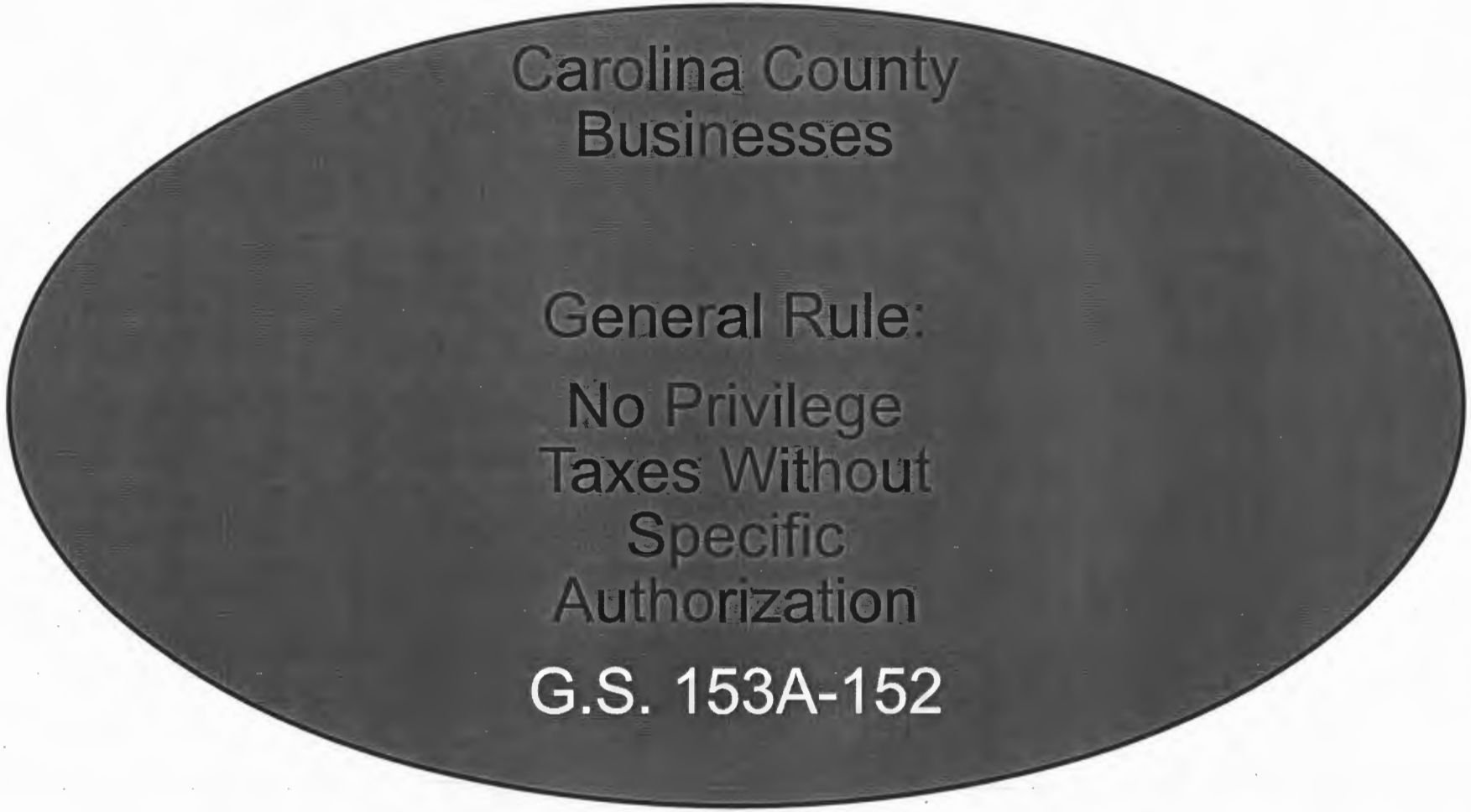
- $62.3 million collected in 2009-10
- More than ½ collect < $10,000
- 40 collect >$100,00
- 20 collect > $500,000

Significant Revenue Source For Some Cities

- Charlotte: $24.7 million
- Raleigh: $7.2 million
- Greensboro: $3.1 million
- Durham: $2.7 million

- High Point: $2.3 million
- Lumberton: $1.2 million
- Hickory: $1.1 million

Local Privilege License Taxes In North Carolina



Local Privilege License Taxes In North Carolina

Local Privilege License Taxes In North Carolina

Local Privilege License Taxes In North Carolina

Local Privilege License Taxes In North Carolina

The Key Question

- For Counties:

  "Is there a statute that authorizes us to tax this business?

- For Cities:

  "Is there a statute that restricts us from taxing this business?"

"Schedule B"

- Nickname for collection of privilege license tax limitations and exemptions

- 30 repealed statutes still control
  - No text available!

"Schedule B"

- Sprinkler Systems: $100
- Gas Stations: $12.50
- Building Contractors: $10
- Attorneys & Doctors: No local PLTs

Oddities from Schedule B

- Seasonal Christmas tree sales:
  $100 max

- Seasonal Christmas tree sales by grower:
  unlimited

Oddities from Schedule B

- Selling Computers: NO city PLT
- Repairing Computers: Unlimited

Oddities from Schedule B

- Vending Machines (< 5): $5 max
- Vending Machines (>=5): NO city PLT
- Vending Machines (>=5 at one location): Unlimited
- Vending Machines (milk): Unlimited
- Vending Machines (juice, >=5): Unlimited

Oddities from Schedule B

- Selling/Repairing Record Players: NO city PLT
- Selling/Repairing DVD/CD Players: Unlimited

City PLT Options

- Schedule B businesses:
  - Flat rate up to statutory maximum

- All other businesses:
  - Flat rate
  - Gross Receipts
  - Any other reasonable method *(# of employees)*

Gross Receipts

- No statutory guidance on how to calculate
- Apportionment problems with businesses operating in multiple cities
- Example: Landscaper
  - HQ in Durham
  - Clients in 5 different cities
  - What are the gross receipts for Durham PLTs?

Sample City PLD Provisions For Retailers

- Gross Receipts
  - Durham:
    - $50 up to $15,000, then 50¢ per $1,000
    - No maximum tax
  - Charlotte:
    - 60¢ per $1,000
    - $10,000 max tax
- Flat Fee
  - Dunn: $30 per retailer

How to Tax Target?

- Bicycles ($25 max)
- DVDs ($25)
- Computers, calculators (No tax)
- Ice Cream ($2.50 max)
- Motor Oil/Auto Accessories ($12.50 max)
- Restaurant ($42.50)
- Barber Shop/Beauty Salon ($2.50 per stylist)
- Vending Machines (????)
- Chain Store ($50)
- Plus . . **Gross Receipts on all other sales**

How to Tax Target?

- SuperTarget store with $50M receipts
  - Durham: $25,000
  - Charlotte: $10,000
  - Dunn: $400

From: Mark Yambor [mailto:markyambor@fairvalue.com]
Sent: Tuesday, January 31, 2012 12:45 PM
To: Bobb.Rucho@ncleg.net; Rep. Julia Howard; Rep. Danny McComas
Cc: Rep. Edgar Starnes
Subject: Revenue Laws - Privilege licenses

My name is Mark Yambor and my wife and I am the owner of three (3) independent grocery stores in Caldwell County, N.C.

Last week, Andy Ellen of the Carolina Retail Merchants Association asked me to come talk to the Revenue Laws Study Committee about what I feel is the unfair and unjust "Privilege License" taxes that are being imposed by many municipalities around NC. Unfortunately, due to prior commitments here and a short notice, I am not able to address your Committee. I would very much like to address the Committee in March if this subject is still on your agenda.

If you will each allow me a short note however, I would like to share a few thoughts on this subject:

My office store is in Lenoir, NC where the city privilege tax for our store went from $50.00 in 2009 to nearly $6000.00 in 2010 because, they say, it is now (as of 2010) based on gross sales. This new tax represents about 5% of the store's net profits and really hurts us and any small business that is already struggling in today's economic climate. Please do not interpret this as we do not want to pay our fair share. We do and have been, but an increase of more than 100 times of what we were paying in one year and without any notification is overwhelming. The grocery business is very competitive with very small margins (national average of less than 1%) and we cannot just "pass on" such a large fee.

We employ over 170 people and would like to hire more and invest more but taxes like this one impede not only our ability to do so, but also our mind set as to "is it the right climate to do so".

In 2011, Granite Falls, NC imposed a similar tax with similar fees and results.

Further evidence of why we feel this tax is unfair is the businesses that are exempt from the tax altogether. These include (although the list varies from city to city) lawyers, banks, doctors, real estate brokers and agents, trucking companies, telephone companies and others. The list in Lenoir exempts over 40 businesses.

Thank you for listening and please consider my comments.

Respectfully,

Mark S. Yambor
Owner/Operator
Fairvalue Stores

NORTH CAROLINA GENERAL ASSEMBLY
REVENUE LAWS STUDY COMMITTEE
Wednesday, March 7, 2012
Room 544, Legislative Office Building
9:30 a.m.

The Revenue Laws Study Committee met at 9:30 a.m. on Wednesday, March 7, 2012, in room 544 of the Legislative Office Building. Fifteen members attended the meeting. The following Senators were present: Senator Blue, Senator Brunstetter, Senator Harrington, Senator Hartsell, Senator McKissick, Senator Rucho, and Senator Stevens. The following Representatives were present: Representative Alexander, Representative Howard, Representative Blust, Representative Brubaker, Representative Hill, Representative Lewis, Representative Moffitt, and Representative Starnes. Senator Bob Rucho presided as chair.

Approval of the February 1, 2012 meeting minutes

Senator Brunstetter moved to approve the minutes and the motion carried. A copy of the minutes is attached.

Sales Tax Application Issues

Taxation of Solar Electricity Generating Equipment

Canaan Huie, the Department of Revenue's general counsel, was recognized to give examples of various factors in the taxation of solar equipment and each factor's tax option. He informed the committee that the Department has no specific recommendations regarding solar taxation. Heather Fennell, a staff attorney with the Research Division, was recognized to further explain the 2007 Session Senate Bill 3 – Promote Renewable Energy/Baseload Generation which passed into law. It promoted the development of renewable energy and energy efficiency in the state through implementation of a ten percent renewable energy and energy efficiency portfolio standard. Cindy Avrette, a staff attorney with the Research Division, was recognized. She explained the expansion of tax code and preferential rates, and how to treat solar equipment for tax purposes. A copy of Mr. Huie's presentation is attached.

Sales Tax and Performance Contracts

Mr. Huie was recognized to discuss gray areas where transactions involve both tangible personal property and services. He explained the Department needs guidance on this issue and has no specific recommendations. A copy of his presentation is attached.

Interpretation of Revenue Laws by Secretary of Revenue

Greg Roney, a staff attorney with the Research Division, was recognized. He explained that directives are the Department of Revenue's interpretation of General Statutes. Use of these directives disallows any authority for appeals. Karen Cochrane-Brown, a staff attorney with the Research Division, was recognized to answer questions regarding the Administrative Procedure Act's (APA) oversight process and the ability of citizens to

contest Department of Revenue's decisions. A copy of Mr. Roney's power point is attached.

Chuck Neely, a lobbyist for the Council on State Taxation, had issue of when and how the Department of Revenue can require separate entity returns. Combined reporting standards have been set, but the Department's new directive is still murky, significantly misstated and undercuts the latest legislation. COST and the Retail Merchants association sent a letter to the Department about their concerns, but they have not yet received a response. A copy of the letter is attached.

Andy Ellen, the NC Retail Merchant Association's president and general counsel, was recognized. He questioned whether the Department of Revenue should have unilateral ability to changes directives without going through the APA rulemaking process. He also requested that Department of Revenue directives meet the definition of a rule as set forth by the APA.

Canaan Huie, representing the Department of Revenue, stated that the Department is allowed to interpret laws and that the Secretary of Revenue can change the interpretation with advanced notice. He said that failure to comply does not necessarily bring down sanctions and taxpayers' penalties, since adopting rules takes time and the Department sometimes needs to act quickly. He reiterated that directives and bulletins are produced to provide needed guidance to a wide array of taxpayers. A copy of his power point presentation is attached.

Repeal State Estate Tax

Jonathan Tart, a fiscal analyst with the Fiscal Research Division, was recognized. He summarized that when it comes to estate taxes, North Carolina currently follows federal law and mores estates will be impacted after 2013 with the exemption dropping from $5 million to $1 million. Mr. Tart explained a bill draft that would repeal North Carolina's estate tax. Estates will not see a reduction in the total tax bill. A draft copy of the bill and the fiscal note is attached.

Alexandra Sirota, NC Budget and Tax Center's director, was recognized. She explained fiscal issues to consider when making changes to the estate tax. She said that very few North Carolina estates face any estate tax issues and the tax collectively is comparable to appropriations for key public investments. A copy of her power point is attached.

Brian Balfour, Civitas Institute's director of policy, was recognized. He explained that the lowered cap will affect more citizens, will not necessarily impact charitable giving, the tax generates a very small fraction of State revenues, and voters oppose the tax. A copy of his presentation is attached.

David Heinen, NC Center for Nonprofits' director of public policy and advocacy, was recognized. He stated that the fiscal impact on nonprofits may be understated, contributions vary depending on who passes away and the size of the estates, and that current private giving has been reduced due to the economy. A copy of his remarks is attached.

Representative Paul Luebke was recognized. He wondered why provide relief to the 1% at the expense of education, mental health, etc.? He stated that this is not tax modernization since it does not broaden the base and lower the rate.
The meeting adjourned at 12:01 p.m.

Senator Bob Rucho
Presiding Chair

DeAnne Mangum
Committee Assistant

REVENUE LAWS STUDY COMMITTEE AGENDA

Rep. Julia Howard *Rep. Danny McComas* *Sen. Bob Rucho*

Wednesday, March 7, 2012
Room 544, Legislative Office Building
9:30 a.m.

I. Approval of Minutes from the February 1, 2012, Meeting

II. Sales Tax Application Issues:

A. Taxation of Solar Electricity Generating Equipment
Canaan Huie, General Counsel, Department of Revenue

B. Sales Tax and Performance Contracts
Canaan Huie, General Counsel, Department of Revenue

III. Interpretation of Revenue Laws by Secretary of Revenue

- Greg Roney, Legislative Analyst, Research Division
- Chuck Neely, Williams & Mullens, COST
- Andy Ellen, NC Retail Merchant's Association
- Canaan Huie, General Counsel, Department of Revenue

IV. Repeal State Estate Tax

- Jonathan Tart, Fiscal Analyst, Fiscal Research Division
- Alexandra Sirota, NC Budget & Tax Center
- Brian Balfour, John W. Pope Civitas Institute
- David Heinen, NC Center for Nonprofits

V. General Fund Revenue Update
Barry Boardman, Economist, Fiscal Research Division

VI. Adjournment

Next Meeting Date: April 4, 2012
in Room 544, LOB, at 9:30 a.m.

Taxation of Solar Electricity Equipment

Y. Canaan Huie
General Counsel
North Carolina Department of Revenue
Revenue Laws Study Committee
March 7, 2012

Overview

- Background
- Current Taxation of Sales/Purchases of Solar Electricity Equipment
- Options

Background

- Over the past few years, the Department of Revenue has gotten more questions about the taxation of sales/purchases of solar electricity equipment
- Questions have arisen about situations that may not have been anticipated originally
- Interaction between sales/privilege tax treatment and income/franchise tax treatment
  - Tax credit statutes mention "solar energy property" rather than "solar electricity property"
  - Tax credit statutes make a distinction between residential and non-residential uses – for sales tax purposes the emphasis is on production

Background

- Factors affecting current requests for interpretation
  - SB 3 – Renewable Energy and Energy Efficiency Portfolio Standard
    - Requires utilities to meet a renewable energy standard equal to a percentage of retail sales
    - Standard may be met through generating electricity, purchasing electricity, purchasing renewable energy certificates, or efficiency savings
  - Increased interest of consumers in "Going Green"
  - Advances in the industry that make solar electricity generation more cost competitive

Treatment of Sales/Purchases of Solar Electricity Equipment

- Sales or use tax generally applies to sales/purchases of tangible personal property
- Several questions:
  - Is solar electricity equipment tangible personal property?
    - Yes.
  - Is there an exemption so that the sales or use tax would not apply?
    - Possibly.
      - No specific exemption for this type of equipment.
      - Is solar electricity equipment subject to tax under Article 5F (Mill Machinery – 1%/$80 cap)?

Treatment of Sales/Purchases of Solar Electricity Equipment

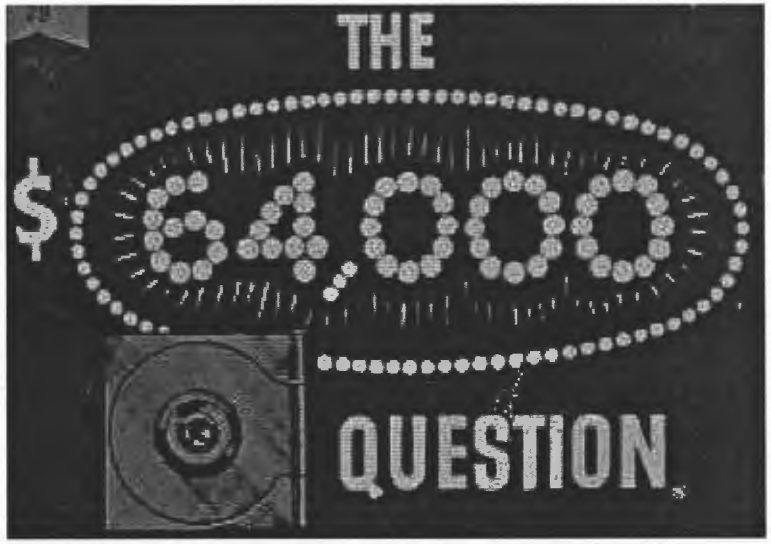
- Article 5F – Manufacturing Fuel and Certain Machinery and Equipment
  - Definitions under sales and use tax statutes apply
  - Imposes a privilege tax on "manufacturing industry or plant that purchases mill machinery or mill machinery parts or accessories for storage, use, or consumption in this State"
  - No statutory definitions of:
    - Manufacturing industry or plant
    - Mill machinery or mill machinery parts or accessories

Treatment of Sales/Purchases of Solar Electricity Equipment

- Rules adopted under G.S. 105-262
  - No specific mention of electricity equipment
- Sales and Use Tax Bulletins adopted under G.S. 105-264
  - Section 59-4
    - **A. Purchases of the following items of tangible personal property by firms engaged in generating, producing or processing electric power to be distributed to consumers are subject to the 1% privilege tax with a maximum tax of $80.00 per article:**
      - **1. all production machinery and accessories thereto...**

Treatment of Sales/Purchases of Solar Electricity Equipment

- Is solar electricity equipment subject to tax under Article 5F?
  - Firm engaged in generating electric power?
  - To be distributed to consumers?



Application to Specific Examples

- Traditional Example A
  - Electric power company purchases solar electricity equipment
  - Solar electricity equipment is installed on property owned by electric power company
  - Electricity generated by the equipment is supplied to the grid and sold to consumers
  - Taxpayer is engaged in business of producing electric power to be distributed to consumers – Subject to tax under Article 5F and exempt from sales and use taxes

Application to Specific Examples

- Traditional Example B
  - Consumer purchases solar energy property
  - Property is used for active or passive space heating or domestic water heating
  - No actual electricity is generated
  - All energy created is used for the residence or business that installs the property
  - Taxpayer is not engaged in business of producing electric power to be distributed to consumers – sales or use tax applies

Application to Specific Examples

- New Example C
  - Electric power company purchases solar electricity equipment
  - Electric power company installs the solar electricity equipment on leased space on rooftops and grounds of homes, schools, office buildings, shopping centers, industrial facilities, etc.
  - Electric power company maintains ownership of equipment
  - Electricity generated is transferred to the grid for distribution to all customers, and no electricity is sold or transferred directly to the owner of the property on which the equipment is installed
  - Taxpayer is engaged in business of producing electric power to be distributed to consumers – Subject to tax under Article 5F and exempt from sales and use taxes

Application to Specific Examples

- New Example D
  - Large manufacturing firm (not an electric power company) purchases solar electricity equipment
  - 100% of electricity generated is sold to electric power company for resale to consumers
  - None of the electricity generated by the manufacturing firm is used directly by the firm
  - (Generally this is accomplished by the use of separate meters for the electricity produced and the electricity consumed.)
  - Taxpayer is engaged in business of producing electric power to be distributed to consumers – Subject to tax under Article 5F and exempt from sales and use taxes

Application to Specific Examples

- New Example E
  - Individual purchases solar electricity equipment for installation on roof of residence
  - 100% of electricity generated is sold to electric power company for resale to consumers
  - None of the electricity generated by the equipment is used directly by the residence
  - (Generally this is accomplished by the use of separate meters for the electricity produced and the electricity consumed.)
  - Taxpayer is engaged in business of producing electric power to be distributed to consumers – Subject to tax under Article 5F and exempt from sales and use taxes

Application to Specific Examples

- New Example F
  - Individual purchases solar electricity equipment for installation on roof of residence
  - 100% of electricity generated is used directly by the residence
  - None of the electricity generated by the equipment is sold to an electric power company or placed on the grid
  - Taxpayer is not engaged in business of producing electric power to be distributed to consumers – sales or use tax applies

Application to Specific Examples

- New Example G
  - Individual purchases solar electricity equipment for installation on roof of residence
  - Individual elects to have "net metering"
    - During times of high electricity generation/low electricity use, electricity flows from the residence to the grid
    - During times of low electricity generation/high electricity use, electricity flows from the grid to the residence
    - One meter is used for both types of electricity flows
  - The taxpayer may have net positive outflows or net positive inflows – this may vary on a period to period basis
  - Taxpayer is presumed not to be engaged in business of producing electric power to be distributed to consumers – sales or use tax applies

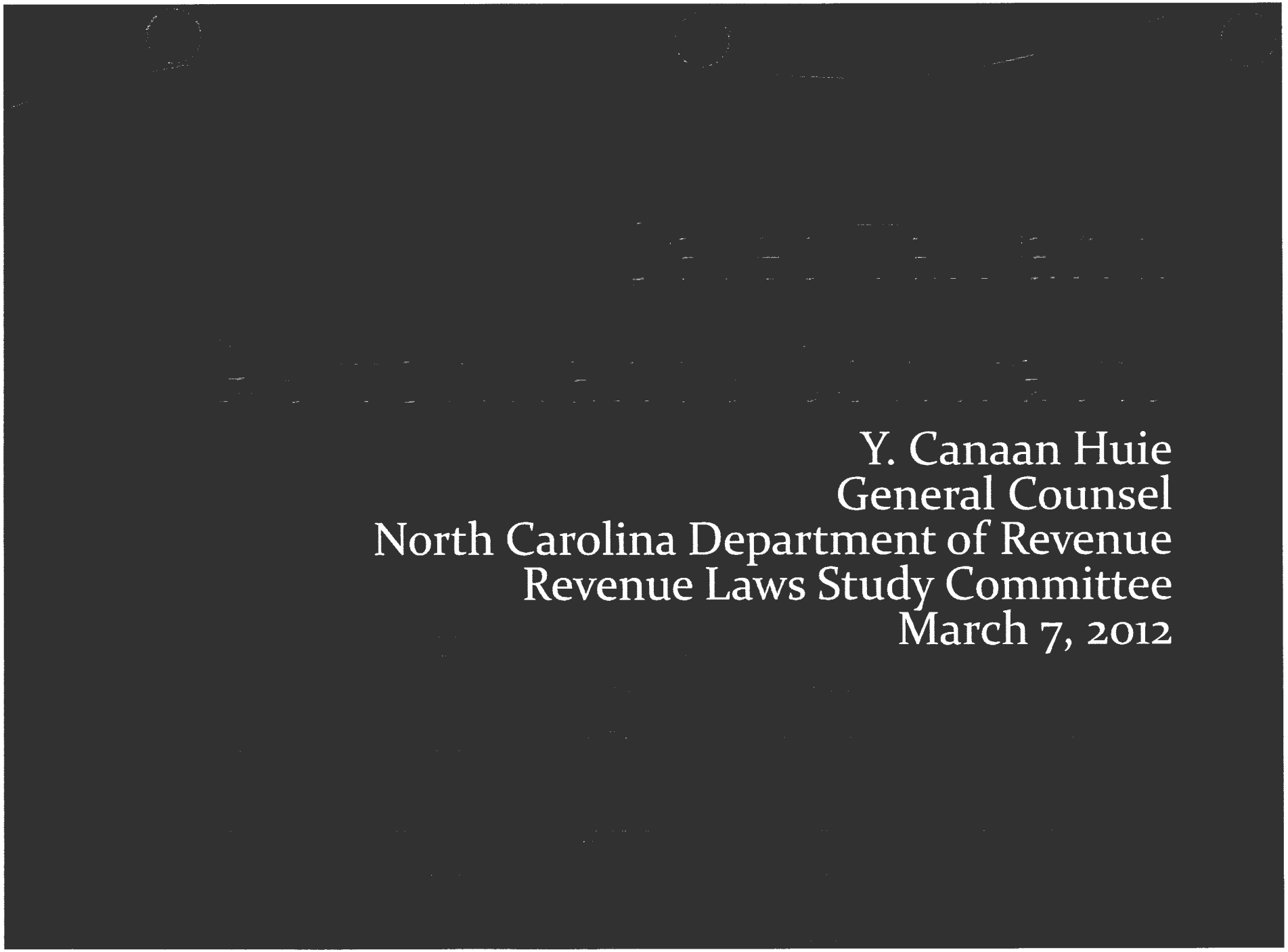
Issue

- Taxation of solar electricity equipment depends on one key factor: Is the person purchasing the equipment a "manufacturer" of electricity
  - Is electricity produced?
  - Is the electricity sold to consumers or used by the producer?
- Same equipment is taxed differently based on whether or how it is connected to the grid
- Small differences in technical specs can have significant tax consequences
- This leads to compliance and administrative issues

Possible actions

- Department has no specific recommendation
- No change – continue current interpretation
  - Administration issues
  - Somewhat confusing to taxpayers
  - Tax considerations may drive technical decisions
- Legislation providing guidance to the Department
  - Subject all solar electricity equipment to the 1%/$80 privilege tax under Article 5F?
  - Clarify that the 1%/$80 privilege tax under 5F applies only to electric power companies directly engaged in making sales to consumers?

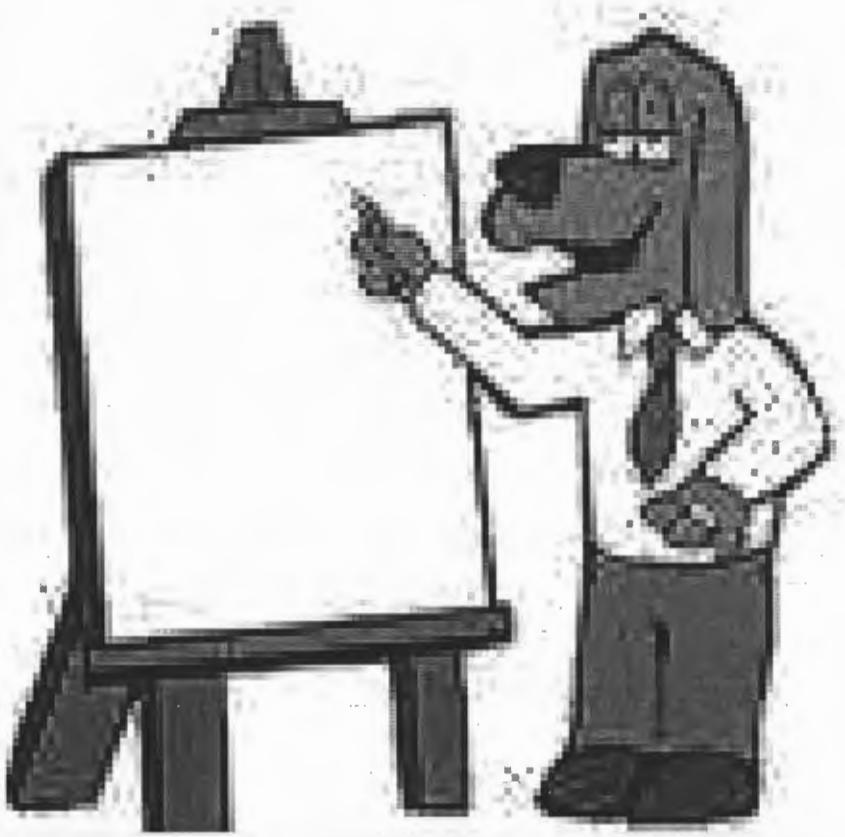
Questions?



Y. Canaan Huie
General Counsel
North Carolina Department of Revenue
Revenue Laws Study Committee
March 7, 2012

Overview

- Presentation of Issue
- Specific Examples
- Possible Options



Presentation of Issue

- Generally, sales of tangible personal property are subject to sales and use taxes
- Generally, contracts for the provision of services are not subject to sales and use taxes

What about gray areas where the transaction involves both tangible personal property and services?

- Is it the sale of tangible personal property with installation services?
- Is it a performance contract?

Sale of TPP with Installation

- Tenor of agreement is for sale or purchase of property
  - Generally involves sale of specific items or quantities of tangible personal property
  - Vendor will erect or install tangible personal property for additional charge
  - Title to tangible personal property passes to owner (not contractor) when delivered to site; retailer not liable for loss or damage due to vandalism, neglect, theft, fire
- Retailer purchases tangible personal property exempt from tax; charges owner tax on sales price – installation exempt if separately stated on the invoice at the time of sale (Note: the owner may instead owe tax under Article 5F if the property qualifies as mill machinery)

Performance Contract

- Tenor of agreement is for contractor to perform job
  - Contractor retains right to control means, method, and manner of accomplishing the desired result
  - Does not provide for sale of specific items or quantities of tangible personal property; contractor furnishes necessary materials, labor, and expertise to accomplish job
  - Title to materials purchased by contractor passes to and remains with contractor until job is completed and turned over to (and accepted by) owner
  - Total responsibility for job until it is completed, accepted, and turned over to owner is on contractor
  - Contractor responsible/liable for accidents or injury at job site; loss or damage due to vandalism, neglect, theft, fire
- Contractor owes sales or use tax on items purchased for use in fulfilling contract (Note, the contractor may instead owe tax under Article 5F if the property qualifies as mill machinery)

Tax implications

- Sale of tangible personal property with installation
  - Sales or use tax applies to sales price of tangible personal property to end consumer, including any charges for installation unless separately stated on the invoice at the time of sale

- Performance contract
  - Sales or use tax applies to sales price of tangible personal property when purchased by the contractor

Clear Examples of Sales of TPP with Installation

- Major appliances (refrigerators, dishwashers, etc.)
- High-end entertainment equipment (big-screen televisions, etc.)
- Some fixtures (ceiling fans, some light fixtures)

Clear Examples of Performance Contracts

- Painting motor vehicles or buildings (considered a service rather than a sale of paint)
- Exterminators (not a sale of pesticide)
- Cleaning services (cleaning supplies are used rather than sold)

More Gray Areas…

- Generally, the analysis is more difficult with the installation of "major" fixtures
  - Cabinetry
  - Carpeting

Analysis

- In general, the tenor of the agreement controls
- Is the "seller" a retailer, a contractor, or a retailer-contractor?
  - For sales tax purposes, "retailer" is defined under G.S. 105-164.3
  - There is no specific definition (under statute, rule, or bulletin) for contractor
  - Retailer-contractor is defined by rule and bulletin – it means a business that engages in some transactions as a retailer and other transactions as a contractor

Analysis

- If there is doubt, G.S. 105-164.26 provides that it is presumed:
  - That all gross receipts of wholesale merchants and retailers are subject to the retail sales tax until the contrary is established by proper records as required in this Article.
- Specific guidance is given for some industries under Section 31 of the Sales and Use Tax Technical Bulletins

Cabinetmakers

- **17 NCAC 07B .0803 CABINETMAKERS**
  - (a) Cabinetmakers who fabricate and sell cabinets to homeowners, contractors and others for use in this state are liable for collecting and remitting the applicable statutory state and local sales or use tax on the sales price of such property. Any cost of labor or services rendered in installing or affixing such property when separately stated on sales invoices given to customers at the time of sale shall not be included as a part of the sales price.
  - (b) Cabinetmakers who, pursuant to a construction or performance-type contract with or for the benefit of the owner of real property, install or affix tangible personal property, including cabinets, in or to real property are liable for tax on the cost or purchase price of materials and other such property used in performing the contract.

Cabinets – Rule of Thumb

- Are cabinets sold without an installation agreement?
  - Yes. Treated as a sale of tangible personal property
  - Seller collects sales tax on sales price of cabinets
- Are the cabinets a pre-fabricated product that are installed?
  - Yes. Treated as a sale of tangible personal property with installation
  - Seller collects sales tax on sales price of cabinets, including installation charges unless separately stated on the invoice at time of sale
- Are the cabinets designed to suit the specific needs of the client, to fit specific space requirements, or built on-site?
  - Yes. Treated as a performance contract.
  - Seller pays sales/use tax on tangible personal property used in the performance of the contract

Carpet

- Section 31-2 of Technical Bulletins
  - General Information
  - Sale of Carpet
  - Sale and Installation of Carpet
  - Performance Contract
  - Both Contractors and Retailers May Make Retail Sales and/or Perform Contracts

Carpet

- Is carpet sold without an installation agreement?
  - Yes. Treated as a sale of tangible personal property and seller collects the tax on the sales price
  - (Carpet sold to the end consumer without an installation agreement may be the least common method, but also the easiest for tax purposes)

diy network
Home Improvement Television

Carpet

- Retailer or contractor?
  - Does the contract specify an amount of carpet to be sold or does it specify enough carpet to cover a particular space?
    - Is exactly X square feet of carpet sold along with Y number of carpet tacks and Z amount of adhesive?
      - Yes. Treated as a sale of tangible personal property with installation
      - Seller collects sales tax on sales price of tangible personal property, including installation charges unless separately stated on the invoice at the time of sale
    - Are enough carpet and supplies sold to carpet X square feet – allowing for some variation or waste due to the shape of the room or other factors?
      - Yes. Treated as a performance contract.
      - Seller pays sales/use tax on tangible personal property used in the performance of the contract

Carpet

- Is selling and installing X square feet of carpet the same as selling and installing enough carpet to cover X square feet?
- NO!
- Different tax consequences based on the differences in the tenor of these agreements

Problem

- Department and taxpayer must make fine distinctions to determine if transaction is a sale of TPP with installation or a performance contract
- Consequences for retailer or contractor
- May result in revenue loss contrary to legislative intent

Possible solutions

- Department does not have a specific recommendation
- Subject all or most services to sales and use tax
- Clarify law around this general area
  - Tax the full sales price paid by consumer for permanently affixing tangible personal property to real estate
  - Definitively state that these types of transactions are either
    - Sales of tangible personal property with installation
    - Performance contracts
- Clarify law with respect to specific types of transactions that are most common or problematic – cabinets, countertops, flooring, roofing

Possible solutions

- Adopt specific requirements for certain types of retailers or contractors
  - Sales by certain retailers always considered to be sale of TPP with installation
    - Retailers of a certain size
    - Retailers that maintain a showroom and an inventory of goods
  - Contracts with a person required to be licensed under a State board always considered to be a performance contract

Questions

Rulemaking by Department of Revenue

Revenue Laws Study Committee

March 7, 2012

Greg Roney, Research Division

Overview-Rulemaking in General

- Rulemaking: Process for administrative agencies to create new rules and meet Constitutional requirements for notice
- NC Administrative Procedure Act (APA)
  - Chapter 150B contains APA
  - APA requires fiscal note, publication of proposed rule, hearing and comment period, and approval by Rules Review Commission

Rulemaking by Dept of Revenue

- 2 Tracks
  - Rulemaking under APA

GS 105-262: "The Secretary . . . may adopt rules" under GS 150B-1 and Article 2A of Chapter 150B

  - Bulletins and Directives

GS 105-264: "When the Secretary interprets a law by adopting a rule or publishing a bulletin or directive on the law . . . taxpayers are entitled to rely upon the interpretation."

Track 1:Bulletins

- Technical Bulletins present the administrative interpretation and application of tax laws
  - Corporate, Excise, and Insurance Tax Bulletins
  - Individual Income Tax Bulletins
  - Sales and Use Tax Technical Bulletins
- Bulletins generally updated annually
- Bulletins reflect tax law changes made by General Assembly

Track 1: Directives

- Directives issued on as-needed basis
  - To set out interpretation of a tax law
  - To explain the application of law to stated facts
  - To clarify an issue on which the Department has received numerous questions
- Once issued, Directives are not updated to reflect changes in the law or administrative interpretation

Track 2: Rules under APA

- Dept of Revenue issues rules
- Not updated annually
- May not reflect current law
- Rarely used

APA Applied to Dept of Revenue

- Dept. of Revenue is exempt from the notice and hearing requirements - GS 150B-1(d)(4)
- Definition of a rule does not include
  - Nonbinding interpretative statements . . . that merely define, interpret, or explain the meaning of a statute or rule – GS 150B-2(8a)(c)
  - Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections – GS 150B-2(8a)(g)

Tracks Compared

	Rulemaking under APA	Bulletins and Directives
Frequency of Use	Rarely used	Regularly used
Timeliness	Several months delay	Issued immediately; no delay
Notice and Hearing	No, unless rule affects corporate "combination" audits	No
OSBM Fiscal Note	Yes	No
Approval by Rules Review Commission	Yes	No
Updated	Rarely	Directives updated annually

Issue in Corporate Audits

- Dept. of Revenue issued Directive CD-11-01 on November 16, 2011 titled "Secretary's Authority to Adjust the Net Income of a Corporation or to Require a Corporation to File a Combined Return"
- Corporate taxpayers argue Directive CD-11-01 should be subject to rulemaking under APA

Option 1

- Require rules be adopted under APA on combination audits discussed in Directive CD-11-01
- General Assembly used this option in the past
  - GS 105-262(b) requires notice and hearing for rules affecting combination audits
  - Formerly Section 31.10.(b) of S.L. 2010-31 required rules be adopted under APA on combination audits before penalties applied

Option 2

- Require Dept. of Revenue issue all guidance through APA rulemaking
  - Major change to existing practice
  - Value to immediate statements from the Dept. of Revenue giving certainty to taxpayers
    - For example, filing deadlines; federal law changes
    - Annual updates
  - Statements may be exempt from APA because definition of rule does not include nonbinding interpretative statements and audit guidelines

January 30, 2012

Senator Robert Rucho
Co-Chair, Revenue Laws Study Committee
300-A Legislative Office Building
Raleigh, N.C. 27603-5925

Representative Danny McComas
Co-Chair, Revenue Laws Study Committee
506 Legislative Office Building
Raleigh, NC 27601

Representative Julia Howard
Co-Chair, Revenue Laws Study Committee
1106 Legislative Building
Raleigh, N.C 27601-1096

Re: North Carolina Department of Revenue Directive CD-11-01

Dear Senator Rucho, Representative Howard and Representative McComas:

On behalf of the North Carolina Chamber of Commerce, the North Carolina Retail Merchants Association and the Council on State Taxation, we thank you for the opportunity to comment on the North Carolina Department of Revenue's ("Department") recently issued Directive CD-11-01 dealing with forced combination of corporate tax returns and the Department's authority to make other discretionary adjustments to corporate income tax liability.

We would like to acknowledge the significant progress made in the past year on this issue. HB 619, enacted through your efforts and the efforts of the Senate and House leadership, was a significant step forward in bringing clarity and fairness to this area of taxation. Secretary Hoyle has made a real effort to improve transparency and openness, while vigorously leading the Department to fulfill its core mission of fair and equitable administration of the revenue laws. That said, significant problems remain.

The Directive responds to criticism by the North Carolina Business Court of the Department under previous Secretaries for its failure to provide guidance in the area of forced combination, and to a legislative invitation in 2010 to provide guidance by following the rule-making process contained in the North Carolina Administrative Procedures Act. While the new Directive represents a laudable effort by the Department to provide, for the first time, transparency in this hotly disputed area of North Carolina tax law, there are three major areas of concern with the Directive, which are discussed in more detail in the attached memorandum. Briefly, the primary concerns with the Directive are the following:

1) The Directive does not create the certainty that the legislature intended and that businesses need.

First, it lists 25 factors that the Department will consider in evaluating transaction, but it states that the Department may also consider other factors which are not included in the list. The Department therefore appears to be retaining unlimited discretion in its decisions regarding combination or other adjustment of a taxpayer's reported income, leaving taxpayers to guess what other factors may be important.

Second, the Directive leaves the large majority of multistate corporate taxpayers (those who did not settle with the Department during its 2009 Resolution Initiative, or since that time) to grapple with two different tax regimes – one regime for tax years prior to January 1, 2012 and the other regime for tax years thereafter. Many taxpayers have multiple prior years, some back as far as year 2000, which are still subject to forced combination by the Department.

The Department could have imported the standards of new G.S. 105-130.5A into its Directive for the years prior to January 1, 2012, avoiding the very real hardship its Directive will impose on most multistate corporations doing business in North Carolina. Specifically:

a. Although the new law requires the Department to include in a forced combination all corporations operating as part of a "unitary group," the Directive states that, for years still covered by the old law, the Department may continue its prior practice of "selective combination" of entities to be included in the combined group. Not only is this practice unfair, we believe it is also unconstitutional and it creates unpredictability for taxpayers from year to year.

b. Contrary to the requirements of the new law (which makes clear that fair transfer pricing between related entities is required), the Directive states that for years still covered by the old law, the Department may consider intercompany transactions in excess of cost as indicating that "true earnings" are not reflected on a company's separate tax return. This "excess of cost" standard is contrary to other North Carolina law requiring recognition of a fair profit between related entities, as well as contrary to federal law and the laws of other states.

2) The Directive erroneously interprets the legislation passed by the 2011 session of the General Assembly and by prior sessions of the General Assembly, significantly misstating the law or imposing requirements beyond the authority of the Department. The following problems, among others, are created by the Directive:

a. Although North Carolina law requires different apportionment formulas for different types of businesses, the Directive imposes an apportionment formula on a combined group, under both the old and new law, that does not fairly reflect the different formulas of the entities included in the group. This is contrary to the express requirement of the new statute, and is also contrary to legislative intent under the old law.

b. The Directive makes numerous misstatements regarding the consideration of the tax effects of a transaction under the new law in G.S. 105-130.5A.

c. The Directive imposes requirements on taxpayers that are beyond the authority of the Department under the new law, such as, among others, a requirement for contemporaneous written documentation of the business purposes of transactions, a requirement that a taxpayer prove positive financial effects for a transaction under review

(notwithstanding that the statute clearly recognizes other material benefits of transactions), and imposition of joint and several liability on all corporations in a combined group (including corporations with no North Carolina nexus).

3) Publication of the Directive without undergoing formal rule making violates the North Carolina Administrative Procedures Act and the North Carolina Revenue Laws. The failure of the Department to undergo formal rule-making resulted in erroneous interpretations of North Carolina law and results in the Directive being unenforceable.

Since the Department takes the position that promulgation of its new Directive is not subject to the formal rule-making process as prescribed in the North Carolina Administrative Procedures Act, we respectfully ask the Revenue Laws Committee to propose legislation to the 2012 General Assembly which will ensure that the new Directive and other Departmental rule making is subject to the North Carolina Administrative Procedures Act, that the public be afforded an opportunity to comment on the Directive when it is proposed as a rule, and that the comments made in the attached memorandum be reflected in the proposed rule when it is proposed by the Department.

We also respectfully ask that the Revenue Laws Committee carefully evaluate how legislation may be adopted which makes HB 619 apply to years prior to January 1, 2012 in order to prevent the problems outlined above in section 1 of this letter.

Sincerely,

Lew Ebert
North Carolina Chamber of Commerce

Andy Ellen
North Carolina Retail Merchants Association

Todd A. Lard
Council On State Taxation

Enclosure

cc: Members, Revenue Laws Study Committee
The Honorable David Hoyle, Secretary of Revenue

MEMORANDUM

TO: Senator Robert Rucho, Co-Chair, Revenue Laws Study Committee
Representative Julia Howard, Co-Chair, Revenue Laws Study Committee
Representative Daniel McComas, Co-Chair, Revenue Laws Study Committee

FROM: North Carolina Chamber of Commerce, North Carolina Retail Merchants Association and Council on State Taxation

DATE: January 30, 2012

RE: DOR Directive CD-11-01

Directive CD-11-01 explains the Secretary's authority to combine and the standards which the Department will follow in using its forced combination remedy under G.S. 105-130.6, G.S. 105-130.15 and G.S. 105-130.16, for tax years beginning before January 1, 2012. It also explains its authority and the standards it will follow under new G.S. 105-130.5A, enacted by HB 619 in 2011, to adjust intercompany transactions or require a corporation to file a combined return for tax years beginning on or after January 1, 2012.

The Directive responds to criticism by the North Carolina Business Court of the Department under previous Secretaries for its failure to provide guidance in the area of forced combination, and to a legislative invitation in 2010 to provide guidance by following the rule making process contained in the North Carolina Administrative Procedures Act. While the new Directive represents a laudable effort by the Department to provide, for the first time, transparency in this hotly disputed area of North Carolina tax law, there are three major areas of concern with the Directive:

I. The Directive does not alleviate taxpayer concerns about certainty in taxation.

A. It leaves the large majority of multistate corporate taxpayers (those who did not settle with the Department during its 2009 Resolution Initiative, or since that time) to grapple with two different tax regimes – one regime for tax years prior to January 1, 2012 and the other regime for tax years thereafter.

B. Further, under both regimes, the Directive lists 25 factors the Department will consider in analyzing transactions, but states as a preface to this list: "That a factor is not included on this list does not mean that it will not be considered or is not relevant." Therefore, taxpayers are still left to guess what factors will ultimately be important to the Department's decision, resulting in continued

uncertainty about how their business operations will be taxed in North Carolina.

II. The Directive erroneously interprets the legislation passed by the 2011 session of the General Assembly and by prior sessions of the General Assembly, significantly misstating the law.

III. Publication of the Directive without undergoing formal rule making violates the North Carolina Administrative Procedures Act and the North Carolina Revenue Laws. The failure of the Department to undergo formal rule-making resulted in the erroneous interpretations of North Carolina law which are discussed below and results in the Directive being unenforceable.

I. The Directive does not alleviate taxpayer concerns about certainty in taxation.

A) The Directive unnecessarily creates different tax regimes for the same taxpayers for different periods of time.

Taxpayers and the Department are confronted with the prospect of spending significant resources negotiating and litigating under an unclear law (G.S. 105-130.6) which has been repealed and which is dramatically different from the new law, which provides clear standards. Since G.S. 105-130.6 has no definition of "true earnings," and case law has failed to provide any clear explanation of the term, the Department could have drafted its Directive in such a way as to import the standards of the new legislation into the Department's application of the old statute, allowing the development of a more consistent and useful body of precedent and providing much needed certainty to taxpayers.

The impact of these vastly different standards on taxpayers should not be underestimated. Taxpayers can operate with no changes to their business operations, yet still face forced combination under one set of standards in the Directive, but not under the other. Although reform was badly needed and the new law far surpasses the old, it simply does not make sense to have two different tax regimes complicating compliance and enforcement. While we recognize that the statutory language has changed, the Department could have crafted combination standards for prior years that more closely followed the standards under the new law. We believe it has the clear statutory authority to do so.

Depending upon whether the year in question falls under the old statute or the new, the following substantial differences may occur under the Directive:

1) **Entities subject to combination**. The Department contends in the Directive that it may combine less than a full unitary group under the old statute, while a full unitary combination is required under the new statute.

The Department's legal authority to exclude certain members of the unitary group once the Department has determined that a combined return must be filed is questionable. As articulated by the U.S. Supreme Court in *Mobil Oil Corp. v. Comm'r of Taxes,* 445 U.S. 425

(1980), "the linchpin of apportionability in the field of state income taxation is the unitary business principle." If the Department requires related companies to file a combined corporate income tax return, then it must respect the Constitutional restriction on its authority to tax non-unitary income and its corollary, a restriction on its authority to exclude unitary income and losses. If a combined return is required, the failure to include in the combined group all companies operating the unitary business could itself cause a distortion of true earnings.

The lack of a requirement to include all unitary affiliates in the North Carolina combined return gives the Department unwarranted discretion to selectively choose entities for the combined group based on income/loss profiles, resulting in the potential for "cherry picking," in which only those corporations are combined whose combination will result in an increase of North Carolina tax. Further, it also creates unpredictability for taxpayers on a year-to-year basis. Under the limited circumstances in which forced combination might be warranted, the inclusion of all unitary affiliates would ensure fairness and a level playing field for both the taxpayer and the Department and help ensure that "true earnings" are reported to the state.

2) **Treatment of fair market value transactions between affiliated entities.** Although the Directive acknowledges the new law's requirement that compliance with IRC section 482 transfer pricing standards will satisfy the new law's fair market value standards for transactions between related entities, the Department continues to take the position that intercompany transactions in excess of cost, even if they are supported by transfer pricing studies, are to be treated with suspicion. The new Directive provides, "intercompany transactions in excess of cost may indicate that net income attributable to the State is not disclosed..."

The use of the Directive's "excess of cost" standard for determining that true earnings are not reported has no equivalent in the laws of other states, the Internal Revenue Code, or in international tax treaties. Independent companies do not engage in transactions at "cost." Requiring related companies to engage in transactions at "cost" in order to avoid forced combination itself would *distort* true earnings. The Directive's standard turns existing state, federal, and international tax standards on their heads. Indeed, other states, the United States, and foreign countries *require* a fair profit on intercompany transactions. (*E.g.*, IRC Sec. 482.) In fact, if separate corporations were to apply the Directive's excess of cost standard, they would be in violation of the IRC and the tax laws of North Carolina and other states.

The "excess of cost" standard does not relate to "true earnings," as required by old North Carolina law under G.S. 105-130.6, and it casts a net so broad as to sweep in virtually all corporations doing business with affiliates. Such a standard is not legal under North Carolina law.

The "excess of cost" standard is contrary to the relevant provisions of North Carolina law, including G.S. 105-130.5, 105-130.6, and 105-130.16, all of which make reference to "fair compensation" and/or "fair profit," and G.S. 105-130.2(5c) which uses federal taxable income as the starting point for determining State net income, thereby directly incorporating into North Carolina law the requirements of federal fair transfer pricing. The Directive's "excess of cost" standard means that the separate return of every corporation which follows federal guidelines for

fair transfer pricing for intercompany transactions may, in the Department's discretion, be deemed not to reflect true earnings for North Carolina purposes.

An additional problem with the use of "cost" as a standard is that it is not clear and administrable. There is no generally accepted definition of "cost" for tax purposes in law or in fact. "Cost" is defined for certain limited purposes (*e.g.*, last in, first out accounting), but those definitions cannot be expanded for general use in determining whether a unitary group must file a combined return.

If the Department had undergone formal rule making, as it is required to do, all of these issues would have received citizen input through written and public comments and then would have been carefully scrutinized by the North Carolina Rules Review Commission.

3) **There is no necessity for treating taxpayers differently**. In issuing the Directive, the Department effectively acknowledges that it could have taken steps to conform taxpayer treatment under both statutes and thereby eliminate the two-regime problems:

- The Directive lists 25 factors the Department may consider to determine whether net income properly attributable to the State is disclosed on a return filed under the old statute. It lists the same 25 factors for determining whether a transaction has economic substance under the new statute.

- The entities the Directive says will be excluded from combination under the old statute are largely the same entities which the General Assembly has provided may not be combined under the new statute.

- The methodology and procedures for computing State net income under a forced combination are the same in the Directive under both the old and new statutes.

- The Directive states that the Department will examine the economic substance of some transactions under the old statute, as it is required to do under the new statute, acknowledging that economic substance of a transaction is also a proper subject of inquiry under the old statute. After all, if a business transaction has a legitimate purpose and if the transaction has economic substance as defined by the new statute, the Department should have no objection to that transaction under either the old statute or the new.

B) **The Directive does not create the certainty that taxpayers need and the legislature intended.**

As noted above, the Directive lists 25 factors the Department may consider to determine whether net income properly attributable to the State is disclosed on a return filed under the old statute. It lists the same 25 factors for determining whether a transaction has economic substance under the new statute. However, the Department states that the Department may also consider other factors that it does not include in its comprehensive list. Specifically, the Directive states, "That a factor is not included on this list does not mean that it will not be considered or is not

relevant." This statement, included in the sections of the Directive dealing with both the old law as well as the new law, appears intended to give the Department unlimited discretion in its decisions regarding combination and leaves taxpayers without the certainty that the legislature intended in enacting the new law and that businesses need.

Moreover, the Department fundamentally misinterprets the economic substance test. Whether a transaction has economic substance is not an all-encompassing inquiry of various factors that may show that a transaction has been designed in a tax-efficient manner. The inquiry is much more straightforward: Does it have a valid business purpose and economic effects? If the answer to that two-part question is in the affirmative, the inquiry that the General Assembly has prescribed is at an end. The Directive, instead of acknowledging this basic feature of HB 619, designs its own vague test which lacks clarity or predictability and which could again be a tool for abuse.

II. The Directive erroneously interprets the legislation passed by the 2011 session of the General Assembly and by prior sessions of the General Assembly, significantly misstating the law.

A. <u>The Directive violates North Carolina law for years prior to 2012.</u>

1) **<u>Apportionment formula for combined group.</u>** Some of the Department's targets for combination have been members of unitary groups that include corporations required to apportion their income under the different apportionment formulae contained in G.S. 105-130.4. Without legislative authority, the Department has stated in the Directive that it will use the general three-factor formula with a double weighted sales factor for all of the group's combined income, unless more than 50% of the group's combined income subject to apportionment is generated from a business activity subject to special apportionment. This practice contravenes express legislative language which requires the use of different apportionment formulas for different kinds of businesses and does not acknowledge that some other apportionment approach might be fairer when entities with different formulae are combined.

The new legislation makes it clear that the Department must consider the different formulas in a forced combination for years beginning on or after January 1, 2012.

2) **<u>Joint and several liability</u>**. The Directive provides that every member of the combined group is jointly and severally liable for the combined group's tax liability. There is no statutory authority for imposing joint and several tax liability, and no authority to impose <u>any</u> tax liability on a corporation that has no nexus with this State.

B) <u>The Directive misstates and erroneously interprets new G.S. 105-130.5A.</u>

1) **<u>The Directive misstates the law in G.S. 105-130.5A as to consideration of the tax effects of a transaction, making the Directive unlawful.</u>**

a. Throughout its discussion of G.S. 105-130.5A, the Directive repeatedly misstates the clear language of the statute as to how tax effects of a transaction should be considered in determining economic substance. G.S. 105-130.5A(f) provides that an intercompany transaction has economic substance if it has one or more "reasonable business purposes other than the creation of State income tax benefits" and the transaction "has economic effects beyond the creation of State income tax benefits," (emphasis added), providing also that if State income tax benefits resulting from a transaction are consistent with legislative intent, those income tax benefits may be considered in determining both business purpose and economic substance.

In the face of that clear statutory language, the Directive states that the statute "mandates the use of a conjunctive two prong test to determine whether a transaction shall be found to have economic substance" and goes on to state that the first prong "requires that the transaction have one or more reasonable business purposes other than the creation of tax benefits" and the second prong "requires that the transaction have economic effects other than the creation of tax benefits."[1]

The Directive misstates the law as to both prongs since the law provides that it is state income tax benefits – not benefits derived from other portions of the tax code – that are subject to scrutiny.

Similar misstatements of the law are made elsewhere in the Directive.[2]

b. The Directive states that the taxpayer "bears the burden of proving that the transaction has economic substance and is absent the motive of tax avoidance."[3] The statute says no such thing and, in fact, recognizes the legitimacy of appropriate tax planning.

c. Further, the Directive attempts to engraft onto the statute a requirement relative to tax effects not set forth in the statute. The Directive states that "the asserted business purpose must be commensurate with the tax benefits claimed."[4] The General Assembly imposed no such requirement and it is difficult to understand how such a comparison would actually be made.

2) The Directive erroneously interprets the law beyond the authority of the Secretary.

a. Documentation of business purpose. The Directive states that, "The asserted business purpose must be supported by contemporaneous documentation."[5] The statute imposes no such requirement. It is unreasonable and incredibly burdensome to require businesses to document the business purpose for every intercompany transaction and then to require them to retain that documentation for many years. Corporate document retention policies frequently result in destruction of documents relative to challenged transactions long before audits commence, and corporations cannot be expected to generate written documentation of the

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[1] Directive, Part Two, Section I.A (emphasis added).
[2] See Directive, Part Two, Section I.B, C, Section II.C, E 4.
[3] Directive, Part Two, Section II.A.2 (emphasis added).
[4] Directive, Part Two, Section II.B.4 (emphasis added).
[5] Directive, Part Two, Section II.B.5.

business purpose for every transaction. This rule, if allowed, would give the Department unreasonable power in an audit to pressure taxpayers by requesting business purpose documentation for virtually every aspect of the business. A more appropriate rule might acknowledge that more weight might be afforded contemporaneous documentation, but legitimate business planning may well exist where no documentation exists at the time of an audit.

b. **Proof of economic substance**. The Directive states, "The taxpayer must prove by objective evidence that the transaction affected the taxpayer's financial position in a positive and meaningful way apart from tax benefits."[6] There is no requirement in the new law that economic substance include a change to the taxpayer's financial situation. The statute clearly provides that business purpose and economic effects requirements of economic substance are met if there is a "material benefit" from the transaction. As an example, creation of a subsidiary to insulate a parent from liability is a straightforward example of a material benefit from a transaction where there might not be a change to the taxpayer's financial situation.

Similarly, a transaction may have material benefit even if it does not "substantially improve(s) the economic position of the taxpayer on a pre-tax basis."[7]

c. **Apportionment formula**. The Directive states that the apportionment formula for a combined group will be determined under the new law in the same manner as under the old law. Therefore, as explained above, the Department fails to take into account that different apportionment formulas may apply to different members of a combined group.[8] The Directive ignores the express language of G.S. 105-130.5A(h) requiring that the apportionment formula used in forced combination "fairly reflect(s) the apportionment formula in G.S. 105-130.4 applicable to the corporation and each member of the affiliated group included in the combined return."

d. **Creation of additional tests for "material business activity."** G.S. 105-130.5A states, "In determining whether to require a combined return, whether the transaction has economic effects beyond the creation of State income tax benefits may be satisfied by demonstrating material business activity of the entities involved in the transaction." The Directive provides that "along with material business activity, the principles, factors and rules in Section II (of the Directive) will also be considered in determining whether the transaction has economic effect beyond tax benefits." The Department, by this portion of the Directive, may recognize that there are additional ways to satisfy the economic effect test, beyond "material business activity," which would comport with the intent of the legislation. However, if the Department is stating that material business activity is not enough to satisfy that test and that other factors will be considered as well, it has attempted to engraft a requirement into the statute the General Assembly did not impose.

This is an ambiguity which rules review would have addressed.

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[6] Directive, Part Two, Section C.2.
[7] Directive, Part Two, Section II.E.1.
[8] Directive, Part Two, Section II.V.D, incorporating Part One, Section V.F.

e. **Royalty reporting option.** The Department has apparently had concerns about alleged abuses of the royalty reporting option contained in GA 105-130.7A. It has responded to those alleged abuses and to the provisions of G.S. 105-130.5A, by stating in the Directive that, "[t]he Secretary can, however, adjust the amount of the payments if the transactions lack economic substance or are not at fair market value." The question of economic substance of intellectual property holding companies has been at issue since they became a popular tax planning device in the early 1990s, or earlier. The same companies have been held by some jurisdictions to have substance and by others not to have substance.[9] The North Carolina statute creating the royalty reporting option avoids the issue of economic substance and merely requires that the royalties be reported for taxation, either by the payor through an add back, or by the payee through filing a North Carolina tax return. An attempt by the Department to override the legislative intent of G.S. 105-130.7A, and to delve into issues of substance with intellectual property holding companies which have been reporting royalties to North Carolina under the options afforded by the law would be beyond its authority.

III. Publication of the Directive without undergoing formal rule making violates the North Carolina Administrative Procedures Act and the North Carolina Revenue Laws. The failure of the Department to undergo formal rule-making resulted in the erroneous interpretations of North Carolina law which are discussed below and results in the Directive being unenforceable.

Rules are defined under the Administrative Procedures Act as "any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly ... or that describes the procedure or practice requirements of an agency." G.S. 150B-2(8a)

Excluded from the definition of "rule" are "nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule." G.S. 150B-2(8a) c. The Directive does not fall within this exclusion, as the Directive clearly states, "the interpretation in this Directive is a protection to the taxpayers affected by the interpretation and taxpayers are entitled to rely on this interpretation." Further, the Directive goes far beyond merely defining, interpreting or explaining the statute, as it includes lengthy guidelines for how the statute will be implemented and how taxpayers must compute the apportionment formula and prepare their tax returns.

The Department seeks to rely on G.S. 105-264 as statutory authority to bypass formal rule-making to issue this Directive. However, the Department is noticeably absent from G.S. 150B-1(c) which lists those administrative agencies and departments that have complete exemptions from the North Carolina Administrative Procedures Act. To the contrary, G.S. 150B-1(d)(4) is clear and unambiguous that the Department only has a specific and limited exemption from rule-making under the North Carolina Administrative Procedures Act – a limited exemption from the notice and hearing requirements as contained within Part 2 of Article 2A of

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[9] *See Sherwin-Williams Co. v. Comm'r of Rev.*, 438 Mass. 71, 778 N.E.2d 504 (2002); *Sherwin-Williams Co. v. Tax Appeals Tribunal*, 2004 NY Slip Op 07737, 12 A.D.3d 112 (2004).

the Act. (The Department is instead subject to the notice and hearing requirements contained in G.S. 105-262.)

The 2011 session of the General Assembly, in adopting SB 781 which amended G.S. 150B, the Administrative Procedures Act, emphasized to agencies the importance of following the rule making process by providing, "An agency shall not seek to implement or enforce against any person a policy, guideline, or other non binding interpretive statement that meets the definition of a rule contained in G.S. 150B-2(8a) if the policy, guideline, or other nonbinding interpretive statement has not been adopted as a rule in accordance with this Article." G.S. 150B-18. In any event, as noted above, the Directive is not a nonbinding interpretative statement.

The 2010 General Assembly adopted an amendment to G.S. 105-130.6, one of the statutes the Directive interprets, by providing, "In order to provide clarity for taxpayers, the Secretary may adopt rules in accordance with G.S. 105-262 that describe facts and circumstances under which the Secretary will require a corporation to file a consolidated or combined return." G.S. 105-262 specifically requires that such rules be adopted in accordance with G.S. 150B, the Administrative Procedures Act. The 2010 General Assembly also detailed the specific procedures to be followed for notice and hearing in connection with the adoption of such rules. (As noted above, although the Department is subject to G.S. chapter 150B's rule making requirements, it is exempt from the notice and hearing provisions of G.S. chapter 150B and those notice and hearing provisions are contained in G.S. 105-262(b).)

The Directive clearly is intended to "describe facts and circumstances under which the Secretary will require a corporation to file a ... combined return" (G.S. 105-130.6) and is clearly "an agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly...." G.S. 150B-2(8a). Despite the clear and explicit language of the General Assembly in 2010 and 2011 and a lack of an exemption from formal rulemaking under G.S. 150B-1(c), the Department ignored the legislative requirements with regard to rule making.

The Department apparently takes the position that it has the authority to issue the Directive without complying with the rule-making process because of the general authority given to the Secretary in G.S. 105-264(a) to interpret the tax laws. However, this general authority, which is an important function of the Secretary, must be construed with other statutory provisions governing that interpretive authority. Those statutes require compliance with the rule-making process set forth in the APA, with limited exceptions. *See* G.S. 150B-1(d)(4).

One of the purposes of that rule-making process is to prevent the errors and misinterpretations of the law like those contained in the Directive when an agency acts without proper rule-making review. Under review by the Rules Review Commission, statements in proposed rules which are without legislative authority or ambiguous are subject to review and objection, requiring the agency to address the objections. *See* G.S. 150B-21.9.

Had the Department complied with the APA and with the requirements of the General Assembly set out above, its Directive would have been more carefully drafted to comply with the reform legislation enacted in 2011 in HB 619 and with other provisions of the Revenue Laws, and its errors subject to review by an independent commission whose function is to assure that

rules comport with legislation enacted by the General Assembly – not with an agency's notion of what the law should be.

In essence, if the Department intends to have the Directive be enforced with general applicability to all corporate taxpayers, the Department must undertake the process of formal rule making as set out in the North Carolina Administrative Procedures Act.

Rulemaking, Directives, and the Department of Revenue

Y. Canaan Huie
General Counsel
North Carolina Department of Revenue
Revenue Laws Study Committee
March 7, 2012

Secretary's Authority

- Since 1955, the General Statutes have recognized two separate levels of guidance from the Secretary
  - Rules under G.S. 105-262
  - Interpretations under G.S. 105-264

Secretary's Authority

- G.S. 105-262. Rules
  - "The Secretary of Revenue may adopt rules... G.S. 150B-1 and Article 2A of Chapter 150B of the General Statutes set out the procedure for the adoption of rules."

Secretary's Authority

- G.S. 105-264. Effect of Secretary's interpretation of revenue laws
  - "It is the duty of the Secretary to interpret all laws administered by the Secretary. The Secretary's interpretation of the law shall be consistent with the applicable rules. An interpretation by the Secretary is *prima facie* correct. When the Secretary interprets a law by adopting a rule or publishing a bulletin or directive on the law, the interpretation is a protection to the officers and taxpayers affected by the interpretation, and taxpayers are entitled to rely upon the interpretation. If the Secretary changes an interpretation, a taxpayer who relied on it before it was changed is not liable for any penalty or additional assessment on any tax that accrued before the interpretation was changed and was not paid by reason of reliance upon the interpretation." [emphasis added]
  - "This section does not prevent the Secretary from changing an interpretation, and it does not prevent a change in an interpretation from applying on and after the effective date of the change."

Secretary's Authority – Caselaw

- "This section gives the Secretary of Revenue the power to construe the Revenue Act of 1929, codified as this Subchapter, and such construction will be given due consideration by the courts, although it is not controlling." *Valentine v. Gill*, 223 N.C. 296 (1943)
- "The construction given a taxing statute by the Secretary of Revenue will be given consideration by the courts though not controlling." *Charlotte Coca-Cola Bottling Co. v. Shaw*, 232 N.C. 307 (1950)
- "If there should be a conflict between the interpretation placed upon any of the provisions of the Revenue Act by the Secretary of Revenue and the interpretation of the courts, the interpretation or construction by the latter will prevail." *Campbell v. Currie*, 251 N.C. 329 (1959)

Secretary's Authority – Definition of a Rule

- G.S. 150B-2(8a)
  - Rule does not include "nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule."
- Case law makes it clear that the Secretary's interpretations are not controlling (or binding) on the courts, even though they are afforded great weight
- Statutes make it clear that interpretations are not binding on the Secretary prospectively and may be changed at his discretion
- Statutes state that interpretations may be relied upon and offer protection to a taxpayer, but do not state that they are binding
- As such, Secretary's interpretations under G.S. 105-264 are nonbinding and therefore not a rule

Secretary's Authority – Recent Legislative History

- 2008
  - Report to the Revenue Laws Study Committee on Department's efforts to inform taxpayers of "revised interpretations"
- 2010
  - Notice for revised interpretations
  - Fair Tax Penalties – rule v. directive
- 2011
  - Regulatory Reform Act of 2011

Practical Impacts

- Nothing requires the Secretary to issue directives or adopt rules
  - The directives provide guidance on how the Secretary interprets the underlying law
  - The Secretary could forgo issuing guidance and merely apply the law
- Adopting rules takes much longer than issuing bulletins or directives
  - Example – Changes to taxation of food in 2003
    - Law enacted June 30, 2003
    - Changes took effect July 15, 2003
- Directives and bulletins provide needed guidance to many taxpayers who simply want direction
  - Particularly important for small businesses
  - Particularly important with respect to sales and use taxes

Timeline for Department of Revenue Rules

- Before publishing a rule, Secretary must request OSBM prepare a fiscal note if there is substantial economic impact, OSBM has up to 90 days to respond – G.S. 105-262
- Publish proposed rule
- Accept public comment for at least 60 days – G.S. 150B-21.2(f)
- Take no final action for at least 60 days if there is a sub. econ. impact – G.S. 105-262
- Adopt rule
- Submit adopted rule to Rules Review Commission within 30 days of adoption – G.S. 150B-21.2(g)
- Review by RRC
  - Depends on the date of submission, but generally the RRC has 40 to 70 days to take first action – G.S. 150B-21.9(b)
  - May be extended another 70 days – G.S. 150B-21.13
  - Commission may call a public hearing when it extends period for review (notice of which must be given in the Register) and must make a decision within 70 days after the date of the public hearing – G.S. 150B-21.14
- Rule becomes effective first day of the month following the month the rule is approved, unless the RRC receives written objections from 10 or more people requesting legislative review
  - Rule cannot become effective until 31st legislative day of next regular session of G.A.
  - If a bill to disapprove the rule is filed, rule cannot become effective until an unfavorable action is taken on the bill or the General Assembly adjourns without ratifying bill

Timeline for Department of Revenue Rules - Example

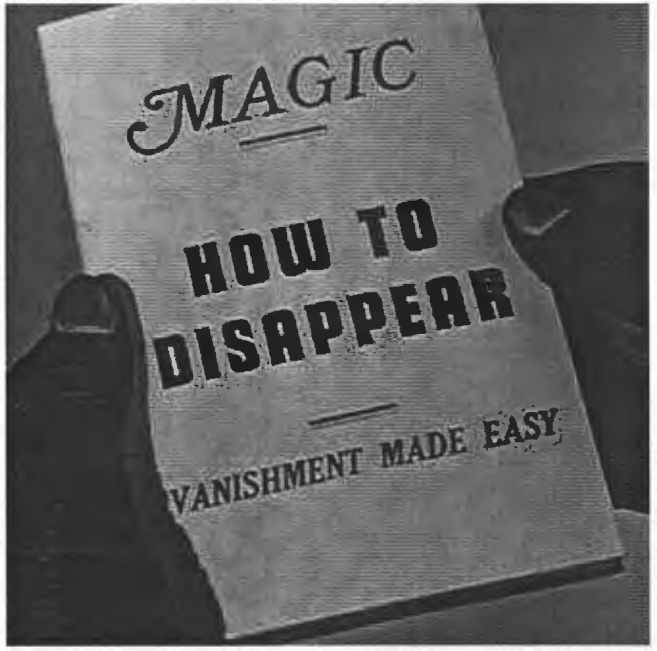
- **Potential** timeline, if Department had adopted a rule with respect to combinations and adjustments
  - Law effective 9/15/11
  - Assume Secretary had a proposed rule ready and immediately requested fiscal note
  - Fiscal note ready and Secretary publishes proposed rule - 12/14/11
  - Secretary accepts public comment, adopts rule and submits rule to RRC - 2/13/12
  - RRC must take first action (accept, reject or extend time) – 4/2/12
  - RRC extends time for review by an additional 70 days – 6/11/12
  - On 6/5/12, RRC calls for a hearing to be held
  - Notice of hearing is published in Register 6/15/12 with a hearing on 7/2/12
  - RRC approves rule 9/10/12, but 10 or more people have objected
  - Bill to disapprove rule filed during first 31 legislative days of 2013 regular session
  - No action is taken on that bill and legislature adjourns 7/1/13
  - Rule becomes effective 7/1/13
  - 21½ months between the effective date of the statute and the effective date of the rule
  - Taxpayers have no certainty during that time period
- This timeline is one scenario, could be lengthened or shortened based on the timeliness of actions by the Department and others – but a likely effective date would still be the date of adjournment of the 2013 Regular Session
- What actually happened
  - Department published a directive on November 16, 2011 – 2 months after the statute was enacted

Practical Impacts - Timeline

- Two complicating factors
  - Does the rule result in substantial estimated additional costs?
    - If so, rule could not be adopted until 7/1/12 under S 22
    - Potential for pushing the timeline out to 2014
  - Is the rule expressly authorized by federal or State law?
    - If not, rule may not be adopted under G.S. 150B-19.1, as enacted by S 781
      - Does "express" mean "explicit or definitive"?
        - If so, G.S. 105-262 gives the Secretary explicit general authority to adopt rules and rule may be adopted
      - Does "express" mean "specific or particular"?
        - If so, nothing in H 619 or S 580 specifically authorizes rules on this issue and Secretary may not adopt rule

Practical Impacts

- Much of the existing guidance from the Department comes in the form of bulletins or directives
- If formal rulemaking is required of the Department, what happens to this existing guidance?

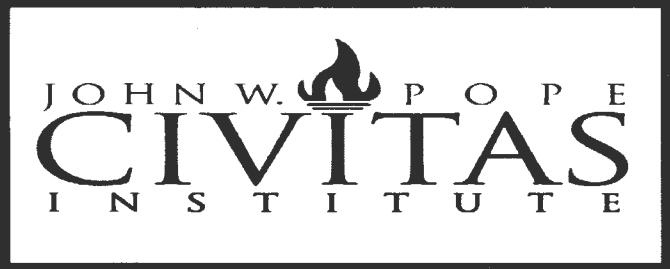


Conclusions

- The issuance of interpretations in the form of directives or bulletins instead of through the formal rulemaking process is authorized and appropriate
- The use of directives and bulletins allows the Department to provide timely guidance to taxpayers on its interpretation of the revenue laws
- The impact on both current and future guidance from the Department of requiring the Department to go through the formal rulemaking process is unclear

NORTH CAROLINA'S ESTATE TAX:

REAL IMPACT ON REAL FAMILIES



Brian Balfour, Director of Policy
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834-2099

Repealing the Estate Tax Will Create Jobs

- A study by the Institute for Research on the Economics of Taxation concludes that estate taxes "result in a reduced stock of capital," and that such consequences are "borne by the labor force" through lost jobs.
- Repealing the estate tax will encourage more capital investment by increasing the rate of return on that investment. Increased investment means a growing economy and more jobs.

Entin, Stephen J., "Kill the Death Tax," Institute for Research on the Economics of Taxation. Sept. 5, 2007. Available at: http://www.nodeathtax.org/uploads/view/839/kill_the_death_tax_2007.pdf

The Estate Tax Will Affect a Growing Share of Farms and Businesses

- As of Jan. 1, 2013, the estate tax exemption will drop from $5 million to $1 million.
- This will greatly increase the number of small businesses and farms affected by the estate tax.
- Data from Fiscal Research suggests the lower exemption could trigger a ***ten-fold increase*** in the number of estates impacted.

Spreadsheet of taxable estates for years 2007, 2008 and 2009 obtained via email from Fiscal Research. The number of estates valued at $1 million or more compared to $5 million in each year showed: a 943% increase in 2007, a 572% increase in 2008 and an 899% increase in 2009.

Repealing the Estate Tax Will Not Negatively Impact Charitable Giving

- Some argue that people will give more to charity -- both throughout their life and as bequests -- as a way of avoiding paying taxes on their estate. If there was no estate tax, they argue, these people wouldn't donate as much to charity because there would be no tax avoidance needed.
- A prominent 2004 Congressional Budget Office report is often cited. That report also declares that a repeal of the estate tax would have the most significant negative impact on charitable bequests.

Congressional Budget Office, The Estate Tax and Charitable Giving, July 2004.

Repealing the Estate Tax Will Not Negatively Impact Charitable Giving

- The year 2010 presents the perfect test for that theory, as the federal estate tax was repealed for one year.
  - Research by the Giving USA Foundation shows that charitable bequests *increased by 18 percent* in 2010.
  - Thus, empirical evidence refutes the theory.

Giving USA Foundation (2011). Giving USA 2011: The Annual Report on Philanthropy for the Year 2010. Available at: http://www.givingusareports.org/products/GivingUSA_2011_ExecSummary_Print.pdf

Estate Tax Generates Only a Tiny Fraction of State Revenue

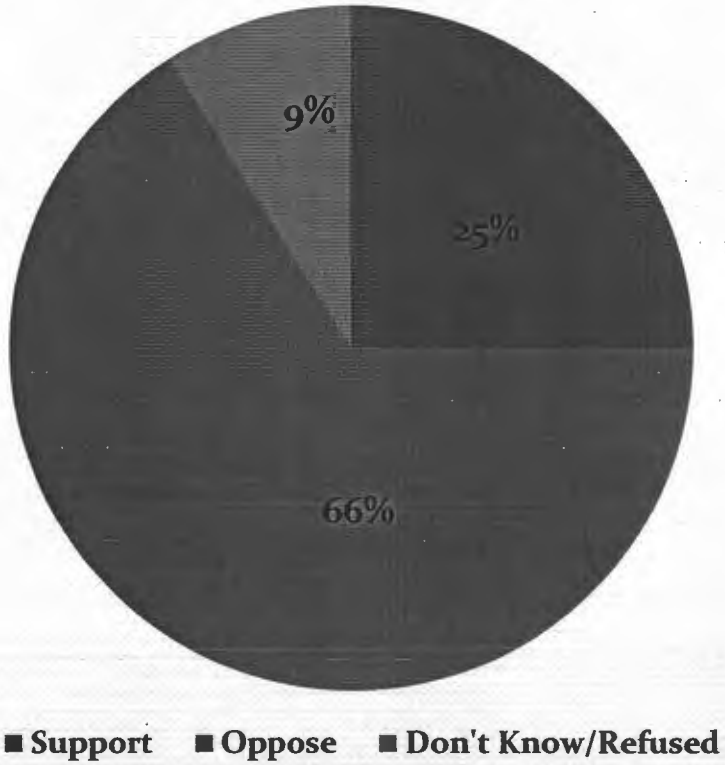
- The estate tax generated only one-half of one percent and four-tenths of one percent of state revenue in FY 2009 and FY 2010, respectively.
- Even with the significantly lower exemption affecting many more small businesses and farms, the estate tax would still generate less than 1 percent of state revenue in the future.

North Carolina Office of State Controller, General Fund Monthly Financial Report; June 30, 2010. Available at: http://www.osc.nc.gov/pdfs/June_2010_Gen_Fund_Mthly_Rpt.pdf

Fiscal Research projects estate tax revenue of $171 million for FY 2015. Reasonable projections would place state revenue to be roughly $20 billion in that year, thus estate tax revenue would be less than 1%.

Voters Overwhelmingly Oppose the State's Estate Tax

Do You Support or Oppose the State Estate Tax?



REAL IMPACT ON REAL FAMILIES

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

U D

BILL DRAFT 2011-TMz-6 [v.4] (01/31)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/31/2012 3:09:46 PM

Short Title: Repeal Estate Tax. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE ESTATE TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1A of Chapter 105 of the General Statutes is repealed.

SECTION 2. G.S. 105-241.10 reads as rewritten:

"**§ 105-241.10. Limit on refunds and assessments after a federal determination.**

The limitations in this section apply when a taxpayer files a timely return reflecting a federal determination that affects the amount of State tax payable and the general statute of limitations for requesting a refund or proposing an assessment of the State tax has expired. A federal determination is a correction or final determination by the federal government of the amount of a federal tax due. A return reflecting a federal determination is timely if it is filed within the time required by G.S. ~~105-32.8,~~ 105-130.20, 105-159, 105-160.8, or 105-163.6A, as appropriate. The limitations are:

(1) Refund. – A taxpayer is allowed a refund only if the refund is the result of adjustments related to the federal determination.

(2) Assessment. – A taxpayer is liable for additional tax only if the additional tax is the result of adjustments related to the federal determination. A proposed assessment may not include an amount that is outside the scope of this liability."

SECTION 3. Sections 1 and 2 of this act become effective January 1, 2013, and apply to the estates of decedents dying on or after that date. The remainder of this act is effective when it becomes law.

N.C. Center *for* Nonprofits

Impact of the Repeal of the NC Estate Tax on Charitable Giving

Remarks of David Heinen, Director of Public Policy and Advocacy, N.C. Center *for* Nonprofits
May 7, 2012

- I am David Heinen, Director of Public Policy and Advocacy at the N.C. Center for Nonprofits, a statewide organization that helps North Carolina nonprofits operate more efficiently and effectively. I am here to speak on the impact of the repeal of the estate tax on philanthropy in North Carolina.

- Charitable bequests are a major source of revenue for nonprofits.

- According to the Giving USA Foundation, charitable bequests account for 8% of total giving to nonprofits. This is about $400 million annually in North Carolina.

- The Congressional Budget Office has estimated that eliminating the federal estate tax would decrease charitable bequests by between 16% and 28%.

- Nonprofit tax experts agree that the repeal of the North Carolina estate tax would also create a disincentive for charitable bequests and also would reduce charitable donations in the last 10 years of life.

- And even the most rigorous fiscal estimates may understate the impact of the estate tax on philanthropy in North Carolina. For example, a 1975 court decision make clear that the third largest private foundation in Minnesota - which reduces burdens on government services by investing millions of dollars annually in nonprofits' work - would not have been created but for the existence of the estate tax.

- Also, it is important to note that the Giving USA Foundation's estimate for an increase in charitable bequests from 2009 to 2010 is only a preliminary estimate and may not be an indication of a trend. Bequests vary widely from year to year, so it's important to look at data from several years to see trends. For example, bequests in 2010 were 20% lower than in 2008 when the estate tax was in place. And because of the uncertainty surrounding the immediate future of the federal estate tax, many wills and estates were not altered when the estate tax went away for one year in 2010.

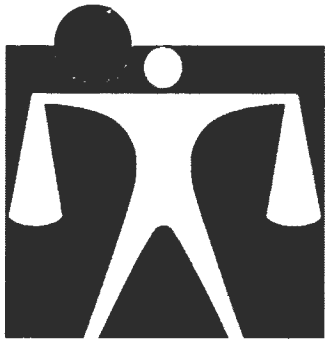
- A decline in bequests and late-in-life philanthropy would be particularly damaging to nonprofits today, when private giving continues to struggle. In each of the last three years, at least half of all North Carolina nonprofits reported a decrease in individual giving.

- Nonprofits improve the quality of life in North Carolina in a wide variety of ways, ranging from education to health care to disaster relief to the arts.

- We ask that you preserve the estate tax and other laws that encourage North Carolinians to give generously to nonprofits and thereby ease the burden on government services.

- Thank you.

For more information, contact David Heinen, Director of Public Policy and Advocacy, dheinen@ncnonprofits.org or 919-790-1555, ext. 111.



NC Justice Center

North Carolina's Estate Tax:

Key Fiscal Issues to Consider in Estate Tax Changes

Alexandra Sirota,

NC Justice Center

Opportunity and prosperity for all

NC Budget and Tax Center

What is the Budget and Tax Center?

The Budget and Tax Center, a project of the N.C. Justice Center, seeks to create economic opportunity and shared prosperity for all North Carolinians through non-partisan research, education and advocacy on budget, tax and economic issues.

Visit us at www.ncbudgetandtaxcenter.org.

NC Justice Center

Opportunity and prosperity for all

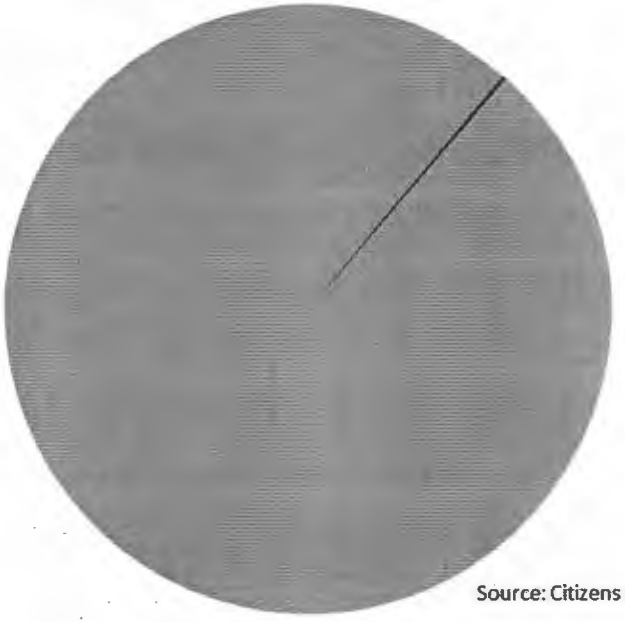
Key Points

1. **Very Few Estates Face Any Estate Tax Liability**
2. **Evidence Suggests Little Impact on Interstate Migration to/from North Carolina**
3. **Estate Tax Revenue Comparable to Appropriations for Key Public Investments**

NC Justice Center
Opportunity and prosperity for all

Very Few Estates Face Any Estate Tax Liability

Roughly 2 in 1,000 decedents paid any estate tax in North Carolina in 2009



Source: Citizens for Tax Justice

From the Urban-Brookings Tax Policy Center:

"The estate tax is highly progressive. The top ten percent of income earners pays virtually all of the tax; over half is paid by the richest 1 in 1,000… [and] very few farms or businesses actually pay the tax."

2011 Exemption Levels

- $5 million ($10 million for couples)

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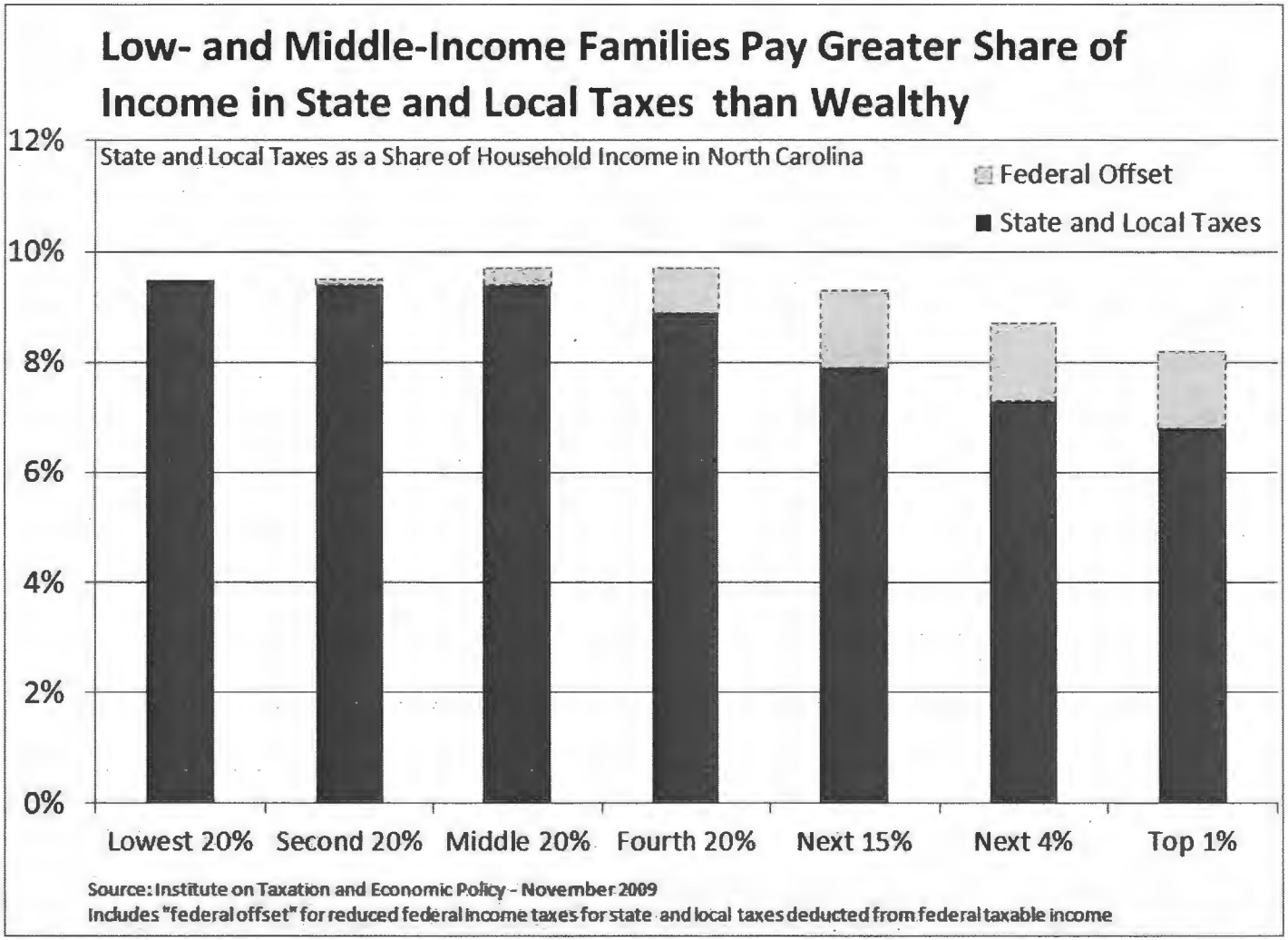
Estate Tax Falls Most on Income Group with Lowest State & Local Tax Rate



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Opportunity and prosperity for all

Evidence Suggests Little Impact on Interstate Migration to/from North Carolina

Statistical Evidence: At most, a small impact

- Bakija & Slemrod (NBER, 2004)
  - Some wealthy migration, but revenue gained by state-level estate/inheritance taxes far exceeds losses from migration
- Conway & Rork (NTJ, 2006)
  - No evidence of elderly migration, past studies have causation backward (migration → tax-law changes)

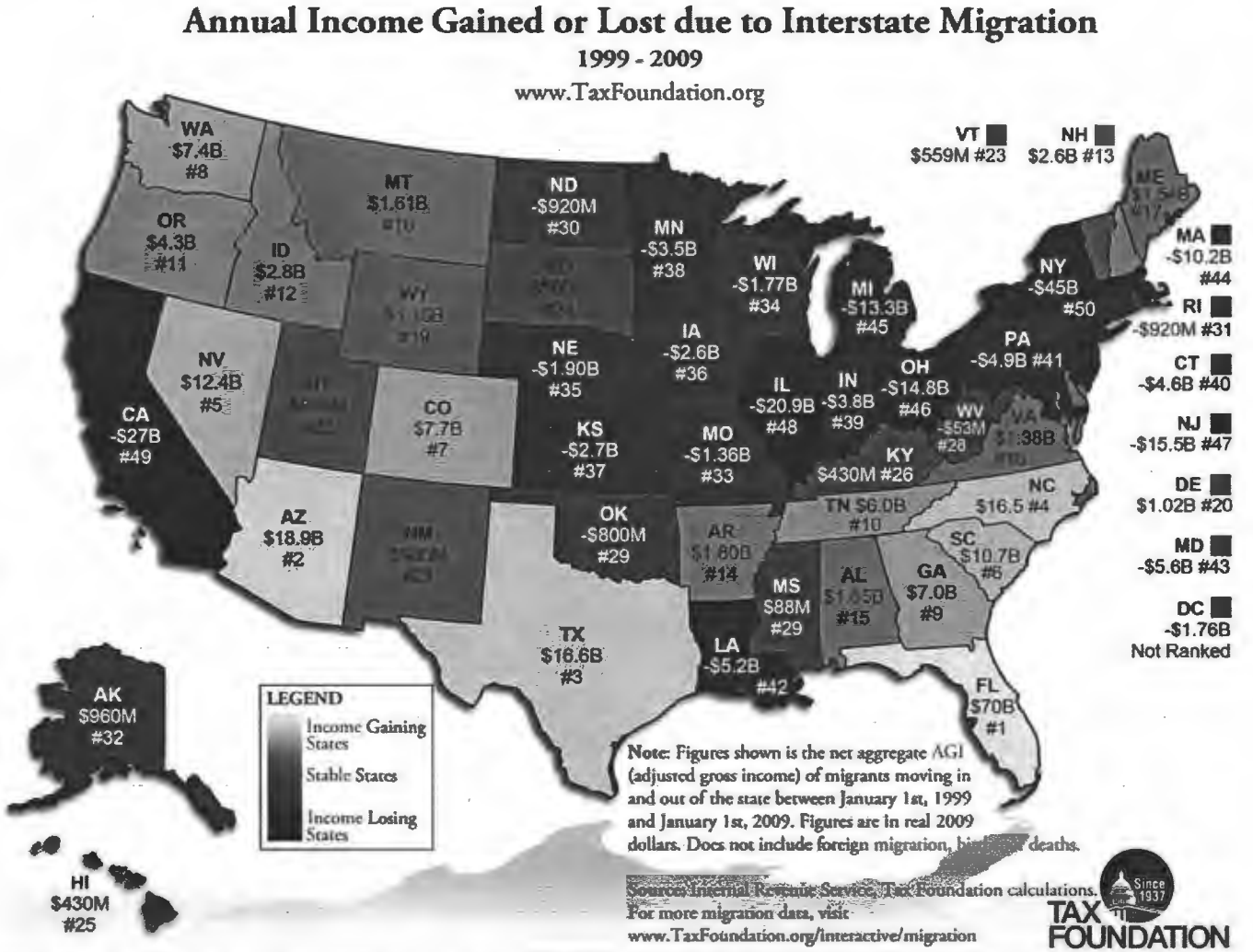
NC Justice Center

Opportunity and prosperity for all

Evidence Suggests Little Impact on Interstate Migration to/from North Carolina

Top Five Income-Gaining States

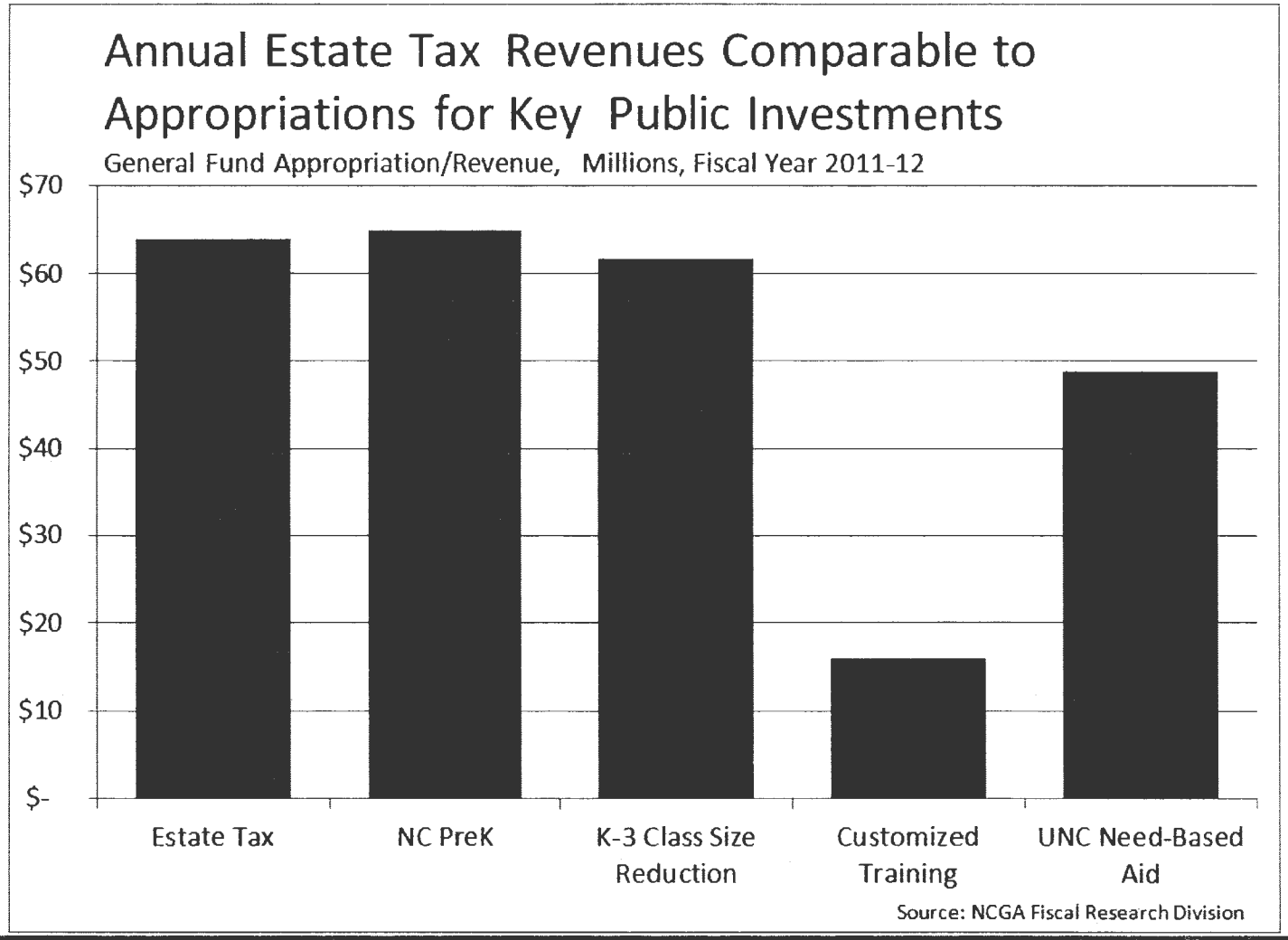
1. Florida - $70B
2. Arizona - $18.9B
3. Texas - $16.6B
4. North Carolina - $16.5B
5. Nevada - $12.4B



NC Justice Center

Opportunity and prosperity for all

Estate Tax Revenue Comparable to Appropriations for Key Public Investments



Bill Draft 2011-TMz-6: Repeal Estate Tax.

2011-2012 General Assembly

Committee:	Revenue Laws Study Committee	**Date:**	February 1, 2012
Introduced by:		**Prepared by:**	Greg Roney
Analysis of:	2011-TMz-6		Committee Counsel

SUMMARY: The Bill Draft would repeal the estate tax for decedents dying on or after January 1, 2013.

CURRENT LAW: For decedents dying in 2012, North Carolina imposes an estate tax on the value of the estate over $5 million. The tax rate is graduated from 0.8% to a maximum rate of 16% for taxable estates over $10,040,000.

BILL ANALYSIS: The Bill Draft would repeal the estate tax and the generation-skipping transfer tax.

EFFECTIVE DATE: The Bill Draft would be effective for decedents dying on or after January 1, 2013.

BACKGROUND: In 2001, the federal estate tax was designed as a revenue sharing system where the federal estate tax gave estates a 100% credit for state estate tax. Because estates received a full credit for state estate tax imposed, the estates did not pay any additional estate tax if state estate tax also applied. In 2001, all fifty states and the District of Columbia imposed an estate tax.

In 2012, the federal estate tax allows only a deduction for state estate tax. Because the deduction did not relieve estates of the financial loss of paying state estate tax, estates do pay additional estate tax if state estate tax applies. Currently, twenty-two states and the District of Columbia impose an estate tax.

The federal estate tax is scheduled to return to the 2001 law for decedents dying after December 31, 2012.

2011-TMz-6-SMTM-57 v3

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

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 1, 2012

TO: Revenue Laws Study Committee

FROM: Jonathan Tart, Barry Boardman
Fiscal Research Division

RE: Estate Tax Repeal

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
REVENUES:	0	(127.6)	(170.7)	(173.2)	(175.6)
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

EFFECTIVE DATE: Decedents dying on or after January 1, 2013

BILL SUMMARY: The proposal would repeal the North Carolina estate tax for decedents dying on or after January 1, 2013. Under current federal law effective for decedents dying on or after January 1, 2013, taxpayers are allowed a credit against federal estate tax liability for state estate

taxes paid. Consequently, the proposal would eliminate both the state estate tax liability and the corresponding credit that could be used to offset federal estate tax liability.

ASSUMPTIONS AND METHODOLOGY: The fiscal impact is an estimate of the estate tax foregone as a result of the repeal of the tax. The estimate reflects current state and federal law and does not anticipate any changes to the federal law, which would impact the state's estate tax depending on how the state chooses to conform to any federal changes.

Under current federal law, the estate exemption amount is reduced from $5 million to $1 million beginning in 2013. Since North Carolina conforms to the federal exemption amount, the tax is expected to impact more estates in 2013 than it currently impacts. This means the fiscal impact is based on the $1 million exemption, consistent with current law.

The fiscal estimate is based on tax return data obtained from the Department of Revenue for the 2007, 2008, and 2009 tax years; 15 years of baseline changes to the state estate tax; and various estimates of changes in the federal estate tax by the Joint Committee on Taxation (JCT). Baseline growth averages 1.2% per fiscal year, but is highly volatile from year-to-year.

Estate tax returns are due nine months after the date of death. Since the proposal is effective for decedents dying on or after January 1, 2013, the estimated fiscal impact begins in September of 2013, and therefore, would not impact the 2012-13 fiscal year. Consequently, there is a partial year impact (3/4) recognized for FY 2013-14, and the first full year impact begins with FY 2014-15.

SOURCES OF DATA: NC Dept. of Revenue; Fiscal Research; the federal Joint Committee on Taxation

TECHNICAL CONSIDERATIONS: None

NORTH CAROLINA GENERAL ASSEMBLY
REVENUE LAWS STUDY COMMITTEE
Wednesday, April 11, 2012
Room 544, Legislative Office Building
9:30 a.m.

The Revenue Laws Study Committee met at 9:30 a.m. on Wednesday, April 11, 2012, in room 544 of the Legislative Office Building. Seventeen members attended the meeting. The following Senators were present: Senator Blue, Senator Brunstetter, Senator Harrington, Senator Hartsell, Senator McKissick, Senator Rucho, and Senator Stevens. The following Representatives were present: Representative Alexander, Representative Howard, Representative Blust, Representative Brubaker, Representative Carney, Representative Hill, Representative Lewis, Representative Moffitt, and Representative Starnes. Representative Julia Howard presided as chair.

Approval of the March 7, 2012 meeting minutes

Senator Brunstetter moved to approve the minutes and the motion carried. A copy of the minutes is attached.

Interpretation of G.S. 105-130.5A by Secretary of Revenue: The Issue of Forced Combinations and Guidelines

Cindy Avrette, a staff attorney with the Research Division, was recognized. She explained the Department of Revenue's (DOR) use of directives and bulletins. (Bulletins are created with no advance notice and are effective immediately.) Then she explained the DOR's Secretary's authority to adjust corporations' net income or to require combined returns. She outlined the concerns of corporations on how the broad the current law is in allowing the DOR to possibly avoid going through the rulemaking process. She explained a draft bill that would require the DOR to adopt rules regarding its interpretation of G.S. 105-130.5A, the Secretary's authority to redetermine the State net income of a corporation properly attributable to its business carried on in the State by adjusting its net income or requiring it to file a combined return. It also provides an expedited rule-making process for these rules. Joe DeLuca, Office of Administrative Hearings – Rules Review Commission, was recognized to answer questions. Secretary Hoyle, DOR, was recognized to comment on the bill draft. He stated the Department will do as the General Assembly directs, but had concerns about how long it takes to get a rule adopted. He does want things uniform and fair to all taxpayers without creating additional problems. Canaan Huie, DOR legal counsel, was concerned about the estimated two year rule making process, that any proposed rule will have objections and some of the language in the bill draft. He wanted a clear definition of an "aggrieved" person that does not contradict the definition found in G.S. 150-245.19. Senator Rucho was recognized for comments. He stated that it is important for the public to have a voice and wants to see the process streamlined and uncertainty removed. He recommended that the bill move forward. Attached is a copy of Ms. Avrette's presentation, the bill draft, the draft summary, and a flow chart.

Extension of Tax Provision: Work Opportunity Tax Credit

Heather Fennell, an attorney with the Research Division, was recognized. She explained a chart of tax provisions that will subset for taxable years, 2012, 2013, or

2014. She described how North Carolina allows a credit of 6% of the Federal Work Opportunity Tax Credit (WOTC) for positions located in the State. This credit expired on January 1, 2012 and reduced General Fund availability by $0.8 million per year. This credit puts certain groups into jobs, reduces the costs of hiring hard-to-place individuals, and employers really like the WOTC. Senator Rucho was recognized to comment that it might be best to let a majority of tax credits expire except for the WOTC. Representative Moffitt requested preparation of a bill draft that would extend the WOTC. A copy of the list of expiring tax credits and Ms. Fennell's WOTC summary is attached.

Collection of NC Income Tax from Out-of-State Real Estate Appraisal Management Companies

Jonathan Tart, an analyst from the Fiscal Research Division, was recognized. He explained the concern of out of state appraisers earing income on instate appraisals but paying tax on the income. There are about 140 registered appraisers, but only 6 are in North Carolina. He recommended having the NC Appraisal Board share information with DOR in performing tax compliance checks.

2012 Technical and Administrative Changes Bill

Trina Griffin, an attorney with the Research Division, was recognized. She explained sections the bill draft which makes technical, clarifying and administrative changes to the tax and other related laws. A copy of the bill draft and the summary is attached.

The meeting adjourned at 11:02 a.m.

Representative Julia Howard Presiding Chair	DeAnne Mangum Committee Assistant

REVENUE LAWS STUDY COMMITTEE AGENDA

Rep. Julia Howard *Rep. Danny McComas* *Sen. Bob Rucho*

Wednesday, April 11, 2012
Room 544, Legislative Office Building
9:30 a.m.

I. **Approval of Minutes from the March 7, 2012, Meeting**

II. **Interpretation of G.S. 105-130.5A by Secretary of Revenue: *The Issue of Forced Combinations and Guidelines***
Cindy Avrette, Research Division, NCGA

III. **Extension of Tax Provision: Work Opportunity Tax Credit**
Heather Fennell, Research Division, NCGA

IV. **Collection of NC Income Tax from Out-of-State Real Estate Appraisal Management Companies**
Jonathan Tart, Fiscal Research Division, NCGA

V. **2012 Technical and Administrative Changes Bill**
Trina Griffin, Research Division, NCGA

V. **Adjournment**

Next Meeting Date: May 2, 2012
in Room 544, LOB, at 9:30 a.m.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

U D

BILL DRAFT 2011-RBz-18 [v.9] (03/31)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/10/2012 4:48:33 PM

Short Title: Expedited Rule-Making for Forced Combination. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE SECRETARY OF REVENUE'S INTERPRETATION OF THE LAW CONCERNING THE SECRETARY'S AUTHORITY TO ADJUST NET INCOME OR REQUIRE A COMBINED RETURN BE MADE THROUGH RULE-MAKING AND TO PROVIDE AN EXPEDITED PROCESS FOR RULE-MAKING ON THIS ISSUE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-262(b) is repealed.

SECTION 2. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ G.S. 105-262A. Rules to exercise authority under G.S. 105-130.5A.**

(a) Purpose and Scope. – It is the policy of the State to provide necessary guidance on a timely basis to corporate taxpayers subject under G.S. 105-130.5A to have their net income adjusted or to be required to file a combined return. The Secretary may not redetermine the State net income of a corporation properly attributable to its business carried on in the State under G.S. 105-130.5A until the Secretary has adopted rules in accordance with this section. This section provides an expedited procedure for the adoption of rules needed to administer G.S. 105-130.5A. The Secretary may not interpret G.S. 105-130.5A in the form of a bulletin or directive under G.S. 105-264.

The Secretary is exempt from G.S. 150B-21.1 through G.S. 150B-21.4 of Part 2 of Article 2A of Chapter 150B of the General Statutes but is subject to the expedited procedure for the adoption of rules as established by this section. The Secretary is exempt from Part 3 of Article 2A of Chapter 150B of the General Statutes but is subject to the expedited review procedure as established by this section.

Rules adopted under this section apply to taxable years beginning on or after January 1, 2012. Failure to adopt a rule before the end of a taxable year beginning on or after January 1, 2012, does not affect the validity of a proposed denial of a refund or proposed assessment resulting from the redetermination of State net taxable income of a corporation properly attributable to its business carried on in the State under G.S. 105-130.5A.

(b) Definition. – The definitions in G.S. 150B-2 apply in this section.

(c) Fiscal Note. – The Secretary must prepare a fiscal note for a proposed new rule or a proposed change to a rule that has a substantial economic impact. The fiscal note must be submitted with the proposed rule when the rule is submitted to the Codifier of Rules and the Codifier of Rules must publish the fiscal note with the proposed rule on the Internet. The

Secretary is not subject to the fiscal note requirement under G.S. 105-262(c). For purposes of this section, a "substantial economic impact" has the same meaning as defined in G.S. 150B-21.4(b1).

(d) Adoption. – The Secretary may adopt a rule under this section by using the procedure for adoption of a temporary rule set forth in G.S. 150B-21.1(a3). If the Secretary receives written comment objecting to the rule, the rule must be reviewed in accordance with subsections (e) through (i) of this section. If the Secretary receives no written comment objecting to the rule, the Secretary must deliver the rule to the Codifier of Rules. The Codifier of Rules must enter the rule into the North Carolina Administrative Code upon receipt of the rule.

(e) Review. – If the Secretary receives written comment objecting to the rule, the Secretary must submit the rule to the Commission for review. The Commission may not consider questions relating to the quality or efficacy of the rule but must restrict its review to a determination of whether the rule meets all of the following criteria:

(1) It is within the authority delegated to the agency by the General Assembly.

(2) It is clear and unambiguous.

(3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission must consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.

(4) It was adopted in accordance with this section.

(f) Manner of Review. – When the Commission reviews a rule under this section, the time limits in subsections (b) and (b1) of G.S. 150B-21.1 apply. The Commission must review the rule to determine whether the rule meets the standards in subsection (e) of this section. The Commission must direct a member of its staff who is an attorney licensed to practice law in North Carolina to review the rule. The staff member must make a recommendation to the Commission or its designee. The Commission's designee must be a panel of at least three members of the Commission. The staff member, Commission's designee, or the Commission may also request technical changes as allowed in G.S. 150B-21.10. In reviewing the rule, the Commission may consider any information submitted by the Secretary or another person.

(g) Objection. – If the Commission or its designee finds that the rule does not meet the standards in subsection (e) of this section and objects to the rule, the Commission or its designee must send the Secretary a written statement of the objection and the reason for the objection within one business day. The Secretary must take one of the following actions:

(1) Change the rule to satisfy the Commission's objection and submit the revised rule to the Commission.

(2) Submit a written response to the Commission indicating that the Secrtary has decided not to change the rule.

(h) Changes. – When the Secretary changes a rule in response to an objection by the Commission, the Commission must determine whether the change satisfies the Commission's objection. If it does, the Commission must approve the rule. If it does not, the Commission must send the Secretary a written statement of the Commission's continued objection and the reason for the continued objection.

(i) Approval. – If the Commission or its designee finds that the rule meets the standards in subsection (e) of this section, the Commission or its designee must approve the rule and deliver the rule to the Codifier of Rules. The Codifier of Rules must enter the rule into the North Carolina Administrative Code upon receipt from the Commission or its designee.

(j) Return of Rule. – A rule to which the Commission has objected remains under review by the Commission until the Secretary decides not to satisfy the Commission's objection and makes a written request to the Commission to return the rule to the Secretary. When the Commission returns a rule to the Secretary in accordance with this section, the Secretary may

file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.

(k) Standing. – A person aggrieved by a rule adopted by the Secretary may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court must determine whether the rule meets the standards in subsection (e) of this section. The court may not grant an ex parte temporary restraining order. Filing a petition for rule making or a request for a declaratory ruling with the Secretary is not a prerequisite to filing an action under this subsection. A person who files an action for declaratory judgment under this subsection must serve a copy of the complaint on the Secretary, the Codifier of Rules, and the Commission.

(l) Effective Date. – G.S. 150B-21.3 does not apply to rule adopted under this section. A rule adopted under this section becomes effective on the first day of the month following the month the rule is entered in the North Carolina Administrative Code. "

SECTION 3. G.S. 150B-1(d)(4) reads as rewritten:

"(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the following:

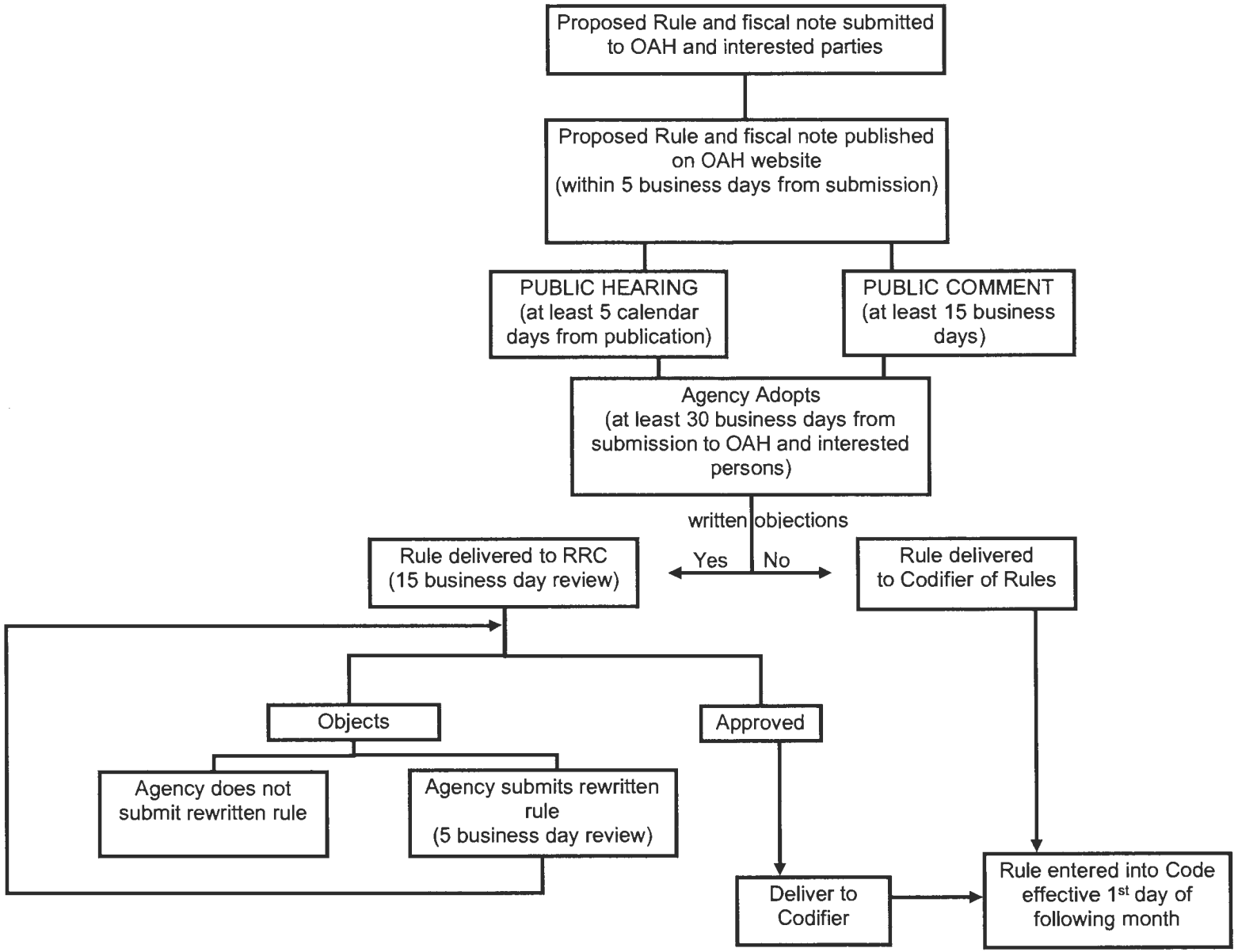
...

(4) The Department of Revenue, with respect to the notice and hearing requirements contained in Part 2 of Article 2A. With respect to the Secretary of Revenue's authority to redetermine the State net taxable income of a corporation under G.S. 105-130.5A, the Department is subject to the rulemaking requirements of G.S. 105-262A.

...".

SECTION 3. This act is effective when it becomes law.

DOR Proposed Rulemaking



(04/11/12)

Bill Draft 2011-RBz-18: Expedited Rule-Making for Forced Combination

2011-2012 General Assembly

Committee:	Revenue Laws Study Committee	**Date:**	April 9, 2012
Introduced by:		**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	2011-RBz-18		

SUMMARY: ***This draft requires the Department of Revenue to adopt rules regarding its interpretation of G.S. 105-130.5A, the Secretary's authority to redetermine the State net income of a corporation properly attributable to its business carried on in the State by adjusting its net income or requiring it to file a combined return. The draft provides an expedited rule-making process for these rules.***

BACKGROUND: Under current law, a corporation files as a separate entity, meaning it must determine its State net income as if a separate return had been filed for federal income tax purposes. Separate entity filing gives corporations with subsidiaries in multiple states the ability to devise ways to shift income from a high effective tax rate state to a low effective tax rate state, often through the use of passive investment companies and inter-company transactions. To administratively address the problem of income shifting between multistate corporations, the Department of Revenue has aggressively used the tools available to it to require a corporation to file a consolidated return when the Department believes the corporation's net income attributable to this State is not accurately reflected on its separate entity filing return. This action by the Department is commonly referred to as "forced combination."

In 2011, the General Assembly repealed the statutes[1] that allowed the Secretary to redetermine the net income of a corporation if the Secretary found that a report by the corporation did not reflect its true earnings from its business carried on in this State. In its place, the General Assembly provided that the Secretary may only make this redetermination if the Secretary finds the corporation fails to accurately report its State net income through the use of transactions that lack economic substance or are not at fair market value.[2] The more restricted interpretation becomes effective for taxable years beginning on or after January 1, 2012.

In response to this legislative change, the Department of Revenue issued the first Corporate Tax Directive[3] it has issued since 2008. The Department divided the 19-page directive into two parts. The first part concerns tax years beginning prior to January 1, 2012. This part of the directive discusses the Department's interpretation of the law as it applied to taxpayers under the G.S. 105-130.6, 105-130.15, and G.S. 105-130.16 and appears to set forth the Department's application of the law as upheld by the North Carolina Courts.[4] The second part of the directive sets forth how the Department plans to apply the new law, effective for assessments proposed for taxable years beginning on or after January 1, 2012. Representatives on behalf of the North Carolina Chamber of Commerce, the North Carolina Retail Merchants Association, and the Council on State Taxation appeared before the Revenue Laws Study Committee on March 7, 2012, and expressed concern that the Directive issued by the Department did not provide clarity to the law, exceeded the Department's statutory authority, and did not undergo the

[1] G.S. 105-130.6, 105-130.15, and 105-130.16.
[2] S.L. 2011-390 created G.S. 105-130.5A.
[3] Corporate Income Tax Directives Table of Contents
[4] Wal-Mart Stores East v. Hinton, 197 N.C. App. 30 (2009); Delhaize America, Inc., Plaintiff, v. Kenneth R. Lay, 2011 NCBC 2: 2011 NCBC LEXIS 9 (2011).

formal rule-making process.[5] The Department of Revenue expressed concern about the length of the rule-making process.

CURRENT LAW: The tax laws in Chapter 105 of the General Statutes contain two statutes that appear to give the Department of Revenue two different pathways of interpreting the law:

- G.S. 105-264 – It provides the Secretary may interpret a law by adopting a rule *or by publishing a bulletin or directive* on the law. The Department has interpreted tax law through the issuance of bulletins[6] or directives[7] since at least 1955. This process does not involve public notice and comment or approval by any outside authority. Bulletins and directives may be issued immediately. A directive or bulletin is not considered a binding interpretation on the courts.
- G.S. 105-262 – It provides the Secretary may adopt rules under Chapter 150B. The Department is exempt from the notice and hearing provisions of Part 2 of Article 2A of Chapter 150B. Although the rule-making process does not provide an opportunity for public notice and hearing for rules adopted by the Department, it does provide a review of the rules by the Rules Review Commission. The Commission reviews rules to ensure they do not exceed an agency's statutory authority. A rule is considered a binding interpretation on the courts. The definition of a rule in G.S. 150B-1 specifically states that a rule does not include nonbinding interpretative statements that merely define, interpret, or explain the meaning of a statute or rule and that a rule does not include statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections.

Under current law, the Department may adopt a permanent rule and submit that rule to the Rules Review Commission. The Commission meets monthly. If the rule is submitted on or before the 20th day of the month, the Commission must review it before the last day of the following month. This process could be completed in less than two months. The Commission may extend the period for reviewing a rule up to 70 days if the Commission needs more information to be able to decide whether the rule meets the standards for review. The standards for review by the Commission are limited to the following:

- Is the rule within the authority delegated to the agency?
- Is it clear and unambiguous?
- Is it reasonably necessary to implement or interpret an act of the General Assembly or of Congress or of a regulation of a federal agency?

In 2010, the General Assembly specifically provided that the Department of Revenue would be subject to the notice and hearing provisions for purposes of any rules adopted regarding forced combinations. The provision did provide for an expedited notice and hearing schedule.[8] The Department did not adopt any rules under this provision.

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[5] North Carolina General Assembly - Revenue Laws > Meeting Documents > 2011-2012 Meeting Documents > March 7

[6] Bulletins present the Department of Revenue's administrative interpretation and application of tax laws. The Department has 'Corporate, Excise, and Insurance Tax Bulletins', 'Individual Income Tax Bulletins', and 'Sales and Use Tax Bulletins'. The Department typically updates the bulletins annually to reflect changes in the law or administrative interpretation. However, the Department has not updated the bulletins in the last three or four years.

[7] Directives are issued by the Department of Revenue on an as-needed basis to interpret a tax law, explain the application of law to stated facts, or to clarify an issue on which the Department has received numerous questions. Directives are not updated to reflect changes in the law or administrative interpretation. The contents of a directive may be included in an updated bulletin.

[8] G.S. 105-262(b). Subsequent to the legislation's adoption, the Office of Administrative Hearings notified legislative staff that the wording needed to be changed to reference an "adopted rule" as opposed to a "proposed rule." The incorrect term of art unintentionally confused the processes intended by the General Assembly. However, this subsection is no longer valid because the statute it references has been repealed.

BILL ANALYSIS: The Revenue Laws Study Committee heard several presentations this interim on the issue of forced combination, the directives the Department of Revenue issued concerning the newly enacted law regarding forced combination, and the issues surrounding rule-making as it applies to the Department of Revenue. This proposal seeks to balance the following three goals:

- The need for taxpayer certainty about the tax laws – expediency.
- The need for an outside determination as to whether the Department of Revenue has exceeded its statutory authority in its interpretation of the law.
- The opportunity for public notice and comment on the Department's interpretation of the law.

The proposal requires the Secretary to adopt rules providing guidance to taxpayers on its administration of GS 105-130.5A, the newly enacted law regarding the Secretary's ability to redetermine a corporation's State net taxable income by adjustment or by forced combination. To expedite the rulemaking process, the proposal does the following:

- Provides the rulemaking procedure will be the quicker timetable allowed for temporary rulemaking:
    - The Department must submit its proposed rule to OAH and interested parties.
    - OAH must publish the rule on the Internet within five days of the submission.
    - The Department must hold a public hearing on the proposed rule within five days of publication.
    - The Department must accept public comment for at least 15 days.
    - The Department may adopt the rule 30 days from the time the proposed rule is submitted.
    - If the Department does not receive any written objection to the rule, the rule may be delivered to the Codifier of Rules and entered into the Code. If the Department receives written objections to the rule, then the Rules Review Commission must review the rule within 15 days. The Commission may not extend the period of time for review.
- Changes the fiscal note requirement to allow Revenue to prepare its own fiscal note.[9] It will not need to submit the fiscal note to OSBM. The fiscal note must be submitted with the proposed rule to the Codifier of Rules and posted on the Internet.
- Exempts the Department from the delayed effective date provisions that apply whenever the Commission receives 10 or more objections to a rule requesting review by the legislature.

Rules adopted by the Department for G.S. 105-130.5A would apply to taxable years beginning on or after January 1, 2012; that is the effective of G.S. 105-130.5A.

EFFECTIVE DATE: The proposal would become effective when it becomes law.

2011-RBz-18-SMRB-115 v2

[9] A fiscal note must be prepared if the rule has a substantial economic impact. Prior to 2011, the term 'substantial economic impact' meant a cumulative impact of $3,000,000. In 2011, this amount was reduced to $500,000.

Interpretation of G.S. 105-130.5A

Secretary's authority to adjust net income or require a combined return

How May Secretary Interpret Laws?

- Rulemaking : G.S. 105-262
  - DOR exempt from notice and hearing requirement
  - Requires OSMB to prepare fiscal note and post for at least 60 days
  - Rules Review Commission reviews rule to make sure it is within the agency's authority

- Directive or bulletin: G.S. 105-264
  - May become effective immediately
  - No notice, hearing, comment, or determination that interpretation of law is w/in the agency's authority

Law re: "True Earnings"

- Taxable years beginning before January 1, 2012
  - G.S. 105-130.6, 105-130.15, and 105-130.16
  - Redetermine net income if Secretary finds that report does not reflect corporation's true earnings in this State
  - No guidance to taxpayers
- Taxable years beginning on or after January 1, 2012
  - S.L. 2011-390
  - G.S. 105-130.5A
  - Redetermine net income if Secretary finds corporation failed to accurately report State income through the use of transactions that lack economic substance or are not at fair market value
  - Issued CD-11-01

Committee Proceedings on CD-11-01

- November 2 and March 7
- Concerns
  - Does the guidance provided in CD-11-01 meet the definition of a rule? (Guidelines to be used for audits are not rules)
  - If it is a rule, should it have gone through rulemaking?
- Prior Legislative Actions on Similar Issue
  - G.S. 105-262(b) provided expedited notice & hearing for rules affecting combination audits
  - S.L. 2010-31 required rules be adopted under APA on combination audits before penalties applied

Rulemaking for Forced Combinations

- Should the Department have to give guidance re: combination audits?
- Should that guidance be in the form of rulemaking?
- If yes, need to balancing objectives:
  - Expediency
  - Opportunity for notice and comment
  - Outside determination that interpretation is within the agency's statutory authority

What Makes the Process Timely?

- Timetable for notice & hearing
- Fiscal Note
  - Revenue must obtain a fiscal note prepared by the OSBM if proposed rule has a substantial economic impact (90 days)
    - Prior to 2011, amount = $3,000,000
    - Current law, amount = $500,000
  - Note must be published for at least 60 days
- Delayed effective date if Commission receives written objection from 10 or more people – "Rule subject to legislative disapproval"

DRAFT: *Expedited Rulemaking for Forced Combination*

- Use timetable offered for temporary rule-making
  - Expedited review
  - Commission may not extend period of time for review
- Alter fiscal note requirements
  - Allow agency to prepare
  - Publish fiscal note with rule for 30 days
- Do not provide for a delayed effective date through legislative disapproval
  - Only applies if Commission finds agency acted within its authority – issue is whether law should be changed
  - By not delaying effective date, taxpayers have certainty
  - General Assembly may still change the law

Application Beyond Forced Combinations?

- Review by outside authority
- All interpretations subject to Part 3 of Article 2A of Chapter 150B
- Process could be complete in less than two months
- Notice & hearing
- All interpretations must go through rulemaking (*expedited process)*
- Interpretations that expand the scope of a tax or increase the amount of tax due (*105-264(c))*

Revenue Laws Study Committee: April 11, 2012

Cindy Avrette, Research Division

THE END

Tax sunsets. Here are the tax provisions that sunset for taxable years 2012, 2013, or 2014:

	Repeal Date	Est. Annual Revenue Loss*	Fiscal Year Impacted
o Tax credit for constructing renewable fuel facilities	01/01/2013	$100,000	fy 13/14
o Tax credit for biodiesel producers (motor fuel excise tax)	01/01/2013	$100,000	fy 13/14
o Tax credit for renewable energy property facility	01/01/2013	$0	fy 13/14
o Work opportunity tax credit	01/01/2012	$800,000	fy 12/13
o Tax credit for historic rehabilitation			
- Income-Producing	01/01/2014	$6,200,000	fy 14/15
- NonIncome-Producing	01/01/2014	$8,000,000	fy 14/15
o Tax credit for mill rehabilitation			
- Income-Producing	01/01/2014	$1,500,000	fy 14/15
- NonIncome-Producing	01/01/2014	$500,000	fy 14/15
o Article 3J tax credits (**SEE ARTICLE 3J NOTE)			
- Credit for Creating Jobs	01/01/2013	$1,000,000	fy 13/14
- Credit for Investing in Business Property	01/01/2013	$5,100,000	fy 13/14
- Credit for Investing in Real Property	01/01/2013	$300,000	fy 13/14
o Tax credit for qualified business ventures	01/01/2013	$7,500,000	fy 13/14
o Tax credit for NC State ports	01/01/2014	$2,000,000	fy 14/15
o Film production refundable tax credit	01/01/2014	$68,750,000	fy 14/15
o Tax credit for recycling oyster shells	01/01/2013	$100,000	fy 13/14
o Tax credit for premiums paid on long-term care insurance	01/01/2013	$5,800,000	fy 13/14
o Tax credit for adoption expenses	01/01/2013	$5,400,000	fy 13/14
o Refundable earned income tax credit	01/01/2013	$102,500,000	fy 13/14
o Sales tax refund for passenger air carriers	01/01/2013	$6,000,000	fy 13/14
o Sales tax refund for machinery and equipment placed in a tier one county	01/01/2013	$200,000	fy 13/14
o Sales tax refund for aviation fuel of motorsports team or sanctioning body	01/01/2013	$100,000	fy 13/14
o Sales tax refund for professional motorsports team	01/01/2014	$300,000	fy 13/14
o Sales tax refund for analytical services business	01/01/2013	$100,000	fy 13/14
o Sales tax refund for certain industrial facilities	01/01/2013	$700,000	fy 13/14
o Builder's inventory property tax deferral	07/01/2013	minimal	fy 13/14

ARTICLE 3J NOTE: The fy 13/14 estimate for Article 3J is only a partial year cost. Since

the credits cannot be taken until the tax year following the year generated, the only impact recognized for fy 13/14 is based on reduced 3rd and 4th qtr estimated payments. The full year cost estimate for each year of extension for Article 3J is $14.3 million

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

U D

BILL DRAFT 2011-SVxz-13 [v.7] (03/05)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/10/2012 9:23:47 PM

Short Title: Revenue Laws Tech., Clarifying, & Admin Chngs. (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:

INCOME AND FRANCHISE TAX CHANGES

SECTION 1. G.S. 105-120.2(c) reads as rewritten:

"(c) For purposes of this section, a "holding company" is a corporation that ~~receives~~ satisfies at least one of the following conditions:

(1) It has no assets other than ownership interests in corporations in which it owns directly or indirectly more than fifty percent (50%) of the outstanding voting stock or voting capital interests.

(2) It receives during its taxable year more than eighty percent (80%) of its gross income from corporations in which it owns directly or indirectly more than fifty percent (50%) of the outstanding voting stock or voting capital interests."

SECTION 2. G.S. 105-130.5(b) reads as rewritten:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

...

(14) The amount by which the basis of a depreciable asset is required to be reduced under the Code for federal tax purposes because of a tax credit allowed against the corporation's federal income tax ~~liability.~~ liability or because of a grant allowed under section 1603 of the American Recovery and Reinvestment Tax Act of 2009, P.L. 111-3. This deduction may be claimed only in the year in which the Code requires that the asset's basis be reduced. In computing gain or loss on the asset's disposition, this deduction shall be considered as depreciation.

..."

SECTION 3.(a) G.S. 105-228.90(b)(1b) reads as rewritten:

"(1b) Code. – The Internal Revenue Code as enacted as of ~~January 1, 2011,~~ January 1, 2012, including any provisions enacted as of that date that become effective either before or after that date."

SECTION 3.(b) This section is effective when it becomes law. Notwithstanding subsection (a) of this section, any amendments to the Internal Revenue Code enacted after January 1, 2011, that increase North Carolina taxable income for the 2011 taxable year become effective for taxable years beginning on or after January 1, 2012.

SALES TAX CHANGES

SECTION 4. G.S. 105-164.3 reads as rewritten:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(25a) Over-the-counter drug. – A drug that can be dispensed under federal law without a prescription and is required by 21 C.F.R. § 201.66 to have a label containing a "Drug Facts" panel ~~and~~ or a statement of its active ingredients.

...

(36) Sale or selling. – The transfer for consideration of ~~title~~ title, license to use or consume, or possession of tangible personal property or digital property or the performance for consideration of a service. The transfer or performance may be conditional or in any manner or by any means. The term includes the following:

a. Fabrication of tangible personal property for consumers by persons engaged in business who furnish either directly or indirectly the materials used in the fabrication work.

b. Furnishing or preparing tangible personal property consumed on the premises of the person furnishing or preparing the property or consumed at the place at which the property is furnished or prepared.

c. A transaction in which the possession of the property is transferred but the seller retains title or security for the payment of the consideration.

d. A lease or rental.

e. Transfer of a digital code.

...

(45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement as amended as of ~~May 12, 2009.~~December 19, 2011.

..."

SECTION 5. G.S. 105-164.4B(a) reads as rewritten:

"(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.~~product except as otherwise noted in this section:

(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 or purchaser's donee 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 or the purchaser's donee 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 prepaid wireless calling 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.~~

(4) When subsections (1) and (2) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

(5) When subsections (1), (2) and (4) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(6) When subsections (1), (2), (4), and (5) do not apply, including the circumstance in which the seller is without sufficient information to apply the rules, the location will be determined based on the following:

a. Address from which tangible personal property was shipped,

b. Address from which the digital good or the computer software delivered electronically was first available for transmission by the seller or,

c. Address from which the service was provided."

SECTION 6. G.S. 105-164.7 reads as rewritten:

"**§ 105-164.7. Retailer to collect sales tax from purchaser as trustee for State.**

The sales tax imposed by this Article is intended to be passed on to the purchaser of a taxable item and borne by the purchaser instead of by the retailer. A retailer must collect the tax due on an item when the item is sold at retail. The tax is a debt from the purchaser to the retailer until paid and is recoverable at law by the retailer in the same manner as other debts. A retailer is considered to act as a trustee on behalf of the State when it collects tax from the purchaser of a taxable item. The tax must be stated and charged separately on the invoices or other documents of the retailer given to the purchaser except for vending machine sales. Where the sales price of a product includes the tax, a retailer must clearly display a statement indicating such."

SECTION 7.(a) Part 2 of Article 5 of Chapter 105 of the General Statutes is amended by adding the following new section:

"**§ 105-164.12C. Items given away by merchants.**

If a retailer engaged in the business of selling prepared food and drink for immediate or on-premises consumption also gives prepared food or drink to its patrons or employees free of charge, for the purpose of this Article the property given away is considered sold along with the property sold. If a retailer gives an item of inventory to a customer free of charge on the condition that the customer purchase similar or related property, the item given away is considered sold along with the item sold. In all other cases, property given away or used by any retailer or wholesale merchant is not considered sold, whether or not the retailer or wholesale merchant recovers its cost of the property from sales of other property."

SECTION 7.(b) This section is effective August 7, 2009.

SECTION 8. 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, digital property, and services are specifically exempted from the tax imposed by this Article:

...

(49) Installation charges when the charges are separately stated on the invoice or similar billing document given to the purchaser at the time of sale.

(49a) Delivery charges for delivery of direct mail if the charges are separately stated on an invoice or similar billing document given to the ~~purchaser.~~purchaser at the time of sale.

..."

SECTION 9. G.S. 105-164.14(a) reads as rewritten:

"(a) Interstate Carriers. – An interstate carrier is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on the purchase in this State of railway cars and locomotives, and fuel, lubricants, repair parts, and accessories for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. An "interstate carrier" is a person who is engaged in transporting persons or property in interstate commerce for compensation. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following these periods, an application for refund may be made.

An applicant for refund shall furnish the following information and any proof of the information required by the Secretary:

(1) A list identifying the railway cars, locomotives, fuel, lubricants, repair parts, and accessories purchased by the applicant inside or outside this State during the refund period.

(2) The purchase price of the items listed in subdivision (1) of this subsection.

(3) The sales and use taxes paid in this State on the listed items.

(4) The number of miles the applicant's motor vehicles, railroad cars, locomotives, and airplanes were operated both inside and outside this State during the refund period. Airplane miles are not in this State if the airplane does not depart or land in this State.

(5) Any other information required by the Secretary.

For each applicant, the Secretary shall compute the amount to be refunded as follows. First, the Secretary shall determine the ratio of the number of miles the applicant operated its motor vehicles, railroad cars, locomotives, and airplanes in this State during the refund period to the number of miles it operated ~~them~~ all motor vehicles, railroad cars, locomotives, and airplanes both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the items identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period."

SECTION 10. G.S. 105-468 reads as rewritten:

"**§ 105-468. Scope of use tax.**

The use tax authorized by this Article is a tax at the rate of one percent (1%) of the cost price of each item or article of tangible personal property that is not sold in the taxing county but is used, consumed, or stored for use or consumption in the taxing county. The tax applies to the same items that are subject to tax under G.S. 105-467.

Every retailer who is engaged in business in this State and in the taxing county and is required to collect the use tax levied by G.S. 105-164.6 shall collect the one percent (1%) use tax when the property is to be used, consumed, or stored in the taxing county. The use tax contemplated by this section shall be levied against the purchaser, and the purchaser's liability for the use tax shall be extinguished only upon payment of the use tax to the retailer, where the retailer is required to collect the tax, or to the Secretary, where the retailer is not required to collect the tax.

Where a local sales or use tax has been paid with respect to tangible personal property by the ~~purchaser, either~~ purchaser in another taxing county within the State, or where a local sales

or use tax was due and has been paid in a taxing jurisdiction outside the State where the purpose of the tax is similar in purpose and intent to the tax which may be imposed pursuant to this Article, the tax paid may be credited against the tax imposed under this section by a taxing county upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due the taxing county under this section, the purchaser shall pay to the Secretary an amount equal to the difference between the amount so paid in the other taxing county or jurisdiction and the amount due in the taxing county. The Secretary may require such proof of payment in another taxing county or jurisdiction as is deemed to be necessary. The use tax levied under this Article is not subject to credit for payment of any State sales or use tax not imposed for the benefit and use of counties and municipalities. No credit shall be given under this section for sales or use taxes paid in a taxing jurisdiction outside this State if that taxing jurisdiction does not grant similar credit for sales taxes paid under this Article."

GENERAL ADMINISTRATION CHANGES

SECTION 11. G.S. 105-263(a) reads as rewritten:

"(a) Mailed Document. ~~Section~~ Sections 7502 and 7503 of the Code ~~governs~~ govern when a return, report, payment, or any other document that is mailed to the Department is timely filed."

OTHER CHANGES

SECTION 12.(a) G.S. 105-113.107(1a) reads as rewritten:

"(1a) At the rate of three dollars and fifty cents ($3.50) for each gram, or fraction thereof, of marijuana, other than separated stems and stalks taxed under subdivision (1) of this ~~section.~~section, or synthetic cannabinoids."

SECTION 12.(b) This section is effective June 1, 2011.

SECTION 13. The catchline of G.S. 105-187.70, as enacted by Section 6 of S.L. 2011-122, reads as rewritten:

"**§ 105-187.70. Department comply with Article 43 of Chapter 62A of the General Statutes.**"

SECTION 14. G.S. 105-277.1F(a)(1) reads as rewritten:

"(a) Scope. – This section applies to the following deferred tax programs:

(1) ~~G.S. 105-275(12)f., real property held for future transfer to government unit for conservation purposes.~~G.S. 105-275(12), real property owned by a nonprofit corporation held as a protected natural area."

SECTION 15. G.S. 143-59.1(a) reads as rewritten:

"(a) Ineligible Vendors. – The Secretary of Administration and other entities to which this Article applies shall not contract for goods or services with either of the following:

(1) A vendor if the vendor or an affiliate of the vendor meets one or more of the conditions of G.S. 105-164.8(b) but refuses to collect the use tax levied under Article 5 of Chapter 105 of the General Statutes on its sales delivered to North Carolina. ~~The~~ Upon request, the Secretary of Revenue shall provide the Secretary of Administration ~~periodically with a list of vendors to which~~ or another entity to which this Article applies verification whether this section ~~applies.~~applies to a specific entity.

(2) A vendor if the vendor or an affiliate of the vendor incorporates or reincorporates in a tax haven country after December 31, 2001, but the United States is the principal market for the public trading of the stock of the corporation incorporated in the tax haven country."

SECTION 16. G.S. 160A-536(e)(2) reads as rewritten:

"(2) The city must receive a petition signed by at least sixty percent (60%) of the lot owners of the owners' association requesting the city to establish a

municipal service district for the purpose of paying the costs related to converting private residential streets to public streets. The executive board of an owners' association for which the city has received a petition under this subsection may transfer street-related common elements to the city, notwithstanding the provisions of either the North Carolina Planned Community Act in Chapter 47F of the General ~~Statutes,~~ Statutes or the North Carolina Condominium Act in Chapter 47C of the General Statutes, or related articles of declaration, deed covenants, or any other similar document recorded with the Register of Deeds."

SECTION 17. Effective when it becomes law, but expiring at the same time as Section 1 of S.L. 2011-296 expires (currently July 1, 2013), G.S. 161-10(a), as rewritten by S.L. 2011-296, reads as rewritten:

"**§ 161-10. Uniform fees of registers of deeds.**

(a) Except as otherwise provided in this Article, all fees collected under this section shall be deposited into the county general fund. While performing the duties of the office, the register of deeds shall collect the following fees which shall be uniform throughout the State:

(1) Instruments in General. – For registering or filing any instrument for which no other provision is made by this section, the fee shall be twenty-six dollars ($26.00) for the first 15 pages plus four dollars ($4.00) for each additional page or fraction thereof.

~~When a subsequent instrument, as defined in G.S. 161-14.1(a)(3), is presented for registration with reference to more than one original instrument for which recording data are required to be indexed pursuant to G.S. 161-14.1(b), the fee shall be an additional twenty-five dollars ($25.00) for each additional reference.~~ For any instrument that assigns more than one security instrument as defined in G.S. 45-36.4(18) by reference to previously recorded instrument recording data that are required to be indexed pursuant to G.S. 161-14.1(b), the fee shall be an additional ten dollars ($10.00) for each additional reference.

When a document is presented for registration that consists of multiple instruments, the fee shall be an additional ten dollars ($10.00) for each additional instrument. A document consists of multiple instruments when it contains two or more instruments with different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

...."

SPECIAL LICENSE PLATE CHANGES

SECTION 18.(a) G.S. 20-63 reads as rewritten:

"(b1) **(Effective until July 1, 2016)** The following special registration plates do not have to be a "First in Flight" plate as provided in subsection (b) of this section. The design of the plates that are not "First in Flight" plates must be approved by the Division and the State Highway Patrol for clarity and ease of identification. When the Division registers a vehicle or renews the registration of a vehicle on or after July 1, 2015, the Division must send the owner a replacement special license plate in a standardized format in accordance with subsection (b) of this section and G.S. 20-79.4(a3).

(1) Friends of the Great Smoky Mountains National Park.
(2) Rocky Mountain Elk Foundation.
(3) Blue Ridge Parkway Foundation.
(4) Friends of the Appalachian Trail.
(5) NC Coastal Federation.

(6) In God We Trust.
(7) Stock Car Racing Theme.
(8) Buddy Pelletier Surfing Foundation.
(9) Guilford Battleground Company.
(10) National Wild Turkey Federation.
(11) North Carolina Aquarium Society.
(12) First in Forestry.
(13) North Carolina Wildlife Habitat Foundation.
(14) NC Trout Unlimited.
(15) Ducks Unlimited.
(16) Lung Cancer Research.
(17) NC State Parks.
(18) Support Our Troops.
(19) US Equine Rescue League.
(20) Fox Hunting.
(21) Back Country Horsemen of North Carolina.
(22) Hospice Care.
(23) Home Care and Hospice.
(24) NC Tennis Foundation.
(25) AIDS Awareness.
(26) Donate Life.
(27) Farmland Preservation.
(28) Travel and Tourism.
(29) Battle of Kings Mountain.
(30) NC Civil War.
(31) North Carolina Zoological Society.
(32) United States Service Academy.
(33) Carolina Raptor Center.
(34) Carolinas Credit Union Foundation.
(35) North Carolina State Flag.
(36) NC Mining.
(37) Coastal Land Trust.
(38) ARTS NC.
(39) Choose Life.
(40) North Carolina Green Industry Council.
(41) NC Horse Council.
(42) Core Sound Waterfowl Museum and Heritage Center.
(43) Mountains-to-Sea Trail, Inc."

SECTION 18.(b) G.S. 20-79.7(a) reads as rewritten:

"**§ 20-79.7. Fees for special registration plates and distribution of the fees.**

(a) Fees. – Upon request, the Division shall provide and issue free of charge a single Legion of Valor, 100% Disabled Veteran, and Ex-Prisoner of War registration plate to a recipient of a Legion of Valor award, a 100% disabled veteran, and an ex-prisoner of war each year. The preceding special registration plates are subject to the regular motor vehicle registration fees in G.S. 20-88, if the registered weight of the vehicle is greater than 6,000 pounds. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
American Red Cross	$30.00
Animal Lovers	$30.00
Arthritis Foundation	$30.00

1	ARTS NC	$30.00
2	Back Country Horsemen of NC	$30.00
3	Boy Scouts of America	$30.00
4	Brenner Children's Hospital	$30.00
5	Carolina Raptor Center	$30.00
6	Carolinas Credit Union Foundation	$30.00
7	Carolinas Golf Association	$30.00
8	Coastal Conservation Association	$30.00
9	Coastal Land Trust	$30.00
10	Crystal Coast	$30.00
11	Daniel Stowe Botanical Garden	$30.00
12	El Pueblo	$30.00
13	Farmland Preservation	$30.00
14	First in Forestry	$30.00
15	Girl Scouts	$30.00
16	Greensboro Symphony Guild	$30.00
17	Historical Attraction	$30.00
18	Home Care and Hospice	$30.00
19	Home of American Golf	$30.00
20	HOMES4NC	$30.00
21	Hospice Care	$30.00
22	In God We Trust	$30.00
23	Maggie Valley Trout Festival	$30.00
24	Morgan Horse Club	$30.00
25	Mountains-to-Sea Trail	$30.00
26	NC Civil War	$30.00
27	NC Coastal Federation	$30.00
28	NC Veterinary Medical Association	$30.00
29	National Kidney Foundation	$30.00
30	North Carolina 4-H Development Fund	$30.00
31	North Carolina Emergency Management Association	$30.00
32	North Carolina Green Industry Council	$30.00
33	North Carolina Libraries	$30.00
34	Outer Banks Preservation Association	$30.00
35	Pamlico-Tar River Foundation	$30.00
36	P.E.O. Sisterhood	$30.00
37	Personalized	$30.00
38	Retired Legislator	$30.00
39	Ronald McDonald House	$30.00
40	Share the Road	$30.00
41	S.T.A.R.	$30.00
42	State Attraction	$30.00
43	Stock Car Racing Theme	$30.00
44	Support NC Education	$30.00
45	Support Our Troops	$30.00
46	Sustainable Fisheries	$30.00
47	Toastmasters Club	$30.00
48	Topsail Island Shoreline Protection	$30.00
49	Travel and Tourism	$30.00
50	AIDS Awareness	$25.00
51	Buffalo Soldiers	$25.00

Choose Life	$25.00
Collegiate Insignia	$25.00
First in Turf	$25.00
Goodness Grows	$25.00
High School Insignia	$25.00
Kids First	$25.00
National Multiple Sclerosis Society	$25.00
National Wild Turkey Federation	$25.00
NC Agribusiness	$25.00
NC Children's Promise	$25.00
Nurses	$25.00
Olympic Games	$25.00
Rocky Mountain Elk Foundation	$25.00
Special Olympics	$25.00
Support Soccer	$25.00
Surveyor Plate	$25.00
The V Foundation for Cancer Research Division	$25.00
University Health Systems of Eastern Carolina	$25.00
Alpha Phi Alpha Fraternity	$20.00
ALS Association, Jim "Catfish" Hunter Chapter	$20.00
ARC of North Carolina	$20.00
Audubon North Carolina	$20.00
Autism Society of North Carolina	$20.00
Battle of Kings Mountain	$20.00
Be Active NC	$20.00
Brain Injury Awareness	$20.00
Breast Cancer Earlier Detection	$20.00
Buddy Pelletier Surfing Foundation	$20.00
Concerned Bikers Association/ABATE of North Carolina	$20.00
Daughters of the American Revolution	$20.00
Donate Life	$20.00
Ducks Unlimited	$20.00
Greyhound Friends of North Carolina	$20.00
Guilford Battleground Company	$20.00
Harley Owners' Group	$20.00
Jaycees	$20.00
Juvenile Diabetes Research Foundation	$20.00
Kappa Alpha Order	$20.00
Litter Prevention	$20.00
March of Dimes	$20.00
~~Morgan Horse Club~~	~~$20.00~~
Native American	$20.00
NC Fisheries Association	$20.00
NC Horse Council	$20.00
NC Mining	$20.00
NC Tennis Foundation	$20.00
NC Trout Unlimited	$20.00
NC Victim Assistance	$20.00
NC Wildlife Federation	$20.00
NC Wildlife Habitat Foundation	$20.00
NC Youth Soccer Association	$20.00

North Carolina Master Gardener	$20.00
Omega Psi Phi Fraternity	$20.00
Phi Beta Sigma Fraternity	$20.00
Piedmont Airlines	$20.00
Prince Hall Mason	$20.00
Save the Sea Turtles	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
SCUBA	$20.00
Soil and Water Conservation	$20.00
Special Forces Association	$20.00
Support Public Schools	$20.00
~~Sustainable Fisheries~~	~~$20.00~~
US Equine Rescue League	$20.00
USO of NC	$20.00
Wildlife Resources	$20.00
Zeta Phi Beta Sorority	$20.00
Carolina Regional Volleyball Association	$15.00
Carolina's Aviation Museum	$15.00
Leukemia & Lymphoma Society	$15.00
Lung Cancer Research	$15.00
NC Beekeepers	$15.00
Shag Dancing	$15.00
Active Member of the National Guard	None
100% Disabled Veteran	None
Ex-Prisoner of War	None
Gold Star Lapel Button	None
Legion of Valor	None
Purple Heart Recipient	None
All Other Special Plates	$10.00.

EFFECTIVE DATE

SECTION 19. Except as otherwise provided, this act is effective when it becomes law.

Bill Draft 2011-SVxz-13: Revenue Laws Tech., Clarifying, & Admin Chngs.

2011-2012 General Assembly

Committee:	Revenue Laws Study Committee	**Date:**	April 11, 2012
Introduced by:		**Prepared by:**	Trina Griffin Committee Counsel
Analysis of:	2011-SVxz-13		

SUMMARY: ***This legislative proposal includes several technical, administrative, and clarifying changes to the revenue laws and related statutes, many of which were requested by the Department of Revenue.***

EFFECTIVE DATE: Except as otherwise provided, this bill would become effective when it becomes law.

BILL ANALYSIS:

Section	Explanation
	Income & Franchise Tax Changes
1	Holding companies are subject to an annual franchise tax, which is capped at $75,000. A holding company is currently defined as one that receives more than 80% of its gross income from corporations in which it owns, directly or indirectly, more than 50% of the outstanding voting stock or capital interests. However, a corporation whose only asset is an investment in subsidiaries and has no income cannot meet the 80% test because the denominator would be zero. This section expands the definition of a holding company to address this situation.
2	A taxpayer is allowed a deduction for the amount by which the basis of a depreciable asset is required to be reduced under the Code for federal tax purposes because of a tax credit allowed against the corporation's federal taxable income. Section 1603 of ARRTA directs the Treasury to provide cash payments, or grants, to eligible persons who place in service specified energy property and apply for the payments. The purpose of section 1603 is to reimburse eligible applicants for a portion of the expense of such property. A section 1603 grant recipient is required to reduce the basis of the asset. This change would allow a taxpayer to reduce his or her State taxable income if the taxpayer receives a section 1603 payment rather than a credit under sections 45 or 48 of the Code.
3	This section updates from January 1, 2011, to January 1, 2012 the reference to the Internal Revenue Code. This change keeps the statute up to date, but does not result in any substantive changes because there have not been any federal tax law changes since January 1, 2011 that impact the calculation of North Carolina taxable income.

Sales Tax Changes	
4	This section makes two changes to sales tax definitions in order to conform to the Streamlined definitions, and it updates the reference to the most current version of the Streamlined Agreement dated December 19, 2011.
5	This section clarifies the general sourcing provisions to conform to the Streamlined requirements. It was noted during the 2011 Annual Compliance Review that the existing statute was not consistent with the Streamlined requirements.
6	Restores language that was inadvertently stricken from the statute.
7	This section restores language relating to the application of use tax to items given away by merchants, which was inadvertently deleted in a 2009 budget provision. The language was originally added to the definition of "sale or selling" in 1996 as the result of a court case.[1] The language was intended to restrict the application of that case. In 2009, the language was removed from the definition with the intent that it be located elsewhere in the sales and use tax statutes. However, it was never relocated. This section restores the language by placing it in a new statutory section, effective the date that the 2009 deletion became effective since there was no intent to remove it.
8	This section amends the sales tax exemptions for delivery and installation charges so that the language is parallel. It adds the phrase "similar billing document," which currently appears in the exemption for delivery charges, to the exemption for installation charges. It adds the phrase "at the time of sale," which currently appears in the exemption for installation charges, to the exemption for delivery charges.
9	This section makes two changes related to sales tax refunds for interstate carriers. First, it modifies the reference to "them" to make it clear that, for purposes of calculating a refund on certain cars, parts, fuel, and repair parts, an interstate carrier must include all motor vehicles, railroad cars, locomotives, and airplanes operated both inside and outside the State in the denominator. Second, it clarifies that airplane miles are not in this State if the airplane only flies over North Carolina but does not take off or land in the State.

[1] The general rule in this State, and virtually all states, is that a retailer who gives away products free of charge instead of selling them is liable for the sales and use tax. Until 1993, the following items were considered used, not sold, and thus subject to use tax: meals provided free to a merchant's employees, food given away to the merchant's patrons, and matches given away to patrons, other than matches given away along with the sale of cigarettes. A group of restaurants appealed the assessment of the tax, claiming that the items should be considered sold. In *Matter of Rock-Ola Café*, 111 N.C.App. 683 (1993), the North Carolina Court of Appeals agreed with the restaurants that these items should be considered sold along with the food the restaurant sold as part of its business. However, the Revenue Laws Study Committee, in its report to the 1996 Regular Session, concluded that the Court's opinion was overly broad in its rationale. The rationale, that the cost of these items is recovered by the sales of other items, taken literally, could be interpreted to eliminate the use tax altogether for merchants in that the cost of all of a merchant's purchases are covered by the price of sold items. The Committee recommended, and the General Assembly enacted, the language in this section to limit the application of the court's opinion.

10	This section conforms the statute on the scope of the local use tax so that it is consistent with the parallel statute for the State use tax, which was amended during the 2011 session. The 2011 change was a clarifying change.
General Administration Changes	
11	This section adds an additional Code reference to the statute that governs when a return, report, payment, or any other document that is mailed to the Department is timely filed. Code section 7503 addresses when the due date falls on a Saturday, Sunday, or a holiday.
Other Changes	
12	S.L. 2011-12 added synthetic cannabinoids to the list of controlled substances. No corresponding changes were made to the unauthorized substance tax laws. Therefore, under current law, they would be grouped with "other controlled substances" and subject to tax at a rate of $200 per gram. Marijuana is taxed at $3.50 per gram. This section would tax synthetic cannabinoids at the same rate as marijuana, effective when the S.L. 2011-12 became law.
13	This is a technical change because the existing statutory catchline refers to an Article that does not exist.
14	This is a technical change to correct a statutory reference.
15	Generally speaking, the State may not contract with foreign vendors that refuse to collect use tax, where applicable, on sales delivered to North Carolina. G.S. 143-59.1 requires the Department to periodically provide to the Secretary of Administration a list of ineligible vendors based on this requirement. This section modifies the obligation on the Department such that it need only verify, upon request, a vendor's ineligibility in lieu of providing a periodic list. The Department does not receive the information in order to adhere to the requirements of the current statute.
16	S.L. 2011-72 authorized certain cities to establish a municipal service district for the purpose of converting private residential streets to public streets. The act was designed to address 14 residential developments in the Town of Morrisville that were seeking to convert private streets to public streets. After the bill passed, it was discovered that some of the developments were created under the Condominium Act rather than the Planned Development Act, which the bill amended. This section makes the necessary conforming changes.

17	This section removes the confusion caused by the new fee applicable to the recording of subsequent instruments by eliminating the fee and imposing a $10 fee for an instrument that assigns more than one security instrument by reference to a previously recorded instrument. S.L. 2011-296 changed the fees collected by register of deeds for the purpose of simplifying their collection and remittance. As part of the legislation, a new fee became applicable to the indexing and filing of "subsequent instruments." Several registers of deeds have questioned how to apply the new fee applicable to subsequent instruments that contain references to multiple recorded documents, such as cancellations of multiple deeds of trust or substitution of trustee in multiple documents.
	Special License Plate Changes
18	This section corrects several errors in the 2011 special license plate bill. It adds the "Mountains-to-Sea Trail" plate to the list of plates that may be on a background other than the First in Flight background, which was the original intent. In G.S. 20-79.4, the authorization for the plate states that it "shall bear the phrase 'Mountains-to-Sea Trail' with a background designed by the Friends of the Mountains-to-Sea Trail," suggesting that the organization may design its own background. However, in order for an organization to have a background other than First in Flight, it must be authorized in G.S. 20-63. This section also corrects errors with regard to the fees for the Sustainable Fisheries and the Morgan Horse Club plates.

2011-SVxz-13-SMSV-92 v2

Work Opportunity Tax Credit

North Carolina allowed a credit of 6% of the Federal Work Opportunity Tax Credit (WOTC) for positions located in North Carolina. This credit expired for taxable years beginning on or after January 1, 2012. The credit reduced General Fund availability by $0.8 million per fiscal year

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Federal Work Opportunity Tax Credit for Returning Heroes and Wounded Warriors:

Tax credit for hiring veterans between **November 22, 2011 and December 31, 2012.** The amount of the credit is based on wages paid. The maximum credit allowed depends on the category of the veteran.

Veteran +	Maximum Credit
Unemployed for 4 weeks	$2,400
Unemployed for 6 months	$5,600
SNAP benefits	$2,400
Service connected disability	$4,800
Service connected disability & 6 months unemployed	$9,600

Expired Federal Work Opportunity Tax Credit:

Tax credit for hiring individuals that face barriers to employment. The amount of the credit was based on wages paid. **This tax credit expired December 31, 2011.** Roughly 8,600 North Carolina employers have utilized the WOTC since the program's inception. For the 2010-11 program year, employers received tax credits for workers in the following categories:

- TANF recipients 1,959
- SNAP recipients 37,846
- High –risk youth 6,094
- Unemployed veterans 248
- Disabled veterans 511
- Summer youth 0
- Vocational rehabilitation 898
- Ex-felons 843
- SSI recipients 869

The credit was 25% of the first year wages of those employed between 120 and 400 hours and 40% for those employed for more than 400 hours.

The wage cap for the credit was:

- $3,000 for summer youth.
- $10,000 for long-term TANF recipients. An additional credit of 50% of wages in the 2nd year of employment is also available.
- $6,000 for all other groups.

NORTH CAROLINA GENERAL ASSEMBLY
REVENUE LAWS STUDY COMMITTEE
Wednesday, May 2, 2012
Room 544, Legislative Office Building
9:30 a.m.

The Revenue Laws Study Committee met at 9:30 a.m. on Wednesday, May 2, 2012, in room 544 of the Legislative Office Building. Seventeen members attended the meeting. The following Senators were present: Senator Blue, Senator Brunstetter, Senator Harrington, Senator Hartsell, Senator McKissick, Senator Rucho, and Senator Stevens. The following Representatives were present: Representative Alexander, Representative Howard, Representative Blust, Representative Brubaker, Representative Carney, Representative Hill, Representative Lewis, Representative Moffitt, and Representative Starnes. Representative Julia Howard presided as chair.

Approval of the April 11, 2012 meeting minutes

Senator Brunstetter moved to approve the minutes and the motion carried. A copy of the minutes is attached.

Overview of Committee Proceedings

Trina Griffin, a tax attorney with the Research Division, was recognized. She outlined the interim committee meetings of the Revenue Laws Study Committee and provided a brief overview of possible legislation generated by the Committee.

Legislative Proposal # 1: Expedited Rulemaking for Forced Combinations

Cindy Avrette, Committee Counsel, was recognized to explain the proposed legislation. It would require the Department of Revenue to adopt rules regarding its interpretation of G.S. 105-130.5A, the Secretary's authority to redetermine the State net income of a corporation properly attributable to its business carried on in the State by adjusting it net income or requiring it to file a combined return. The proposed bill provides an expedited rule-making process for these rules. Senator Clodfelter moved to recommend the proposed legislation and the motion carried. A copy of the draft bill, the summary and a chart of the rulemaking process is attached.

Legislative Proposal # 2: Unemployment Insurance Changes

Ms. Avrette explained that the proposed legislation would include several changes to the unemployment laws that fall within three categories. First, the extension of the three-year book-back period from January 1, 2012 to January 1, 2013. Second, the resolution of outstanding issues associated with S.L. 2011-401. Third, the statutory changed required to comply with the federal Trade Adjustment Assistance Extension Act of 2011. Senator Rucho moved to recommend the proposed legislation. The motion carried a copy of the draft legislation, the summary and a memo from Gerry Cohen is attached.

Legislative Proposal # 3: Extend Tax Provisions

Heather Fennell, a tax attorney with the Research Division, was recognized to explain the proposed legislation. The proposal draft would extend several tax provisions due to anticipated major tax reform during the 2013 legislative session. Jonathan Tart, an analyst with the Fiscal Research Division, was recognized to explain the financial outcomes of the extensions. Senator Rucho moved for the recommendation of the proposed bill draft and the motion carried. A copy of the proposed legislation, the summary and the fiscal memo is attached.

Legislative Proposal # 4: Appraisal Management Companies Reported to DOR

Greg Roney, a tax attorney with the Research Division, was recognized proposed bill draft. It would require the NC Appraisal Board to report annually to the NC Department of Revenue the following information about registered appraisal management companies: name, address, process agent if any, type of entity, employer identification number for social security number, and NC Secretary of State identification number is any. Representative Starnes moved to recommend the proposed legislation and the motion carried. A copy of the proposed legislation and the summary is attached.

Legislative Proposal # 5: Revenue Laws Technical, Clarifying and Administrative Changes

Ms. Griffin explained that the proposed bill draft had been approved during the April meeting, but had been revised. The bill draft includes several technical, administrative and clarifying changes to the revenue laws and related statutes, many of which were requested by the Department of Revenue. Representative Carney moved for the recommendation of the proposed bill draft and the motion carried. A copy of the proposed bill draft and the summary is attached.

Approval of the Final Report

Senator Clodfelter moved to adopt the Final Report with its recommendations of proposed legislation to the 2013 Session of the General Assembly. The motion carried. A copy of the report is attached.

The meeting adjourned at 10:05 a.m.

Representative Julia Howard
Presiding Chair

DeAnne Mangum
Committee Assistant

REVENUE LAWS STUDY COMMITTEE AGENDA

Rep. Julia Howard *Rep. Danny McComas* *Sen. Bob Rucho*

Wednesday, May 2, 2012
Room 544, Legislative Office Building
9:30 a.m.

I. **Approval of Minutes from the April 11, 2012, Meeting**

II. **Overview of Committee Proceedings**
Trina Griffin, Research Division, NCGA

III. **Legislative Proposal #1: Expedited Rulemaking for Forced Combinations**
Cindy Avrette, Research Division, NCGA

IV. **Legislative Proposal #2: Unemployment Insurance Changes**
Cindy Avrette, Research Division, NCGA

V. **Legislative Proposal #3: Extend Tax Provisions**
Heather Fennell, Research Division, NCGA
Jonathan Tart, Fiscal Research Division, NCGA

VI. **Legislative Proposal #4: Appraisal Management Companies Reported to DOR**
Greg Roney, Research Division, NCGA
Jonathan Tart, Fiscal Research Division, NCGA

VII. **Legislative Proposal #5: Revenue Laws Technical, Clarifying, and Administrative Changes**
Trina Griffin, Research Division, NCGA

VIII. **Approval of Final Report**

IX. **Adjournment**

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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BILL DRAFT 2011-RBz-18A [v.7] (03/31)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/1/2012 6:56:02 AM

Short Title: Expedited Rulemaking for Forced Combination. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE SECRETARY OF REVENUE'S INTERPRETATION OF THE LAW CONCERNING THE SECRETARY'S AUTHORITY TO ADJUST NET INCOME OR REQUIRE A COMBINED RETURN BE MADE THROUGH RULEMAKING AND TO PROVIDE AN EXPEDITED PROCESS FOR RULEMAKING ON THIS ISSUE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-262(b) is repealed.

SECTION 2. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ G.S. 105-262A. Rules to exercise authority under G.S. 105-130.5A.**

(a) Purpose and Scope. – It is the policy of the State to provide necessary guidance on a timely basis to corporate taxpayers subject under G.S. 105-130.5A to have their net income adjusted or to be required to file a combined return. Except for a voluntary redetermination as allowed under G.S. 105-130.5A(c), the Secretary may not redetermine the State net income of a corporation properly attributable to its business carried on in the State under G.S. 105-130.5A until a rule adopted by the Secretary in accordance with this section becomes effective. This section provides an expedited procedure for the adoption of rules needed to administer G.S. 105-130.5A. The Secretary may not interpret G.S. 105-130.5A in the form of a bulletin or directive under G.S. 105-264.

The Secretary is exempt from G.S. 150B-21.1 through G.S. 150B-21.4 of Part 2 of Article 2A of Chapter 150B of the General Statutes but is subject to the expedited procedure for the adoption of rules as established by this section. The Secretary is exempt from Part 3 of Article 2A of Chapter 150B of the General Statutes but is subject to the expedited review procedure as established by this section.

(b) Definition. – The definitions in G.S. 150B-2 apply in this section.

(c) Fiscal Note. – The Secretary must prepare a fiscal note for a proposed new rule or a proposed change to a rule that has a substantial economic impact. The fiscal note must be submitted with the proposed rule when the rule is submitted to the Codifier of Rules and the Codifier of Rules must publish the fiscal note with the proposed rule on the Internet. The Secretary must accept a written comment on the fiscal note in the same manner the Secretary accepts written comments on the proposed rule. The Secretary is not subject to the fiscal note requirement under G.S. 105-262(c). For purposes of this section, a "substantial economic impact" has the same meaning as defined in G.S. 150B-21.4(b1).

(d) Adoption. – The Secretary may adopt a rule under this section by using the procedure for adoption of a temporary rule set forth in G.S. 150B-21.1(a3). The Secretary must provide electronic notification of the adoption of a rule to persons on the mailing list maintained in accordance with G.S. 150B-21.2(d) and any other interested parties, including those originally given notice of the rulemaking and those who provided comment on the rule. If the Secretary receives written comment objecting to the rule and requesting review by the Commission, the rule must be reviewed in accordance with subsections (e) through (i) of this section. A person may object to the rule and request review by the Commission at any point prior to the adoption of the rule and by 5:00 p.m. on the third business day following electronic notification from the Secretary of the adoption of a rule. If the Secretary receives no written comment objecting to the rule and requesting review by the Commission, the Secretary must deliver the rule to the Codifier of Rules. The Codifier of Rules must enter the rule into the North Carolina Administrative Code upon receipt of the rule.

(e) Review. – If the Secretary receives written comment objecting to the rule and requesting review by the Commission, the Secretary must submit the rule to the Commission for review. The Commission may not consider questions relating to the quality or efficacy of the rule but must restrict its review to a determination of whether the rule meets all of the following criteria:

(1) It is within the authority delegated to the agency by the General Assembly.

(2) It is clear and unambiguous.

(3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission must consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.

(4) It was adopted in accordance with this section.

(f) Manner of Review. – When the Commission reviews a rule under this section, the time limits in subsections (b) and (b1) of G.S. 150B-21.1 apply. The Commission must review the rule to determine whether the rule meets the standards in subsection (e) of this section. The Commission must direct a member of its staff who is an attorney licensed to practice law in North Carolina to review the rule. The staff member must make a recommendation to the Commission or its designee. The Commission's designee must be a panel of at least three members of the Commission. The staff member, Commission's designee, or the Commission may also request technical changes as allowed in G.S. 150B-21.10. In reviewing the rule, the Commission may consider any information submitted by the Secretary or another person.

(g) Objection. – If the Commission or its designee finds that the rule does not meet the standards in subsection (e) of this section and objects to the rule, the Commission or its designee must send the Secretary a written statement of the objection and the reason for the objection within one business day. The Secretary must take one of the following actions:

(1) Change the rule to satisfy the Commission's objection and submit the revised rule to the Commission.

(2) Submit a written response to the Commission indicating that the Secretary has decided not to change the rule.

(h) Changes. – When the Secretary changes a rule in response to an objection by the Commission, the Commission must determine whether the change satisfies the Commission's objection. If it does, the Commission must approve the rule. If it does not, the Commission must send the Secretary a written statement of the Commission's continued objection and the reason for the continued objection.

(i) Approval. – If the Commission or its designee finds that the rule meets the standards in subsection (e) of this section, the Commission or its designee must approve the rule and deliver the rule to the Codifier of Rules. The Codifier of Rules must enter the rule into the North Carolina Administrative Code upon receipt from the Commission or its designee.

(j) Return of Rule. – A rule to which the Commission has objected remains under review by the Commission until the Secretary decides not to satisfy the Commission's objection and makes a written request to the Commission to return the rule to the Secretary. When the Commission returns a rule to the Secretary in accordance with this section, the Secretary may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.

(k) Effective Date. – G.S. 150B-21.3 does not apply to a rule adopted under this section. A rule adopted under this section becomes effective on the last day of the month the Codifier of Rules enters the rule in the North Carolina Administrative Code. "

SECTION 3. G.S. 150B-1(d)(4) reads as rewritten:

"(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the following:

...

(4) The Department of Revenue, with respect to the notice and hearing requirements contained in Part 2 of Article 2A. With respect to the Secretary of Revenue's authority to redetermine the State net taxable income of a corporation under G.S. 105-130.5A, the Department is subject to the rulemaking requirements of G.S. 105-262A.

...".

SECTION 4. On June 30, 2011, the Governor signed into law S.L. 2011-390, House Bill 619, as passed by the General Assembly. The law repealed the Secretary of Revenue's authority to adjust a corporation's net income or require a combined return under G.S. 105-130.6, 105-130.15, and 105-130.16 and replaced it with a new authority under G.S. 105-130.5A. The Fiscal Research Division of the North Carolina General Assembly prepared a fiscal memo on House Bill 619. Therefore, notwithstanding G.S. 105-262A(c), as enacted by Section 2 of this act, G.S. 105-262(c), and Section 7 of the Budget Manual prepared by the Office of State Budget and Management, the Secretary of Revenue shall not be required to prepare a fiscal note for a proposed new rule submitted to the Codifier of Rules under G.S. 105-262A, as enacted by this act, prior to December 31, 2012.

SECTION 5. On April 17, 2012, the Department of Revenue published a directive pursuant to G.S. 105-264, CD-12-02, that explains the Secretary's authority under G.S. 105-130.5A to redetermine a corporation's net income by adjusting the corporation's intercompany transactions or requiring a corporation to file a combined income tax return for tax years beginning on or after January 1, 2012. This act supersedes the Directive; however, a taxpayer who relied upon the interpretation in the Directive and whose North Carolina taxable income for the 2012 taxable year is less under the Directive's interpretation than under an interpretation of G.S. 105-130.5A by a rule adopted pursuant to G.S. 105-262A, as enacted by this act, is entitled to rely on the interpretation under the Directive for the 2012 taxable year.

SECTION 6. S.L. 2011-390, as amended by S.L. 2011-411, enacted G.S. 105-130.5A, effective for taxable years beginning on or after January 1, 2012. The Secretary of Revenue's authority under G.S. 105-130.5A exists continuously for taxable years beginning on or after January 1, 2012. G.S. 105-262A, as enacted by Section 2 of this act, prevents the Secretary from exercising the authority granted under G.S. 105-130.5A until a rule adopted in accordance with G.S. 105-262A becomes effective. After the rule becomes effective, the Secretary may issue a proposed denial of a refund or a proposed assessment under the authority of G.S. 105-130.5A for any taxable year beginning on or after January 1, 2012, subject to the applicable statute of limitations.

SECTION 7. This act is effective when it becomes law.

Bill Draft 2011-RBz-18A: Expedited Rulemaking for Forced Combination.

2011-2012 General Assembly

Committee:	Revenue Laws Study Committee	**Date:**	May 1, 2012
Introduced by:		**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	2011-RBz-18A		

SUMMARY: ***This draft requires the Department of Revenue to adopt rules regarding its interpretation of G.S. 105-130.5A, the Secretary's authority to redetermine the State net income of a corporation properly attributable to its business carried on in the State by adjusting its net income or requiring it to file a combined return. The draft provides an expedited rule-making process for these rules.***

CURRENT LAW: The tax laws in Chapter 105 of the General Statutes contain two statutes that appear to give the Department of Revenue two different pathways of interpreting the law:

- G.S. 105-264 – It provides the Secretary may interpret a law by adopting a rule *or by publishing a bulletin or directive* on the law. The Department has interpreted tax law through the issuance of bulletins[1] or directives[2] since at least 1955. This process does not involve public notice and comment or approval by any outside authority. Bulletins and directives may be issued immediately. A directive or bulletin is not considered a binding interpretation on the courts.
- G.S. 105-262 – It provides the Secretary may adopt rules under Chapter 150B. The Department is exempt from the notice and hearing provisions of Part 2 of Article 2A of Chapter 150B. Although the rule-making process does not provide an opportunity for public notice and hearing for rules adopted by the Department, it does provide a review of the rules by the Rules Review Commission (RCC). The RCC reviews rules to ensure they do not exceed an agency's statutory authority. A rule is considered a binding interpretation on the courts. The definition of a rule in G.S. 150B-1 specifically states that a rule does not include nonbinding interpretative statements that merely define, interpret, or explain the meaning of a statute or rule and that a rule does not include statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections.

BILL ANALYSIS: *Legislative Proposal #1* would require the Department of Revenue to adopt rules before it could exercise the authority under G.S. 105-130.5A[3] to redetermine the State net income of a corporation properly attributable to its business carried on in the State by adjusting its net income or requiring it to file a combined return. The proposal does not extend the rulemaking requirement to all

[1] Bulletins present the Department of Revenue's administrative interpretation and application of tax laws. The Department has 'Corporate, Excise, and Insurance Tax Bulletins', 'Individual Income Tax Bulletins', and 'Sales and Use Tax Bulletins'. The Department typically updates the bulletins annually to reflect changes in the law or administrative interpretation. However, the Department has not updated the bulletins in the last three or four years.

[2] Directives are issued by the Department of Revenue on an as-needed basis to interpret a tax law, explain the application of law to stated facts, or to clarify an issue on which the Department has received numerous questions. Directives are not updated to reflect changes in the law or administrative interpretation. The contents of a directive may be included in an updated bulletin.

[3] S.L. 2011-390, as amended by S.L. 2011-411, repealed the statutes that allowed the Secretary to redetermine the net income of a corporation if the Secretary found that a report by the corporation did not reflect its true earnings from its business carried on in this State. In their place, the General Assembly enacted a more restrictive interpretation in G.S. 105-130.5A. Effective for taxable years beginning on or after January 1, 2012, the Secretary must find that the corporation fails to accurately report its State net income through the use of transactions that lack economic substance or are not at fair market value.

interpretations of the tax laws by the agency because there did not appear time to address the issues a larger proposal would entail:

- A clear understanding of what interpretations would require a rule. The current definition of a rule does not include nonbinding interpretative statements or statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits. Arguably, the Department's bulletins would fall within these exceptions to the definition of a rule in Chapter 150B.
- A clear understanding of the status of the bulletins and directives that currently exist. Would they all have to be adopted through the rulemaking process? Would they be grandfathered into effectiveness? Do they meet the definition of a rule? Do they need to be published in the North Carolina Administrative Code (Code)?

Throughout the course of the Revenue Laws Study Committee meetings on the implementation of G.S. 105-130.5A, the members expressed strong concerns on the need for the Department to provide clarity on the law for taxpayers and to execute the law as enacted. In response to the change in the law and the legislative concern on the interpretation of the law, the Department issued the first Corporate Tax Directive[4] it has issued since 2008. Representatives on behalf of the North Carolina Chamber of Commerce, the North Carolina Retail Merchants Association, and the Council on State Taxation appeared before the Committee on March 7, 2012, and expressed concern that the directive issued by the Department did not provide clarity to the law, exceeded the Department's statutory authority, and did not undergo the formal rule-making process.[5] The Department of Revenue expressed concern about the length of the rule-making process.

This proposal seeks to balance the following three goals:

- The need for taxpayer certainty about the tax laws.
- The need for an outside determination as to whether the Department of Revenue has exceeded its statutory authority in its interpretation of the law.
- The opportunity for public notice and comment on the Department's interpretation of the law.

The proposal provides the rulemaking procedure will be the quicker timetable allowed for temporary rulemaking. This process may be completed in less than two months. This process allows 15 days for notice and comment from outside parties. Anyone may object to a proposed rule during the notice and comment period or within three business days of the adoption of the rule by requesting review by the RRC. To ensure that all parties have knowledge of the adoption of a rule, the proposal requires the Department to provide electronic notification of its adoption of a rule to persons on the mailing list, those originally given notice of the rulemaking, and those who provided comment on the rule. If no one requests review by the RRC, the adopted rule may be delivered to the Codifier of Rules and entered into the Code. If the Department receives written objections to the rule and requests that the rule be reviewed, then the RRC must review the rule within 15 days. The RRC may not extend the period of time for review. As provided in G.S. 150B-21.9, the RRC does not consider questions relating to the quality or efficacy of the rule, but limits its review to the following:

- Is the rule within the authority delegated to the agency?
- Is it clear and unambiguous?
- Is it reasonably necessary to implement or interpret an act of the General Assembly or of Congress or of a regulation of a federal agency?

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[4] Corporate Income Tax Directives Table of Contents

[5] North Carolina General Assembly - Revenue Laws > Meeting Documents > 2011-2012 Meeting Documents > March 7

- Was it adopted in accordance with G.S. 105-262A?

The proposal changes the fiscal note requirement to allow Revenue to prepare its own fiscal note.[6] It will not need to submit the fiscal note to the Office of State Budget and Management. The fiscal note must be submitted with the proposed rule to the Codifier of Rules and posted on the Internet. A person may comment on the fiscal note in the same manner a person may comment on a proposed rule. Section 4 of the bill provides that the Department does not need to prepare a fiscal note for a proposed rule submitted to the Codifier of Rules prior to December 31, 2012. The reason for this waiver is that any rules submitted before the end of this calendar year under the statute created by this act is limited to the Department's application of G.S. 105-130.5A. The subject of the rule has been debated in the General Assembly during the 2011 session, where the Fiscal Research Division prepared a fiscal memo, and it has been the subject of four Revenue Laws Study Committee meetings in 2011 and 2012. The fiscal issues surrounding this particular rule appear to be well known and understood by all the parties.

The proposal exempts the Department from the delayed effective date provisions that apply whenever the Commission receives 10 or more objections to a rule requesting review by the legislature.

A rule becomes effective on the last day of the month the Codifier of Rules enters the rule in the Code. This effective date provision differs from the general effective date provision in Chapter 150B[7] and enables the rule to become effective a month earlier. Section 6 of the draft clarifies that the Secretary's authority under G.S. 105-130.5A exists continuously for taxable years beginning on or after January 1, 2012. After a rule becomes effective, the Secretary may issue a proposed denial of a refund or a proposed assessment under the authority of G.S. 105-130.5A for any taxable year that beginning on or after January 1, 2012.

The proposal only applies to G.S. 105-130.5A. It does not apply to the Secretary's interpretations of the repealed statutes that continue to be applicable for taxable years beginning before January 1, 2012: G.S. 105-130.6, 105-130.15, and 105-130.16. The Department has issued a directive offering guidance on its interpretation of those laws, CD-12-01, and the directive appears to set forth the Department's application of the law as upheld by the North Carolina Courts.[8] The Department has also issued a directive offering guidance on its interpretation of the newly enacted law, G.S. 105-130.5A, in CD-12-02. Section 5 of the bill provides that a taxpayer who relied upon the interpretation in that Directive and whose North Carolina taxable income for the 2012 taxable year is less under the Directive's interpretation than under an interpretation adopted through the rulemaking process may rely on the interpretation under the Directive for the 2012 taxable year.

EFFECTIVE DATE: The proposal would become effective when it becomes law.

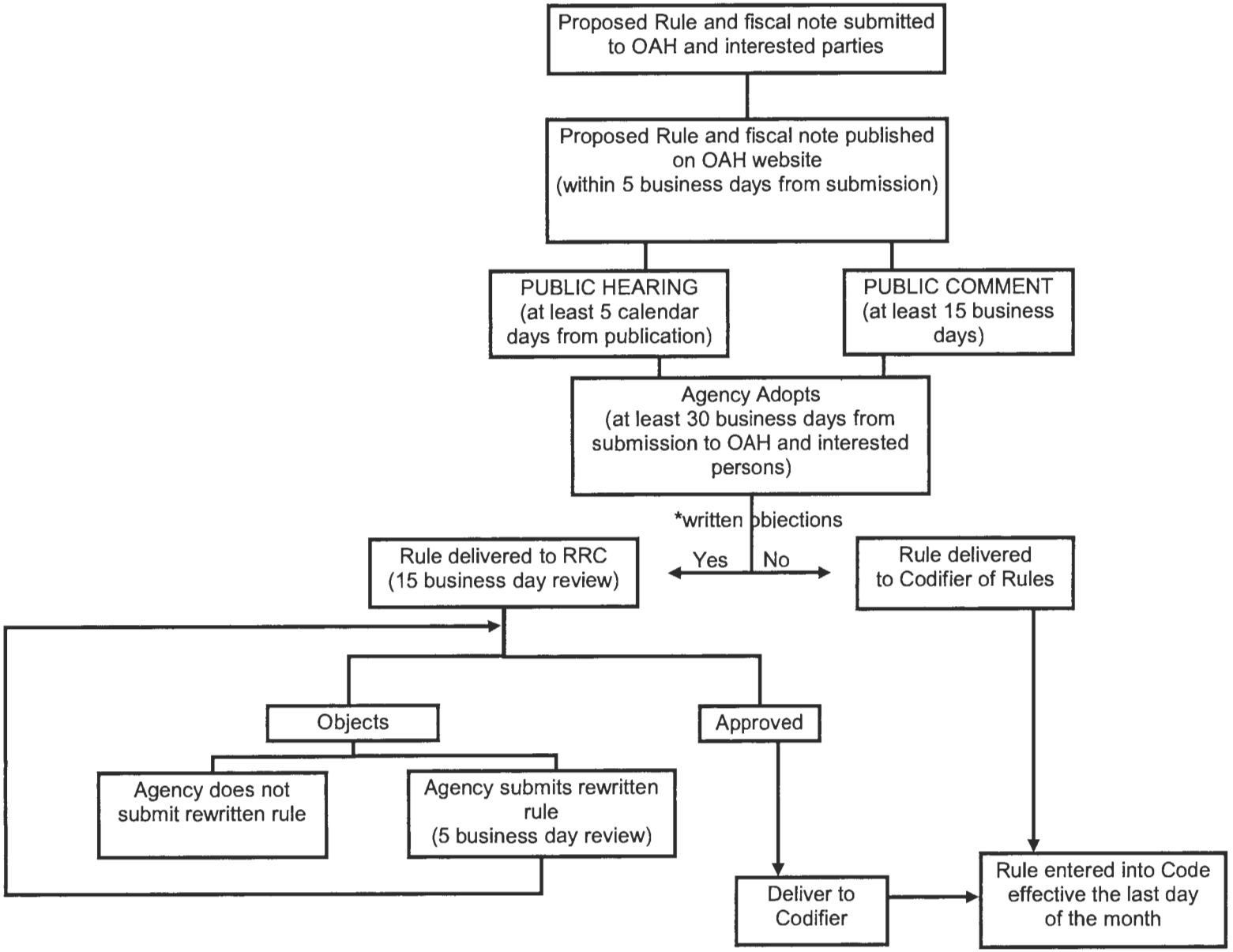
2011-RBz-18A-SMRB-116 v1

[6] A fiscal note must be prepared if the rule has a substantial economic impact. Prior to 2011, the term 'substantial economic impact' meant a cumulative impact of $3,000,000. In 2011, this amount was reduced to $500,000.

[7] G.S. 150B-21.3 provides that a rule becomes effective on the first day of the month following the month the rule is approved.

[8] *Wal-Mart Stores East v. Hinton*, 197 N.C. App. 30 (2009); *Delhaize America, Inc., Plaintiff, v. Kenneth R. Lay*, 2011 NCBC 2: 2011 NCBC LEXIS 9 (2011).

DOR Rulemaking



*Written [redacted]s requesting RRC review received by DOR by 5 pm the third business day following [redacted]ion from the Secretary of the rule adoption [redacted]

(05/01/12)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

U D

BILL DRAFT 2011-RBz-20A [v.1] (03/31)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/1/2012 12:57:55 PM

Short Title:	Unemployment Insurance Changes.	(Public)
Sponsors:	.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE UNEMPLOYMENT INSURANCE LAWS.

The General Assembly of North Carolina enacts:

PART I. CHANGE THE LAW TO CONTINUE THE THREE-YEAR LOOK-BACK TRIGGER FOR EXTENDED BENEFITS

SECTION 1.(a) The General Assembly finds that the Governor's Executive Order No. 93, entitled "Extend Unemployment Benefits to Protect the Safety, Health, and Welfare of North Carolina's Long-Term Unemployed", was the purported basis for action by the then Employment Security Commission to provide for the extension of unemployment benefits to thousands of North Carolinians. The extension of unemployment benefits was grounded upon amendments to Section 203 of the Federal-State Extended Unemployment Compensation Act of 1970 (the "1970 Act"), as amended by Section 502(b) of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (the "2010 Act").

SECTION 1.(b) The General Assembly finds that the Governor's Executive Order 113, entitled "Further Extend Unemployment Benefits to Protect the Safety, Health, and Welfare of North Carolina's Long-Term Unemployed" was the purported basis for action by the then Employment Security Commission to provide for the extension of unemployment benefits to thousands of North Carolinians nearing the end of a two-month, federal extension of unemployment benefits under Section 201 of the Temporary Payroll Tax Cut Continuation Act of 2011. That extension, authorized through February 29, 2012, was grounded upon amendments to Section 203 of the Federal-State Extended Unemployment Compensation Act of 1970 (the "1970 Act"), as amended by Section 502(b) of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (the "Tax Relief Act of 2010").

SECTION 1.(c) The General Assembly finds that Section 502(b) of the Tax Relief Act of 2010 specifies that the extension of benefits is to be made only as "the State may by law provide." Section 205(f) of the underlying 1970 Act defines "State law" as the "unemployment compensation law of the State, approved by the [U.S. Secretary of Labor]." In North Carolina, that law is Chapter 96 of the General Statutes, the "Employment Security Law." Nothing in Chapter 96 of the General Statutes, then or now, authorizes the Governor to extend unemployment benefits by Executive Order, nor does Executive Order 93 or Executive Order No. 113, or any other such order, constitute a "State law" within the meaning of the 1970 Act or the North Carolina Constitution. Article II Section 1 of our State Constitution provides that

"The legislative power of the State shall be vested in the General Assembly. Further, Article I, Section 6 of our State Constitution provides that the legislative and executive powers are "...separate and distinct..."

SECTION 1.(d). The General Assembly finds that the people of this State entrusted the creation of laws to the General Assembly, not to the executive branch, and that Executive Order No. 93 and Executive Order No. 113 were issued and acted upon by the executive branch in a manner contrary to the rule of law.

SECTION 1.(e) Further, the General Assembly finds that it enacted Section 6.16 of Session Law 2011-145 and in so doing validated the effects of the Governor's Executive Order No. 113, with the stated intent to allow extended benefits to be paid under the Tax Relief Act of 2010 so long as payment of the extended benefits did not hinder the State's ability to reduce its debt owed to the federal government for unemployment benefits.

SECTION 1.(e) It is deemed, therefore, to be in the best interest of the people of this State that the General Assembly now ratify and hereby validate the effects of the Governor's Executive Order No. 113.

SECTION 1.(f) To maintain the rule of law with respect to State and federal relations pertaining to employment security laws in North Carolina, any executive order issued by the Governor that purports to extend unemployment insurance benefits, whether those benefits will be paid from federal or State funds, is void ab initio, unless the executive order is issued upon authority that is conferred expressly by an act enacted by the General Assembly or granted specifically to the Governor by the Congress of the United States.

SECTION 1.(g) Section 6.16(d) of S.L. 2011-145 reads as rewritten:

"**SECTION 6.16.(d)** This section becomes effective April 16, 2011, and expires ~~January 1, 2012.~~January 1, 2013."

SECTION 1.(h) G.S. 96-12.01(a1)(4)c.3. reads as rewritten:

"3. This section applies as provided under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) as it existed on December 17, 2010, and is applicable to compensation for weeks of unemployment beginning after December 17, 2010, and ending on or before ~~December 31, 2011,~~ December 31, 2012, provided that:

I. The average rate of (i) insured unemployment, not seasonally adjusted, equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding 13-week period ending in all of the preceding three calendar years and equaled or exceeded five percent (5%) or (ii) total unemployment, seasonally adjusted, as determined by the United States Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds six and one-half percent (6.5%); and

II. The average rate of total unemployment in this State, seasonally adjusted, as determined by the United States Secretary of Labor, for the three-month period referred to in this subsection, equals or exceeds one hundred ten percent (110%) of the average for any of the corresponding three-month periods ending in the three preceding calendar years."

SECTION 1.(i) G.S. 96-12.01(a1)(4)e. reads as rewritten:

"(4) There is an "on indicator" for this State for a week if the Commission determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediate preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this Chapter:

...

e. Total extended benefit amount.

...

3. This subdivision applies as provided under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) as it existed on December 17, 2010, and is applicable to compensation for weeks of unemployment beginning after December 17, 2010, and ending on or before ~~December 31, 2011,~~ December 31, 2012, provided that:

I. The average rate of total unemployment, seasonally adjusted, as determined by the United States Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds eight percent (8%); and

II. The average rate of total unemployment in this State, seasonally adjusted, as determined by the United States Secretary of Labor, for the three-month period referred to in this subdivision equals or exceeds one hundred ten percent (110%) of the average for any of the corresponding three-month periods ending in the three preceding calendar years."

SECTION 1.(j) This section is effective when it becomes law and applies retroactively to January 1, 2012.

PART II. RESOLUTION OF OUTSTANDING ISSUES FROM S.L. 2011-401

SECTION 2.(a) The Current Operations Appropriations Act for the 2012-2013 fiscal year shall provide for the annual salaries of the Board of Review, as provided in G.S. 96-4(b).

SECTION 2.(b) G.S. 96-14(2) reads as rewritten:

"**§ 96-14. Disqualification for benefits.**

An individual shall be disqualified for benefits:

...

(2) For the duration of the individual's unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Division that such individual is, at the time such claim is filed, unemployed because he or she was discharged for misconduct connected with the work. Misconduct connected with the work is defined as intentional acts or omissions evincing disregard of an employer's interest or standards of behavior which the employer has a right to expect or has explained orally or in writing to an employee or evincing carelessness or negligence of such degree as to manifest equal disregard.

"Discharge for misconduct connected with the work" as used in this section is defined to include but not be limited to any one or more of the following acts or conduct:

a. ~~separation~~ Separation initiated by an employer for violating the employer's written alcohol or illegal drug ~~policy; reporting~~policy.

b. Reporting to work significantly impaired by alcohol or illegal ~~drugs; consuming~~drugs.

c. Consuming alcohol or illegal drugs on employer's ~~premises; conviction~~ premises.

d. Conviction by a court of competent jurisdiction for manufacturing, selling, or distribution of a controlled substance punishable under G.S. 90-95(a)(1) or G.S. 90-95(a)(2) while in the employ of said ~~employer; being~~employer.

e. Being terminated or suspended from employment after arrest or conviction for an offense involving violence, sex crimes, or illegal ~~drugs; any~~ drugs if the offense is related to or connected with an employee's work for an employer or is in violation of a reasonable work rule or policy.

f. Any physical violence whatsoever related to an employee's work for an employer, including, but not limited to, physical violence directed at supervisors, subordinates, coworkers, vendors, customers, or the general ~~public; inappropriate~~public.

g. Inappropriate comments or behavior towards supervisors, subordinates, coworkers, vendors, customers, or to the general public relating to any federally protected characteristic which creates a hostile work ~~environment; theft~~ environment.

h. Theft in connection with the ~~employment; forging~~employment.

i. Forging or falsifying any document or data related to employment, including a previously submitted application for ~~employment; violation~~ employment.

j. Violation of an employer's written absenteeism ~~policy; refusing~~policy.

k. Refusing to perform reasonably assigned work ~~tasks; and the failure to adequately perform any other employment duties as evidenced by~~ tasks.

l. Intentional acts or omissions evincing disregard of the employer's interest or standards of behavior which the employer has a right to expect or has explained orally or in writing to the employee or evincing careless or negligence of such degree as to manifest equal disregard. For purposes of this sub-subdivision, evidence that an employee has received no fewer than three written reprimands ~~received~~ in the 12 months that immediately ~~preceding~~ precedes the employee's ~~termination.~~ termination is prima facie evidence of misconduct connected with the work. ~~This~~

The phrase "discharge for misconduct connected with the work" does not include the discharge or an employer-initiated separation of a severely disabled veteran, as defined in G.S. 96-8, for any act or omission of the veteran that the Division determines are attributed to a disability incurred or aggravated in the line of duty during active military service, or to the veteran's absence from work to obtain care and treatment of a disability incurred or aggravated in the line of duty during active military service."

SECTION 2.(c) G.S. 96-15(b)(2) reads as rewritten:

"(2) Adjudication. – When a protest is made by the claimant to the initial or monetary determination, or a question or issue is raised or presented as to the eligibility of a claimant under G.S. 96-13, or whether any disqualification should be imposed under G.S. 96-14, or benefits denied or adjusted pursuant to G.S. 96-18, the matter shall be referred to an adjudicator. The adjudicator may consider any matter, document or statement deemed to be pertinent to the issues, including telephone conversations, and after such consideration shall render a conclusion as to the claimant's benefit entitlements. The adjudicator shall notify the claimant and all other interested parties of the conclusion reached. The conclusion of the adjudicator shall be deemed the final decision of the Division unless within 30 days after the date of notification or mailing of the conclusion, whichever is earlier, a written appeal is filed pursuant to rules adopted by the Division. The Division shall be deemed an interested party for such purposes and may remove to itself or transfer to an appeals referee the proceedings involving any claim pending before an adjudicator.

Provided, any interested employer shall be allowed ~~30~~10 days from the ~~earlier of mailing or~~ delivery of the notice of the filing of a claim against the employer's account to protest the claim and have the claim referred to an adjudicator for a decision on the question or issue raised. A copy of the notice of the filing shall be sent contemporaneously to the employer by telefacsimile transmission if a fax number is on file. Provided further, no question or issue may be raised or presented by the Division as to the eligibility of a claimant under G.S. 96-13, or whether any disqualification should be imposed under G.S. 96-14, after 45 days from the first day of the first week after the question or issue occurs with respect to which week an individual filed a claim for benefits. None of the provisions of this subsection shall have the force and effect nor shall the same be construed or interested as repealing any other provisions of G.S. 96-18.

An employer shall receive written notice of the employer's appeal rights and any forms that are required to allow the employer to protest the claim. The forms shall include a section referencing the appropriate rules pertaining to appeals and the instructions on how to appeal."

SECTION 2.(d) G.S. 96-15(f) reads as rewritten:

"(f) Procedure. – The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with rules adopted by the Division for determining the rights of the parties, whether or not such ~~regulations~~ rules conform to common-law or statutory rules of evidence and other technical rules of procedure. All testimony at any hearing before an appeals referee upon a disputed claim shall be recorded unless the ~~the~~ parties have waived the evidentiary hearing and entered into a stipulation resolving the issues pending before the appeals referee, hearing officer, or other employee assigned to make the ~~decision,~~decision. The appeals referee, hearing officer, or other employee assigned to make the decision may either accept or reject the stipulation. If the stipulation is rejected, the parties may appeal the decision to the Board of Review. ~~but~~ If the testimony is recorded, it need not be transcribed unless the disputed claim is further appealed and, one or more of the parties objects, under such rules as the Division may adopt, to being provided a copy of the tape recording of the hearing. Any other provisions of this Chapter notwithstanding, any individual receiving the transcript shall pay to the Division such reasonable fee for the transcript as the Division may by regulation provide. The fee so prescribed by the Division for a party shall not exceed the lesser of

sixty-five cents (65¢) per page or sixty-five dollars ($65.00) per transcript. The Division may by regulation provide for the fee to be waived in such circumstances as it in its sole discretion deems appropriate but in the case of an appeal in forma pauperis supported by such proofs as are required in G.S. 1-110, the Division shall waive the fee."

SECTION 2.(e) This section becomes effective November 1, 2012.

PART III. COMPLIANCE WITH THE TRADE ADJUSTMENT ASSISTANCE EXTENSION ACT OF 2011: NEW HIRE DIRECTORY

SECTION 3.(a) G.S. 110-129.2(c) reads as rewritten:

"(c) Report Contents. – Each report required by this section shall contain the name, address, ~~and~~ social security number of the newly hired employee, the date services for remuneration were first performed by the newly hired employee, and the name and address of the employer and the employer's identifying number assigned under section 6109 of the Internal Revenue Code of 1986 and the employer's State employer identification number. Reports shall be made on the W-4 form or, at the option of the employer, an equivalent form, and may be transmitted magnetically, electronically, or by first-class mail."

SECTION 3.(b) G.S. 110-129.2(j) is amended by adding a new subdivision to read:

"(j) Definitions. – As used in this section, unless the context clearly requires otherwise, the term:

...

(5) "Newly hired employee" means both an employee who has not previously been employed by the employer as well as an employee who was previously employed by the employer but has been separated from such prior employment for at least 60 consecutive days."

SECTION 3.(b) This section becomes effective July 1, 2012.

PART IV. EFFECTIVE DATES

SECTION 4. Except as otherwise provides, this act is effective when it becomes law.

Bill Draft 2011-RBz-20A: Unemployment Insurance Changes.

2011-2012 General Assembly

Committee:	Revenue Laws Study Committee	**Date:**	May 1, 2012
Introduced by:		**Prepared by:**	Cindy Avrette
Analysis of:	2011-RBz-20A		Committee Counsel

SUMMARY: 2011-RBx-20 includes several changes to the unemployment laws that fall within these three categories:

- ***The extension of the three-year look-back period from January 1, 2012, to January 1, 2013.***
- ***The resolution of outstanding issues associated with S. L. 2011-401, Senate Bill 532.***
- ***The statutory change required to comply with the federal Trade Adjustment Assistance Extension Act of 2011 this year.***

CHANGE IN THE LAW TO CONTINUE THE THREE-YEAR LOOK-BACK TRIGGER FOR EXTENDED BENEFIT

There are two permanent benefit programs required by federal law: regular unemployment benefits and extended benefits.[1] Regular unemployment benefits are fully funded by the State through its State Unemployment Insurance Trust Fund and claimants in North Carolina are eligible to receive benefits for up to 26 weeks under it. Extended benefits are available in a state when the state is experiencing high levels of unemployment.[2] The program is funded 50% by state contributions and 50% by the federal government. However, the federal government has paid 100% of the extended benefit claims since February 22, 2009.[3]

Extended benefits are triggered in a state when the unemployment rate is at least 6.5% and at least 10% higher than it was at the same time in either of the past two calendar years; this two-year window is known as the "two-year look-back". In the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010[4], Congress allowed states to amend their laws to temporarily increase the two-year look-back period to a three-year look-back period. This measure enabled more states to offer extended benefits. Under the 2010 legislation, the temporary measure ended December 31, 2011. However, Congress extended the temporary measure twice.[5] It is currently set to expire December 31, 2012.

North Carolina changed the law to permit a three-year look-back in S.L. 2011-145, Section 6.16. This provision expired January 1, 2012. *Legislative Proposal #2* would extend the sunset from January 1, 2012, until January 1, 2013. In North Carolina, extended benefits will not be allowed for claim weeks

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[1] Congress enacted Emergency Unemployment Compensation in 2008, known as EUC08. These benefits are fully payable by the federal treasury.

[2] In North Carolina, a claimant may receive up to 20 weeks of extended benefits.

[3] P.L. 111-5, Sec. 2005, approved February 19, 2009, *American Recovery and Reinvestment Act of 2009.* The provision has been extended several times in other federal legislation. The current expiration date for federal funding of extended benefits is December 31, 2012.

[4] P.L.111-312, approved December 17, 2010.

[5] P.L. 112-78, approved December 23, 2011, *Temporary Payroll Tax Cut Continuation Act of 2011.* P.L. 112-96, approved February 22, 2012, *The Middle Class Tax Relief and Job Creation Act of 2012.*

later than May 12, 2012, because the State's unemployment rate has fallen below the trigger. However, it is possible the extended benefits may trigger back "on" before the end of the year.

The Governor ordered the Employment Security Commission to use the three-year look-back in Executive Order 93, dated June 3, 2011. The Governor ordered the Division of Employment Security to use the three-year look-back in Executive Order 113, dated January 11, 2012. Although the Executive Orders purport to give the Governor the authority to make this change, the federal law clearly states that a "State may by law" provide for the temporary look-back extension.[6] *Legislative Proposal #2*, finds that the Governor did not have the authority under federal law, the North Carolina Constitution, or Chapter 96 of the North Carolina General Statutes to change the look-back period.

RESOLUTION OF OUTSTANDING ISSUES FROM S.L. 2011-401, SENATE BILL 532

The General Assembly enacted Senate Bill 532 on July 26, 2012. The Senate passed the bill on June 2, 2011, by a vote of 43 to 5. The House passed the bill on June 15, 2011, by a vote of 104 to 12. Senate Bill 532 had four operative parts:

- It created the Division of Employment Security within the Department of Commerce and transferred the functions of the Employment Security Commission to that Division.
- It made the Division subject to rulemaking under Article 2A of chapter 150B of the General Statutes.
- It made substantive changes to the employment security laws.
- It made conforming changes to the employment security laws.

On June 30, 2011, the Governor vetoed the bill. In the Governor's Objections and Veto Message, she stated the U.S. Department of Labor informed the administration that a lack of conformity between the bill and federal law could result in a loss of money for the State's unemployment insurance program and a reduction in the FUTA tax credit.[7] A state's law must conform to the provisions of the federal unemployment compensation laws in order for employers in a state to be eligible for a credit against the FUTA tax and for the state to be eligible to receive an administrative grant to operate its unemployment compensation programs.

The General Assembly overrode the Governor's veto on July 26, 2011.[8] After passage of the bill, the Employment Security Commission informed the General Assembly by a letter dated October 12, 2011, of its intention to suspend the provisions of the bill determined by the U.S. Department of Labor to be noncompliant with federal law. G.S. 96-19(b) gives the Division of Employment Security the authority to suspend enforcement of a provision upon receiving notification from the U.S. Department of Labor that the provision is noncompliant with the requirements of federal law. The suspension may be in effect until the Legislature next has an opportunity to reconsider the provisions purported to be noncompliant with federal law.

Legislative Proposal #2 addresses the areas of concern noted by the U.S. Department of Labor:

- Senate Bill 532 expanded the time for an employer to provide information required to protest a claim from 10 days to 30 days. The U.S. Department of Labor noted that the extension of time

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[6] P. L. 11-312, approved December 2010, Sec. 502, *Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010.*

[7] The FUTA tax rate is 6% and is imposed on wages up to $7,000 a year. Federal law provides a credit against the tax liability of up to 5.4% to employers who pay state taxes timely under an approved state unemployment insurance program. The 2012 effective FUTA tax rate for NC employers is 0.9%, which is approximately $63 per employee.

[8] The Senate voted to override the veto on July 13, 2011, by a vote of 31 to 17. The House voted to override the veto on July 26, 2011, by a vote of 72 to 47.

would make it virtually impossible for the agency to make timely determinations under the standards set by federal regulations.[9]

- An individual is totally disqualified from receiving benefits if the Division of Employment Security determines the individual was discharged for misconduct connected with the work. Senate Bill 532 expanded the definition of "misconduct connected with the work" to include both of the following:
  - Arrest for or conviction of certain offenses. The U.S. Department of Labor noted that the new definition did not require that the criminal conduct be connected with the individual's work.
  - Failure to adequately perform employment duties after being warned. The U.S. Department of Labor noted that, in order to be the basis for a disqualification to receive unemployment benefits, unsatisfactory job performance must be the result of intentional behavior or gross negligence, and must be egregious.
- Senate Bill 532 allowed the parties to tender stipulation of the ultimate issues in cases pending on appeal to the agency. The U.S. Department of Labor noted that while a stipulation of facts might be acceptable, a stipulation of the issues vitiates the agency's federally-mandated responsibility to apply the unemployment law to specific facts. The Department also recommended that any procedure or process by which an appeals referee or hearing officer accepts a stipulation of fact should be recorded.

Senate Bill 532 created a Board of Review[10] to determine appeals policies and procedures and to hear appeals arising from the decisions and determinations of the Employment Security Section and the Employment Insurance Section. The annual salaries of the three-person board are to be set by the General Assembly in the current Operations Appropriations Act. The Current Operations and Capital Improvements Appropriations Act of 2011 did not set the salaries for the members of the Board of Review. *Legislative Proposal #2* provides that the current Operations Appropriations Act of 2012 must provide for the annual salaries of the Board of Review, as provided in G.S. 96-4(b).

COMPLIANCE WITH THE TRADE ADJUSTMENT ASSISTANCE EXTENSION ACT OF 2011

In 2002, the United States General Accounting Office issued a report on the unemployment insurance program and the need for an increased focus on program integrity. The focus of President Obama's Executive Order 13520, issued November 23, 2009, was the reduction of improper payments in major programs administered by the federal government, including the unemployment insurance program. In response to the level of improper payments in the unemployment insurance program, the U.S. Department of Labor developed a strategic plan to address the root causes of improper payments. The plan involves new performance measures for the states; increased funding of new tools and technology; and a focus on the root causes leading to improper payments. The three identified root causes leading to improper payments are:

- A gap in employment service registration.
- Claimants continuing to claim benefits after returning to work.
- Untimely and insufficient separation information from employers and third party administrators.

[9] For most intrastate claims, federal regulations require that a state pay at least 87% of its claims within 14 days of the end of the first compensable week, or 21 days for states that do not have a waiting week requirement, and 93% of such claims within 35 days.

[10] G.S. 96-4(b).

As part of the increased focus on program integrity, the U.S. Department of Labor recommended legislative language to Congress in June of 2011. In October 2011, three key integrity provisions recommended by the Department were enacted as part of the Trade Adjustment Assistance Extension Act of 2011. *Legislative Proposal #2* includes the statutory change North Carolina must make to be in conformity with the program integrity provisions this year. States have until October 21, 2013, to enact the other two conforming changes; those changes are not included in this proposal.

The New Hire Directory was created years ago to assist states with the collection of child support payments. The Directory is administered by the Department of Health and Human Services. The directory is also a valuable tool for unemployment insurance programs because it allows an agency to cross-check claimants with new hires. This information assists the agency with the detection of overpayments being made to individuals who have returned to work. To address the gap in employment service registration, the Trade Adjustment Assistance Extension Act of 2011 requires states to expand the definition of a 'newly hired employee' to include a rehired employee who was separated for at least 60 days. It also requires employers to enter the start date of employment when the employer submits the information to the New Hire Directory. States are required to make the necessary statutory changes to its New Hire Directory provisions within two months after the latest legislative session ends. *Legislative Proposal #2* includes the necessary changes.

The other two changes, which do not have to be made before October 2013, are not included in this proposal. The first of those two changes addresses claimants who fraudulently continue to accept unemployment benefits after returning to work by requiring the states to impose a penalty on the claimant equal to 15% of the amount of an erroneous overpayment if it determines the overpayment is due to fraud. The money collected from the penalty is payable to the State Unemployment Trust Fund and its use is limited to the payment of unemployment compensation benefits. The second of those two changes addresses the untimely and insufficient separation information provided by employers and third party administrators to the agencies by requiring states to enact a provision prohibiting the non-charging of employer's unemployment insurance account when an improper payment is made because of the employer's failure to respond timely or adequately to a written request for separation information. This provision points to a trend whereby employers are expected to improve the quality of information provided to state employment agencies at the front end of the unemployment insurance claim process, rather than waiting until a hearing to provide details.

2011-RBz-20A-SMRB-118 v1

NORTH CAROLINA GENERAL ASSEMBLY
Legislative Services Office

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Gerry Cohen
Director

April 30, 2011

TO: Revenue Law Study Committee
FROM: Gerry Cohen, Director of Legislative Drafting
SUBJECT: Validity of Executive Order 113 extending Unemployment Benefits

I have been asked whether Executive Order 113 is sufficient under federal law to constitute approval of extended unemployment benefits, and whether it is valid under our State Constitution. It is my opinion that the Executive Order of the Governor is not sufficient under either State or federal law as outlined below to trigger a benefit extension.

Executive Order 113 was promulgated as a result of P.L. 112-78, which extended certain unemployment benefits from December 31, 2011 to February 29, 2012. Section 201(a)(4) of P.L. 112-78 contains the operative language amending Section 203(f) of the Federal-State Unemployment Compensation Act of 1970. Section 201(c) of P.L. 112-78 states that the act becomes effective as if it had been included in P.L. 111-312. Section 502(b) of Title V of PL 111-312, the "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010". That act authorized through 12/31/2011 (and now through 2/29/2012 as provided by P.L. 112-78) the extension of benefits, provides that the extension in a particular state is made only as "***the State may by law provide***" (emphasis added). This language appears twice in that federal law. Section 502(b) is an amendment to Section 203(f) of the Federal-State Unemployment Compensation Act of 1970, P.L. 91-371 as amended. Section 205(f) of that act provides that "State law" is the "unemployment compensation law of the State, approved by the Secretary of Labor." In North Carolina, that law is Chapter 96 of the General Statutes, the "Employment Security Law".

Executive Order 113 recites that Section 6.16 of S.L. 2011-145 "codified" Executive Order 93, which was a similar executive order in 2011 that attempted to extend unemployment benefits without legislative action. EO 113 notes that both Executive Order 93 and Section 6.16 of S.L. 2011-145 expired 12/31/2011. Rather than concluding as does EO 113 that Section 6.16 somehow recognized or validated EO 93, it is my opinion that in fact the enactment of Section 6.16 indicates that the General Assembly did NOT recognize that EO 93 has independent validity. Section 6.16 does not mention EO 93.

In our State constitutional scheme "laws" are made only by the General Assembly. Article II, Section 22 provides that public bills, upon executive approval or override, become law. Numerous other provisions of the State Constitution provide that the General Assembly enacts laws, and Article II Section 1 provides that "The legislative power of the State shall be vested in the General Assembly, while Article I, Section 6 provides that the legislative and executive powers are "...separate and distinct..." Furthering the conclusion that Congress intended for "State law" to be made by the legislature of each state is Section 207(c) of the Federal-State Unemployment Compensation Act of 1970, which provided a special exception for States whose legislatures did not meet in regular session during 1971. Congress in the

amended 1970 legislation has clearly provided that the decision in each state is a legislative power, not an executive one. The General Assembly makes laws, not the executive branch.
The legal underpinning of the executive order is quoted and analyzed as follows, with my comments underlined and italicized:

1. Whereas, Article III, Section 1 of the State Constitution invests the executive power of the State in the Governor; *While the executive power of the State is vested in the Governor, by federal law and our State Constitution only legislative power is involved.*
2. Whereas, North Carolina General Statute §143-4 provides that the Governor, in accordance with Article III of the Constitution of North Carolina, is the Chief Executive Officer of the State and is responsible for formulating and administering the policies of the executive branch of the State government; *While the Governor is responsible for the policies of the executive branch, this has no relevance.*
3. Whereas, the Governor is the sole official liaison between the government of this State and the government of the United States; *I know of no legal basis for this conclusion, and even if it is so it has no relevance.*
4. Whereas, the Governor is the sole signatory for the State on agreements and contracts with the United States Department of Labor; *Whether true or not this has no relevance.*
5. Whereas, the North Carolina Department of Commerce Division of Employment Security ... is an agency of the executive branch of North Carolina state government and subject to the policies formulated and administered by the Governor, and is authorized by N.C. Gen. Stat. Chapter 96 to administer the extended benefits program in the State of North Carolina; *It is true that it is an agency of the executive branch and that she is given the power under N.C. Gen. Stat. Chapter 96 to administer the extended benefits program, but the issue is not an executive power of administration but a legislative power as to what the benefits are.*
6. Whereas, based upon the aforementioned provisions of the North Carolina Constitution and the North Carolina General Statutes, I hereby choose to exercise my authority because the extended benefits addressed by this Executive Order are federal funds that are being made available to the State of North Carolina by the United States Department of Labor without the need for any appropriation of state funds by the North Carolina General Assembly. *This is conclusory and in fact is not based on actual powers of the Governor under State and federal law.*

While I recognize that the U.S. Department of Labor in 2011 recognized the validity of EO 93 and began the benefits extension prior to approval of the General Assembly, I am of the opinion that such actions were not authorized by either federal law or the laws of our State.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

BILL DRAFT 2011-TDxz-17 [v.7] (03/01)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/1/2012 1:29:56 PM

Short Title:	Extend Tax Provisions.	(Public)
Sponsors:	Representative.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE SUNSET OF CERTAIN TAX PROVISIONS AS PROPOSED BY THE REVENUE LAWS STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of S.L. 2009-505 reads as rewritten:

"**SECTION 2.** This act is effective when it becomes law and expires ~~July 1, 2012.~~July 1, 2013."

SECTION 2. G.S. 105-129.16D(d) reads as rewritten:

"(d) Sunset. – This section is repealed effective for facilities placed in service on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 3. G.S. 105-129.16F(b) reads as rewritten:

"(b) Sunset. – This section is repealed for taxable years beginning on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 4. G.S. 105-129.16G(b) reads as rewritten:

"(b) Sunset. – This section expires for taxable years beginning on or after ~~January 1, 2012.~~January 1, 2014."

SECTION 5. G.S. 105-129.16I(c) reads as rewritten:

"(c) Sunset. – This section is repealed effective for a renewable energy property facility placed in service on or after ~~January 1, 2014.~~January 1, 2014."

SECTION 6. G.S. 105-129.82(a) reads as rewritten:

"(a) Sunset. – This Article is repealed effective for business activities that occur on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 7.(a) G.S. 105-130.48(f) reads as rewritten:

"(f) Sunset. – This section is repealed effective for taxable years beginning on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 7.(b) G.S. 105-151.30(f) reads as rewritten:

"(f) Sunset. – This section is repealed effective for taxable years beginning on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 8. G.S. 105-151.28(d) reads as rewritten:

"(d) Sunset. – This section is repealed for taxable years beginning on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 9. G.S. 105-151.31(c) reads as rewritten:

"(c) Sunset. – This section is repealed effective for taxable years beginning on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 10. G.S. 105-131.32(c) reads as rewritten:

"(c) Sunset. – This section is repealed effective for taxable years beginning on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 11. G.S. 105-163.015 reads as rewritten:

"**§ 105-163.015. Sunset.**

This Part is repealed effective for investments made on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 12.(a) G.S. 105-164.14A(a) reads as rewritten:

"(a) Refund. – The following taxpayers are allowed an annual refund of sales and use taxes paid under this Article:

(1) **(Repealed for purchases made on or after January 1, 2013)** Passenger air carrier. – An interstate passenger air carrier is allowed a refund of the sales and use tax paid by it on fuel in excess of two million five hundred thousand dollars ($2,500,000). The amount of sales and use tax paid does not include a refund allowed to the interstate passenger air carrier under G.S. 105-164.14(a). This subdivision is repealed for purchases made on or after ~~January 1, 2013.~~January 1, 2014.

(2) Major recycling facility. – An owner of a major recycling facility is allowed a refund of the sales and use tax paid by it on building materials, building supplies, fixtures, and equipment that become a part of the real property of the recycling facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner.

(3) Business in low-tier area. – A taxpayer that is engaged primarily in one of the businesses listed in G.S. 105-129.83(a) in a development tier one area and that places machinery and equipment in service in that area is allowed a refund of the sales and use tax paid by it on the machinery and equipment. For purposes of this subdivision, "machinery and equipment" includes engines, machinery, equipment, tools, and implements used or designed to be used in one of the businesses listed in G.S. 105-129.83, capitalized for tax purposes under the Code, and not leased to another party. Liability incurred indirectly by the taxpayer for sales and use taxes on these items is considered tax paid by the taxpayer. The sunset for Article 3J of Chapter 105 of the General Statutes for development tier one areas applies to this subdivision.

(4) **(Repealed for purchases made on or after January 1, 2013)** Motorsports team or sanctioning body. – A professional motorsports racing team, a motorsports sanctioning body, or a related member of such a team or body is allowed a refund of the sales and use tax paid by it in this State on aviation fuel that is used to travel to or from a motorsports event in this State, to travel to a motorsports event in another state from a location in this State, or to travel to this State from a motorsports event in another state. For purposes of this subdivision, a "motorsports event" includes a motorsports race, a motorsports sponsor event, and motorsports testing. This subdivision is repealed for purchases made on or after ~~January 1, 2013.~~January 1, 2014.

(5) **(Repealed for purchases made on or after January 1, 2014)** Professional motorsports team. – A professional motorsports racing team or a related member of a team is allowed a refund of fifty percent (50%) of the sales and use tax paid by it in this State on tangible personal property, other than tires or accessories, that comprises any part of a professional motorsports vehicle.

For purposes of this subdivision, "motorsports accessories" includes instrumentation, telemetry, consumables, and paint. This subdivision is repealed for purchases made on or after January 1, 2014.

(6) **(Repealed for purchases made on or after January 1, 2013)** Analytical services business. – A taxpayer engaged in analytical services in this State is allowed a refund of sales and use tax paid by it. This subdivision is repealed for purchases made on or after ~~January 1, 2013.~~January 1, 2014. The amount of the refund is the greater of the following:

a. Fifty percent (50%) of the eligible amount of sales and use tax paid by it on tangible personal property that is consumed or transformed in analytical service activities. The eligible amount of sales and use tax paid by the taxpayer in this State is the amount by which sales and use tax paid by the taxpayer in this State in the fiscal year exceed the amount paid by the taxpayer in this State in the 2006-2007 State fiscal year.

b. Fifty percent (50%) of the amount of sales and use tax paid by it in the fiscal year on medical reagents.

(7) **(Repealed for purchases made on or after January 1, 2038)** Railroad intermodal facility. – The owner or lessee of an eligible railroad intermodal facility is allowed a refund of sales and use tax paid by it under this Article on building materials, building supplies, fixtures, and equipment that become a part of the real property of the facility. Liability incurred indirectly by the owner or lessee of the facility for sales and use taxes on these items is considered tax paid by the owner or lessee. This subdivision is repealed for purchases made on or after January 1, 2038."

SECTION 12.(b) G.S. 105-164.14B(f) reads as rewritten:

"(f) Sunset. – This section is repealed for sales made on or after ~~January 1, 2013.~~January 1, 2014."

SECTION 13. This act is effective when it becomes law.

Bill Draft 2011-TDxz-17: Extend Tax Provisions.

2011-2012 General Assembly

Committee:	Revenue Laws Study Committee	**Date:**	May 2, 2012
Introduced by:		**Prepared by:**	Heather Fennell
Analysis of:	2011-TDxz-17		Committee Counsel

SUMMARY: The proposed draft extends several tax provisions.

BILL ANALYSIS: It is anticipated that major tax reform will be undertaken during the 2013 session of the General Assembly. This act extends the following provisions in order to maintain the current state of the North Carolina tax code until comprehensive tax reform can be accomplished.

Section 1: Extends the tier one designation for seafood industrial parks through July 1, 2013.

Sections 2-11: Extends the following tax credits through January 1, 2014:

2. Tax credit for renewable fuel facilities.
3. Tax credit for biodiesel producers.
4. Work opportunity tax credit.
5. Tax credit for renewable energy property facilities.
6. Article 3J tax credits.
7. Tax credit for recycling oyster shells.
8. Tax credit for premiums on long-term care insurance.
9. Refundable earned income tax credit.
10. Tax credit for adoption expenses.
11. Tax credit for qualified business ventures.

Section 12: Extends the following sales tax refunds through January 1, 2014:

- Passenger air carriers
- Machinery and equipment place in a tier 1 county.
- Aviation fuel for motorsports team of sanctioning body.
- Analytical services.
- Certain industrial facilities.

EFFECTIVE DATE: This act is 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. 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. Periodic review of tax credits 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.

2011-TDxz-17-SMTD-112 v4

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

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 2, 2012

TO: Revenue Laws Study Committee

FROM: Jonathan Tart, Rodney Bizzell, and Sandra Johnson
Fiscal Research Division

RE: Extend Tax Code Sunsets

FISCAL IMPACT ($millions)

	Yes (x)	No ( )	No Estimate Available ( )		
	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES:					
General Fund:	**$0**	**-$0.8**	**-$135.8**	**-$14.3**	**$-14.3**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Dept. of Revenue

EFFECTIVE DATE: Effective when it becomes law

BILL SUMMARY: This proposal would extend the expiring tax expenditures listed in the chart below:

	Repeal Date	FY 13/14 Revenue Loss
Income Tax Credits:		
o Work opportunity tax credit	01/01/2012	$800,000
o Tax credit for constructing renewable fuel facilities	01/01/2013	$100,000
o Tax credit for biodiesel producers (motor fuel excise tax)	01/01/2013	$100,000
o Tax credit for renewable energy property facility	01/01/2013	$0
o Article 3J tax credits		
- Credit for Creating Jobs	01/01/2013	$1,000,000
- Credit for Investing in Business Property	01/01/2013	$5,100,000
- Credit for Investing in Real Property	01/01/2013	$300,000
o Tax credit for qualified business ventures	01/01/2013	$7,500,000
o Tax credit for recycling oyster shells	01/01/2013	$100,000
o Tax credit for premiums paid on long-term care insurance	01/01/2013	$5,800,000
o Tax credit for adoption expenses	01/01/2013	$5,400,000
o Refundable earned income tax credit	01/01/2013	$102,500,000
Sales Tax Refunds:		
o Sales tax refund for passenger air carriers	01/01/2013	$6,000,000
o Sales tax refund for machinery and equipment placed in a tier one county	01/01/2013	$200,000
o Sales tax refund for aviation fuel of motorsports team or sanctioning body	01/01/2013	$100,000
o Sales tax refund for analytical services business	01/01/2013	$100,000
o Sales tax refund for certain industrial facilities	01/01/2013	$700,000
Total:		$135,800,000

The work opportunity tax credit was repealed for 2012. The proposal would reinstate the credit for 2012 and schedule its repeal for 2014. The other provisions are scheduled for repeal in 2013. The proposal extends the repeal date for one year to 2014.

ASSUMPTIONS AND METHODOLOGY:
The estimated impact for the income and sales tax provisions is based on data obtained from the Department of Revenue. The fiscal impact shown for FY 14/15 and FY 15/16 is due to the extension of the Article 3J tax credits. The Article 3J tax credits are taken in installments that don't begin until the tax year following the year generated and are subject to carry-forward provisions. Consequently, the fiscal impact for a one year extension of Article 3J is spread out over a 10-year period.

SOURCES OF DATA: NC Department of Revenue

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

U D

BILL DRAFT 2011-TMz-10A [v.1] (04/11)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/1/2012 3:03:05 PM

Short Title: Appraisal Mgmt Co Reported to Dept of Revenue. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE NORTH CAROLINA APPRAISAL BOARD TO REPORT THE RECORDS OF APPRAISAL MANAGEMENT COMPANIES TO THE NORTH CAROLINA DEPARTMENT OF REVENUE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93E-2-9 is amended by adding the following new subsection to read:

"**§ 93E-2-9. Records.**

(a) The Board shall maintain a list of all applicants for registration under this Article that includes for each applicant the date of application, the name and primary business location of the applicant, and whether the registration was granted or refused.

(b) The Board shall maintain a current roster showing the names and places of business of all registered appraisal management companies that lists the appraisal management companies' respective officers and directors. The rosters shall: (i) be kept on file in the office of the Board; (ii) contain information regarding all orders or other action taken against the company, its officers, and other persons; and (iii) be open to public inspection.

(b1) The Board shall report annually to the Department of Revenue the following information about registered appraisal management companies:

(1) Name and name used to do business in the State.

(2) Main address of company.

(3) Name and address of agent for service of process in the State if not domiciled in the State.

(4) Legal structure, such as domestic corporation, foreign corporation, domestic partnership, or foreign partnership.

(5) Employer identification number or social security number.

(6) Secretary of State identification number if required.

(c) Every registered appraisal management company shall maintain the accounts, correspondence, memoranda, papers, books, and other records related to services provided by the appraisal management company as prescribed in rules adopted by the Board, including in electronic form. All records shall be preserved for five years unless the Board, by rule, prescribes otherwise for particular types of records.

(d) If the information contained in any document filed with the Board is or becomes inaccurate or incomplete in any material respect, the appraisal management company shall promptly file a correcting amendment to the information contained in the document."

SECTION 2. Section 1 of this act becomes effective December 1, 2012. The remainder of this act is effective when it becomes law.

Bill Draft 2011-TMz-10A: Appraisal Mgmt Co Reported to Dept of Revenue.

2011-2012 General Assembly

Committee:		**Date:**	May 2, 2012
Introduced by:		**Prepared by:**	Greg Roney
Analysis of:	2011-TMz-10A		Committee Counsel

SUMMARY: The Bill Draft would require the NC Appraisal Board to report annually to the NC Department of Revenue the following information about registered appraisal management companies: name, address, process agent if any, type of entity, employer identification number or social security number, and NC Secretary of State identification number if any.

CURRENT LAW: S.L. 2010-141 added a new Article 2 in Chapter 93E to regulate real estate appraisal management companies. G.S. 93E-2-1 requires appraisal management companies meet certain requirements and register with the Appraisal Board beginning January 1, 2011.

S.L. 2010-141 defines an appraisal management company as an entity that uses a network of licensed appraisers who are independent contractors to perform appraisals. Additionally, the appraisal management company must administer the network of appraisers including recruiting appraisers, negotiating fees and contracts with the appraisers, and conducting quality control of the appraisals.

All of the information the Bill Draft would require the Appraisal Board to report is already disclosed when an appraisal management company registers.

Under G.S. 93E-2-9(b), the public records of the Appraisal Board include the roster showing the names, places of business, and listing of officers and directors of all registered appraisal management companies.

BILL ANALYSIS: The Bill Draft would require the Appraisal Board to report annually to the Department of Revenue information collected from appraisal management companies during the registration process. Specifically, the Bill Draft would require the following information be reported annually to the Department of Revenue: name, address, process agent if any, type of entity, employer identification number or social security number, and NC Secretary of State identification number if any.

BACKGROUND: Federal regulations adopted in response to the housing crisis led to the growth of appraisal management companies. The Appraisal Board has approximately 140 registered appraisal management companies. Only 6 of the 140 are NC companies. The out-of-state companies owe State income tax on the appraisal work conducted within the State.

The purpose of the Bill Draft is to insure out-of-state appraisal management companies are paying NC taxes. The Department of Revenue could use the information from the Appraisal Board to check the filing status of registered appraisal management companies.

EFFECTIVE DATE: The Bill Draft would be effective December 1, 2012.

2011-TMz-10A-SMTM-63 v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

U D

BILL DRAFT 2011-SVxz-13 [v.14] (03/05)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/1/2012 4:46:31 PM

Short Title: Revenue Laws Tech., Clarifying, & Admin Chngs. (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:

PART I. TECHNICAL CHANGES

SECTION 1.1 G.S. 105-130.5(b) reads as rewritten:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

...

(14) The amount by which the basis of a depreciable asset is required to be reduced under the Code for federal tax purposes because of a tax credit allowed against the corporation's federal income tax ~~liability.~~ liability or because of a grant allowed under section 1603 of the American Recovery and Reinvestment Tax Act of 2009, P.L. 111-3. This deduction may be claimed only in the year in which the Code requires that the asset's basis be reduced. In computing gain or loss on the asset's disposition, this deduction shall be considered as depreciation.

..."

SECTION 1.2. 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, digital property, and services are specifically exempted from the tax imposed by this Article:

...

(11) Any of the following fuel:

a. Motor fuel, as ~~defined in G.S. 105-449.60,~~ taxed in Article 36C, except motor fuel for which a refund of the per gallon excise tax is allowed under G.S. 105 449.105A or G.S. 105 449.107.

b. Alternative fuel taxed under Article 36D of this Chapter, unless a refund of that tax is allowed under G.S. 105 449.107.

...

(49) Installation charges when the charges are separately stated on the invoice or similar billing document given to the purchaser at the time of sale.

(49a) Delivery charges for delivery of direct mail if the charges are separately stated on an invoice or similar billing document given to the ~~purchaser.~~purchaser at the time of sale.

..."

SECTION 1.3. The title of Article 5F of Chapter 105 of the General Statutes reads as rewritten:

"Article 5F.

~~Manufacturing Fuel and~~ Certain Machinery and Equipment."

SECTION 1.4. The catchline of G.S. 105-187.70, as enacted by Section 6 of S.L. 2011-122, reads as rewritten:

"**§ 105-187.70. Department comply with Article 43 of Chapter 62A of the General Statutes.**"

SECTION 1.5.(a) G.S. 105-228.90(b)(1b) reads as rewritten:

"(1b) Code. – The Internal Revenue Code as enacted as of ~~January 1, 2011,~~ January 1, 2012, including any provisions enacted as of that date that become effective either before or after that date."

SECTION 1.5.(b) This section is effective when it becomes law. Notwithstanding subsection (a) of this section, any amendments to the Internal Revenue Code enacted after January 1, 2011, that increase North Carolina taxable income for the 2011 taxable year become effective for taxable years beginning on or after January 1, 2012.

SECTION 1.6. G.S. 105-263(a) reads as rewritten:

"(a) Mailed Document. ~~Section~~ Sections 7502 and 7503 of the Code ~~governs~~ govern when a return, report, payment, or any other document that is mailed to the Department is timely filed."

SECTION 1.7. G.S. 105-277.1F(a)(1) reads as rewritten:

"(a) Scope. – This section applies to the following deferred tax programs:

(1) ~~G.S. 105-275(12)f., real property held for future transfer to government unit for conservation purposes.~~G.S. 105-275(12), real property owned by a nonprofit corporation held as a protected natural area."

SECTION 1.8. G.S. 105-468 reads as rewritten:

"**§ 105-468. Scope of use tax.**

The use tax authorized by this Article is a tax at the rate of one percent (1%) of the cost price of each item or article of tangible personal property that is not sold in the taxing county but is used, consumed, or stored for use or consumption in the taxing county. The tax applies to the same items that are subject to tax under G.S. 105-467.

Every retailer who is engaged in business in this State and in the taxing county and is required to collect the use tax levied by G.S. 105-164.6 shall collect the one percent (1%) use tax when the property is to be used, consumed, or stored in the taxing county. The use tax contemplated by this section shall be levied against the purchaser, and the purchaser's liability for the use tax shall be extinguished only upon payment of the use tax to the retailer, where the retailer is required to collect the tax, or to the Secretary, where the retailer is not required to collect the tax.

Where a local sales or use tax has been paid with respect to tangible personal property by the ~~purchaser, either~~ purchaser in another taxing county within the State, or where a local sales or use tax was due and has been paid in a taxing jurisdiction outside the State where the purpose of the tax is similar in purpose and intent to the tax which may be imposed pursuant to this Article, the tax paid may be credited against the tax imposed under this section by a taxing county upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due the taxing county under this section, the purchaser shall pay to the Secretary an amount equal to the difference between the amount so paid in the other taxing county or jurisdiction and the amount due in the taxing county. The Secretary may require such proof of

payment in another taxing county or jurisdiction as is deemed to be necessary. The use tax levied under this Article is not subject to credit for payment of any State sales or use tax not imposed for the benefit and use of counties and municipalities. No credit shall be given under this section for sales or use taxes paid in a taxing jurisdiction outside this State if that taxing jurisdiction does not grant similar credit for sales taxes paid under this Article."

SECTION 1.9. G.S. 160A-536(e)(2) reads as rewritten:

"(2) The city must receive a petition signed by at least sixty percent (60%) of the lot owners of the owners' association requesting the city to establish a municipal service district for the purpose of paying the costs related to converting private residential streets to public streets. The executive board of an owners' association for which the city has received a petition under this subsection may transfer street-related common elements to the city, notwithstanding the provisions of either the North Carolina Planned Community Act in Chapter 47F of the General ~~Statutes,~~ Statutes or the North Carolina Condominium Act in Chapter 47C of the General Statutes, or related articles of declaration, deed covenants, or any other similar document recorded with the Register of Deeds."

SECTION 1.10.(a) G.S. 20-63 reads as rewritten:

"(b1) **(Effective until July 1, 2016)** The following special registration plates do not have to be a "First in Flight" plate as provided in subsection (b) of this section. The design of the plates that are not "First in Flight" plates must be approved by the Division and the State Highway Patrol for clarity and ease of identification. When the Division registers a vehicle or renews the registration of a vehicle on or after July 1, 2015, the Division must send the owner a replacement special license plate in a standardized format in accordance with subsection (b) of this section and G.S. 20-79.4(a3).

(1) Friends of the Great Smoky Mountains National Park.
(2) Rocky Mountain Elk Foundation.
(3) Blue Ridge Parkway Foundation.
(4) Friends of the Appalachian Trail.
(5) NC Coastal Federation.
(6) In God We Trust.
(7) Stock Car Racing Theme.
(8) Buddy Pelletier Surfing Foundation.
(9) Guilford Battleground Company.
(10) National Wild Turkey Federation.
(11) North Carolina Aquarium Society.
(12) First in Forestry.
(13) North Carolina Wildlife Habitat Foundation.
(14) NC Trout Unlimited.
(15) Ducks Unlimited.
(16) Lung Cancer Research.
(17) NC State Parks.
(18) Support Our Troops.
(19) US Equine Rescue League.
(20) Fox Hunting.
(21) Back Country Horsemen of North Carolina.
(22) Hospice Care.
(23) Home Care and Hospice.
(24) NC Tennis Foundation.
(25) AIDS Awareness.
(26) Donate Life.

(27) Farmland Preservation.
(28) Travel and Tourism.
(29) Battle of Kings Mountain.
(30) NC Civil War.
(31) North Carolina Zoological Society.
(32) United States Service Academy.
(33) Carolina Raptor Center.
(34) Carolinas Credit Union Foundation.
(35) North Carolina State Flag.
(36) NC Mining.
(37) Coastal Land Trust.
(38) ARTS NC.
(39) Choose Life.
(40) North Carolina Green Industry Council.
(41) NC Horse Council.
(42) Core Sound Waterfowl Museum and Heritage Center.
(43) Mountains-to-Sea Trail, Inc."

SECTION 1.9.(b) G.S. 20-79.7(a) reads as rewritten:

"**§ 20-79.7. Fees for special registration plates and distribution of the fees.**

(a) Fees. – Upon request, the Division shall provide and issue free of charge a single Legion of Valor, 100% Disabled Veteran, and Ex-Prisoner of War registration plate to a recipient of a Legion of Valor award, a 100% disabled veteran, and an ex-prisoner of war each year. The preceding special registration plates are subject to the regular motor vehicle registration fees in G.S. 20-88, if the registered weight of the vehicle is greater than 6,000 pounds. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
American Red Cross	$30.00
Animal Lovers	$30.00
Arthritis Foundation	$30.00
ARTS NC	$30.00
Back Country Horsemen of NC	$30.00
Boy Scouts of America	$30.00
Brenner Children's Hospital	$30.00
Carolina Raptor Center	$30.00
Carolinas Credit Union Foundation	$30.00
Carolinas Golf Association	$30.00
Coastal Conservation Association	$30.00
Coastal Land Trust	$30.00
Crystal Coast	$30.00
Daniel Stowe Botanical Garden	$30.00
El Pueblo	$30.00
Farmland Preservation	$30.00
First in Forestry	$30.00
Girl Scouts	$30.00
Greensboro Symphony Guild	$30.00
Historical Attraction	$30.00
Home Care and Hospice	$30.00
Home of American Golf	$30.00
HOMES4NC	$30.00
Hospice Care	$30.00

1	In God We Trust	$30.00
2	Maggie Valley Trout Festival	$30.00
3	Morgan Horse Club	$30.00
4	Mountains-to-Sea Trail	$30.00
5	NC Civil War	$30.00
6	NC Coastal Federation	$30.00
7	NC Veterinary Medical Association	$30.00
8	National Kidney Foundation	$30.00
9	North Carolina 4-H Development Fund	$30.00
10	North Carolina Emergency Management Association	$30.00
11	North Carolina Green Industry Council	$30.00
12	North Carolina Libraries	$30.00
13	Outer Banks Preservation Association	$30.00
14	Pamlico-Tar River Foundation	$30.00
15	P.E.O. Sisterhood	$30.00
16	Personalized	$30.00
17	Retired Legislator	$30.00
18	Ronald McDonald House	$30.00
19	Share the Road	$30.00
20	S.T.A.R.	$30.00
21	State Attraction	$30.00
22	Stock Car Racing Theme	$30.00
23	Support NC Education	$30.00
24	Support Our Troops	$30.00
25	Sustainable Fisheries	$30.00
26	Toastmasters Club	$30.00
27	Topsail Island Shoreline Protection	$30.00
28	Travel and Tourism	$30.00
29	AIDS Awareness	$25.00
30	Buffalo Soldiers	$25.00
31	Choose Life	$25.00
32	Collegiate Insignia	$25.00
33	First in Turf	$25.00
34	Goodness Grows	$25.00
35	High School Insignia	$25.00
36	Kids First	$25.00
37	National Multiple Sclerosis Society	$25.00
38	National Wild Turkey Federation	$25.00
39	NC Agribusiness	$25.00
40	NC Children's Promise	$25.00
41	Nurses	$25.00
42	Olympic Games	$25.00
43	Rocky Mountain Elk Foundation	$25.00
44	Special Olympics	$25.00
45	Support Soccer	$25.00
46	Surveyor Plate	$25.00
47	The V Foundation for Cancer Research Division	$25.00
48	University Health Systems of Eastern Carolina	$25.00
49	Alpha Phi Alpha Fraternity	$20.00
50	ALS Association, Jim "Catfish" Hunter Chapter	$20.00
51	ARC of North Carolina	$20.00

1	Audubon North Carolina	$20.00
2	Autism Society of North Carolina	$20.00
3	Battle of Kings Mountain	$20.00
4	Be Active NC	$20.00
5	Brain Injury Awareness	$20.00
6	Breast Cancer Earlier Detection	$20.00
7	Buddy Pelletier Surfing Foundation	$20.00
8	Concerned Bikers Association/ABATE of North Carolina	$20.00
9	Daughters of the American Revolution	$20.00
10	Donate Life	$20.00
11	Ducks Unlimited	$20.00
12	Greyhound Friends of North Carolina	$20.00
13	Guilford Battleground Company	$20.00
14	Harley Owners' Group	$20.00
15	Jaycees	$20.00
16	Juvenile Diabetes Research Foundation	$20.00
17	Kappa Alpha Order	$20.00
18	Litter Prevention	$20.00
19	March of Dimes	$20.00
20	~~Morgan Horse Club~~	~~$20.00~~
21	Native American	$20.00
22	NC Fisheries Association	$20.00
23	NC Horse Council	$20.00
24	NC Mining	$20.00
25	NC Tennis Foundation	$20.00
26	NC Trout Unlimited	$20.00
27	NC Victim Assistance	$20.00
28	NC Wildlife Federation	$20.00
29	NC Wildlife Habitat Foundation	$20.00
30	NC Youth Soccer Association	$20.00
31	North Carolina Master Gardener	$20.00
32	Omega Psi Phi Fraternity	$20.00
33	Phi Beta Sigma Fraternity	$20.00
34	Piedmont Airlines	$20.00
35	Prince Hall Mason	$20.00
36	Save the Sea Turtles	$20.00
37	Scenic Rivers	$20.00
38	School Technology	$20.00
39	SCUBA	$20.00
40	Soil and Water Conservation	$20.00
41	Special Forces Association	$20.00
42	Support Public Schools	$20.00
43	~~Sustainable Fisheries~~	~~$20.00~~
44	US Equine Rescue League	$20.00
45	USO of NC	$20.00
46	Wildlife Resources	$20.00
47	Zeta Phi Beta Sorority	$20.00
48	Carolina Regional Volleyball Association	$15.00
49	Carolina's Aviation Museum	$15.00
50	Leukemia & Lymphoma Society	$15.00
51	Lung Cancer Research	$15.00

NC Beekeepers	$15.00
Shag Dancing	$15.00
Active Member of the National Guard	None
100% Disabled Veteran	None
Ex-Prisoner of War	None
Gold Star Lapel Button	None
Legion of Valor	None
Purple Heart Recipient	None
All Other Special Plates	$10.00."

PART II. CLARIFYING AND ADMINISTRATIVE CHANGES

SECTION 2.1. G.S. 105-113.38 reads as rewritten:

"**§ 105-113.38. ~~Bond.~~Bond or irrevocable letter of credit.**

The Secretary may require a wholesale dealer or a retail dealer to furnish a bond in an amount that adequately protects the State from loss if the dealer fails to pay taxes due under this Part. A bond shall be conditioned on compliance with this Part, shall be payable to the State, and shall be in the form required by the Secretary. The Secretary shall proportion a bond amount to the anticipated tax liability of the wholesale dealer or retail dealer. The Secretary shall periodically review the sufficiency of bonds required of dealers, and shall increase the amount of a required bond when the amount of the bond furnished no longer covers the anticipated tax liability of the wholesale dealer or retail dealer. The Secretary shall decrease the amount of a required bond when the Secretary determines that a smaller bond amount will adequately protect the State from loss. For purposes of this section, a bond may also include an irrevocable letter of credit."

SECTION 2.2.(a) G.S. 105-113.107(1a) reads as rewritten:

"(1a) At the rate of three dollars and fifty cents ($3.50) for each gram, or fraction thereof, of marijuana, other than separated stems and stalks taxed under subdivision (1) of this ~~section.~~section, or synthetic cannabinoids."

SECTION 2.2.(b) This section is effective June 1, 2011.

SECTION 2.3. G.S. 105-120.2(c) reads as rewritten:

"(c) For purposes of this section, a "holding company" is a corporation that ~~receives~~ satisfies at least one of the following conditions:

(1) It has no assets other than ownership interests in corporations in which it owns directly or indirectly more than fifty percent (50%) of the outstanding voting stock or voting capital interests.

(2) It receives during its taxable year more than eighty percent (80%) of its gross income from corporations in which it owns directly or indirectly more than fifty percent (50%) of the outstanding voting stock or voting capital interests."

SECTION 2.4. G.S. 105-164.3 reads as rewritten:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(25a) Over-the-counter drug. – A drug that can be dispensed under federal law without a prescription and is required by 21 C.F.R. § 201.66 to have a label containing a "Drug Facts" panel ~~and~~ or a statement of its active ingredients.

...

(36) Sale or selling. – The transfer for consideration of ~~title~~ title, license to use or consume, or possession of tangible personal property or digital property or the performance for consideration of a service. The transfer or performance

may be conditional or in any manner or by any means. The term includes the following:

a. Fabrication of tangible personal property for consumers by persons engaged in business who furnish either directly or indirectly the materials used in the fabrication work.

b. Furnishing or preparing tangible personal property consumed on the premises of the person furnishing or preparing the property or consumed at the place at which the property is furnished or prepared.

c. A transaction in which the possession of the property is transferred but the seller retains title or security for the payment of the consideration.

d. A lease or rental.

e. Transfer of a digital code.

...

(45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement as amended as of ~~May 12, 2009.~~December 19, 2011.

..."

SECTION 2.5. G.S. 105-164.4B(a) reads as rewritten:

"(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.~~product except as otherwise noted in this section:

(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 or purchaser's donee 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 or the purchaser's donee 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 prepaid wireless calling 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.~~

(4) When subsections (1) and (2) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

(5) When subsections (1), (2) and (4) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(6) When subsections (1), (2), (4), and (5) do not apply, including the circumstance in which the seller is without sufficient information to apply the rules, the location will be determined based on the following:

a. Address from which tangible personal property was shipped,

b. Address from which the digital good or the computer software delivered electronically was first available for transmission by the seller or,

c. Address from which the service was provided."

SECTION 2.6. G.S. 105-164.7 reads as rewritten:

"**§ 105-164.7. Retailer to collect sales tax from purchaser as trustee for State.**

The sales tax imposed by this Article is intended to be passed on to the purchaser of a taxable item and borne by the purchaser instead of by the retailer. A retailer must collect the tax due on an item when the item is sold at retail. The tax is a debt from the purchaser to the retailer until paid and is recoverable at law by the retailer in the same manner as other debts. A retailer is considered to act as a trustee on behalf of the State when it collects tax from the purchaser of a taxable item. The tax must be stated and charged separately on the invoices or other documents of the retailer given to the purchaser except for vending machine sales. Where the sales price of a product includes the tax, a retailer must clearly display a statement indicating such."

SECTION 2.7.(a) Part 2 of Article 5 of Chapter 105 of the General Statutes is amended by adding the following new section:

"**§ 105-164.12C. Items given away by merchants.**

If a retailer engaged in the business of selling prepared food and drink for immediate or on-premises consumption also gives prepared food or drink to its patrons or employees free of charge, for the purpose of this Article the property given away is considered sold along with the property sold. If a retailer gives an item of inventory to a customer free of charge on the condition that the customer purchase similar or related property, the item given away is considered sold along with the item sold. In all other cases, property given away or used by any retailer or wholesale merchant is not considered sold, whether or not the retailer or wholesale merchant recovers its cost of the property from sales of other property."

SECTION 2.7.(b) This section is effective August 7, 2009.

SECTION 2.8. G.S. 105-164.14(a) reads as rewritten:

"(a) Interstate Carriers. – An interstate carrier is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on the purchase in this State of railway cars and locomotives, and fuel, lubricants, repair parts, and accessories for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. An "interstate carrier" is a person who is engaged in transporting persons or property in interstate commerce for compensation. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following these periods, an application for refund may be made.

An applicant for refund shall furnish the following information and any proof of the information required by the Secretary:

(1) A list identifying the railway cars, locomotives, fuel, lubricants, repair parts, and accessories purchased by the applicant inside or outside this State during the refund period.

(2) The purchase price of the items listed in subdivision (1) of this subsection.

(3) The sales and use taxes paid in this State on the listed items.

(4) The number of miles the applicant's motor vehicles, railroad cars, locomotives, and airplanes were operated both inside and outside this State during the refund period. Airplane miles are not in this State if the airplane does not depart or land in this State.

(5) Any other information required by the Secretary.

For each applicant, the Secretary shall compute the amount to be refunded as follows. First, the Secretary shall determine the ~~ratio of~~ mileage ratio. The numerator of the mileage ratio is the number of miles the applicant operated its motor vehicles, railroad cars, locomotives, and

airplanes in this State during the refund ~~period to~~ period. The denominator of the mileage ratio is the number of miles it operated ~~them~~ all motor vehicles, railroad cars, locomotives, and airplanes that the applicant owns, both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the items identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period."

SECTION 2.9. G.S. 105-164.27A reads as rewritten:

"§ 105-164.27A. Direct pay permit.

(a) General. – A general direct pay permit authorizes its holder to purchase any tangible personal property, digital property, or service without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the permit holder. A person who purchases an item under a direct pay permit issued under this subsection is liable for use tax due on the purchase. The tax is payable when the property is placed in use or the service is received. A direct pay permit issued under this subsection does not apply to taxes imposed under G.S. 105-164.4 on electricity.

A person who purchases an item for use in this State whose tax status cannot be determined at the time of the purchase because of one of the reasons listed below may apply to the Secretary for a general direct pay permit:

(1) The place of business where the item will be used is not known at the time of the purchase and a different tax consequence applies depending on where the item is used.

(2) The manner in which the item will be used is not known at the time of the purchase and one or more of the potential uses is taxable but others are not taxable.

...

(b) Telecommunications Service. – A direct pay permit for telecommunications service authorizes its holder to purchase telecommunications service and ancillary service without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the permit holder. A person who purchases these services under a direct pay permit must file a return and pay the tax due monthly or quarterly to the Secretary. A direct pay permit issued under this subsection does not apply to any tax other than the tax on telecommunications service and ancillary service.

A call center that purchases telecommunications service that originates outside this State and terminates in this State may apply to the Secretary for a direct pay permit for telecommunications service and ancillary service. A call center is a business that is primarily engaged in providing support services to customers by telephone to support products or services of the business. A business is primarily engaged in providing support services by telephone if at least sixty percent (60%) of its calls are incoming.

..."

SECTION 2.10. G.S. 105-187.43(b) reads a rewritten:

"(b) Prepayment. – A taxpayer who is consistently liable for at least ~~ten~~ twenty thousand dollars ~~($10,000)~~($20,000) of tax a month must make a monthly prepayment of the next month's tax liability. This requirement applies when the taxpayer meets the threshold and the Secretary notifies the taxpayer to make prepayments. A prepayment is due on the date a monthly payment is due. The prepayment must equal at least sixty five percent (65%) of any of the following:

(1) The amount of tax due for the current month.

(2) The amount of tax due for the same month in the preceding year.
(3) The average monthly amount of tax due in the preceding calendar year."

SECTION 2.11. G.S. 143-59.1(a) reads as rewritten:

"(a) Ineligible Vendors. – The Secretary of Administration and other entities to which this Article applies shall not contract for goods or services with either of the following:

(1) A vendor if the vendor or an affiliate of the vendor meets one or more of the conditions of G.S. 105-164.8(b) but refuses to collect the use tax levied under Article 5 of Chapter 105 of the General Statutes on its sales delivered to North Carolina. ~~The~~ Upon request, the Secretary of Revenue shall provide the Secretary of Administration ~~periodically with a list of vendors to which~~ or another entity to which this Article applies verification whether this section ~~applies.~~applies to a specific entity.

(2) A vendor if the vendor or an affiliate of the vendor incorporates or reincorporates in a tax haven country after December 31, 2001, but the United States is the principal market for the public trading of the stock of the corporation incorporated in the tax haven country."

SECTION 2.12. G.S. 105-241(b)(2a) reads as rewritten:

"(2a) Motor fuel taxes. – A taxpayer that ~~is required to file~~ files an electronic return under Subchapter V of this Chapter or Article 3 of Chapter 119 of the General Statutes must pay the tax by electronic funds transfer."

SECTION 2.13. Effective when it becomes law, but expiring at the same time as Section 1 of S.L. 2011-296 expires (currently July 1, 2013), G.S. 161-10(a), as rewritten by S.L. 2011-296, reads as rewritten:

"**§ 161-10. Uniform fees of registers of deeds.**

(a) Except as otherwise provided in this Article, all fees collected under this section shall be deposited into the county general fund. While performing the duties of the office, the register of deeds shall collect the following fees which shall be uniform throughout the State:

(1) Instruments in General. – For registering or filing any instrument for which no other provision is made by this section, the fee shall be twenty-six dollars ($26.00) for the first 15 pages plus four dollars ($4.00) for each additional page or fraction thereof.

~~When a subsequent instrument, as defined in G.S. 161-14.1(a)(3), is presented for registration with reference to more than one original instrument for which recording data are required to be indexed pursuant to G.S. 161-14.1(b), the fee shall be an additional twenty-five dollars ($25.00) for each additional reference.~~ For any instrument that assigns more than one security instrument as defined in G.S. 45-36.4(18) by reference to previously recorded instrument recording data that are required to be indexed pursuant to G.S. 161-14.1(b), the fee shall be an additional ten dollars ($10.00) for each additional reference.

When a document is presented for registration that consists of multiple instruments, the fee shall be an additional ten dollars ($10.00) for each additional instrument. A document consists of multiple instruments when it contains two or more instruments with different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

…."

SECTION 2.14.(a) G.S. 45-102(6) reads as rewritten:

"(6) The address, telephone number, and other contact information for the ~~consumer complaint section~~ State Home Foreclosure Prevention Project of the Housing Finance Agency. ~~Office of Commissioner of Banks, or, alternatively, if the loan is serviced by~~

~~a credit union, the address, telephone number, and other contact information for the consumer complaint section of the Credit Union Division.~~"

SECTION 2.14.(b) G.S. 45-103(a) reads as rewritten:

"(a) Within three business days of mailing the notice required by G.S. 45-102, the mortgage servicer shall file certain information with the Administrative Office of the Courts. The filing shall be in an electronic format, as designated by the Administrative Office of the Courts, and shall contain the name and address of the borrower, the due date of the last scheduled payment made by the borrower, and the date the notice was mailed to the borrower. The Administrative Office of the Courts shall establish an internal database to track information required by this section. The ~~Commissioner of Banks~~ Housing Finance Agency shall design and develop the State Home Foreclosure Prevention Project database, in consultation with the Administrative Office of the Courts. Only the Administrative Office of the Courts, ~~the Office of Commissioner of Banks,~~ the Housing Finance Agency, and the clerk of court as provided by G.S. 45-107 shall have access to the database."

SECTION 2.14.(c) G.S. 45-104 reads as rewritten:

"**§ 45-104. State Home Foreclosure Prevention Project and Fund.**

(a) ~~The Commissioner of Banks is authorized to establish the State Home Foreclosure Prevention Project.~~ The purpose of the State Home Foreclosure Prevention Project is to seek solutions to avoid foreclosures for home loans. ~~In developing the~~ The Project, ~~the Commissioner~~ may include input from HUD-approved housing counselors, community organizations, the Credit Union Division and other State agencies, mortgage lenders, mortgage servicers, and other partners. The Housing Finance Agency shall administer the Project.

(b) There is established a State Home Foreclosure Prevention Trust Fund to be managed and maintained by the Housing Finance Agency. The funds shall be held separate from any other funds received by ~~either the Office of the Commissioner of Banks or~~ the Housing Finance Agency in trust for the operation of the State Home Foreclosure Prevention Project.

(c) Upon the filing of the information required under G.S. 45-103, the mortgage servicer shall pay a fee of seventy-five dollars ($75.00) to the State Home Foreclosure Prevention Trust Fund. The fee shall not be charged more than once for a home loan covered by this act. The ~~Office of the Commissioner of Banks~~ Housing Finance Agency shall collect the fee. Upon receipt of the fee the Housing Finance Agency~~Commissioner~~ shall deposit the funds ~~into a separate account. The funds shall be transferred no less than monthly~~ into the State Home Foreclosure Prevention Trust Fund. The Housing Finance Agency shall manage the State Home Foreclosure Prevention Trust Fund.

(d) The Housing Finance Agency shall use funds from the State Home Foreclosure Prevention Trust Fund to compensate performance-based service contracts or other contracts and grants necessary to implement the purposes of this act in the following manner:

(1) An amount, not to exceed the greater of two million two hundred thousand dollars ($2,200,000) or thirty percent (30%) of the funds per year, to cover the administrative costs of the operation of the program by ~~the Office of the Commissioner of Banks and~~ the Housing Finance Agency, including managing on behalf of the Administrative Office of the Courts the database identified in G.S. 45-103, expenses associated with informing homeowners of State resources available for foreclosure prevention, expenses associated with connecting homeowners to available resources, and assistance to homeowners and counselors in communicating with mortgage servicers.

(2) An amount, not to exceed the greater of three million four hundred thousand dollars ($3,400,000) or forty percent (40%) per year, to make grants to or reimburse nonprofit housing counseling agencies for providing foreclosure prevention counseling services to homeowners involved in the State Home Foreclosure Prevention Project.

(3) An amount, not to exceed thirty percent (30%) of the total funds collected per year, to make grants to or reimburse nonprofit legal service providers for services rendered on behalf of homeowners in danger of defaulting on a home loan to avoid foreclosure, limited to legal representation such as negotiation of loan modifications or other loan work-out solutions, defending homeowners in foreclosure or representing homeowners in bankruptcy proceedings, and research and counsel to homeowners regarding the status of their home loans.

(4) Any funds remaining in the State Home Foreclosure Prevention Trust Fund as of June 30, 2011, and any funds remaining in the State Home Foreclosure Prevention Trust Fund upon the expiration of each subsequent fiscal year shall be directed to the North Carolina Housing Trust Fund.

(e) The Housing Finance Agency shall have the discretion to enter into an agreement to administer funds under subdivisions (2) and (3) of subsection (d) of this section in a manner that complements or supplements other State and federal programs directed to prevent foreclosures for homeowners participating in the State Home Foreclosure Prevention Project."

SECTION 2.14.(d) G.S. 45-105 reads as rewritten:

"**§ 45-105. Extension of foreclosure process.**

The ~~Commissioner of Banks upon referral from the~~ Housing Finance Agency shall review information provided in the database created by G.S. 45-103 to determine which home loans are appropriate for efforts to avoid foreclosure. If the ~~Commissioner~~ Housing Finance Agency reasonably believes, based on a full review of the loan information, the mortgage servicer's loss mitigation efforts, the borrower's capacity and interest in staying in the home, and other appropriate factors, that further efforts by the State Home Foreclosure Prevention Project offer a reasonable prospect to avoid foreclosure on primary residences, the ~~Commissioner~~ Executive Director of the Housing Finance Agency shall have the authority to extend one time under this Article the allowable filing date for any foreclosure proceeding on a primary residence by up to 30 days beyond the earliest filing date established by the pre-foreclosure notice. If the ~~Commissioner~~ Executive Director of the Housing Finance Agency makes the determination that a loan is subject to this section, the ~~Commissioner~~ Housing Finance Agency shall notify the borrower, mortgage servicer, and the Administrative Office of the Courts. ~~If the mortgage servicer is a state or federally chartered credit union, the Commissioner shall also notify the Administrator of the Credit Union Division of the determination.~~"

SECTION 2.14.(e) G.S. 45-106 reads as rewritten:

"**§ 45-106. Use and privacy of records.**

The data provided to the Administrative Office of the Courts pursuant to G.S. 45-103 shall be exclusively for the use and purposes of the State Home Foreclosure Prevention Project developed by the Commissioner of Banks and administered by the Housing Finance Agency in accordance with G.S. 45-104. The information provided to the database is not a public record, except that a mortgage lender and a mortgage servicer shall have access to the information submitted only with regard to its own loans. ~~Any notice provided by the Commissioner to the Administrator of the Credit Union Division under G.S. 45-105 is not a public record.~~ Provision of information to the Administrative Office of the Courts for use by the State Home Foreclosure Prevention Project shall not be considered a violation of G.S. 53B-8. A mortgage servicer shall be held harmless for any alleged breach of privacy rights of the borrower with respect to the information the mortgage servicer provides in accordance with this Article."

SECTION 2.14.(f) Section 5 of S.L. 2008-226 reads as rewritten:

"**SECTION 5.** The ~~Office of the Commissioner of Banks~~ Housing Finance Agency shall report to the General Assembly describing the operation of the program established by this act not later than May 1 of each year until the funds are completely disbursed from the

~~reserve.~~ State Home Foreclosure Prevention Trust Fund. Information in the report shall be presented in aggregate form and may include the number of clients helped, the effectiveness of the funds in preventing home foreclosure, recommendations for further efforts needed to reduce foreclosures, and provide any other aggregated information the ~~Commissioner~~ Housing Finance Agency determines is pertinent or that the General Assembly requests."

SECTION 2.14.(g) Section 6 of S.L. 2008-226, as amended by Section 9 of S.L. 2010-168, reads as rewritten:

"**SECTION 6.** Section 4 of this act becomes effective July 1, 2008. Sections 1, 2, 3, and 5 become effective November 1, ~~2008, and expire May 31, 2013.~~ 2008. The remainder of this act is effective when it becomes law."

SECTION 2.14.(h) This section becomes effective December 1, 2012. The North Carolina Housing Finance Agency shall assume the responsibilities designated in this section for operation of the State Home Foreclosure Prevention Project no later than December 31, 2012.

PART III. MOTOR VEHICLE/PROPERTY TAX CHANGES

SECTION 3.1. G.S. 105-321(f) reads as rewritten:

"(f) Minimal Taxes. – Notwithstanding the provisions of G.S. 105-380, the governing body of a taxing unit that collects its own taxes may, by resolution, direct its assessor and tax collector not to collect minimal taxes charged on the tax records and receipts. Minimal taxes are the combined taxes and fees of the taxing unit and any other units for which it collects taxes, due on a tax receipt prepared pursuant to G.S. 105-320 ~~or on a tax notice prepared pursuant to G.S. 105-330.5,~~ in a total original principal amount that does not exceed an amount, up to five dollars ($5.00), set by the governing body. The amount set by the governing body should be the estimated cost to the taxing unit of billing the taxpayer for the amounts due on a tax receipt or tax notice. Upon adoption of a resolution pursuant to this subsection, the tax collector shall not bill the taxpayer for, or otherwise collect, minimal taxes but shall keep a record of all minimal taxes by receipt number and amount and shall make a report of the amount of these taxes to the governing body at the time of the settlement. These minimal taxes shall not be a lien on the taxpayer's real property and shall not be collectible under Article 26 of this Subchapter. A resolution adopted pursuant to this subsection must be adopted on or before June 15 preceding the first taxable year to which it applies and remains in effect until amended or repealed by resolution of the taxing unit. A resolution adopted pursuant to this subsection shall not apply to taxes on registered motor vehicles."

SECTION 3.2. G.S. 105-330.2 reads as rewritten:

"…

(b1) Valuation Appeal. – The owner of a classified motor vehicle may appeal the appraised value ~~or taxability~~ of the vehicle by filing a request for appeal with the assessor within 30 days of the date taxes are due on the vehicle under G.S. 105-330.4. An owner who appeals the appraised value ~~or taxability~~ of a classified motor vehicle must pay the tax on the vehicle when due, subject to a full or partial refund if the appeal is decided in the owner's favor.

The combined tax and registration notice or tax receipt for a classified motor vehicle must explain the right to appeal the appraised value ~~and taxability~~ of the vehicle. A lessee of a vehicle that is required by the terms of the lease to pay the tax on the vehicle is considered the owner of the vehicle for purposes of filing an appeal under this subsection. Appeals filed under this subsection shall proceed in the manner provided by G.S. 105-312(d).

(b2) Exemption or Exclusion Appeal. – The owner of a classified motor vehicle may appeal the vehicle's eligibility for an exemption or exclusion by filing a request for appeal with the assessor within 30 days of the assessor's initial decision on the exemption or exclusion application filed by the owner pursuant to G.S. 105-330.3(b). Appeals filed under this subsection shall proceed in the manner provided by G.S. 105-312(d).

..."

SECTION 3.3. G.S. 105-330.3 reads as rewritten:

"...

(a1) Unregistered Vehicles. – The owner of an unregistered classified motor vehicle must list the vehicle for taxes by filing an abstract with the assessor of the county in which the vehicle is located on or before January 31 following the date the owner acquired the unregistered vehicle or, in the case of a registration that is not renewed, January 31 following the date the registration expires, and on or before January 31 of each succeeding year that the vehicle is unregistered. If a classified motor vehicle required to be listed pursuant to this subsection is registered ~~during the calendar~~ before the end of the fiscal year ~~in~~ for which it was ~~listed, the vehicle is taxed for the fiscal year that opens in the calendar year of listing as an unregistered vehicle.~~ required to be listed, the following applies:

(1) The vehicle is taxed as a registered vehicle and the tax assessed pursuant to this subsection for the fiscal year in which the vehicle was required to be listed shall be released and/or refunded.

(2) For any months for which the vehicle was not taxed between the date the registration expires and the start of the current registered vehicle tax year, the vehicle is taxed as an unregistered vehicle as follows:

a. The value of the motor vehicle is determined as of January 1 of the year in which the registration of the motor vehicle expires.

b. In computing the taxes, the assessor must use the tax rates and any additional motor vehicle taxes of the various taxing units in effect on the date the taxes are computed.

c. The tax on the motor vehicle is the product of a fraction and the number of months for which the vehicle was not taxed between the date the registration expires and the start of the current registered vehicle tax year. The numerator of the fraction is the product of the appraised value of the motor vehicle and the tax rate of the various taxing units. The denominator of the fraction is 12.

d. Interest accrues on unpaid taxes for these unregistered classified motor vehicles at the rate of five percent (5%) for the remainder of the month following the month the taxes are due. Interest accrues at the rate of three fourths percent (3/4%) for each following month until the taxes are paid, unless the notice is prepared after the date the taxes are due. In that circumstance, the interest accrues beginning the second month following the date of the notice until the taxes are paid.

e. For any months between the date the registration expires and the start of the current registered vehicle tax year that the vehicle is taxed as an unregistered vehicle pursuant to G.S. 105-312, the vehicle is not taxed as provided in this subsection.

(3) A vehicle required to be listed pursuant to this subsection that is not listed by January 31 and is not registered before the end of the fiscal year for which it was required to be listed is subject to discovery pursuant to G.S. 105-312.~~G.S. 105-312, unless the vehicle has been taxed as a registered vehicle for the current year.~~

(b) Exemption or Exclusion. – The owner of a classified motor vehicle who claims an exemption or exclusion from tax under this Subchapter has the burden of establishing that the vehicle is entitled to the exemption or exclusion. The owner may establish prima facie entitlement to exemption or exclusion of the classified motor vehicle by filing an application for exempt status with the ~~assessor.~~ assessor within 30 days of the date taxes on the vehicle are

due. When an approved application is on file, the assessor must omit from the tax records the classified motor vehicles described in the application. An application is not required for vehicles qualifying for the exemptions or exclusions listed in G.S. 105 282.1(a)(1). The remaining provisions of G.S. 105 282.1 do not apply to classified motor vehicles.

..."

SECTION 3.4. G.S. 105-330.4 reads as rewritten:

"...

(c) Remedies. – The enforcement remedies in this Subchapter apply to unpaid taxes on an unregistered classified motor vehicle. The enforcement remedies in this Subchapter do not apply to unpaid taxes on a registered classified motor ~~vehicle.~~vehicle for which the tax year begins on or after August 1, 2013.

(d) Tax payments submitted by mail are deemed to be received as of the date shown on the postmark affixed by the United States Postal Service. If no date is shown on the postmark or if the postmark is not affixed by the United States Postal Service, the tax payment is deemed to be received when the payment is received ~~in the office of the tax collector.~~ by the collecting authority. In any dispute arising under this subsection, the burden of proof is on the taxpayer to show that the payment was timely made."

SECTION 3.5. G.S. 105-330.5(e) is repealed.

SECTION 3.6. Effective July 1, 2011, Section 13 of S.L. 2005-294, as amended by Section 31.5 of S.L. 2006-259, Section 22(b) of S.L. 2007-527, and Section 65 of S.L. 2008-134, reads as rewritten:

"**SECTION 13.** Sections 4 and 8 of this act become effective January 1, 2006. Sections 1, 2, 3, 5, 6, 7, 10 and 11 of this act become effective July 1, ~~2011,~~2013, or when the Division of Motor Vehicles of the Department of Transportation 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. Sections 12 and 13 of this act are effective when they become law. Nothing in this act shall require the General Assembly to appropriate funds to implement it for the biennium ending June 30, 2007."

PART IV. EFFECTIVE DATE

SECTION 4.1. Except as otherwise provided, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

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 2, 2012

TO: Revenue Laws Study Committee

FROM: Sandra Johnson
Fiscal Research Division

RE: 2011-SVxz-13 vs. 7

FISCAL IMPACT

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

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
REVENUES:					
Section 17: Register of Deeds (State)		$0	$0	$0	$0
Section 17: Register of Deeds (Local)		**No Estimate Available**			
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: County Register of Deeds Offices

EFFECTIVE DATE: Except as otherwise provided, effective when the bill becomes law.

BILL SUMMARY:
Section 17 of the bill amends S.L. 2011-296, legislation enacted to simplify the fees charged for registering instruments with register of deeds offices. The technical corrections bill modifies $25.00 fee created during the 2011 session in S.L. 2011-296 for registering subsequent instruments. Prior to the enactment of S.L. 2011-296, a $10.00 fee applied to the registration of subsequent/multiple instruments. The language and fee schedule for registering subsequent instruments in this proposal reduces the $25.00 fee to $10.00 making it consistent with the fee schedule used in previous years.

The bill also modifies the definition of subsequent instruments referencing G.S. 45-36.4(18). This change clarifies that subsequent instruments are documents intended to modify, amend, supplement or replace any previously registered instrument.

ASSUMPTIONS AND METHODOLOGY:

No State Impact
Changes included in the Revenue Laws Technical Corrections proposal modify the register of deeds fee schedule created during the 2011 Session with S.L. 2011-296. S.L. 2011-296 revised the fee schedule used at register of deeds offices and the amount of revenue that the registrars remit to the State. Though the technical corrections bill slightly reduces the amount of revenue collected through the registrar's offices, the amendment does not impact State funds. Register of deeds, under this proposal must still remit to the State $6.20 per registered document as set forth in S.L. 2011-296.

Local Impact
The local fiscal impact of the technical corrections bill remains unknown due to a lack of data. Conversations with the North Carolina Association Register of Deeds representatives suggest that the impact will be minimal. The proposal changes the register of deeds fee schedule reducing the fees for registering subsequent instruments from $25.00 per instrument to $10.00 per instrument. Should the proposal become law, the fees for registering subsequent instruments would be congruent with the fee schedule utilized in prior years.

SOURCES OF DATA: North Carolina Association Register of Deeds

TECHNICAL CONSIDERATIONS: None

Bill Draft 2011-SVxz-13: Revenue Laws Tech., Clarifying, & Admin Chngs.

2011-2012 General Assembly

Committee:	Revenue Laws Study Committee	**Date:**	May 2, 2012
Introduced by:		**Prepared by:**	Trina Griffin Committee Counsel
Analysis of:	2011-SVxz-13		

SUMMARY: ***This legislative proposal includes several technical, administrative, and clarifying changes to the revenue laws and related statutes, many of which were requested by the Department of Revenue.***

This proposal and a summary was initially distributed at the April 11, 2012, meeting. Additional changes have since been added to the bill. Explanations of the new sections are shaded in gray on this analysis. The bill has also been reorganized so that the technical changes appear in Part I and the clarifying and administrative changes appear in Part II. Part III contains changes related to the combined motor vehicle registration and property tax collection system. Those changes are also clarifying and/or administrative in nature, but have been set out separately since they were not included in the last version.

EFFECTIVE DATE: Except as otherwise provided, this bill would become effective when it becomes law.

BILL ANALYSIS:

Section	Explanation
	PART I: TECHNICAL CHANGES
1.1	A taxpayer is allowed a deduction for the amount by which the basis of a depreciable asset is required to be reduced under the Code for federal tax purposes because of a *tax credit* allowed against the corporation's federal taxable income. Section 1603 of ARRTA directs the Treasury to provide cash payments, or grants, to eligible persons who place in service specified energy property and apply for the payments. The purpose of section 1603 is to reimburse eligible applicants for a portion of the expense of such property. A section 1603 grant recipient is required to reduce the basis of the asset. This change would allow a taxpayer to reduce his or her State taxable income if the taxpayer receives a section 1603 *grant payment* rather than a credit under sections 45 or 48 of the Code.

1.2	This section makes changes to the sales and use tax exemption statute with regard to motor fuels and installation and delivery charges. Motor fuels are subject either to the motor fuels tax or to the sales tax, but not both. Dyed diesel and dyed kerosene are examples of motor fuels that are subject to the sales tax, but are nevertheless defined as motor fuels. This change in the sales tax exemption statute makes it clear that, to the extent a motor fuel is taxed under Article 36C (Gasoline, Diesel, and Blends), it is exempt from sales and use tax. This section also amends the sales tax exemptions for delivery and installation charges so that the language is parallel. It adds the phrase "similar billing document," which currently appears in the exemption for delivery charges, to the exemption for installation charges. It adds the phrase "at the time of sale," which currently appears in the exemption for installation charges, to the exemption for delivery charges.
1.3	This is a technical change because the tax on manufacturing fuel was repealed, effective July 1, 2010.
1.4	This is a technical change because the existing statutory catchline refers to an Article that does not exist.
1.5	This section updates from January 1, 2011, to January 1, 2012 the reference to the Internal Revenue Code. This change keeps the statute up to date, but does not result in any substantive changes because there have not been any federal tax law changes since January 1, 2011 that impact the calculation of North Carolina taxable income.
1.6	This section adds an additional Code reference to the statute that governs when a return, report, payment, or any other document that is mailed to the Department is timely filed. Code section 7503 addresses when the due date falls on a Saturday, Sunday, or a holiday.
1.7	This is a technical change to correct a statutory reference.
1.8	This section conforms the statute on the scope of the local use tax so that it is consistent with the parallel statute for the State use tax, which was amended during the 2011 session. The 2011 change[1] was a clarifying change.
1.9	S.L. 2011-72 authorized certain cities to establish a municipal service district for the purpose of converting private residential streets to public streets. The act was designed to address 14 residential developments in the Town of Morrisville that were seeking to convert private streets to public streets. After the bill passed, it was discovered that some of the developments were created under the Condominium Act rather than the Planned Development Act, which the bill amended. This section makes the necessary conforming changes.

[1] S.L. 2011-330, s. 25(a).

1.10	This section corrects several errors in the 2011 special license plate act.[2] It adds the "Mountains-to-Sea Trail" plate to the list of plates that may be on a background other than the First in Flight background, which was the original intent. Under current law, the authorization for the plate states that it "shall bear the phrase 'Mountains-to-Sea Trail' with a background designed by the Friends of the Mountains-to-Sea Trail," suggesting that the organization may design its own background. However, in order for an organization to have a background other than First in Flight, it must be authorized in G.S. 20-63. This section also corrects errors with regard to the fees for the Sustainable Fisheries and the Morgan Horse Club plates.
PART II: CLARIFYING AND ADMINISTRATIVE CHANGES	
2.1	This change would allow a wholesale or retail dealer of other tobacco products to provide security to the Secretary in the form of an irrevocable letter of credit as an alternative to a bond. An irrevocable letter of credit would typically be used by a foreign company that would be unable to obtain a bond because it does not have assets in this country. This form of security is consistent with what is currently allowed under the motor fuels tax statutes.
2.2	S.L. 2011-12 added synthetic cannabinoids to the list of controlled substances. No corresponding changes were made to the unauthorized substance tax laws. Therefore, under current law, they would be grouped with "other controlled substances" and subject to tax at a rate of $200 per gram. Marijuana is taxed at $3.50 per gram. This section would tax synthetic cannabinoids at the same rate as marijuana, effective when the S.L. 2011-12 became law.

[2] S.L. 2011-392.

2.3	Holding companies are subject to an annual franchise tax, which is capped at $75,000. A holding company is currently defined as one that receives more than 80% of its gross income from corporations in which it owns, directly or indirectly, more than 50% of the outstanding voting stock or capital interests. However, a corporation whose only asset is an investment in subsidiaries and has no income cannot meet the 80% test because the denominator would be zero. This section expands the definition of a holding company to address this situation. The Department has indicated that this is a clarifying change, not a substantive one. A question has arisen about this specific fact pattern where a taxpayer is clearly a holding company in that all of its assets are investments in subsidiaries. For the year in question, the holding company had no income. Therefore, there would be $0 in income from subsidiaries and $0 in total income. Under a strict application of G.S. 105-120.2, $0 divided by $0 would result in an undefined mathematical value. Because it is undefined, it cannot be determined if it exceeds 80%. Alternatively, if one of the subsidiaries of the holding company had issued a dividend of as little as one cent, then 100% of the income would be coming from investments in subsidiaries. The Department believes that this interpretation is not what the General Assembly intended. The Department's interpretation is that it was a holding company and subject to the cap of $75,000 on franchise tax.
2.4	This section makes two changes to sales tax definitions in order to conform to the Streamlined definitions, and it updates the reference to the most current version of the Streamlined Agreement dated December 19, 2011.
2.5	This section clarifies the general sourcing provisions to conform to the Streamlined requirements. It was noted during the 2011 Annual Compliance Review that the existing statute was not consistent with the Streamlined requirements.
2.6	Restores language that was inadvertently stricken from the statute.

2.7	This section restores language relating to the application of use tax to items given away by merchants, which was inadvertently deleted in a 2009 budget provision. The language was originally added to the definition of "sale or selling" in 1996 as the result of a court case.[3] The language was intended to restrict the application of that case, a broad application of which could be interpreted in such a way so as to eliminate the use tax. In 1996, the Revenue Laws Study Committee recommended limiting the application of the decision to the facts of that case, which involved food given away by restaurants. In 2009, a number of sales tax statutes were amended to address digital property. While amending those statutes, a number of stylistic and technical changes were also made. The language dealing with items given away by merchants was removed with the intent that it be located elsewhere in the sales and use tax statutes as a technical change. However, it was never relocated. This section restores the language by placing it in a new statutory section, effective the date that the 2009 deletion became effective since there was no intent to remove it.
2.8	This section makes two changes related to sales tax refunds for interstate carriers. First, it modifies the reference to "them" to make it clear that, for purposes of calculating a refund on certain cars, parts, fuel, and repair parts, an interstate carrier must include all motor vehicles, railroad cars, locomotives, and airplanes it owns operated both inside and outside the State in the denominator. Second, it clarifies that airplane miles are not in this State if the airplane only flies over North Carolina but does not take off or land in the State.

[3]The use tax, first enacted in 1939, is the complement to the sales tax and applies to the storage, use, or consumption in this State of tangible personal property. Use tax accounts for approximately 5% of total sales and use tax collections. A merchant is liable for use tax on property it *uses* in its business, such as furniture, equipment, décor, or promotional giveaways. Items *sold* by the merchant, however, are not subject to use tax because sales tax will apply when the items are sold at retail. With regard to items given away free of charge, the general rule in this State, and virtually all states, is that a retailer is liable for sales and use tax on those items. Until 1993, the following items were considered used, not sold, and thus subject to use tax: meals provided free to a merchant's employees, food given away to the merchant's patrons, and matches given away to patrons, other than matches given away along with the sale of cigarettes. A group of restaurants appealed the assessment of the tax, claiming that the items should be considered sold. In *Matter of Rock-Ola Café*, 111 N.C.App. 683 (1993), the North Carolina Court of Appeals agreed with the restaurants that these items should be considered sold along with the food the restaurant sold as part of its business. However, the Revenue Laws Study Committee, in its report to the 1996 Regular Session, concluded that the Court's opinion was overly broad in its rationale. The rationale, that the cost of these items is recovered by the sales of other items, taken literally and if applied broadly, could be interpreted to eliminate the use tax altogether in that the cost of all of a merchant's purchases are ultimately covered by the price of sold items. The Committee recommended, and the General Assembly enacted, the language in this section to limit the application of the court's opinion to the facts of that case, which dealt specifically with restaurants. Under this language, property given away by a merchant is exempt from use tax only in the case of restaurants that provide free meals to employees or free bar food to patrons. The bill that was ultimately enacted added language to exempt items of inventory given away to a customer free of charge on the condition that the customer buy similar property ("buy one, get one free").

2.9	A direct pay permit authorizes the holder to purchase property that is subject to sales and use tax without paying the tax to the seller. A person who purchases an item under a direct pay permit is liable for use tax, which is payable when the property is placed in use or the service is received. A person can apply for a direct pay permit if the person purchases an item whose tax status cannot be determined at the time of purchase, and either: • The place of business where the item will be used is not known at the time of purchase and a different tax consequence applies depending on where the item is used, or • The manner in which the item will be used is not known at the time of purchase and one or more of the potential uses is taxable but others are not taxable. Generally speaking, a direct pay permit is not intended to allow purchasers to "shop" for a lower tax rate. It was originally designed to address situations where a purchaser of machinery, for example, did not know at the time of purchase how the machinery was going to be used and, therefore, whether it would be subject to sales tax at the general rate, exempt from tax, or subject to the 1%/$80 rate. In those cases, however, the property was always going to be used in North Carolina. The Department is aware of a situation where a retailer that has purchased items from NC vendors and has taken delivery of those items in NC wants to use a direct pay permit arguing that the items may be shipped out of state at some later date for use in another state. This section adds the words "in this State" to make it clear that a direct pay permit may not be used to avoid paying NC sales tax in this way. A person who purchases telecommunications service under a direct pay permit must file a return and pay the tax due monthly to the Secretary. This section adds the word "quarterly" so that the filing frequency is consistent with the filing frequency for general State and local sales tax remitters.[4] By providing for quarterly filing, this change would conform the statute to current practice at the Department.

[4]A taxpayer who is consistently liable for less than $100 a month in State and local sales and use taxes must file a return and pay the taxes due on a quarterly basis. A taxpayer who is consistently liable for at least $100 a month but less than $20,000 a month in State and local sales and use taxes must file a return and pay the taxes due on a monthly basis. (G.S. 105-164.16.)

2.10	There is an excise tax imposed on piped natural gas received for consumption in this State, which is in lieu of the sales and use tax. The tax is payable on a monthly basis. Under current law, a taxpayer who is consistently liable for at least $10,000 of tax a month must make a monthly prepayment of the next month's liability. This section would change from $10,000 to $20,000 the prepayment threshold for the tax on piped natural gas, the purpose of which is to be consistent with the prepayment threshold for retailers required to remit sales and use tax.[5] This change does not change the amount of excise tax revenue remitted to the General Fund, but it does change by one month the timing of the payment for the year of the transition to the higher threshold. The Department indicates that it knows of only one company that would be affected by increasing the threshold to $20,000.
2.11	Generally speaking, the State may not contract with foreign vendors that refuse to collect use tax, where applicable, on sales delivered to North Carolina. G.S. 143-59.1 requires the Department to periodically provide to the Secretary of Administration a list of ineligible vendors based on this requirement. This section modifies the obligation on the Department such that it need only verify, upon request, a vendor's ineligibility in lieu of providing a periodic list. The Department does not receive the information in order to adhere to the requirements of the current statute.
2.12	This section conforms the statute to current practice at the Department. If a taxpayer files a return electronically, then the taxpayer must pay the tax due before the taxpayer may submit the return.
2.13	This section removes the confusion caused by the new fee applicable to the recording of subsequent instruments by eliminating the fee and imposing a $10 fee for an instrument that assigns more than one security instrument by reference to a previously recorded instrument. S.L. 2011-296 changed the fees collected by register of deeds for the purpose of simplifying their collection and remittance. As part of the legislation, a new fee became applicable to the indexing and filing of "subsequent instruments." Several registers of deeds have questioned how to apply the new fee applicable to subsequent instruments that contain references to multiple recorded documents, such as cancellations of multiple deeds of trust or substitution of trustee in multiple documents.

[5]For sales and use tax, the threshold limit of $10,000 was enacted in 2001 as a means to accelerate the payment of sales and use tax dollars into the General Fund for fiscal year 2001-02. Prior to this change, the threshold amount for making bimonthly payments was $20,000. In the years following 2001, the sales and use tax rate, at its highest, reached 7.75%. The lowering of the threshold amount along with the increase in the tax rate subjected more retailers to the most extensive sales tax remittance requirements. Consequently, many small retailers expressed a cash flow hardship with the pre-payment requirement. In 2010, the General Assembly phased in a restoration of the $20,000 prepayment threshold. The change decreased the number of retailers required to submit a prepayment of 65% of the amount of sales tax revenue to be remitted for the following month.

2.14	This section makes conforming changes to the statutes dealing with the State Home Foreclosure Prevention Project (SHFPP). The SHFPP was created by the General Assembly in 2008[6] as an emergency program and was expanded and extended in 2010[7] to cover all homeowners. The program is an effort to reduce unnecessary foreclosures providing homeowners with free resources, such as counseling, as they work with servicers to create alternatives to foreclosure. In 2011, the administration and staffing of SHFPP homeowner and counseling activities was transferred to the NC Housing Finance Agency, effective July 1, 2011.[8] Under that legislation, the Office of the Commissioner of Banks retained administration of the pre-foreclosure filings database, servicing invoicing, and the granting of 30-day extensions. This section would complete the transfer of all program activities to the NC Housing Finance Agency and would remove the program sunset.

PART III: COMBINED MOTOR VEHICLE REGISTRATION/PROPERTY TAX CHANGES

In 2005, the General Assembly created a framework establishing a combined system for motor vehicle registration renewal and property tax collection. Originally, the act was to become effective the earlier of January 1, 2009, or the date that the Department of Revenue and the Division of Motor Vehicles certified that an integrated computer system is in operation. The effective date has since been extended and is currently set to go into effect July 1, 2013. Under the new system, the taxpayer/motor vehicle owner will receive one bill for property taxes and the DMV license renewal, and DMV will be the collecting authority. Counties will still determine the value and the taxability situs of motor vehicles. A number of conforming changes are needed to fully implement the combined system, which goes into effect July 1, 2013. Part III of this bill consists of those changes.

3.1	Current law permits the governing body of a taxing unit to pass a resolution directing its tax collector not to collect minimal taxes, defined as up to $5.00, charged on tax records and receipts. This section would exempt taxes on registered motor vehicles for two reasons: (1) a minimum of $28 is collected for motor vehicle registration; and (2) DMV, not the counties, will be the collecting authority. Therefore, the minimal tax provision is not applicable with regard to combined motor vehicle and property tax collection.

[6] S.L. 2008-226.
[7] S.L. 2010-168.
[8] S.L. 2011-288.

3.2	A taxpayer may appeal motor vehicle taxes on a number of grounds: the valuation by the county, the denial of an application for exemption or exclusion, and on the grounds that the county does not have authority to tax the vehicle because the situs of the vehicle is in another taxing district. The term "taxability" in the appeal statutes has been used to refer to both exemption status and situs, but because there are different time periods that apply depending on the basis of a taxpayer's appeal, the Department recommends separating the statutory provisions.[9] Therefore, this section strikes the term "taxability" from G.S. 105-330.2(b1) so that, as amended, this subsection would apply only to appeals based on valuation. It also creates a new subsection (b2) to address appeals based on an application for exemption or exclusion. Appeals based on a county's authority to tax are covered under current law in G.S. 105-381.
3.3	This section establishes a process for the collection of property tax on an unregistered vehicle. The objective of the process is to ensure that the taxpayer is not double-taxed and that property taxes are paid on motor vehicles that a person owns even if it is not registered. If a person does not register or renew registration, then the person would be required to list the vehicle with the county assessor. The listing will generate a tax bill. However, if the person subsequently registers or renews the tag for the vehicle, then DMV will charge the person for the registration plus the property tax. This provision allows a county to ignore the listing to the extent the person registered or renewed within the same year.
3.4	This section clarifies that counties would have authority to use collection remedies for unpaid motor vehicle taxes that were billed prior to the effective date of the combined motor vehicle/property tax system. The August 1 date is used because the tax year for July renewals begins August 1. This section also changes the term "tax collector" to "collecting authority" because under the new system, DMV and not the county tax assessor or tax collector will be the collecting authority.
3.5	This section repeals an unnecessary statute that relates to small underpayments and overpayments of motor vehicle taxes. Specifically, if a taxpayer fails to remit the additional $1.00 charged for payments that are mailed rather than paid in-person, the collecting authority is not permitted to bill or attempt to collect the additional $1.00. However, there is no longer a $1.00 charge for mailed in payments so the provision is unnecessary.
3.6	This section is a conforming change to the effective date. When the effective date for the implementation of the combined system was changed, this particular session law was missed.

[9] A taxpayer has 30 days to appeal a determination of value or eligibility for an exemption or exclusion. However, there is a five-year period to appeal an "illegal" tax under G.S. 105-381.

2011-2012
REVENUE LAWS STUDY COMMITTEE

REPORT TO THE 2013-2014 GENERAL ASSEMBLY OF NORTH CAROLINA 2013 SESSION

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TABLE OF CONTENTS

Appendices*

A. Authorizing Legislation, Article 12L of Chapter 120 of the General Statutes
B. Disposition of Revenue Laws Study Committee Recommendations
C. Meeting Agendas

*All of the meeting handouts, including Power Point presentations, may be accessed online in PDF format at the Revenue Laws Study Committee website: http://www.ncleg.net/committees/revenuelaws

REVENUE LAWS STUDY COMMITTEE
State Legislative Building
Raleigh, North Carolina 27601

Senator Bob Rucho, Co-Chair

Representative Julia C. Howard, Co-Chair

January 8, 2013

TO THE MEMBERS OF THE 2013 GENERAL ASSEMBLY:

The Revenue Laws Study Committee submits to you for your consideration its report pursuant to G.S. 120-70.106.

Respectfully Submitted,

Sen. Bob Rucho, Co-Chair

Rep. Julia Howard, Co-Chair

2011-2012

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. Before it was created as a permanent legislative commission in 1997, the Revenue Laws Study Committee was a subcommittee of the Legislative Research Commission. It has studied the revenue laws every year since 1977. The Committee consists of twenty members, ten appointed by the President Pro Tempore of the Senate and ten appointed by the Speaker of the House of Representatives.[1] Committee members may be legislators or citizens. The co-chairs for 2011-2012 are Senator Bob Rucho and Representative Julia Howard.

In its study of the revenue laws, G.S. 120-70.106 gives the Committee 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.[2] A committee notebook containing the Committee minutes and all information presented to the Committee is filed in the Legislative Library and may also be accessed online at the Committee's website: http://www.ncleg.net/committees/revenuelaws.

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[1] The Speaker of the House of Representatives appointed a ninth legislative member, a non-voting advisory member in 2007, and again in 2009. The General Assembly changed the membership from 16 members to 20 members in S.L. 2009-574, Section 51.1.

[2] The General Assembly established a permanent subcommittee under the Revenue Laws Study Committee to study and examine the property tax system in S.L. 2002-184, s. 8. However, subcommittee members were not appointed and the subcommittee did not function from 2004 through 2010. In S.L. 2011-266, s.1.15, the General Assembly repealed the subcommittee. The full Committee continues to review the property tax system and recommend changes to it.

COMMITTEE PROCEEDINGS

The 2012 General Assembly enacted the Revenue Laws Study Committee's five legislative proposals in whole or in part. Appendix B lists the Committee's recommendations to the 2012 General Assembly and the action it took on them. A document entitled "**2012 Finance Law Changes**" summarizes all of the tax legislation enacted in 2012. It is available in the Legislative Library located in the Legislative Office Building. It may also be viewed on the Legislative Library's website[1] and the Revenue Laws Study Committee's website.[2]

The Revenue Laws Study Committee met four times after the adjournment of the Second Regular Session of the 2011-2012 biennium of the North Carolina General Assembly on July 3, 2012. Appendix C 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. The Committee considered a limited number of issues this biennium, and it recommended two pieces of legislation. The Committee considers 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.

UNEMPLOYMENT FUND SOLVENCY & PROGRAM CHANGES

The Revenue Laws Study Committee discussed the State's unemployment insurance program (UI) during two meetings held November 8, 2012, and December 5, 2012. At the first meeting, the Committee considered policy options to address the State's approximate $2.5 billion debt owed to the federal government for loans used to

[1] http://www.ncleg.net/LegLibrary under 'Publications,' 'Tax and Finance Law Changes'
[2] http://www.ncleg.net/committees/revenuelaws

pay past UI benefits. The State exhausted the State's UI reserve fund held by the US Treasury and began borrowing to pay UI benefits in February, 2009. The Committee heard testimony explaining recent administrative changes to enhance program integrity and strengthen re-employment efforts.

Under existing law, the debt will be repaid through increased payments by employers under the federal unemployment insurance tax. The mechanism that increases employers' payments is a reduction in tax credit allowed to offset federal UI tax. In 2011, employers paid additional federal UI tax (0.3% credit reduction). The credit against federal UI tax will decrease by 0.3% each year until the debt is repaid. On December 5th, the Committee considered Legislative Proposal #1. The Proposal increases the solvency of the State's unemployment insurance program by changing employers' contributions and claimants' benefits and by limiting the focus of the program on benefits for loss of work.

Legislative Proposal #1 increases the minimum employer contributions from 0% of taxable payroll to 0.06%. The maximum employer contribution is increased from 5.7% to 5.76% of taxable payroll. In addition to the increased State UI taxes, employers are paying increased federal UI taxes through the credit reduction mechanism that applies the additional federal UI tax payments to the State's UI account.

Legislative Proposal #1 changes the maximum duration of benefits from 26 weeks[3] to 20 weeks.[4] The maximum duration of benefits is reduced by 1 week for every 0.5% decline in the total unemployment rate for the State. The reduction of the

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[3] North Carolina is a variable duration state. Under current law, the duration of regular benefits may be as few as 13 weeks to as many as 26 weeks.

[4] The maximum duration range would be 13 to 20 weeks, based on an unemployment rate greater than 9%; the minimum duration range would be 5 to 12 weeks, based on an unemployment rate equal to or less than 5%.

maximum duration would start when the unemployment rate falls below 9% triggering a 1 week reduction of the maximum duration to 19 weeks.

Legislative Proposal #1 changes the method for calculating a claimant's weekly benefit amount. Under current law, the weekly benefit amount is calculated based upon an individual's high quarter wages in the individual's base period of employment. The weekly benefit amount cannot exceed the maximum weekly benefit amount, which is calculated annually. The maximum weekly benefit amount is equal to 66.7% of the average weekly wage in the State. For 2013, the maximum weekly benefit amount is $535. Legislative Proposal #1 calculates a claimant's weekly benefit amount based upon the average of the last two quarters of the individual's base period. It sets the maximum weekly benefit amount at $350. The *American Taxpayer Relief Act of 2012,* signed into law on January 2, 2013, extended the federally funded emergency unemployment compensation benefits through the year 2013. Under that legislation, states may not participate in the federal extension of benefits if they change the manner used to calculate an individual's weekly benefit amount in a way that would result in an average weekly benefit amount less than it would have been in June 2010. The Revenue Laws Study Committee did not have an opportunity to analyze the impact of this recent federal law change on the proposal. It adopted an amendment to the Proposal at its last meeting acknowledging that the General Assembly may wish to consider changes to the Proposal after it has an opportunity to review the federal legislation.

Legislative Proposal #1 also streamlines the UI program by making the following programmatic changes: eliminating substantial fault; eliminating many of the good cause provisions; allowing each claim for benefits to stand alone; requiring claimants to be able, available, and actively seeking work; and redefining suitable work based on the

duration of unemployment. These programmatic changes continue the current administrative efforts to increase program integrity and focus on re-employment.

The benefit changes would become effective July 1, 2013. The new tax rates for employers would become effective January 1, 2014. The remaining change would become effective when the bill becomes law.

REVENUE LAWS TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES

The Revenue Laws Study Committee recommends Legislative Proposal #2, Revenue Laws Technical, Administrative, and Clarifying Changes. This proposal makes several technical and clarifying changes to the revenue laws and related statutes. The majority of the changes were recommendations of the Department of Revenue.

At the October 3, 2012 meeting, the Committee heard a presentation regarding several changes to the administration of tobacco taxes. These changes are intended to provide greater conformity in the administration of the different excise taxes, and to provide more guidance to the Department and greater clarity to taxpayers. After incorporating changes requested by stakeholders, these clarifying and administrative changes are also included in Legislative Proposal #2.

LEASEHOLD INTERESTS IN EXEMPT REAL PROPERTY

During the October 3 meeting, the Revenue Laws Study Committee heard a staff presentation on the taxation and valuation of leasehold interests in exempt real property. Section 2 of S.L. 2012-189 authorized the Committee to study leasehold interests in exempt real property and report to the 2013 Regular Session of the General Assembly.

North Carolina imposes a property tax on a leasehold interest in real property where the real property is exempt from property tax. The property tax on a leasehold interest in exempt real property applies when a unit of government leases property to a private business and when the payments under the lease are below the value of the interest in the real estate. County assessors value these leasehold interests as the difference between the fair market value of the leasehold interest and the rent paid under the lease. For example, if the private tenant is paying market rate for the exempt real property owned by a local government, then the leasehold interest has no value because similar leases can be obtained at the same price. If the tenant is paying a bargain rate under the lease, the leasehold interest has value because a similar lease would cost more.

The Local Government Division of the NC Department of Revenue provided testimony to the Committee on the method of valuation of leasehold interests in exempt real property. The Department of Revenue conducted a survey of counties and reported the data to the Committee. The Department of Revenue plans to include a presentation on the proper methodology for the tax in its educational programs for county tax assessors. The Committee also heard public comment from a taxpayer paying the tax.

COMMITTEE RECOMMENDATIONS AND LEGISLATIVE PROPOSALS

The Revenue Laws Study Committee makes the following two recommendations to the 2013 General Assembly. Each proposal is followed by an explanation and, if it has a fiscal impact, a fiscal memorandum, indicating any anticipated revenue gain or loss resulting from the proposal.

1. Unemployment Fund Solvency and Program Changes
2. Revenue Laws Technical, Clarifying, and Administrative Changes

LEGISLATIVE PROPOSAL #1

UNEMPLOYMENT FUND SOLVENCY & PROGRAM CHANGES

LEGISLATIVE PROPOSAL #1

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2013 REGULAR SESSION OF THE 2013 GENERAL ASSEMBLY

AN ACT TO ADDRESS THE UNEMPLOYMENT INSURANCE DEBT AND TO FOCUS NORTH CAROLINA'S UNEMPLOYMENT INSURANCE PROGRAM ON PUTTING CLAIMANTS BACK TO WORK.

SHORT TITLE: UI Fund Solvency & Program Changes.

PRIMARY SPONSORS: Rep. Julia Howard and Sen. Bob Rucho

BRIEF OVERVIEW: This proposal would make the following changes to the State unemployment insurance program designed to accelerate the retirement of the $2.5 billion debt owed by the Unemployment Insurance Fund on advances made to it by the federal government for the payment of benefits:

- Effective July 1, 2013, it would reduce the maximum duration of regular benefits from 26 weeks to 20 weeks, reduce the maximum weekly benefit amount from $535 to $350, and change the calculation of a weekly benefit amount from the high quarter wage in the claimant's base period to the average of the last two quarters.
- Effective July 1, 2013, it would make the following programmatic changes: require a waiting week for each new benefit claim; repeal substantial fault; eliminate most good cause provisions for voluntary leaving work; and redefine suitable work as any work after 10 weeks of benefits.
- Effective July 1, 2013, it would require governmental entities and nonprofits that elect to finance benefits through reimbursement to maintain a reserve equal to 1% of its taxable wages.
- Effective July 1, 2013, it would transfer $16.6 million from various funds to the UI Fund to be used to pay principal on the debt.
- Effective January 1, 2014, it would increase the minimum and maximum SUTA tax rates by .06%, and it would move from a schedule of tax rates to a formula.

FISCAL IMPACT: The changes made by the proposal are estimated to accelerate the repayment of the debt by two to three years. Under the current law, it is anticipated the debt would be retired in 2018. Under the proposal, it is anticipated the debt would be retired in 2015. The proposal would require governmental entities to maintain a reserve in their UI account equal to 1% of taxable payroll. This change would require an estimated General Fund expenditure of $50.6 million in FY 2013-14 and $16.9 million in FY 2014-15. It would also impact local government expenditures: $50.8 million in FY 2013-14 and $17 million in FY 2014-15.

EFFECTIVE DATE: The benefit changes would become effective July 1, 2013, and apply to claims established on or after that date. The tax changes would become effective January 1, 2014. The changes applicable to entities that elect to finance benefits through direct reimbursement would become effective July 1, 2013. The remaining changes would become effective when it becomes law.

A copy of the proposed legislation, a bill analysis, and a fiscal memorandum begin on the next page.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE DRH60005-RBxz-5* (10/02)

Short Title: UI Fund Solvency & Program Changes. (Public)

Sponsors: Representatives Howard, Warren, Starnes, and Setzer (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ADDRESS THE UNEMPLOYMENT INSURANCE DEBT AND TO FOCUS NORTH CAROLINA'S UNEMPLOYMENT INSURANCE PROGRAM ON PUTTING CLAIMANTS BACK TO WORK.

The General Assembly of North Carolina enacts:

SECTION 1. Congress enacted the American Taxpayer Relief Act of 2012 and the President signed it into law on January 2, 2013. That legislation made changes to the tax laws and to the unemployment insurance laws. The General Assembly acknowledges that it needs to review and analyze the impact of those changes on North Carolina's tax laws and unemployment insurance laws, and based upon that analysis the General Assembly may consider further changes to the tax laws and unemployment insurance laws of North Carolina.

SECTION 2.(a) G.S. 96-5 reads as rewritten:

"**§ 96-5. Employment Security Administration Fund.**

(a) Special Fund. – ~~There is hereby created in the State treasury a special fund to be known as the~~ The Employment Security Administration Fund is created as a special fund. ~~Fund. All moneys which are deposited or paid into this fund shall be continuously available to the Secretary for expenditure in accordance with the provisions of this Chapter, and shall not lapse at any time or be transferred to any other fund. The Employment Security Administration Fund, except as otherwise provided in this Chapter, shall be subject to the provisions of the State Budget Act (Chapter 143C of the General Statutes) and the Personnel Act (G.S. 126-1 et seq.). All moneys in this fund which are received from the federal government or any agency thereof or which are appropriated by this State for the purpose described in G.S. 96-20 shall be expended solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of this Chapter.~~ The fund ~~shall consist~~consists of the following:

(1) ~~all moneys~~Moneys appropriated by this ~~State, all moneys~~State.

(2) Moneys received from the United States of America, or any agency thereof, including the Secretary of Labor, and all moneys received from any other source for ~~such purpose,~~ the administration of this Chapter.

(3) ~~and shall also include any moneys~~ Moneys received from any agency of the United States or any other state as compensation for services or facilities supplied to ~~such agency, any amounts~~ the agency.

(4) Moneys received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the Employment Security Administration Fund or by reason of damage to equipment or supplies purchased from moneys in ~~such fund, and~~ the fund.

(5) ~~proceeds~~ Proceeds realized from the sale or disposition of any ~~such~~ equipment or supplies which may no longer be necessary for the proper administration of this ~~Chapter: Provided, any~~Chapter. ~~interest~~ Interest collected on contributions and/or penalties collected pursuant to this Chapter shall be paid into the Special Employment Security Administration Fund created by subsection (c) of this section. All moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State treasury, and shall be maintained in a separate account on the books of the State treasury. ~~The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Employment Security Administration Fund provided for under this Chapter. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future.~~ All sums recovered on any surety bond for losses sustained by the Employment Security Administration Fund shall be deposited in ~~said~~ the fund.

(a1) Use of Funds. – The moneys in the Employment Security Administration Fund are continuously available to the Secretary for expenditure in accordance with the provisions of this Chapter. All moneys in this fund that are received from the federal government or any agency thereof or that are appropriated by this State for the purpose described in G.S. 96-20 may be expended solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of this Chapter.

The Secretary is authorized to requisition and receive from its account in the unemployment trust fund in the treasury of the United States of America any moneys standing to its credit in the fund that are permitted by federal law to be used for administering this Chapter and to expend the moneys for such purpose, without regard to a determination of necessity by a federal agency.

(b) Replacement of Funds Lost or Improperly Expended. – If any moneys received from the Secretary of Labor under Title III of the Social Security ~~Act, or any unencumbered balances in the Employment Security Administration Fund or any moneys~~

~~granted to this State pursuant to the provisions of the Wagner-Peyser Act, or any moneys made available by this State or its political subdivisions and matched by such moneys granted to this State pursuant to the provisions of the Wagner-Peyser Act,~~ Act are found by the Secretary of ~~Labor, because of any action or contingency, to have been lost or expended for purposes other than, or in amounts in excess of those found necessary by the Secretary of Labor~~Labor to have been expended for purposes other than ~~for~~ the proper administration of this Chapter, it is the policy of this State that such ~~moneys, not available from the Special Employment Security Administration Fund established by subsection (c) of this section, shall be replaced by moneys appropriated for such purpose from the general funds of this State to the Employment Security Administration Fund for expenditure as provided in subsection (a) of this section. Upon receipt of notice of such a finding by the Secretary of Labor,~~ moneys must be replaced. Upon such a finding by the Secretary of Labor and notification from the Secretary of the amount that needs to be replaced, the Division ~~shall~~ must promptly pay from the Special Employment Security Administration Fund such sum if available in ~~such~~ the fund; if the sum is not available in the fund, it ~~shall~~ must promptly report to the Governor the amount required for such replacement ~~to the Governor~~ and the Governor ~~shall, at the earliest opportunity,~~ shall submit to the legislature a request for the appropriation of such ~~amount.~~amount from the General Fund.

~~(c) There is hereby created in the State treasury a special fund to be known as the Special Employment Security Administration Fund. All interest and penalties, regardless of when the same became payable, collected from employers under the provisions of this Chapter subsequent to June 30, 1947 as well as any appropriations of funds by the General Assembly, shall be paid into this fund. No part of said fund shall be expended or available for expenditure in lieu of federal funds made available to the Secretary for the administration of this Chapter. Said fund shall be used by the Division for the payment of costs and charges of administration which are found by the Secretary of Labor not to be proper and valid charges payable out of any funds in the Employment Security Administration Fund received from any source and shall also be used by the Secretary for: (i) extensions, repairs, enlargements and improvements to buildings, and the enhancement of the work environment in buildings used for Division business; (ii) the acquisition of real estate, buildings and equipment required for the expeditious handling of Division business; and (iii) the temporary stabilization of federal funds cash flow. The Division may use funds either from the Special Employment Security Administration Fund created by this subsection or from federal funds, or from a combination of the two, to offset the costs of compliance with Article 7A of Chapter 163 of the General Statutes of North Carolina or compliance with P.L. 103-31. Refunds of interest allowable under G.S. 96-10, subsection (e) shall be made from this special fund: Provided, such interest was deposited in said fund: Provided further, that in those cases where an employer takes credit for a previous overpayment of interest on contributions due by such employer pursuant to G.S. 96-10, subsection (e), that the amount of such credit taken for such overpayment of interest shall be reimbursed to the Unemployment Insurance Fund from the Special Employment Security Administration Fund. The Special Employment Security Administration Fund, except as otherwise provided in this Chapter, shall be~~

~~subject to the provisions of the State Budget Act (Chapter 143C of the General Statutes) and the Personnel Act (G.S. 126-1 et seq.). All moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State treasury, and shall be maintained in a separate account on the books of the State treasury. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Special Employment Security Administration Fund provided for under this Chapter. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the Special Employment Security Administration Fund shall be deposited in said fund. The moneys in the Special Employment Security Administration Fund shall be continuously available to the Division for expenditure in accordance with the provisions of this section.~~

(c1) Repealed by Session Laws 2004-124, s. 13.7B(b), effective July 20, 2004.

~~(d) The other provisions of this section and G.S. 96-6, to the contrary notwithstanding, the Secretary is authorized to requisition and receive from its account in the unemployment trust fund in the treasury of the United States of America, in the manner permitted by federal law, such moneys standing to its credit in such fund, as are permitted by federal law to be used for expense of administering this Chapter and to expend such moneys for such purpose, without regard to a determination of necessity by a federal agency. The State Treasurer shall be treasurer and custodian of the amounts of money so requisitioned. Such moneys shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as are provided by law for other special funds in the State treasury.~~

(e) Reed Bill Fund Authorization. – Subject to a specific appropriation by the General Assembly of North Carolina to the Department of Commerce, Division of Employment Security out of funds credited to and held in this State's account in the Unemployment Trust Fund by the Secretary of the Treasury of the United States pursuant to and in accordance with section 903 of the Social Security Act, the Division is authorized to utilize such funds for the administration of the Employment Security Law, including personal services, operating and other expenses incurred in the administration of said law, as well as for the purchase or rental, either or both, of offices, lands, buildings or parts of buildings, fixtures, furnishings, equipment, supplies and the construction of buildings or parts of buildings, suitable for use in this State by the Division, and for the payment of expenses incurred for the construction, maintenance, improvements or repair of, or alterations to, such real or personal property. Provided, that any ~~such~~ funds appropriated by the General Assembly shall not exceed the amount in the Unemployment Trust Fund ~~which~~ that may be obligated for expenditure for such purposes; and provided that said funds shall not be obligated for expenditure, as herein provided, after the close of the two-year ~~period~~ period, which begins on the effective date of the appropriation.

~~(f) Employment Security Reserve Fund. – There is created in the State treasury a special trust fund, separate and apart from all other public moneys or funds of this State,~~

~~to be known as the Employment Security Reserve Fund, hereinafter "Reserve Fund". Part of the proceeds from the tax on contributions imposed in G.S. 96-9(b)(3)j shall be credited to the Reserve Fund, as specified in that statute. The moneys in the Reserve Fund may be used by the Secretary for loans to the Unemployment Insurance Fund, as security for loans from the federal Unemployment Insurance Trust Fund, and to pay any interest required on advances under Title XII of the Social Security Act, and shall be continuously available to the Division for expenditure in accordance with the provisions of this section. The State Treasurer shall be ex officio the treasurer and custodian and shall invest said moneys in accordance with existing law as well as rules and regulations promulgated pursuant thereto. Furthermore, the State Treasurer shall disburse the moneys in accordance with the directions of the Secretary and in accordance with such regulations as the Secretary may prescribe.~~

~~Administrative costs for the collection of the tax and interest payable to the Reserve Fund shall be borne by the Special Employment Security Administration Fund.~~

~~The interest earned from investment of the Reserve Fund moneys shall be deposited in a fund hereby established in the State Treasurer's Office, to be known as the "Worker Training Trust Fund". These moneys shall be used to:~~

~~(1) Fund programs, specifically for the benefit of unemployed workers or workers who have received notice of long-term layoff or permanent unemployment, which will enhance the employability of workers, including, but not limited to, adult basic education, adult high school or equivalency programs, occupational skills training programs, assessment, job counseling and placement programs;~~

~~(2) Continue operation of local Division offices throughout the State; or~~

~~(3) Provide refunds to employers.~~

~~The use of funds from the Worker Training Trust Fund, for the purposes set out in the above paragraph, shall be pursuant to appropriations in the Current Operations Appropriations Act. Funds appropriated from the Worker Training Trust Fund that are unexpended and unencumbered at the end of the fiscal year for which they are appropriated shall revert to the State treasury to the credit of the Worker Training Trust Fund in accordance with G.S. 143C-1-2.~~

~~(g) Notwithstanding subsection (f) of this section, the State Treasurer may invest not more than a total of twenty-five million dollars ($25,000,000) of funds in the Employment Security Reserve Fund established under subsection (f) of this section in securities issued by the North Carolina Technological Development Authority, Inc., the proceeds for which are directed to support investment in venture capital funds. The State Treasurer shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on October 1 and March 1 of each fiscal year on investments made pursuant to this subsection.~~"

SECTION 2.(b) Article 1 of Chapter 96 of the General Statutes is amended by adding a new section to read:

"**§ 96-5.1. Special Employment Security Administration Fund.**

(a) Special Fund. – The Special Employment Security Administration Fund is created as a special fund. The fund consists of all interest and penalties, regardless of

when the same became payable, collected from employers under the provisions of this Chapter as well as any appropriations of funds by the General Assembly.

(b) Use of Funds. – The moneys in the Special Employment Security Administration Fund may not be expended or available for expenditure in lieu of federal funds made available to the Division of Employment Security for the administration of this Chapter. The moneys in the fund may be used for one or more of the following purposes:

(1) The payment of costs and charges of administration that are found by the Secretary of Labor to be improper and valid charges payable out of any funds in the Employment Security Administration Fund received from any source.

(2) The temporary stabilization of federal funds cash flow and security for loans from the federal Unemployment Insurance Fund.

(3) Refunds of interest, to the extent the interest was deposited in this fund. In those cases where an employer takes credit for a previous overpayment of interest on contributions, the amount of credit taken for the overpayment of interest must be reimbursed to the Unemployment Insurance Fund from the Special Employment Security Administration Fund."

SECTION 2.(c) G.S. 96-6 reads as rewritten:

"**§ 96-6. Unemployment Insurance Fund.**

(a) Establishment and ~~Control.~~ Use. – The Unemployment Insurance Fund is created as a special fund. ~~There is hereby established as a special fund, separate and apart from all public moneys or funds of this State, an Unemployment Insurance Fund, which shall be administered by the Division's Employment Insurance Section~~ The Division of Employment Security in the Department of Commerce shall administer the fund exclusively for the purposes of this Chapter. This fund ~~shall consist of:~~consists of the following sources of revenue:

(1) All contributions collected under this Chapter, together with any interest earned upon any moneys in the ~~fund;~~fund.

(2) Any property or securities acquired through the use of moneys belonging to the ~~fund;~~fund.

(3) All earnings of such property or ~~securities;~~securities.

(4) Any moneys received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the Social Security Act as ~~amended;~~amended.

(5) All moneys credited to this State's account in the Unemployment Trust Fund pursuant to section 903 of Title IX of the Social Security Act, as amended, (U.S.C.A. Title 42, sec. 1103 (a)~~);~~).

(6) All moneys paid to this State pursuant to section 204 of the Federal-State Extended Unemployment Compensation Act of ~~1970;~~1970.

(7) Reimbursement payments in lieu of contributions.

~~All moneys in the fund shall be commingled and undivided.~~

(b) Accounts and Deposit. – The State Treasurer ~~shall be~~is the ex officio ~~the~~ treasurer and custodian of the ~~fund who shall disburse such fund in accordance with the directions of the Secretary and in accordance with such regulations as the Division shall prescribe.~~fund. The Treasurer ~~shall~~ must maintain within the fund three separate accounts:

(1) A clearing account,

(2) An unemployment trust fund account, and

(3) A benefit account.

(b1) Receipt of Funds. – ~~All~~The Division of Employment Security must immediately forward all moneys payable to the Unemployment Insurance Fund ~~fund, upon receipt thereof by the Division, shall be forwarded immediately to the treasurer~~to the Treasurer ~~who shall immediately deposit them in~~ for deposit into the clearing account. ~~Refunds payable pursuant to G.S. 96-10 may be paid from the clearing account upon warrants issued upon the treasurer as provided in G.S. 143B-426.40G under the requisition of the Division. After clearance thereof, all other~~ The moneys in the clearing account ~~shall~~ must be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this State in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, ~~as amended, any provision of law in this State relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this State to the contrary notwithstanding.~~ as amended. The benefit account ~~shall consist~~consists of all moneys requisitioned from this State's account in the unemployment trust fund. Moneys in the clearing and benefit accounts may be deposited ~~by the treasurer, under the direction of the Secretary,~~ in any bank or public depository in which general funds of the State may be deposited, but no public deposit insurance charge or premium ~~shall~~ may be paid ~~out of~~ from the fund. ~~The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the unemployment insurance fund provided for under this Chapter. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability~~ Liability on the State Treasurer's official bond ~~shall exist~~ exists in addition to any liability upon any separate ~~bond existent on the effective date of this provision, or which may be given in the future.~~ bond for the faithful performance of the Treasurer's duties under this section. All sums recovered on any surety bond for losses sustained by the unemployment insurance fund ~~shall~~ must be deposited ~~in said fund.~~in the UI Fund.

(c) Requisitioning Money. – ~~Moneys shall be requisitioned from this~~ The Division must requisition from the State's account in the unemployment trust fund only the amounts needed to pay ~~solely for the payment of benefits (including~~ benefits, including the State's portion of any extended ~~benefits) and in~~ benefits, and overpayments of contributions as provided in G.S. 96-19.30. ~~accordance with regulations prescribed by the Secretary.~~ The Division ~~shall, from time to time,~~ may requisition from the unemployment trust fund ~~such amounts, not exceeding the accounts standing to its account therein, as it deems necessary~~ a sufficient amount for the payment of benefits for a reasonable future period. Upon receipt ~~thereof the treasurer shall~~of the requisitioned amount, the State Treasurer must deposit ~~such moneys~~the funds in the benefit account ~~and shall~~to be used

to pay all warrants drawn ~~thereon~~ on it as provided in G.S. 143B-426.40G and requisitioned by the Division for the payment of ~~benefits solely from such benefit account.~~benefits. Expenditures of ~~such moneys~~funds in the benefit account and refunds from the clearing account ~~shall~~ are ~~not be~~ subject to approval of the ~~Budget Bureau~~State Budget Office or any provisions of law requiring specific appropriations or other formal release by State officers of money in their custody. All warrants issued upon the treasurer for the payment of benefits and refunds ~~shall~~ must be issued as provided in G.S. 143B-426.40G as requisitioned by the Secretary, the Assistant Secretary, or a duly authorized agent of the Division for that purpose. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned ~~shall either~~must either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the Division, ~~shall~~ may be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this State's account in the unemployment trust ~~fund, as provided in subsection (b) of this section.~~fund.

(d) Management of Funds upon Discontinuance of Unemployment Trust Fund. – The provisions of ~~subsections (a), (b), and (c),~~this section, to the extent that they relate to the unemployment trust fund, ~~shall be~~are operative only so long as ~~such~~ the unemployment trust fund ~~continues to exist,~~ exists, and so long as the Secretary of the Treasury of the United States of America continues to maintain for this State a separate book account of all funds deposited ~~therein~~ in it by this State for benefit purposes, together with this State's proportionate share of the earnings of ~~such~~ the unemployment trust ~~fund, from which no~~fund. No other state is permitted to make ~~withdrawals.~~withdrawals from this State's account. If and when ~~such~~ the unemployment trust fund ceases to exist, or ~~such~~ the separate book account is no longer maintained, all moneys, properties, or securities ~~therein~~ belonging to the Unemployment Insurance Fund of this State ~~shall~~ must be transferred to the treasurer of the Unemployment Insurance Fund, who ~~shall~~ must hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the Secretary of the Department of Commerce, in accordance with the provisions of this ~~Chapter: Provided, that such moneys shall be~~ Chapter. The funds may be invested in ~~the following readily marketable classes of securities: Bonds~~bonds or other interest-bearing obligations of the United States of America or ~~such~~ investments ~~as~~ that are ~~now~~ permitted by law for sinking funds of the State of North ~~Carolina; and provided further, that such~~ Carolina. Any investment ~~shall at all times be so~~ made ~~that all the assets of the fund shall always~~ must be readily convertible into cash when needed for the payment of benefits. The treasurer ~~shall~~ may dispose of securities or other properties belonging to the Unemployment Insurance Fund only under the direction of the Secretary of the Department of Commerce.

(e) Benefits. – Benefits ~~shall be deemed to be~~are due and payable ~~under this Chapter only to the extent~~ as provided in this Chapter ~~and to the extent that~~ from moneys ~~are~~ available ~~therefor to the credit of the Unemployment Insurance Fund, and neither the State nor the Division shall be liable for any amount in excess of such sums.~~in the Unemployment Insurance Fund. If the State has received an advance under

~~(f) Any interest required to be paid on advances under~~ Title XII of the Social Security Act for the payment of benefits, then the State must pay any interest required to be paid on the advance ~~shall be paid~~in a timely ~~manner and shall~~manner. The interest may not be paid, directly or indirectly, from amounts in the Unemployment Insurance Fund."

SECTION 2.(d) Article 1 of Chapter 96 of the General Statutes is amended by adding a new section to read:

"**§ 96-6.1. Employment Security Reserve Fund.**

(a) Creation and Purpose. – The Employment Security Reserve Fund is created as a special fund. Interest and other investment income earned by the Reserve Fund must be credited to it. The Reserve Fund consists of the revenues derived from the tax imposed under G.S. 96-19.34. The moneys in the Reserve Fund may only be used for the following purposes:

(1) Interest payments required on advances under Title XII of the Social Security Act.

(2) Principal payments on advances under Title XII of the Social Security Act.

(3) Transfers to the Unemployment Insurance Fund for payment of benefits.

(4) Administrative costs for the collection of the tax.

(5) Refunds of the tax.

(b) Fund Capped. – The balance in the Employment Security Reserve Fund on January 1 may not exceed the greater of fifty million dollars ($50,000,000) or the amount of interest paid the previous September on advances under Title XII of the Social Security Act. Any amount in the Fund that exceeds the cap must be transferred to the Unemployment Insurance Fund."

SECTION 2.(e) This section becomes effective July 1, 2013.

SECTION 3.(a) The Office of State Budget and Management, in conjunction with the Office of the State Controller and the Department of Commerce, shall transfer and allocate to the Unemployment Insurance Fund any unencumbered cash balance as of June 30, 2013, of each of the following special funds within the Department and then close each of these special funds:

(1) Worker Training Trust Fund (Special Fund Code 64654-6400).

(2) Training and Employment Account (Special Fund Code 64655-6601).

SECTION 3.(b) There is appropriated from the Special Employment Security Administration Fund to the Unemployment Insurance Fund the sum of ten million dollars ($10,000,000) for the 2013-2014 fiscal year to be used to make principal payments on advances made by the federal government under Title XII of the Social Security Act to the Unemployment Insurance Fund to pay unemployment compensation benefits.

SECTION 3.(c) To minimize any negative impact on customers, the Division of Workforce Solutions of the Department of Commerce must take into consideration all of the following factors when determining the appropriate number and location of local offices:

(1) Location of the population served.

(2) Staff availability.

(3) Proximity of local offices to each other.
(4) Use of automation products to provide services.
(5) Services and procedural efficiencies.
(6) Any other factors the Division considers necessary in determining the appropriate number and location of local offices.

SECTION 3.(d) This section becomes effective July 1, 2013.

SECTION 4.(a) The following statutes are recodified as indicated:

Current Statute	Recodified Statute
G.S. 96-15	G.S. 96-19.80
G.S. 96-15.1	G.S. 96-19.82
G.S. 96-15.2	G.S. 96-19.83
G.S. 96-16	G.S. 96-19.81
G.S. 96-17	G.S. 96-19.84
G.S. 96-18	G.S. 96-19.90
G.S. 96-19	G.S. 96-19.92

SECTION 4.(b) For the 2013 taxable year, taxpaying employers must report and remit contributions and the 20% tax imposed on contributions in the same manner and to the same extent as provided under Article 2 of Chapter 96 of the General Statutes as it existed on January 1, 2013.

SECTION 4.(c) Except as provided in subsections (a) and (b) of this section, the remainder of Article 2 of Chapter 96 is repealed.

SECTION 4.(d) This section becomes effective when it becomes law.

SECTION 5.(a) Chapter 96 of the General Statutes is amended by adding a new Article to read:

"Article 2A.
"Unemployment Insurance Division.
"Part 1. Title and Definitions.

"**§ 96-19.1. Title.**

This Article may be cited as "The Reemployment Assistance Act of 2013."

"**§ 96-19.2. Definitions.**

The following definitions apply in this Chapter:

(1) Agricultural labor. – Defined in section 3306 of the Code.
(2) Alternative base period. – The last four completed calendar quarters immediately preceding the first day of an individual's benefit year.
(3) American aircraft. – Defined in section 3306 of the Code.
(4) American employer. – Defined in section 3306 of the Code.
(5) American vessel. – Defined in section 3306 of the Code.
(6) Average weekly insured wage. – The weekly rate obtained by dividing the total wages reported by all insured employers by the monthly average in insured employment during the immediately preceding calendar year and further dividing the quotient obtained by 52.
(7) Base period. – The first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year.

(8) Benefit. – Compensation payable to an individual with respect to the individual's unemployment.

(9) Benefit year. – The fifty-two week period beginning with the first day of a week with respect to which an individual first registers for work and files a valid claim for benefits. If the individual is payroll attached, the benefit year begins on the Sunday preceding the payroll week ending date. If the individual is not payroll attached, the benefit year begins on the Sunday of the calendar week with respect to which the claimant registered for work and filed a valid claim for benefits.

(10) Calendar quarter. – The period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(11) Claimant. – An individual who makes a claim for unemployment benefits.

(12) Code. – Defined in G.S. 105-228.90.

(13) Computation date. – August 1 of each year.

(14) Contributions. – Payments made by a person to the UI Fund.

(15) Crew leader. – An individual who meets all of the following conditions:

a. Furnishes individuals to perform agricultural labor for any other person.

b. Pays the individuals for the agricultural labor performed by them.

c. Has not entered into a written agreement with another person under which the individual is designated as an employee of the other person.

(16) Department. – The North Carolina Department of Commerce.

(17) Division. – The Department's Division of Employment Security.

(18) Electronic transfer. – A transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account.

(19) Employee. – Defined in section 3306 of the Code. The term does not include an independent contractor.

(20) Employer. – Defined in G.S. 96-19.4.

(21) Employment. – Defined in G.S. 96-19.3.

(22) Employment security law. – Any law enacted by this State or any other state or territory or by the federal government providing for the payment of unemployment insurance benefits.

(23) Farm. – Stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, orchards, or other similar structure used primarily for the raising of agricultural or horticultural commodities.

(24) Farm operator. – The person responsible for the management decisions in operating an agricultural operation.

(25) Federal Unemployment Tax Act. – Chapter 23 of the Code.

(26) Full-time student. – Defined in section 3306 of the Code.

(27) Immediate family. – An individual's spouse, child, grandchild, parent, and grandparent, whether the relationship is a biological, step-, half-, or in-law relationship.

(28) Indian tribe. – A tribe to which subsection (d) of section 3309 of the Code applies.

(29) Localized in this State. – Service that meets one of the following conditions:

a. Is performed entirely within the State.

b. Is performed both within and without the State, but the service performed without the State is incidental to the individual's service within the State. For example, the individual's service without the State is temporary or transitory in nature or consists of isolated transactions.

(30) Nonprofit organization. – A religious, charitable, educational, or other organization that is exempt from federal income tax and described in section 501(c)(3) of the Code.

(31) Permanent employment. – Employment of indefinite duration or duration of more than 30 consecutive calendar days, regardless of whether work is performed on all those days.

(32) Person. – An individual, a firm, a partnership, an association, a corporation, whether foreign or domestic, a limited liability company, or any other organization or group acting as a unit.

(33) Qualifying wages. – Wages earned with an employer subject to the provisions of this Chapter or other state employment security law or in federal service as defined in 5 U.S.C. Chapter 85.

(34) Rail employer. – Defined in section 3322 of the Code.

(35) Reemployment services. – Job search assistance and job placement services, such as counseling, testing, assessment, and providing occupational and labor market information, job search workshops, job clubs, referrals to employers, and other similar services.

(36) Secretary. – The Secretary of the Department of Commerce or the Assistant Secretary in charge of the Division of Employment Security.

(37) State. – Defined in section 3306 of the Code.

(38) Taxable wage base. – Defined in G.S. 96-19.31.

(39) UI Fund. – The Unemployment Insurance Fund established by this Chapter.

(40) Unemployed. – Defined in G.S. 96-19.6.

(41) Wages. – Defined in G.S. 96-19.5.

"**§ 96-19.3. Employment.**

(a) General Definition. – The term "employment" means service performed for wage or under any contract of hire, written or oral, express or implied, in which the relationship of the individual performing the service and the person for whom the service is rendered is, as to such service, the legal relationship of employer and employee.

(b) Service Performed in the State. – The term "employment services" includes an individual's entire service, whether performed within or without this State, if any of the following applies:

(1) The service is localized in this State.

(2) The service is not localized in any state but some of the service is performed in this State, and one or more of the following applies:

a. The base of operations is in this State.

b. If there is no base of operations, then the place from which such service is directed or controlled is in this State.

c. The base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

(3) The service, wherever performed, is within the United States or Canada and both of the following applies:

a. The service is not covered under the unemployment compensation law of any other state or Canada.

b. The place from which the service is directed or controlled is in this State.

(4) The service is performed outside the Unites States or Canada by a citizen of the United States in the employ of an American employer and at least one of the following applies:

a. The employer's principal place of business in the United States is located in this State.

b. The employer has no place of business in the United States, but the employer is an individual who is a resident of this State, or a corporation that is organized under the laws of this State, or a partnership or a trust where the number of partners or trustees who are residents of this State is greater than the number who are residents of any other state.

c. The employer has elected coverage in this State, as provided in G.S. 96-19.21.

d. The employer has not elected coverage in any state and the employee has filed a claim for benefits under the law of this State based on the service provided to the employer.

(c) Non-Applicability. – The term "employment" does not include any of the following:

(1) Employment as defined in the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

(2) The following services performed for a State or local governmental employing unit or for an employing unit of an Indian tribe:

a. An elected official.

b. A member of a legislative body or a member of the judiciary.

c. A member of the North Carolina National Guard.

d. An employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency. These services include temporary emergency services compensated solely by a fixed payment for each emergency call answered whether or not provided for by prior agreement and training in preparation for such temporary emergency service whether or not compensated.

e. An employee in a policy-making or advisory position, the performance of the duties of which ordinarily does not require more than eight hours per week.

(3) Service with respect to which unemployment insurance is payable under an employment security system established by an act of Congress. The Division may enter into agreements with the proper agencies under such act of Congress, which agreements shall become effective 10 days after publication thereof in the manner provided in G.S. 96-4(b) for general rules, to provide potential rights to benefits under this Chapter, acquired rights to unemployment insurance under act of Congress, or who have, after acquiring potential rights to unemployment insurance, under such act of Congress, acquired rights to benefits under this Chapter.

(4) Services performed by an individual in the employ of a son, daughter, or spouse.

(5) Services performed by a child under the age of 21 in the employ of his father or mother or of a partnership consisting only of parents of the child.

(6) Service performed by an individual during any calendar quarter for an employer as an insurance agent or as an insurance solicitor, or as a securities salesman if all such service performed during the calendar quarter by the individual for the employing unit or employer is performed for remuneration solely by way of commission.

(7) Service performed by an individual for an employing unit as a real estate agent or a real estate salesman as defined in G.S. 93A-2, provided, that the real estate agent or salesman is compensated solely by way of commission and is authorized to exercise independent judgment and control over the performance of his work.

(8) Services performed in employment as a newsboy or newsgirl selling or distributing newspapers or magazines on the street or from house to house.

(9) Service covered by an election duly approved by the agency charged with the administration of any other state or federal employment security law in accordance with an arrangement pursuant to subsection (1) of G.S. 96-4 during the effective period of such election.

(10) Casual labor not in the course of the employing unit's trade or business.

(11) Service in any calendar quarter in the employ of any organization exempt from income tax under the provisions of section 501(a) of the Internal Revenue Code, other than an organization described in section

401(a) of the Internal Revenue Code, or under section 521 of the Internal Revenue Code, if the remuneration for the service is less than fifty dollars ($50.00).

(12) Service in the employ of a school, college, or university, if the service is performed by one of the following:

a. A student who is enrolled and is regularly attending classes at such school, college, or university.

b. The spouse of a student described in this subdivision, if the spouse is advised, at the time the spouse commences to perform such service, both of the following:

1. The employment of the spouse to perform service is provided under a program to provide financial assistance to such student by such school, college, or university.

2. The employment will not be covered by any program of unemployment insurance.

(13) Service performed by an individual for an employer as an integral part of an academic program that combines academic instruction with work experience. This subdivision only applies to service performed by an individual who is enrolled as a student in a full-time program at a nonprofit or public educational institution that maintains a regular faculty and curriculum and has a regularly organized body of students in attendance at the place where its educational activities occur and who is providing the service as part of an academic program taken for credit at the institution. The institution must certify to the employer that the service is an integral part of an academic program that the individual is taking for credit at the institution. This subdivision does not apply to service performed in a program established for or on behalf of an employer or group of employers.

(14) Services performed in the employ of a church or convention or association of churches, or an organization that is operated primarily for religious purposes and that is operated, supervised, controlled or principally supported by a church or convention or association of churches.

(15) Services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order.

(16) Services performed in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work.

(17) Services performed as a part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency, an agency of a state or political subdivision thereof, or an Indian tribe, by an individual receiving the work relief or work training, unless a federal law, rule, or regulation mandates unemployment insurance coverage to individuals in a particular work-relief or work-training program.

(18) Any of the following services performed by an inmate:

a. Services performed for a hospital in a State prison or other State correctional institution.

b. Services performed as part of a work-release program.

c. Services performed at the custodial or penal institution.

(19) Services performed for a hospital by a patient in that hospital.

(20) Services performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under a remuneration arrangement described in this subdivision. In order to preserve the State's right to collect State unemployment taxes for which a credit against federal unemployment taxes may be taken for contributions paid into the State unemployment insurance fund, this subdivision does not apply, with respect to any individual, to service during any period for which an assessment for federal unemployment taxes is made by the Internal Revenue Service pursuant to the Federal Unemployment Tax Act which assessment becomes a final determination. Services performed by an individual for remuneration based upon the amount of the boat's catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of such catch rather than cash. This subdivision only applies if the operating crew of a boat in the fishing operation is normally made up of fewer than 10 individuals. In the case of a fishing operation involving more than one boat, the remuneration may be based upon the catch of all the boats.

(21) Services performed by a full-time student in the employ of an organized camp for less than 13 calendar weeks in the calendar year if the camp meets one of the following conditions:

a. It did not operate for more than seven months in the calendar year and did not operate for more than seven months in the preceding calendar year.

b. It had average gross receipts for any six months in the preceding calendar year which were not more than thirty-three and one-third percent (33 1/3%) of its average gross receipts for the other six months in the preceding calendar year.

(22) Services performed as a resident by an individual who has completed a four-year course in medical school chartered or approved pursuant to State law, provided that the service is performed for and while in the employment of a nonprofit organization created to provide medical

services to a targeted socio-economically disadvantaged group within this State.

(23) Services performed by an individual who is an alien having residence in a foreign country that the individual has no intention of abandoning, who possesses a valid J-1 Visa, and who is present in the State for a period of six months or less pursuant to the provisions of 8 U.S.C. § 1101(a)(15)(F)(J)(M)(Q).

(d) American Vessel or Aircraft. – The term employment includes a service of whatever nature performed by an individual for an employing unit on or in connection with an American vessel under a contract of service that is entered into within the United States or during the performance of which the vessel touches at a port in the United States, if the individual is employed on and in connection with the vessel when outside the United States. The service must be performed on or in connection with the operations of an American vessel operating on navigable waters within or within and without the United States and the operations must be ordinarily and regularly supervised, managed, directed, and controlled from an operating office maintained by the employing unit in this State.

The term does not include service performed by an individual on or in connection with a vessel or aircraft that is not an American vessel or an American aircraft if the individual is performing services on and in connection with the vessel or aircraft when outside the United States. The term does not include service performed by an individual as an officer or member of the crew of a vessel while the vessel is engaged in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed by the individual as an ordinary incident to any such activity, unless both of the following conditions are met:

(1) The service is performed in connection with the catching or taking of salmon or halibut for commercial purposes.

(2) The service is performed on or in connection with a vessel of more than 10 net tons, as determined in the manner provided for determining the registered tonnage of merchant vessels under the laws of the United States.

(e) American Aircraft. – The term employment includes any service of whatever nature performed by an individual for an employing unit on or in connection with an American aircraft under a contract of service that is entered into within the United States or during the performance of which and while the employee is employed on the aircraft it touches at a port in the United States, if such individual is employed on and in connection with such aircraft when outside the United States. The service must be performed on or in connection with the operations of an American aircraft and such operations must be ordinarily and regularly supervised, managed, directed, and controlled from an operating office maintained by the employing unit in this State.

"**§ 96-19.4. Employer.**

(a) Generally. – The term "employer" means an employing unit who paid wages to an individual to perform employment service and who meets one of the following conditions:

(1) Employed one or more individuals within the current or preceding calendar year for some portion of a day in each of 20 different calendar weeks within the calendar year.

(2) Paid wages of one thousand five hundred dollars ($1,500) or more in any calendar quarter in either the current or preceding calendar year.

(b) Agricultural Labor. – With agricultural labor, the employer may be the crew leader or the farm operator. A crew leader may be the employer if the crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act or if substantially all the members of the crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment provided by the crew leader. A farm operator is the employer of a worker hired by the farm operator, regardless of whether the worker is assigned to work with a crew or under the leadership of the crew leader. The farm operator is deemed to be the employer of all the workers when the crew leader does not qualify as an employer.

For agricultural labor, the term "employer" means an employing unit who paid wages to an individual to perform agricultural labor and who meets one of the following conditions:

(1) Employed 10 or more individuals in agricultural labor within the current or preceding calendar year for some portion of a day in each of 20 different calendar weeks within the calendar year.

(2) Paid wages of twenty thousand dollars ($20,000) or more in any calendar quarter in either the current or preceding calendar year.

(c) Domestic Service. – The term "employer" means an employing unit who paid wages to an individual of one thousand dollars ($1,000) or more in any calendar quarter in the current or preceding calendar year for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority.

(d) Other Employers. – The term "employer" means any one or more of the following employing units:

(1) American vessel. – An employing unit that meets at least one other description of an employer in this section and that maintains an operating office within this State from which the operations of an American vessel operating on navigable waters within or within and without the United States are ordinarily and regularly supervised, managed, directed, and controlled.

(2) Election. – A person that has elected to become fully subject to this Chapter under G.S. 96-19.21.

(3) Acquisition. – An employing unit who has acquired part or all of another employing unit who at the time of acquisition was an employer described in this section.

(4) Governmental. – Any employing unit of the State or a local governmental unit. A governmental entity is not an employer by reason of hiring an intern.

(5) Nonprofit organization. – An employing unit of a nonprofit organization that employed four or more individuals within the current or preceding calendar year for some portion of a day in each of 20 different calendar weeks within such calendar year.

(6) Indian tribe. – An employing unit of an Indian tribe, a subdivision or subsidiary of an Indian tribe, or a business enterprise wholly owned by an Indian tribe.

(7) Federal requirement. – An employing unit liable for federal unemployment tax under the Federal Unemployment Tax Act or an employing unit required to be an employer under this Chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act.

(e) Administration. – An individual performing services within this State for an employer who maintains two or more separate establishments within this State is deemed to be employed by a single employer. An individual employed to perform or to assist in performing the work of an agent or employee of an employer is deemed to be employed by that employer unless both of the following conditions are met:

(1) The agent or employee is an employer subject to the tax imposed by the Federal Unemployment Tax Act, whether the individual was hired or paid directly by the employing unit or by the agent or employee of the employing unit.

(2) The employing unit had actual or constructive knowledge of the work of the individual.

"**§ 96-19.5. Wages.**

(a) General. – The term "wages" means all remuneration paid by an employer to an employee for employment from whatever source. The term includes all of the following:

(1) Salaries, commissions, and bonuses.

(2) Amounts paid under an order of a court, the National Labor Relations Board, or any other lawfully constituted adjudicative agency or by private agreement, consent, or arbitration for loss of pay by reason of discharge.

(3) The cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash must be estimated and determined in accordance with rules adopted by the Division.

(4) The reasonable amount of gratuities that an employee receives directly from a customer and reports to the employer and that the employer considers as salary for the purpose of meeting minimum wage requirements.

(5) Tips received while performing services that constitute employment and are included in a written statement furnished to the employer pursuant to the requirements of the Code.

(6) Any amount paid to an employee or a dependent of an employee on account of sickness or accident disability that does not meet the requirements of subdivision (b)(1) of this section.

(b) Excluded. – The term "wages" does not include any of the following:

(1) The amount of any payment made to, or on behalf of, an employee under a plan or system established by an employing unit which makes provision for individuals in its employ generally or for a class or classes of individuals, including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment, on account of retirement, sickness or accident disability, medical and hospitalization expenses in connection with sickness or accident disability, or death.

(2) Payments made to an employee under worker's compensation laws.

(3) Any payment by an employer without deduction from the remuneration of the employee of the tax imposed upon an employee under the Federal Insurance Contributions Act.

(4) Any payment made to, or on behalf of, an employee or the employee's beneficiary from or to a trust that qualifies under the conditions set forth in sections 401(a)(1) and (2) of the Internal Revenue Code.

(5) Any payment made to, or under, an annuity plan which at the time of the payment meets the requirements of sections 401(a)(3), (4), (5) and (6) of the Internal Revenue Code and exempt from tax under section 501(a) of the Internal Revenue Code at the time of the payment, unless the payment is made to an employee of the trust as remuneration for services rendered as an employee and not as beneficiary of the trust.

(6) Any payment made to, or on behalf of, an employee or his beneficiary under a Cafeteria Plan within the meaning of section 125 of the Internal Revenue Code.

(7) The amount of any payment, including any amount paid into a fund to provide for such payment, made to, or on behalf of, an employee under a plan or system established by an employer or others which makes provision for employees generally, or for a class or group of employees, for the purpose of supplementing unemployment benefits, provided that the plan has been approved by the Division in accordance with the Code.

"**§ 96-19.6. Unemployed.**

(a) Initial Unemployment. – An individual is unemployed for the purpose of establishing a benefit year if one of the following conditions is met:

(1) Payroll attachment. – The individual has payroll attachment but because of lack of work during the payroll week for which the individual is requesting the establishment of a benefit year, the individual worked

less than the equivalent of three customary scheduled full-time days in the establishment, plant, or industry in which the individual has payroll attachment as a regular employee.

(2) No payroll attachment. – The individual has no payroll attachment on the date the individual files a claim for unemployment benefits.

(b) Unemployed. – For benefit weeks within an established benefit year, a claimant is unemployed as provided in this subsection:

(1) Totally unemployed. – The claimant's earnings for the week, including payments in subsection (c) of this section, would not reduce the claimant's weekly benefit amount as calculated in G.S. 96-19.60.

(2) Partially unemployed. – The claimant is payroll attached and both of the following apply:

a. The claimant worked less than three customary scheduled full-time days in the establishment, plant, or industry in which the claimant is employed because of lack of work during the payroll week for which the claimant is requesting benefits.

b. The claimant's earnings for the payroll week for which the claimant is requesting benefits, including payments in subsection (c) of this section, would qualify the claimant for a reduced weekly benefit amount as calculated in G.S. 96-19.60.

(3) Part-totally unemployed. – The claimant has no payroll attachment during all or part of the week and the claimant's earnings for odd jobs or subsidiary work would qualify the claimant for a reduced weekly benefit amount as calculated in G.S. 96-19.60.

(c) Separation Payments. – An individual is not unemployed if, with respect to the entire calendar week, the individual receives or will receive as a result of the individual's separation from work remuneration in one or more of the forms listed in this subsection. If the remuneration is given in a lump sum, the amount must be allocated on a weekly basis as if it had been earned by the individual during a week of employment. An individual may be unemployed, as provided in subsection (b) of this section, if the individual is receiving payment applicable to less than the entire week.

(1) Wages in lieu of notice.

(2) Accrued vacation pay.

(3) Terminal leave pay.

(4) Severance pay.

(5) Separation pay.

(6) Dismissal payments or wages by whatever name.

"Part 2. Coverage.

"**§ 96-19.20. Employers and employees.**

(a) Coverage. – An employing unit that is an employer under this Article and employs individuals in an employment service covered under this Article must finance the unemployment benefits paid through the UI Fund and its employees accrue rights to unemployment benefits as provided in this Article.

(b) Acquisition. – An employer who, by operation of law, purchase, or otherwise becomes successor to an employer liable for contributions becomes liable for contributions on the day of the succession. This provision does not affect the successor's liability as otherwise prescribed by law for unpaid contributions due from the predecessor.

(c) Exemption. – This Chapter does not apply to service performed by an individual as an employee or employee representative as defined in section 1 of the Railroad Unemployment Insurance Act.

"**§ 96-19.21. Voluntary election.**

(a) Employer. – An employer not otherwise liable for contributions under this Chapter may file with the Division its written election to become an employer subject to this Chapter. Upon the written approval of the Division, the employer becomes subject to this Chapter to the same extent as all other employers as of the date stated in the approval. The election must be valid for a period of not less than two years.

(b) Employment. – An employer for services that do not constitute employment under this Chapter may file with the Division its written election that all services performed by individuals in its employ, in one or more distinct establishments or places of business, constitute employment for all the purposes of this Chapter. Upon the written approval of the Division, the services become subject to this Chapter to the same extent as all other services as of the date stated in the approval. The election must be valid for a period of not less than two years.

(c) Employees. – An employer who employs the services of an individual who resides within this State but performs the services entirely without the State may file with the Division its written election to have the individual's service constitute employment for all purposes of this Chapter if contributions are not required and are not paid with respect to the services under an employment security law of any other state or of the federal government. Upon the written approval of the Division, the services become subject to this Chapter to the same extent as all other services as of the date stated in the approval. The election must be valid for a period of not less than two years.

(d) Termination of Election. – The Division may, on its own motion, terminate coverage of an employer who has become subject to this Chapter solely by electing coverage under this section. The Division must give the employer 30 days written notice of its decision. The notice must be mailed to the employer's last known address. An employer who elects coverage under this section may, subsequent to the two-year minimum election period, file a written notice to the Division to have coverage under this Chapter cease. The notice must be given prior to the first day of March following the first day of January of the calendar year for which the employing unit wishes to cease coverage under this section.

"**§ 96-19.22. Termination of coverage.**

(a) Nonpayment of Wages. – An employer who has not paid any covered wages for employment in this State during a period of two consecutive calendar years ceases to be an employer liable for contributions under this Chapter.

(b) No Employment of Individuals. – An employer who has not had individuals in employment and who has made an application for exemption from filing contribution and

wage reports and has been so exempted may be terminated from liability upon written application made within 120 days after notification by the Division of the reactivation of the employer's account. The Division may terminate coverage if it finds that the employer was not liable for contributions during the preceding calendar year. Termination of coverage under this subsection may be effective January 1 of any calendar year. In the event these cases are reactivated, a protest of liability is considered an application for termination where the decision with respect to the protest is not final.

(c) Application for Termination. – An employer may file a written application for termination of coverage with the Division. An application for termination must be filed prior to the first day of March following the first day of January of the calendar year for which the employer wishes to cease coverage. The Division may terminate coverage if it finds that the employer was not liable for contributions during the preceding calendar year. Termination of coverage under this subsection is effective as of the first day of January in any calendar year.

(d) Termination by Discovery of Liability. – An employer whose liability covers a period of more than two years when first discovered by the Division may file a written application for termination within 90 days after notification by the Division of the employer's liability. The Division may terminate coverage of the employer effective January 1 and for any subsequent year if the Division finds that the employer was not liable for contributions during the preceding calendar year. In these discovered cases, a protest of liability is considered as an application for termination where the decision with respect to the protest is not final. This subsection does not apply to a case of willful attempt to defeat or evade the payment of contributions due.

"Part 3. Contributions

"**§ 96-19.30. Payment of Contributions.**

(a) Imposition. – A contribution is imposed on the taxable wages of each individual employed by an employer during the calendar year at the rate set in G.S. 96-19.31. Contributions must be credited to the UI Fund. Contributions made by employers must be credited to the employer's account as provided in Part 4 of this Article.

(b) Report and Payment. – Contributions are payable to the Division when a report is due. An employer of domestic service employees may be given permission by the Secretary to file reports once a year on or before the last day of the month following the close of the calendar year in which the wages are paid. All other reports are due on or before the last day of the month following the close of the calendar quarter in which the wages are paid. The Division must remit the contributions to the Fund. An employer may not deduct the contributions due in whole or in part from the remuneration of the individuals employed. If the amount of the contributions shown to be due after all credits is less than five dollars ($5.00), no payment need be made.

(c) Method of Payment. – An employer may elect to pay contributions by electronic funds transfer. When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the Division may assess a penalty equal to ten percent (10%) of the amount of the transfer, subject to a

minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). The Division may waive this penalty for good cause shown.

The Division may establish policies to allow taxes to be payable under certain conditions by credit card. A condition of payment by credit card is receipt by the Division of the full amount of taxes, penalties, and interest due. The Division shall require an employer who pays by credit card to include an amount equal to any fee charged the Division for the use of the card. A payment of taxes that is made by credit card and is not honored by the card issuer does not relieve the employer of the obligation to pay the taxes.

(d) Form of Report. – An employer of domestic service employee that is granted permission to file an annual report may be given permission to file reports by telephone. An employer who reports by telephone must contact either the Field Tax Auditor who is assigned to the employer's account or the Employment Insurance Section in Raleigh and report the required information to that Auditor or to the Division by the date the report is due.

An employer with 100 or more employees, and every person or organization that reports wages on a total of 100 or more employees as an agent on behalf of one or more subject employers, must file that portion of the "Employer's Quarterly Tax and Wage Report" that contains the name, social security number, and gross wages of each individual in employment on magnetic tapes or diskettes in a format prescribed by the Division. For failure of an employer to comply with this subsection, the Division must add to the amount required to be shown as tax in the reports a penalty of twenty-five dollars ($25.00). For failure of an agent to comply with this subdivision, the Division may deny the agent the right to report wages and file reports for the employer for whom the agent filed an improper report for a period of one year following the calendar quarter in which that agent filed the improper report. The Division may reduce or waive a penalty for good cause shown.

(e) Overpayments. – If an employer has paid contributions, penalties, and interest in excess of the amount due, this amount is considered an overpayment and may be refunded to the employer provided no other debts are owed to the Division by the employer. Overpayments of less than five dollars ($5.00) will be refunded only upon receipt by the Secretary of a written demand for such refund from the employer.

(f) Voluntary Contributions. – An employer may make a voluntary contribution to the fund to be credited to its account. A voluntary contribution will for all intents and purposes be deemed a required contribution. The Division is not bound by any condition stipulated in or made a part of the voluntary contribution by the employer.

(g) Assessment. – If the Division has reason to believe that the collection of any contribution under this Chapter will be jeopardized by delay, the Division may, whether or not the time otherwise prescribed by law for making returns and paying the tax has expired, immediately assess the contributions, together with all interest and penalties. Such contributions, penalties, and interest become immediately due and payable.

"**§ 96-19.31. Rate of contribution to the UI Fund.**

(a) Contribution Rate Calculation. – The Division must determine the contribution rate for each employer based on the employer's reserve ratio on the computation date,

August 1. The Division must notify each employer of the employer's contribution rate for the succeeding calendar year by January 1 of the succeeding calendar year. The contribution rate becomes final unless the employer files an application for review and redetermination prior to May 1 following the effective date of the contribution rate. The Division may redetermine the contribution rate on its own motion within the same time period.

(b) Standard Beginning Rate. – The standard beginning rate of contributions for an employer is one percent (1%) of taxable wages paid by the employer during a calendar year for employment occurring during that year. No employer's contribution rate may be reduced below the standard rate for any calendar year until its account has been chargeable with benefits for at least 12 calendar months ending July 31 immediately preceding the computation date. An employer's account has been chargeable with benefits for at least 12 calendar months if the employer has reported wages paid in four completed calendar quarters. No employer's contribution rate may be reduced below the standard rate for any calendar year unless its liability extends over a period of all or part of two consecutive calendar years and, as of August 1 of the second year, its credit reserve ratio meets the requirements used in computing rates for the following calendar year.

(c) Other Rates. – The contribution rate for employers not covered under subsection (b) of this section is a percentage of taxable wages paid by the employer during a calendar year for employment occurring during that year. The percentage for employers whose reserve ratio is equal to zero is the rate set forth in the table below, divided by 100. The percentage for employers whose reserve ratio is not equal to zero is the applicable rate in the table below minus the employer's effective reserve ratio, divided by 100. The employer's effective reserve ratio is equal to the employer's reserve ratio multiplied by sixty-eight hundredths. The Division must round the rate to the nearest one-hundredth percent. The minimum contribution rate may not be less than six-tenths of one percent (0.06%) and the maximum contribution rate may not exceed five and seventy-sixths hundredths percent (5.76%).

Trust Fund Balance	**Contribution Rate**
Less than or equal to 1% of total insured wages	2.9
Greater than 1% but less than or equal to 1.25% of total insured wages	2.4
Above 1.25% of total insured wages	1.9

(d) Taxable Wages. – An individual's taxable wages are the wages subject to contribution under this section. The Division must determine the taxable wage base applicable for each taxable year. The taxable wage base is the greater of the federally required taxable wage base or the product resulting from multiplying the average yearly insured wage by fifty percent (50%), rounded to the nearest multiple of one hundred dollars ($100.00). The average yearly insured wage is the average weekly insured wage on the computation date multiplied by 52. An employer is not liable for contributions on wages paid to an individual that exceed the taxable wage base.

The following wages are included in determining whether the amount of wages paid to an individual in a single calendar year exceeds the taxable wage base:

(1) Wages paid to an individual in this State by an employer that made contributions in another state upon the wages paid to the individual because the work was performed in the other state.

(2) Wages paid by a successor employer to an individual that meets both of the following conditions:

a. The individual was an employee of the predecessor and was taken over as an employee by the successor as a part of the organization acquired.

b. The predecessor employer has paid contributions on the wages paid to the individual while in the predecessor's employ during the year of acquisition and the account of the predecessor is transferred to the successor.

(e) Total Insured Wages. – For purposes of this section, the term "total insured wages" means all wages earned by employees insured by the State's unemployment insurance program.

"**§ 96-19.32. Nonprofit organizations and governmental entities.**

(a) Applicability. – This section applies to an employing unit that is a nonprofit organization, the State, or a local governmental unit. Benefits paid to employees of the State, local governmental units, and nonprofit organizations may be financed in accordance with the provisions of this section.

(b) Election. – An employer to whom this section applies must finance benefits under the contributions method of payment applicable to taxpaying employers, unless it elects to finance benefits by making reimbursable payments to the Division for the UI Fund. The amount of reimbursable payment the employer must make is equal to the amount of regular benefits and one-half of the extended benefits paid to an individual for weeks of unemployment that begin within a benefit year established during the effective period of the election and that are attributable to service in the employ of the electing employer.

To make an election under this section, an employer must file a written notice of its election with the Division at least 30 days before the January 1 effective date of the election. An election made under this section is valid for a minimum of four years. An election made under this section is binding until the employer files a notice terminating its election. A written notice of termination must be filed with the Division at least 30 days before the January 1 effective date of the termination. The Division must notify an employer of any determination of the effective date of any election it makes and of any termination of the election. These determinations are subject to reconsideration, appeal, and review.

(c) Account. – The Division must establish a separate account for each reimbursing employer. The Division must credit payments made by the employer to the account. The Division must allocate benefits paid by the UI Fund to individuals for weeks of unemployment that begin within a benefit year established during the effective period of the election that are attributable to service in the employ of the employer. No benefits may be noncharged except amounts equal to one hundred percent (100%) of benefits paid through error.

(d) Quarterly Contributions and Wage Reports. – An employer that elects to be a reimbursing employer under this section must submit quarterly contributions and wage reports and advance payments to the Division on or before the last day of the month following the close of the calendar quarter in which the wages are paid. The amount of the advance payment is equal to one percent (1%) of the taxable wages reported. The Division must remit the payments to the UI Fund and credit the payments to the employer's account. An employer may not deduct the contributions due in whole or in part from the remuneration of the individuals employed.

An employer paying by reimbursement that, prior to July 1, paid under the reimbursement method of payment for the preceding calendar year, must continue to file quarterly reports but does not need to make a payment with those reports.

(e) Annual Reconciliation. – An employer that elects to finance benefits under the reimbursement method of payment must maintain an account balance equal to one percent (1%) of its taxable wages. The Division must determine the balance of each employer's account as of August 1 of each year. The Division must furnish the employer with a statement of all charges and credits to the account prior to January 1 of the succeeding year.

If there is a deficit in the account, the Division must bill the employer for an amount necessary to bring its account to one percent (1%) of its taxable wages. Any amount in the account in excess of one percent (1%) of taxable wages must be credited to the employer's account. Amounts due from the employer to bring its account to a one percent (1%) balance will be billed as soon as practical and payment is due within 30 days from the date of mailing of the statement of the amount due.

(f) Accelerated Reconciliation. – The Division may, in its sole discretion, provide a reimbursing employer with informational bills or lists of charges on a basis more frequent than yearly if the Division considers such action to be in the best interest of the Division and the affected employer.

(g) Change in Election. – The Division must close the account of an employing unit that has been paying contributions under this Article and that elects to change to a reimbursement basis under this section and the account may not be used in any future computation of the unit's contribution rate in any manner.

(h) Transition. – This subsection is intended to provide a transitional adjustment period for an employing unit that elected to be a reimbursing employer prior to January 1, 2013, but was not required to secure its election with an account balance equal to one percent (1%) of its taxable wages. This subsection expires January 1, 2016.

(1) Governmental entities. – An employing unit that is a State or local governmental unit may elect to forego the payment under subsection (e) of this section until the reconciliation in 2014 payable in 2015. An employer who makes the election under this subdivision must reimburse the Division in the amount required by subsection (b) of this section and must continue to make quarterly contributions and advance payments under subsection (d) of this section.

(2) Nonprofit organization. – An employing unit that is a nonprofit organization that secured its election by posting a surety bond or a line

of credit does not need to meet the annual reconciliation account balance requirement until the year in which its surety bond or line of credit expires. After July 1, 2013, a nonprofit organization may not submit a surety bond or a line of credit to secure its election under this section.

"**§ 96-19.33. Indian tribes.**

(a) Applicability. – Benefits paid to employees of Indian tribe employing units may be financed in accordance with the provisions of this section.

(b) Election. – An Indian tribe employing unit must pay contributions under the provisions of this Article, unless it elects in accordance with this section to pay the Division for the Trust Fund an amount equal to the amount of benefits paid that is attributable to service in the employ of the unit, to individuals for weeks of unemployment that begin within a benefit year established during the effective period of the election. Extended benefits paid that are attributable to service in the employ of an Indian tribe employing unit and not reimbursed by the federal government must be financed in their entirety by the Indian tribe employing unit.

To make an election under this section, an Indian tribe employing unit must file a written notice of its election with the Division at least 30 days before the January 1 effective date of the election. An election made under this section is valid for a minimum of three years. An election made under this section is binding until the Indian tribe employing unit files a notice terminating its election. A written notice of termination must be filed with the Division at least 30 days before the January 1 effective date of the termination. The Division must notify each Indian tribe employing unit of any determination of the effective date of any election it makes and of any termination of the election. These determinations are subject to reconsideration, appeal, and review.

(c) Account. – The Division must establish a separate account for each reimbursing employer. The Division must credit payments made by the employer to the account. The Division must allocate benefits paid by the Trust Fund to individuals for weeks of unemployment that begin within a benefit year established during the effective period of the election that are attributable to service in the employ of the employer. No benefits may be noncharged except amounts equal to one hundred percent (100%) of benefits paid through error. Extended benefits paid that are attributable to service in the employ of an Indian tribe employing unit and not reimbursed by the federal government must be financed in their entirety by the Indian tribe employing unit.

(d) Quarterly Contributions and Wage Reports. – An Indian tribe employing unit that elects to be a reimbursing employer under this section must submit quarterly contributions and wage reports and advance payments to the Division on or before the last day of the month following the close of the calendar quarter in which the wages are paid. The amount of the advance payment is equal to one percent (1%) of the taxable wages reported. The Division must remit the payments to the Fund and credit the payments to the employer's account. An employer may not deduct the contributions due in whole or in part from the remuneration of the individuals employed.

Any Indian tribe employing unit paying by reimbursement having been, prior to July 1, under the reimbursement method of payment for the preceding calendar year, must continue to file quarterly reports but does not need to make a payment with those reports.

(e) Annual Reconciliation. – A reimbursing employer that elects to finance benefits under the reimbursement method of payment must maintain an account balance equal to one percent (1%) of its taxable wages. The Division must determine the balance of each employer's account as of August 1 of each year. The Division must furnish the employer with a statement of all charges and credits to the account prior to January 1 of the succeeding year.

If there is a deficit in the account, the Division must bill the employer for an amount necessary to bring its account to one percent (1%) of its taxable wages. Any amount in the account in excess of one percent (1%) of taxable wages must be credited to the employer's account. Amounts due from the employer to bring its account to a one percent (1%) balance will be billed as soon as practical and payment is due within 25 days from the date of mailing of the statement of the amount due.

(f) Collection Notice. – Notices of payment and reporting delinquency to Indian tribe employing units must include information that failure to make full payment within the time prescribed causes the unit to become liable for contributions G.S. 96-19.30, causes the unit to lose the option of making payment by reimbursement in lieu of contributions, and may cause the unit to lose coverage under this Chapter for services performed for the unit.

(g) Forfeiture of Option. – If an Indian tribe employing unit fails to make payments, including interest and penalties, required under this section within 90 days after receipt of the bill, the unit loses the option to make payments by reimbursement in lieu of contributions for the following calendar year unless payment in full is made before contribution rates for the following calendar year are computed. An Indian tribe that has lost the option to make payments by reimbursement in lieu of contributions for a calendar year regains that option for the following calendar year if it makes all contributions timely during the year for which the option was lost, and no payments, penalties, or interest remain outstanding.

(h) Forfeiture of Coverage. – If an Indian tribe employing unit fails to make payments, including interest and penalties, required under this section after all collection activities considered necessary by the Division have been exhausted, services performed for that employing unit are no longer treated as "employment" for the purpose of coverage under this Chapter. An Indian tribe employing unit that has lost coverage regains coverage under this Chapter for services performed for the employing unit if the Division determines that all contributions, payments in lieu of contributions, penalties, and interest have been paid.

The Division must notify the Internal Revenue Service and the United States Department of Labor of any termination or reinstatement of coverage pursuant to this subsection.

(i) Change in Election. – The account of an Indian tribe employing unit that has been paying contributions under this Chapter for a period of at least three consecutive

calendar years and that elects to change to a reimbursement basis must be closed and may not be used in any future computation of the unit's contribution rate in any manner.

"**§ 96-19.34. Surcharge for the Employment Security Reserve Fund.**

(a) Tax imposed. – A tax is imposed upon taxpaying employers at a rate equal to twenty percent (20%) of the amount of contributions due under G.S. 96-19.30. The tax is collected and administered in the same manner as contributions.

(b) Purpose of Tax. – Taxes collected under this section provide revenue for the purposes listed in G.S. 96-6.1. Taxes must be credited to the Employment Security Reserve Fund and refunds of the taxes may be paid from the same fund. Any interest collected on unpaid taxes imposed by this section may be credited to the Special Employment Security Administration Fund, and any interest refunded on taxes imposed by this section may be paid from the same fund.

(c) Suspension of Tax. – The tax does not apply in a calendar year if, as of August 1 of the preceding year, the amount in the State's account in the Unemployment Trust Fund, established pursuant to section 903 of Title IX of the Social Security Act, equals or exceeds one billion dollars ($1,000,000,000).

"**§ 96-19.35. Collection of contributions.**

(a) Interest on Past-Due Contributions. – Contributions unpaid on the date on which they are due and payable, as prescribed by the Division, shall bear interest at the rate set under G.S. 105-241.21 per month from and after that date until payment plus accrued interest is received by the Division. An additional penalty in the amount of ten percent (10%) of the taxes due shall be added. The clear proceeds of any civil penalties levied pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Interest collected pursuant to this subsection shall be paid into the Special Employment Security Administration Fund. If any employer, in good faith, pays contributions to another state or to the United States under the Federal Unemployment Tax Act, prior to a determination of liability by this Division, and the contributions were legally payable to this State, the contributions, when paid to this State, shall be deemed to have been paid by the due date under the law of this State if they were paid by the due date of the other state or the United States.

(b) Collection. –

(1) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the Division, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions, except petitions for judicial review under this Chapter and cases arising under the Workers' Compensation Law of this State; or, if any contribution imposed by this Chapter, or any portion thereof, and/or penalties duly provided for the nonpayment thereof shall not be paid within 30 days after the same become due and payable, and after due notice and reasonable opportunity for hearing, the Division, under the

hand of the Assistant Secretary, may certify the same to the clerk of the superior court of the county in which the delinquent resides or has property, and additional copies of said certificate for each county in which the Division has reason to believe the delinquent has property located. If the amount of a delinquency is less than fifty dollars ($50.00), the Division may not certify the amount to the clerk of court until a field tax auditor or another representative of the Division personally contacts, or unsuccessfully attempts to personally contact, the delinquent and collect the amount due. A certificate or a copy of a certificate forwarded to the clerk of the superior court shall immediately be docketed and indexed on the cross index of judgments, and from the date of such docketing shall constitute a preferred lien upon any property which said delinquent may own in said county, with the same force and effect as a judgment rendered by the superior court. The Division shall forward a copy of said certificate to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the Division, and when so forwarded and in the hands of such sheriff or agent of the Division, shall have all the force and effect of an execution issued to such sheriff or agent of the Division by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, the Division may in its discretion withhold the issuance of said certificate or execution to the sheriff or agent of the Division for a period not exceeding 180 days from the date upon which the original certificate is certified to the clerk of superior court. The Division is further authorized and empowered to issue alias copies of said certificate or execution to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the Division in all cases in which the sheriff or duly authorized agent has returned an execution or certificate unsatisfied; when so issued and in the hands of the sheriff or duly authorized agent of the Division, such alias shall have all the force and effect of an alias execution issued to such sheriff or duly authorized agent of the Division by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, that notwithstanding any provision of this subsection, upon filing one written notice with the Division, the sheriff of any county shall have the sole and exclusive right to serve all executions and make all collections mentioned in this subsection and in such case no agent of the Division shall have the authority to serve any executions or make any collections therein in such county. A return of such execution, or alias execution, shall be made to the Division, together with all moneys collected thereunder, and when such order, execution, or alias is referred to the agent of the Division for service the said agent of the Division shall be vested with all the powers of the sheriff to the extent of serving such order, execution, or alias and levying or collecting thereunder. The

agent of the Division to whom such order or execution is referred shall give a bond not to exceed three thousand dollars ($3,000) approved by the Division for the faithful performance of such duties. The liability of said agent shall be in the same manner and to the same extent as is now imposed on sheriffs in the service of executions. If any sheriff of this State or any agent of the Division who is charged with the duty of serving executions shall willfully fail, refuse, or neglect to execute any order directed to him by the said Division and, within the time provided by law, the official bond of such sheriff or of such agent of the Division shall be liable for the contributions, penalty, interest, and costs due by the employer.

(2) Any representative of the Division may examine and copy the county tax listings, detailed inventories, statements of assets, or similar information required under General Statutes, Chapter 105, to be filed with the tax supervisor of any county in this State by any person, firm, partnership, or corporation, domestic or foreign, engaged in operating any business enterprise in such county. Any such information obtained by an agent or employee of the Division shall not be divulged, published, or open to public inspection other than to the Division's employees in the performance of their public duties. Any employee of the Division who violates any provision of this section shall be fined not less than twenty dollars ($20.00), nor more than two hundred dollars ($200.00), or imprisoned for not longer than 90 days, or both.

(3) When the Division furnishes the clerk of superior court of any county in this State a written statement or certificate to the effect that any judgment docketed by the Division against any firm or individual has been satisfied and paid in full, and said statement or certificate is signed by the Secretary of Commerce and attested by the Assistant Secretary, with the seal of the Division affixed, it shall be the duty of the clerk of superior court to file said certificate and enter a notation thereof on the margin of the judgment docket to the effect that said judgment has been paid and satisfied in full, and is in consequence canceled of record. The cancellation shall have the full force and effect of a cancellation entered by an attorney of record for the Division. It shall also be the duty of such clerk, when any such certificate is furnished him by the Division showing that a judgment has been paid in part, to make a notation on the margin of the judgment docket showing the amount of such payment so certified and to file said certificate. This paragraph shall apply to judgments already docketed, as well as to the future judgments docketed by the Division. For the filing of said statement or certificate and making new notations on the record, the clerk of superior court shall be paid a fee of fifty cents (50¢) by the Division.

(c) Priorities under Legal Dissolution or Distributions. – In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of

this State, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes, and claims for remuneration of not more than two hundred and fifty dollars ($250.00) to each claimant, earned within six months of the commencement of the proceeding. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in section 64(a) of that act (U.S.C., Title 11, section 104(a)), as amended.

A receiver of any covered employer placed into an operating receivership pursuant to an order of any court of this State shall pay to the Division any contributions, penalties or interest then due out of moneys or assets on hand or coming into his possession before any such moneys or assets may be used in any manner to continue the operation of the business of the employer while it is in receivership.

(d) Collections of Contributions upon Transfer or Cessation of Business. – The contribution or tax imposed by G.S. 96-9, and subsections thereunder, of this Chapter shall be a lien upon the assets of the business of any employer subject to the provisions hereof who shall lease, transfer, or sell out his business, or shall cease to do business and such employer shall be required, by the next reporting date as prescribed by the Division, to file with the Division all reports and pay all contributions due with respect to wages payable for employment up to the date of such lease, transfer, sale, or cessation of the business and such employer's successor in business shall be required to withhold sufficient of the purchase money to cover the amount of said contributions due and unpaid until such time as the former owner or employer shall produce a receipt from the Division showing that the contributions have been paid, or a certificate that no contributions are due. If the purchaser of a business or a successor of such employer shall fail to withhold purchase money or any money due to such employer in consideration of a lease or other transfer and the contributions shall be due and unpaid after the next reporting date, as above set forth, such successor shall be personally liable to the extent of the assets of the business so acquired for the payment of the contributions accrued and unpaid on account of the operation of the business by the former owner or employer.

(e) Refunds. – If not later than five years from the last day of the calendar year with respect to which a payment of any contributions or interest thereon was made, or one year from the date on which such payment was made, whichever shall be the later, an employer or employing unit who has paid such contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund, and the Division shall determine that such contributions or any portion thereof was erroneously collected, the Division shall allow such employer or employing unit to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such an adjustment cannot be made in the next succeeding calendar quarter after such application for such refund is received, a cash refund may be made, without interest, from the fund: Provided, that any interest refunded under this subsection, which has been paid into the Special Employment Security Administration Fund established pursuant to G.S. 96-5(c), shall be paid out of such fund.

For like cause and within the same period, adjustment or refund may be so made on the Division's own initiative. Provided further, that nothing in this section or in any other section of this Chapter shall be construed as permitting the refund of moneys due and payable under the law and regulations in effect at the time such moneys were paid. In any case, where the Division finds that any employing unit has erroneously paid to this State contributions or interest upon wages earned by individuals in employment in another state, refund or adjustment thereof shall be made, without interest, irrespective of any other provisions of this subsection, upon satisfactory proof to the Division that such other state has determined the employing unit liable under its law for such contributions or interest.

(f) No injunction shall be granted by any court or judge to restrain the collection of any tax or contribution or any part thereof levied under the provisions of this Chapter nor to restrain the sale of any property under writ of execution, judgment, decree, or order of court for the nonpayment thereof. Whenever any employer, person, firm, or corporation against whom taxes or contributions provided for in this Chapter have been assessed, shall claim to have a valid defense to the enforcement of the tax or contribution so assessed or charged, such employer, person, firm, or corporation shall pay the tax or contribution so assessed to the Division; but if at the time of such payment he shall notify the Division in writing that the same is paid under protest, such payment shall be without prejudice to any defenses or rights he may have in the premises, and he may, at any time, within 30 days after such payment, demand the same in writing from the Division; and if the same shall not be refunded within 90 days thereafter, he may sue the Division for the amount so demanded; such suit against the Division must be brought in the Superior Court of Wake County, or in the county in which the taxpayer resides, or in the county where the taxpayer conducts his principal place of business; and if, upon the trial it shall be determined that such tax or contribution or any part thereof was for any reason invalid, excessive, or contrary to the provisions of this Chapter, the amount paid shall be refunded by the Division accordingly. The remedy provided by this subsection shall be deemed to be cumulative and in addition to such other remedies as are provided by other subsections of this Chapter. No suit, action, or proceeding for refund or to recover contributions or payroll taxes paid under protest according to the provisions of this subsection shall be maintained unless such suit, action, or proceeding is commenced within one year after the expiration of the 90 days mentioned in this subsection, or within one year from the date of the refusal of the Division to make refund should such refusal be made before the expiration of said 90 days above mentioned. The one-year limitation here imposed shall not be retroactive in its effect, shall not apply to pending litigation, nor shall the same be construed as repealing, abridging or extending any other limitation or condition imposed by this Chapter.

(g) Upon the motion of the Division, any employer refusing to submit any report required under this Chapter, after 10 days' written notice sent by the Division by registered or certified mail to the employer's last known address, may be enjoined by any court of competent jurisdiction from hiring and continuing in employment any employees until such report is properly submitted. When an execution has been returned to the Division unsatisfied, and the employer, after 10 days' written notice sent by the Division

by registered mail to the employer's last known address, refuses to pay the contributions covered by the execution, such employer shall upon the motion of the Division be enjoined by any court of competent jurisdiction from hiring and continuing in employment any employees until such contributions have been paid.

An employer who fails to file a report within the required time shall be assessed a late filing penalty of five percent (5%) of the amount of contributions due with the report for each month or fraction of a month the failure continues. The penalty may not exceed twenty-five percent (25%) of the amount of contributions due. An employer who fails to file a report within the required time but owes no contributions shall not be assessed a penalty unless the employer's failure to file continues for more than 30 days.

(h) When any uncertified check is tendered in payment of any contributions to the Division and such check shall have been returned unpaid on account of insufficient funds of the drawer of said check in the bank upon which same is drawn, a penalty shall be payable to the Division, equal to ten percent (10%) of the amount of said check, and in no case shall such penalty be less than one dollar ($1.00) nor more than two hundred dollars ($200.00).

(i) Except as otherwise provided in this subsection, no suit or proceedings for the collection of unpaid contributions may be begun under this Chapter after five years from the date on which the contributions become due, and no suit or proceeding for the purpose of establishing liability and/or status may be begun with respect to any period occurring more than five years prior to the first day of January of the year within which the suit or proceeding is instituted. This subsection shall not apply in any case of willful attempt in any manner to defeat or evade the payment of any contributions becoming due under this Chapter. A proceeding shall be deemed to have been instituted or begun upon the date of issuance of an order by the Assistant Secretary of the Division directing a hearing to be held to determine liability or nonliability, and/or status under this Chapter of an employing unit, or upon the date notice and demand for payment is mailed by certified mail to the last known address of the employing unit. The order shall be deemed to have been issued on the date the order is mailed by certified mail to the last known address of the employing unit. The running of the period of limitations provided in this subsection for the making of assessments or collection shall, in a case under Title II of the United States Code, be suspended for the period during which the Division is prohibited by reason of the case from making the assessment or collection and for a period of one year after the prohibition is removed.

(j) Waiver of Interest and Penalties. – The Division may, for good cause shown, reduce or waive any interest assessed on unpaid contributions under this section. The Division may reduce or waive any penalty provided in G.S. 96-10(a) or G.S. 96-10(g). The late filing penalty under G.S. 96-10(g) shall be waived when the mailed report bears a postmark that discloses that it was mailed by midnight of the due date but was addressed or delivered to the wrong State or federal agency. The late payment penalty and the late filing penalty imposed by G.S. 96-10(a) and G.S. 96-10(g) shall be waived where the delay was caused by any of the following:

(1) The death or serious illness of the employer or a member of the employer's immediate family or by the death or serious illness of the

person in the employer's organization responsible for the preparation and filing of the report;

(2) Destruction of the employer's place of business or business records by fire or other casualty;

(3) Failure of the Division to furnish proper forms upon timely application by the employer, by reason of which failure the employer was unable to execute and file the report on or before the due date;

(4) The inability of the employer or the person in the employer's organization responsible for the preparation and filing of reports to obtain an interview with a representative of the Division upon a personal visit to the central office or any local office for the purpose of securing information or aid in the proper preparation of the report, which personal interview was attempted to be had within the time during which the report could have been executed and filed as required by law had the information at the time been obtained;

(5) The entrance of one or more of the owners, officers, partners, or the majority stockholder into the Armed Forces of the United States, or any of its allies, or the United Nations, provided that the entrance was unexpected and is not the annual two weeks training for reserves; and

(6) Other circumstances where, in the opinion of the Secretary, Assistant Secretary, or their designees, the imposition of penalties would be inequitable.

In the waiver of any penalty, the burden shall be upon the employer to establish to the satisfaction of the Secretary, Assistant Secretary, or their designees that the delinquency for which the penalty was imposed was due to any of the foregoing facts or circumstances.

The waiver or reduction of interest or a penalty under this subsection shall be valid and binding upon the Division. The reason for any reduction or waiver shall be made a part of the permanent records of the employing unit to which it applies.

"**§ 96-19.36. Compromise of liability.**

(a) Authority. – The Secretary may compromise an employer's tax liability under this Article when the Secretary determines that the compromise is in the best interest of the State and makes one or more of the following findings:

(1) There is a reasonable doubt as to the amount of the liability of the taxpayer under the law and the facts.

(2) The taxpayer is insolvent and the Secretary probably could not otherwise collect an amount equal to, or in excess of, the amount offered in compromise. A taxpayer is considered insolvent only in one of the following circumstances:

a. It is plain and indisputable that the taxpayer is clearly insolvent and will remain so in the reasonable future.

b. The taxpayer has been determined to be insolvent in a judicial proceeding.

(3) Collection of a greater amount than that offered in compromise is improbable, and the funds or a substantial portion of the funds offered in the settlement come from sources from which the Secretary could not otherwise collect.

(b) Written Statement. – When the Secretary compromises a tax liability under this section and the amount of the liability is at least one thousand dollars ($1,000), the Secretary must make a written statement that sets out the amount of the liability, the amount accepted under the compromise, a summary of the facts concerning the liability, and the findings on which the compromise is based. The Secretary must sign the statement and keep a record of the statement.

"Part 4. Experience Rating.

"**§ 96-19.40. Employer account.**

(a) Employer Account. – The Division must maintain a separate account for each employer. The Division must charge the employer's account for benefits, as provided in G.S. 96-19.41. The Division must credit the employer's account with all contributions paid by the employer or on the employer's behalf. Any voluntary contributions made by an employer within 30 days after the date of mailing by the Division of notification of contribution rate, as required by G.S. 96-19.30, must be credited to its account as of the previous July 31.

(b) Closed Account. – Except as provided in subsection (c) of this section, when an employer ceases to be an employer, the employer's account must be closed and may not be used in any future computation of the employer's contribution rate.

(c) Acquisition of Existing Business. – When an employer acquires all of the organization, trade, or business of another employing unit, the Division shall transfer the account of the predecessor to the successor employer as of the date of the acquisition for use in the determination of the successor's rate of contributions. This mandatory transfer does not apply when there is no common ownership between the predecessor and the successor and the successor acquired the assets of the predecessor in a sale in bankruptcy. In this circumstance, the successor's rate of contributions is determined without regard to the predecessor's rate of contributions.

When an employer acquires a distinct and severable portion of the organization, trade, or business of another employing unit, the part of the account of the predecessor that relates to the acquired portion of the business may, upon the mutual consent of the parties concerned and approval of the Division, be transferred as of the date of acquisition to the successor employer for use in the determination of the successor's rate of contributions, provided application for transfer is made within 60 days after the Division notifies the successor of the right to request such transfer, otherwise the effective date of the transfer is the first day of the calendar quarter in which the application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade, or business.

Whenever part of an organization, trade, or business is transferred between entities subject to substantially common ownership, management, or control, the account must be transferred in accordance with rules adopted by the Division. However, employing units transferring entities with any common ownership, management, or control are not entitled

to separate and distinct employer status under this Chapter. Provided however, that the transfer of an account for the purpose of computation of rates is considered to have been made prior to the computation date falling within the calendar year within which the effective date of the transfer occurs, and the account must be used in the computation of the rate of the successor employer for succeeding years. No request for a transfer of the account may be accepted and no transfer of the account may be made if the request for the transfer of the account is not received within two years of the date of acquisition or notification by the Division of the right to request a transfer, whichever occurs later. However, in no event is a request for a transfer allowed if an account has been terminated because an employer ceases to be an employer pursuant to G.S. 96-19.40(b) and G.S. 96-19.22, regardless of the date of notification.

(d) Contributions Credited to Wrong Account. – Whenever contributions are erroneously paid into one account that should have been paid into another account or that should have been paid into a new account, the erroneous payment may be adjusted only by refunding the erroneously paid amounts to the paying entity. No pro rata adjustment to an existing account may be made, nor can a new account be created by transferring any portion of the erroneously paid amount, notwithstanding that the entities involved may be owned, operated, or controlled by the same person or organization. No adjustment of a contribution rate may be made that reduces the rate below the standard rate for any period in which the account was not in actual existence and in which it was not actually chargeable for benefits. Whenever payments are found to have been made to the wrong account, refunds can be made to the entity making the wrongful payment for a period not exceeding five years from the last day of the calendar year in which it is determined that wrongful payments were made. Notwithstanding payment into the wrong account, if an entity is determined to have met the requirements to be a covered employer, whether or not the entity has paid on the account of its employees any sum into another account, the Division must collect contributions at the standard rate or the assigned rate, whichever is higher, for the five years preceding the determination of erroneous payments, which five years runs from the last day of the calendar year in which the determination of liability for contributions or additional contributions is made. This requirement applies regardless of whether the employer acted in good faith.

(e) Interest Credited. – On the computation date, the ratio of the credit balance in each individual account to the total of all the credit balances in all employer accounts must be computed, and an amount equal to the interest credited to this State's account in the unemployment trust fund in the Treasury of the United States for the four most recently completed calendar quarters must be credited prior to the next computation date on a pro rata basis to all employers' accounts having a credit balance on the computation date. The amount must be prorated to the individual accounts in the same ratio that the credit balance in each individual account bears to the total of the credit balances in all such accounts. In computing the amount to be credited to the account of an employer as a result of interest earned by funds on deposit in the unemployment trust fund in the Treasury of the United States to the account of this State, any voluntary contributions made by an employer after July 31 of any year shall not be considered a part of the

account balance of the employer until the next computation date occurring after the voluntary contribution was made.

"**§ 96-19.41. Charging of benefit payments to employer account.**

(a) Allocation of Charged. – Benefits paid to a claimant must be allocated to the account of each base period employer in the proportion that the base period wages paid to an eligible individual in any calendar quarter by each such employer bears to the total wages paid by all base period employers during the base period. The amount allocated is multiplied by one hundred twenty percent (120%) and charged to that employer's account. Benefits paid are charged to employers' accounts upon the basis of benefits paid to claimants whose benefit years have expired.

(b) Charging of Benefits After Separation. – Any benefits paid to a claimant under a claim filed for a period occurring after the date of separation for one of the reasons listed in this subsection may not be charged to the account of an employer by whom the claimant was employed at the time of separation if the employer promptly notifies the Division, in accordance with rules adopted by the Division, of the applicable reason listed below for the separation:

(1) The claimant left work without good cause attributable to the employer.

(2) The employer discharged the claimant for misconduct in connection with his work.

(3) The employer discharged the claimant solely for a bona fide inability to do the work for which the individual was hired and the claimant's period of employment was 100 days or less.

(4) The separation is a disqualifying separation under G.S. 96-19.52.

(c) Benefits Not Chargeable. – The following benefit charges may not be made against an employer's account:

(1) Except as provided in G.S. 96-19.42, benefits paid as a result of a decision by the Division, if the decision to pay benefits is ultimately reversed.

(2) Any benefits paid to any claimant who is attending a vocational school or training program approved by the Division may not be charged to the account of the base period employers.

(3) Any benefits paid to any claimant where all of the following conditions are met:

a. The benefits are paid for unemployment due directly to a major natural disaster.

b. The President has declared the disaster pursuant to the Disaster Relief Act of 1970, 42 U.S.C. 4401, et seq.

c. The benefits are paid to claimants who would have been eligible for disaster unemployment assistance under this Act, if they had not received unemployment insurance benefits with respect to that unemployment.

(d) Current Employer in Base Period. – An employer who has furnished work to an individual who, because of the loss of employment with one or more other employers, becomes eligible for partial benefits while still being furnished work by such employer

on substantially the same basis and substantially the same amount as had been made available to such individual during his base period, whether the employments were simultaneous or successive. An employer must file a written request with the Division for noncharging of benefits under this subdivision.

"**§ 96-19.42. Employer's reserve ratio.**

(a) Computation. – On August 1 of each year, the Division must determine the balance of each employer's account and compute a reserve ratio for the employer. At the same time the Division notifies an employer of the employer's contribution rate for the succeeding calendar year, it must furnish the employer with a statement of all charges and credits made to the employer's account. The employer may file an application for review or redetermination prior to May 1 following the effective date of the contribution rate.

(b) Credit Reserve Ratio. – For each employer whose account has a credit balance, the Division must compute a credit reserve ratio. An employer's credit reserve ratio is the quotient obtained by dividing the credit balance of the employer's account as of July 31 of each year by the total taxable payroll of the employer for the 36 calendar-month period ending June 30 preceding the computation date. Credit balance as used in this subsection means the total of all contributions paid and credited for all past periods together with all other lawful credits to the account of the employer less the total benefits charged to the account of the employer for all past periods.

(c) Debit Reserve Ratio. – For each employer whose account shows that the total of all of its contributions paid and credited for all past periods together with all other lawful credits is less than the total benefits charged to its account for all past periods, the Division must compute a debit reserve ratio. An employer's debit ratio is the quotient obtained by dividing the debit balance of the employer's account as of July 31 of each year by the total taxable payroll of the employer for the 36 calendar-month period ending June 30 preceding the computation date. The employer's debit balance is the total amount of all benefits charged to the employer's account for all past periods less the total amount of all contributions paid and credited in those periods, together with all other lawful credits of the employer.

(d) Insufficient Employer Report. – If, within the calendar month in which the computation date occurs, the Division finds that any employing unit failed to file a report or filed a report that the Division finds incorrect or insufficient, the Division must make an estimate of the information required from the employing unit on the basis of the best evidence reasonably available to it at the time. The Division must notify the employing unit of the estimates it will use to compute the employer's reserve ratio by registered mail addressed to its last known address. The Division must compute the employing unit's reserve ratio and contribution rate based upon those estimates unless the employing unit files a report or a corrected or sufficient report, as the case may be, within 15 days after the mailing of the notice. The rate so determined may be adjusted on the basis of subsequently ascertained information.

(e) Active Duty. – If the Division finds that an employer's business is closed solely because of the entrance of one or more of the owners, officers, partners, or the majority stockholder into the Armed Forces of the United States, or of any of its allies, or of the

United Nations, the employer's experience rating account may not be terminated; and, if the business is resumed within two years after the discharge or release from active duty in the Armed Forces of the United States of such person or persons, the employer's account is deemed to have been chargeable with benefits throughout more than 13 consecutive calendar months ending July 31 immediately preceding the computation date. This subsection applies only to employers who are liable for contributions under the experience rating system of financing unemployment benefits. This subsection does not apply to employers who are liable for payments in lieu of contributions or to employers using the reimbursable method of financing benefit payments under G.S. 96-19.32 or G.S. 96-19.33.

"**§ 96-19.43. Transfer of account.**

(a) Mandatory. – When an employer acquires all of the organization, trade, or business of another employing unit, the account of the predecessor shall be transferred as of the date of the acquisition to the successor employer for use in the determination of the successor's rate of contributions. This mandatory transfer does not apply when there is no common ownership between the predecessor and the successor and the successor acquired the assets of the predecessor in a sale in bankruptcy. In this circumstance, the successor's rate of contributions is determined without regard to the predecessor's rate of contributions.

(b) Consent. – When an employer acquires a distinct and severable portion of the organization, trade, or business of another employing unit, the part of the account of the predecessor that relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Division in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition to the successor employer for use in the determination of the successor's rate of contributions, provided application for transfer is made within 60 days after the Division notifies the successor of the right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade, or business. Whenever part of an organization, trade, or business is transferred between entities subject to substantially common ownership, management, or control, the tax account shall be transferred in accordance with regulations. However, employing units transferring entities with any common ownership, management, or control are not entitled to separate and distinct employer status under this Chapter. Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of subsection (d) of this section. No request for a transfer of the account will be accepted and no transfer of the account will be made if the request for the transfer of the account is not received within two years of the date of acquisition or notification by the Division of the right to request such transfer, whichever occurs later. However, in no event will a request for a transfer be allowed if an account has been terminated because an employer ceases to be

an employer pursuant to G.S. 96-9(c)(5) and G.S. 96-11(d) regardless of the date of notification.

(c) Employer Number. – A new employing unit shall not be assigned a discrete employer number when there is an acquisition or change in the form or organization of an existing business enterprise, or severable portion thereof, and there is a continuity of control of the business enterprise. That new employing unit shall continue to be the same employer for the purposes of this Chapter as before the acquisition or change in form. The following assumptions apply in this subsection:

(1) "Control of the business enterprise" may occur by means of ownership of the organization conducting the business enterprise, ownership of assets necessary to conduct the business enterprise, security arrangements or lease arrangements covering assets necessary to conduct the business enterprise, or a contract when the ownership, stated arrangements, or contract provide for or allow direction of the internal affairs or conduct of the business enterprise.

(2) A "continuity of control" will exist if one or more persons, entities, or other organizations controlling the business enterprise remain in control of the business enterprise after an acquisition or change in form. Evidence of continuity of control shall include, but not be limited to, changes of an individual proprietorship to a corporation, partnership, limited liability company, association, or estate; a partnership to an individual proprietorship, corporation, limited liability company, association, estate, or the addition, deletion, or change of partners; a limited liability company to an individual proprietorship, partnership, corporation, association, estate, or to another limited liability company; a corporation to an individual proprietorship partnership, limited liability company, association, estate, or to another corporation or from any form to another form.

(d) Rate of Contribution. – Notwithstanding any other provisions of this section, if the successor employer was an employer subject to this Chapter prior to the date of acquisition of the business, the successor's rate of contribution for the period from that date to the end of the then current contribution year shall be the same as the successor's rate in effect on the date of the acquisition. If the successor was not an employer prior to the date of the acquisition of the business, the successor shall be assigned a standard beginning rate of contribution set forth in G.S. 96-9(b)(1) for the remainder of the year in which the successor acquired the business of the predecessor; however, if the successor makes application for the transfer of the account within 60 days after notification by the Division of the right to do so and the account is transferred, or meets the requirements for mandatory transfer, the successor shall be assigned for the remainder of the year the rate applicable to the predecessor employer or employers on the date of acquisition of the business, as long as there was only one predecessor or, if more than one, the predecessors had identical rates. In the event the rates of the predecessor were not identical, the rate of the successor shall be the highest rate applicable to any of the predecessor employers on the date of acquisition of the business.

Irrespective of any other provisions of this Chapter, when an account is transferred in its entirety by an employer to a successor, the transferring employer shall thereafter pay the standard beginning rate of contributions set forth in G.S. 96-9(b)(1) and shall continue to pay at that rate until the transferring employer qualifies for a reduction, reacquires the account transferred or acquires the experience rating account of another employer, or is subject to an increase in rate under the conditions prescribed in G.S. 96-9(b)(2) and (3).

(e) Deceased or Insolvent Employer. – In those cases where the organization, trade, or business of a deceased person, or insolvent debtor is taken over and operated by an administrator, executor, receiver, or trustee in bankruptcy, such employing units shall automatically succeed to the account and rate of contribution of such deceased person, or insolvent debtor without the necessity of the filing of a formal application for the transfer of such account.

"**§ 96-19.44. Program integrity.**

(a) Nonrelief of Charges. – The Division must charge benefits to an employer's account when it determines that an overpayment has been made to a claimant and it determines that both of the conditions in this subsection apply. If the claim is a combined-wage claim, the determination of noncharging for the combined-wage claim must be made by the paying state. If the response from the employer does not meet the criteria established by the paying state for an adequate or timely response, the paying state must promptly notify the transferring state of its determination and the employer must be appropriately charged. The Division may waive the prohibition for good cause.

(1) The overpayment occurred because the employer failed to respond timely or adequately to a written or electronic request of the Division for information relating to an unemployment compensation claim. A response is considered untimely if it fails to be made within the time allowed under G.S. 96-19.80(c). A response is considered inadequate if it fails to provide sufficient facts to enable the Division to make a correct determination of benefits. A response may not be considered inadequate if the Division fails to request the necessary information.

(2) The employer exhibits a pattern of failure to respond timely or adequately by failing to respond to written requests from the Division for information relating to an unemployment compensation claim on two or more occasions. If an employer uses a third-party agent to respond on its behalf to the Division, then the actions of the agent must be considered when determining a pattern of failure to respond timely or adequately. A pattern is established based on the agent's behavior overall and not only with respect to its behavior related to the employer.

(b) Applicability. – This section applies to erroneous payments established on or after October 1, 2013.

"Part 5. Benefit Eligibility.

"**§ 96-19.50. Register for work and file a valid claim.**

(a) Initial Determination. – An individual who is unemployed may file a claim for benefits. If the Division determines that the individual has registered for work and filed a

valid claim, the individual may qualify for benefits as provided in this Part. A valid claim is one that meets the employment and wage standards set out below for the individual's base period:

(1) Employment. – The individual has been paid wages in at least two quarters of the individual's base period.

(2) Wages. – The individual has been paid wages totaling at least six times the average weekly insured wage during the individual's base period. If an individual lacks sufficient base period wages, then the wage standard for that individual may be determined using the alternative base period.

(b) Waiting Week. – An individual must serve a waiting period of one week with respect to each benefit claim filed.

(c) Qualifying Wages for Second Benefit Year. – An individual whose prior benefit year has expired and who files a new benefit claim is not entitled to benefits unless the individual has been paid qualifying wages since the beginning date of the prior benefit year and before the date the new benefit claim was filed equal to at least six times the average weekly insured wage and has been paid wages in at least two quarters of the individual's base period.

"**§ 96-19.51. Disqualification for benefits.**

(a) Disqualification Period. – The Division must determine whether an individual who has registered for work and filed a valid claim for benefits as required under G.S. 96-19.50 is qualified to receive benefits. A claimant's qualification for benefits is determined based on the reason for separation from employment from the individual's last permanent employer. The individual's last permanent employer is the employer for whom the claimant worked for more than 30 consecutive calendar days, regardless of whether the work was performed on all of those days. A claimant disqualified for benefits under this section may not receive any benefits for the entire one-year benefit period connected with that claim.

(b) Left Work Without Good Cause Attributable to the Employer. – A claimant is disqualified for benefits if it is determined by the Division that the claimant is unemployed because the claimant left work without good cause attributable to the employer. Where a claimant leaves work, the burden of showing good cause attributable to the employer rests on the claimant and the burden may not be shifted to the employer. Where an employee is notified by the employer that the employee will be separated from employment on some future date and the employee leaves work prior to this date because of the impending separation, the employee has left work voluntarily and the leaving is not considered good cause attributable to the employer.

The following circumstances are prima facie evidence of good cause attributable to the employer that may be rebutted by the employer:

(1) Reduction in hours. – Where an individual leaves work due solely to a unilateral and permanent reduction in work hours of more than fifty percent (50%) of the customary scheduled full-time work hours in the establishment, plant, or industry in which the individual was employed.

(2) Reduction in pay. – Where an individual leaves work due solely to a unilateral and permanent reduction in the individual's rate of pay of more than fifteen percent (15%).

(c) Misconduct. – An individual is disqualified for benefits if it is determined by the Division that the individual is, at the time such claim is filed, unemployed because the individual was discharged for misconduct connected with the work. Misconduct connected with the work is conduct evincing a willful or wanton disregard of the employer's interest as is found in deliberate violation or disregard of standards of behavior that the employer has the right to expect of an employee or has explained orally or in writing to an employee or conduct evincing carelessness or negligence of such degree or recurrence as to manifest an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

The following examples are prima facie evidence of misconduct that may be rebutted by the claimant:

(1) Violating the employer's written alcohol or illegal drug policy.

(2) Reporting to work significantly impaired by alcohol or illegal drugs.

(3) Consuming alcohol or illegal drugs on employer's premises.

(4) Conviction by a court of competent jurisdiction for manufacturing, selling, or distribution of a controlled substance punishable under G.S. 90-95(a)(1) or G.S. 90-95(a)(2) if the offense is related to or connected with an employee's work for an employer or is in violation of a reasonable work rule or policy.

(5) Being terminated or suspended from employment after arrest or conviction for an offense involving violence, sex crimes, or illegal drugs if the offense is related to or connected with an employee's work for an employer or is in violation of a reasonable work rule or policy.

(6) Any physical violence whatsoever related to an employee's work for an employer, including physical violence directed at supervisors, subordinates, coworkers, vendors, customers, or the general public.

(7) Inappropriate comments or behavior towards supervisors, subordinates, coworkers, vendors, customers, or to the general public relating to any federally protected characteristic which creates a hostile work environment.

(8) Theft in connection with the employment.

(9) Forging or falsifying any document or data related to employment, including a previously submitted application for employment.

(10) Violating an employer's written absenteeism policy.

(11) Refusing to perform reasonably assigned work tasks or failing to adequately perform employment duties as evidenced by no fewer than three written reprimands in the 12 months immediately preceding the employee's termination.

(d) Failure to Supply Necessary License. – An individual is disqualified for benefits if the Division determines that the individual is, at the time the claim is filed, unemployed because the individual has been discharged from employment because a

license, certificate, permit, bond, or surety that is necessary for the performance of the individual's employment and that the individual is responsible to supply has been revoked, suspended, or otherwise lost to the individual, or the individual's ability to successfully apply or the individual's application therefor has been lost or denied for a cause that was within the individual's power to control, guard against, or prevent. No showing of misconduct connected with the work is required in order for an individual to be disqualified for benefits under this subsection.

(e) Labor Dispute. – An individual is disqualified for benefits if the Division determines the individual's total or partial unemployment is caused by a labor dispute in active progress at the factory, establishment, or other premises at which the individual is or was last employed or caused after such date by a labor dispute at another place within this State that is owned or operated by the same employing unit which owns or operates the factory, establishment, or other premises at which the individual is or was last employed and that supplies materials or services necessary to the continued and usual operation of the premises at which the individual is or was last employed. An individual disqualified under the provisions of this subsection continues to be disqualified after the labor dispute has ceased to be in active progress for a period of time that is reasonably necessary and required to physically resume operations in the method of operating in use at the plant, factory, or establishment of the employing unit.

(f) Self-Employed and Business Owners. – An individual is disqualified for benefits if the Division determines either of the following:

(1) The individual is customarily self-employed and can reasonably return to self-employment.

(2) The individual is, at the time the claim is filed, unemployed because the individual's ownership share of the employing entity was voluntarily sold and, at the time of the sale, one or more of the following existed:

a. The employing entity was a corporation and the individual held five percent (5%) or more of the outstanding shares of the voting stock of the corporation.

b. The employing entity was a partnership, limited or general, and the individual was a limited or general partner.

c. The employing entity was a proprietorship, and the individual was a proprietor.

(g) Domestic violence. – A claimant may not be disqualified for benefits for leaving work for reasons of domestic violence if the claimant reasonably believes that the claimant's continued employment would jeopardize the safety of the claimant or of any member of the claimant's immediate family. For the purposes of this subsection, a claimant may be a victim of domestic violence if one or more of the following applies:

(1) The claimant has been adjudged an aggrieved party as set forth by Chapter 50B of the General Statutes.

(2) There is evidence of domestic violence, sexual offense, or stalking. Evidence of domestic violence, sexual offense, or stalking may include any one or more of the following:

a. Law enforcement, court, or federal agency records or files.

b. Documentation from a domestic violence or sexual assault program if the claimant is alleged to be a victim of domestic violence or sexual assault.

c. Documentation from a religious, medical, or other professional from whom the claimant has sought assistance in dealing with the alleged domestic violence, sexual abuse, or stalking.

(3) The claimant has been granted program participant status pursuant to G.S. 15C-4 as the result of domestic violence committed upon the claimant or upon a minor child with or in the custody of the claimant by an individual who has or has had a familial relationship with the claimant or minor child.

(h) Military Spouse. – A claimant may not be disqualified for benefits for leaving work to accompany the claimant's spouse to a new place of residence because the spouse has been reassigned from one military assignment to another.

"**§ 96-19.52. Weekly certification.**

(a) Requirements. – A claimant who files a valid claim and is determined by the Division to qualify for benefits must be eligible to receive those benefits for each week in the benefit period. To be eligible to receive a weekly benefit, a claimant must meet all of the following requirements for each weekly benefit period:

(1) File a claim for benefits.

(2) Report at an employment office as requested by the Division.

(3) Meet the work search requirements of subsection (b) of this section.

(b) Work Search Requirements. – A claimant is eligible to receive benefits with respect to any week only if the Division finds the claimant meets all of the following work search requirements:

(1) The individual is able to work.

(2) The individual is available to work.

(3) The individual is actively seeking work.

(4) The individual accepts suitable work when offered.

(c) Able to Work. – An individual is not able to work during any week that the individual is receiving or is applying for benefits under any other State or federal law based on the individual's temporary total or permanent total disability.

(d) Available to Work. – An individual is not available to work during any week that one or more of the following applies:

(1) The individual tests positive for a controlled substance. An individual tests positive for a controlled substance if all of the conditions of this subdivision apply. An employer must report a claimant's positive test for a controlled substance to the Division.

a. The test is a controlled substance examination administered under Article 20 of Chapter 95 of the General Statutes.

b. The test is required as a condition of hire for a job.

c. The job would be suitable work for the claimant.

(2) The individual is incarcerated or has received notice to report or is otherwise detained in any state or federal jail or penal institution. This

subdivision does not apply to an individual who is incarcerated solely on a weekend in a county jail and who is otherwise available for work.

(3) The individual is an alien and is not in satisfactory immigration status under the laws administered by the United States Department of Justice, Immigration and Naturalization Service.

(e) Actively Seeking Work. – The Division's determination of whether an individual is actively seeking work is based upon the following:

(1) The individual is registered for employment services, as required by the Division.

(2) The individual has engaged in an active search for employment that is appropriate in light of the employment available in the labor market and the individual's skills and capabilities.

(3) The individual has sought work on at least two different days during the week and made at least two in-person job contacts with potential employers.

(4) The individual has maintained a record of the individual's work search efforts. The record must include the potential employers contacted, the method of contact, and the date contacted. The individual must provide the record to the Division upon request.

(f) Suitable Work. – The Division's determination of whether an employment offer is suitable must vary based upon the individual's length of unemployment as follows:

(1) During the first 10 weeks of a benefit period, the Division may consider the degree of risk involved to individual's health, safety, and morals; the individual's physical fitness and prior training and experience, the individual's prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and the individual's prior earnings.

(2) During the second 10 weeks of a benefit period, the Division must consider any employment offer paying one hundred twenty percent (120%) of the individual's weekly benefit amount to be suitable work.

(g) Job Attachment. – An individual who is partially unemployed and for whom the employer has filed an attached claim for benefits has satisfied the work search requirements for any given week in the benefit period associated with the attached claim if the Division determines the individual is available for work with the employer that filed the attached claim.

(h) Job Training. – An individual has satisfied the work search requirements for any given week if the Division determines for that week that one or more of the following applies:

(1) Trade Jobs for Success. – The individual is participating in the Trade Jobs for Success initiative under G.S. 143B-438.16.

(2) Reemployment Services. – The claimant is participating in the reemployment services as directed by the Division and is actively seeking work in a manner consistent with the planned reemployment

services. The Division must refer a claimant to reemployment services if the Division finds that the claimant would likely exhaust regular benefits and need reemployment services to make a successful transition to new employment.

(3) Vocational School or Training Program. – The claimant is attending a vocational school or training program approved by the Division.

(i) Federal Labor Standards. – An otherwise eligible individual may not be denied benefits for a given week if the Division determines that for that week the individual refused to accept new work under one or more of the following conditions:

(1) The position offered is vacant due directly to a strike, lockout, or other labor dispute.

(2) The remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

(3) The individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization as a condition of employment.

(j) Trade Act of 1974. – An otherwise eligible individual may not be denied benefits for any week because the individual is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor may the individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any such week in training of provisions in this law or of any applicable federal unemployment compensation law, relating to availability for work, active search for work, or refusal to accept work. For purposes of this subsection, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the Trade Act of 1974, and wages for such work at not less than eighty percent (80%) of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

"**§ 96-19.53. Disqualification for the duration of the benefit period.**

(a) Duration. – A claimant who qualified to receive benefits under G.S. 96-19.50 may be disqualified from receiving benefits for the remaining duration of the unemployment period under this section if one or more subsections of this section apply. The period of disqualification under this section begins with the first day of the first week after the disqualifying act occurs with respect to the week an individual files a claim for benefits.

(b) Suitable Work. – An individual is disqualified for benefits if the Division determines that the individual has failed, without good cause, to do one or more of the following:

(1) Apply for available suitable work when so directed by the employment office of the Division.

(2) Accept suitable work when offered.

(3) Return to the individual's customary self-employment when so directed by the Division.

(c) Recall after Layoff. – An individual is disqualified for benefits if it is determined by the Division that the individual is, at the time a claim is filed, unemployed because the individual, without good cause attributable to the employer and after receiving notice from the employer, refused to return to work for a former employer under one or more of the following circumstances:

(1) The individual was recalled within four weeks from a layoff. As used in this subsection, the term "layoff" means a temporary separation from work due to no work available for the individual at the time of separation from work and the individual is retained on the employee's payroll and is a continuing employee subject to recall by the employer.

(2) The individual was recalled in any week in which the work search requirements were satisfied under G.S. 96-19.52(g).

"**§ 96-19.54. Disqualification for receipt of benefits.**

(a) Failure to Meet Work Search Requirements. – A claimant is disqualified from receiving benefits for any week with respect to which the individual fails to file a claim and meet the work search requirements required under G.S. 96-19.52.

(b) Disciplinary Suspension. – A claimant is disqualified from receiving benefits for any week during any part of which the Division finds that work was not available to the individual because he had been placed on a bona fide disciplinary suspension by his employer. To be bona fide, a disciplinary suspension must be based on acts or omissions which constitute fault on the part of the employee and are connected with the work. A single disciplinary suspension does not disqualify any claims week beginning after 30 consecutive calendar days of the suspension. If the individual is still suspended after 30 consecutive calendar days, the individual is considered to have been discharged from work because of the acts or omissions that caused the suspension.

(c) Receipt of Sum from Employer. – A claimant is disqualified from receiving benefits for any week with respect to which the individual has received any sum from the employer pursuant to an order of any court, the National Labor Relations Board, any other lawfully constituted adjudicative agency, or by private agreement, consent, or arbitration for loss of pay by reason of discharge. When the amount paid by the employer is in a lump sum and covers a period of more than one week, the amount paid is allocated to the weeks in the period on a pro rata basis as the Division may adopt and if the amount so prorated to a particular week would, if it had been earned by the claimant during that week of unemployment, have resulted in a reduced benefit payment as provided in G.S. 96-19.60, the claimant is entitled to receive a reduced payment if the claimant was otherwise eligible.

Any benefits previously paid for weeks of unemployment with respect to which back pay awards, or other such compensation, are made constitutes an overpayment of benefits and the amount of overpayment must be deducted from the award by the employer prior to payment to the employee, and transmitted within five days to the Division by the employer for application against the overpayment. Any amount of overpayment deducted by the employer and not transmitted to the Division, or the failure of an employer to deduct an overpayment, is subject to the same procedures for collection as is provided for contributions. The removal of any charges made against the employer as a result of any

previously paid benefits must be applied to the calendar year in which the overpayment is transmitted to the Division, and no attempt will be made to relate the credit to the period to which the award applies.

"Part 6. Benefits.

"§ 96-19.60. **Weekly benefit amount.**

(a) Full Weekly Benefit Amount. – The weekly benefit amount for an individual who is totally unemployed is an amount equal to the wages paid to the individual in the last two completed quarters of the individual's base period divided by 52 and rounded to the next lower whole dollar. If this amount is less than fifteen dollars ($15.00), the individual is not eligible for benefits. The weekly benefit amount may not exceed three hundred fifty dollars ($350.00).

(b) Partial Weekly Benefit Amount. – The weekly benefit amount for an individual who is partially unemployed or part-totally employed is a portion of the individual's weekly benefit amount. The portion payable is the difference between the individual's weekly benefit amount and any part of the wages or remuneration that is payable to the individual for a week for which benefits are claimed and that exceeds twenty percent (20%) of the individual's weekly benefit amount. If the amount so calculated is not a whole dollar, the amount must be rounded to the next lower whole dollar. Payments received by an individual under a supplemental benefit plan do not affect the computation of the individual's partial weekly benefit.

(c) Retirement Deduction. – The amount of benefit payable to an individual for any week that begins in a period with respect to which the individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment that is based on the previous work of the individual must be reduced by the amounts of such pension, retirement or retired pay, annuity, or other payment that is reasonably attributable to such week or that is contributed to in part or in total by the individual's base period employers. The amount of all payments received by an individual under the Railroad Retirement Act must be deducted from the individual's benefit amount. Any weekly benefit amounts reduced under this subsection must be rounded to the nearest lower full dollar amount. The amount may not be reduced below zero.

(d) Mandatory Withholding. – The Division must withhold the following from a claimant's benefits, if applicable:

(1) Child support obligations, as determined under G.S. 96-19.63.

(2) Overpayments of benefits, to the extent provided under G.S. 96-19.80.

(e) Voluntary Income Tax Withholding. – Unemployment compensation is subject to federal and State individual income tax. A claimant may elect to have federal and State income tax withheld from the claimant's weekly benefit amount as provided in this subsection. The Division must follow the procedures specified by the United States Department of Labor, the Internal Revenue Service, and the Department of Revenue pertaining to the deducting and withholding of individual income tax. The amounts deducted and withheld from unemployment compensation remain in the Unemployment Insurance Fund until transferred to the appropriate taxing authority as a payment of income tax. When an individual files a new claim for unemployment compensation, the individual must be advised in writing at the time of filing that:

(1) Unemployment compensation is subject to federal and State individual income tax.

(2) Requirements exist pertaining to estimated tax payments.

(3) The individual may elect to have federal individual income tax deducted and withheld from the individual's payment of unemployment compensation at the amount specified in section 3402 of the Internal Revenue Code.

(4) The individual may elect to have State individual income tax deducted and withheld from the individual's payment of unemployment compensation in an amount determined by the individual.

(5) The individual may change a previously elected withholding status.

(f) Administration. – The Division must establish and maintain individual wage record accounts for each individual who earns wages in covered employment for as long as the wages would be included in a determination of benefits. If two or more deductions are made from an individual's unemployment compensation payment, then the deductions must be deducted and withheld in accordance with priorities established by the Division.

"**§ 96-19.61. Duration of benefits.**

(a) Total Benefit Amount. – The total amount of benefits paid to an individual may not exceed the individual's total benefit amount. The total benefit amount for an individual is determined as follows:

(1) Divide the individual's base-period wages by the average of the wages paid to the individual in the last two completed quarters of the base period.

(2) Multiplying that quotient by eight and two-thirds.

(3) Round the product to the nearest whole number.

(4) Multiply the resulting amount by the individual's weekly benefit amount as determined under G.S. 96-19.60.

(b) Duration. – The number of weeks an individual may receive benefits varies depending on the seasonal adjusted statewide unemployment rate in use at the time the regular unemployment claim is filed. The total benefits paid to an individual may not be less than the individual's average weekly benefit amount multiplied by the minimum number of weeks allowed under the table in subsection (c) of this section. The total benefits paid to an individual may not exceed the lesser of the following:

(1) The individual's average weekly benefit amount multiplied by the maximum number of weeks allowed under the table in subsection (c) of this section.

(2) The individual's total benefit allowed, as calculated under subsection (a) of this section.

(c) Unemployment Rate in Use. – The minimum and maximum number of weeks allowed for a claim filed during a six-month base period depends on the seasonal adjusted statewide unemployment rate in use for that base period. One six-month base period begins on July 1 and one six-month base period begins on January 1. For the period beginning July 1, the Division must use the most recently available seasonal adjusted unemployment rate for the State for the preceding month of April. For the base period

that begins January 1, the Division must use the most recently available seasonal adjusted unemployment rate for the preceding month of October. The seasonal adjusted unemployment rate the Division uses must be the most recent one determined by U.S. Department of Labor, Bureau of Labor Statistics; it is not the rate as revised in the annual benchmark.

Seasonal Adjusted UI Rate	Minimum Number of Weeks	Maximum Number of Weeks
Less than or equal to 5.5%	5	12
Greater than 5.5% up to 6%	6	13
Greater than 6% up to 6.5%	7	14
Greater than 6.5% up to 7%	8	15
Greater than 7% up to 7.5%	9	16
Greater than 7.5% up to 8%	10	17
Greater than 8% up to 8.5%	11	18
Greater than 8.5% up to 9%	12	19
Greater than 9%	13	20

(d) Limitation of Benefits for Business Owners. – This subsection limits the number of weeks an individual may receive benefits to the lesser of six weeks or the applicable weeks determined under this subsection (b) of this section. This subsection applies to an individual who is unemployed based on services performed for a corporation in which the individual held five percent (5%) or more of the outstanding shares of the voting stock of the corporation.

"**§ 96-19.62. Services provided to an educational institution.**

(a) Individuals Employed by Educational Institutions in a Professional Capacity. – This subsection applies to individuals who provide services to or on behalf of an educational institution in an instructional, research, or principal administrative capacity, regardless of whether the individual is employed by the institution or by an educational service agency. Benefits are not payable to an individual to whom this subsection applies for any week described below:

(1) Academic terms. – For any week commencing during the period between two successive academic years or terms or, when an agreement provides instead for a similar period between two regular but not successive terms, during that period, if the individual performs services in the first of the academic years or terms and there is a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution in the second of the academic years or terms.

(2) Holiday recess. – For any week commencing during an established and customary vacation period or holiday recess, and there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess.

(b) Individuals Employed by Educational Institutions in any other Capacity. – This subsection applies to individuals who provide services to or on behalf of an educational institution in any capacity other than a capacity described in subsection (a) of this section,

regardless of whether the individual is employed by the institution or by an educational service agency. Benefits are not payable to an individual to whom this subsection applies for any week described below:

(1) Academic terms. – For any week commencing during the period between two successive academic years or terms or, when an agreement provides instead for a similar period between two regular but not successive terms, during that period, if the individual performs services in the first of the academic years or terms and there is a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution in the second of the academic years or terms. If benefits are denied to an individual under this subdivision and the individual was not offered an opportunity to perform such services for the educational institution for the second of the academic years or terms, the individual is entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this subdivision.

(2) Holiday recess. – For any week commencing during an established and customary vacation period or holiday recess, and there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess.

(c) Educational Service Agency. – The term "educational service agency" has the same meaning as defined in section 3304 of the Code.

"**§ 96-19.63. Professional athletes; aliens.**

(a) Professional Athletes. – Benefits are not payable to an individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons or periods if the individual performs services in the first season or period and there is a reasonable assurance that the individual will perform services in the latter season or period.

(b) Illegal Aliens. – Benefits are not payable to an individual on the basis of any services performed by an alien unless the alien was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for purposes of performing the services, or was permanently residing in the United States under the color of law. A claimant present in the United States as a result of the application of the provisions of the federal Immigration and Nationality Act is considered to be an alien lawfully present in the United States.

Any data or information required of a claimant to determine whether or not benefits are payable based upon the claimant's alien status must be uniformly required from all individuals making a claim for benefits. A determination that benefits are not payable to a claimant because of the claimant's alien status may be made only upon a preponderance of the evidence.

"**§ 96-19.64. Deduction for child support obligations.**

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

(1) Child support obligation. – Obligations that are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services under Part D of Title IV of the Social Security Act.

(2) State or local child support enforcement agency. – An agency of this State or a political subdivision thereof operating pursuant to a plan described in subdivision (1) of this subsection.

(3) Unemployment compensation. – Any compensation found by the Division to be payable to an unemployed individual under the Employment Security Law of North Carolina, including amounts payable by the Division pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(b) Withholding of Child Support Obligation. – An individual filing a new claim for unemployment compensation shall, at the time of filing the claim, disclose whether the individual owes child support obligations. If an individual discloses that he or she owes child support obligations and the Division determines that the individual is eligible to receive unemployment compensation, the Division shall notify the State or local child support enforcement agency enforcing the child support obligation that the individual has been determined to be eligible for payment of unemployment compensation. Upon payment by the State or local child support enforcement agency of the processing fee in subsection (c) of this section and beginning with any payment of unemployment compensation that would be made to the individual during the current benefit year and more than five working days after the receipt of the processing fee by the Division, the Division shall deduct and withhold from any unemployment compensation otherwise payable to an individual the amount of child support obligation owed. Any amount deducted and withheld under this section is treated as if it were paid to the individual as unemployment compensation and then paid by the individual to the State or local child support enforcement agency in satisfaction of the individual's child support obligations. The amount of child support obligation owed is the first applicable amount listed below:

(1) The amount required to be deducted and withheld from unemployment compensation under a properly served legal process, as that term is defined in section 462(e) of the Social Security Act.

(2) The amount determined pursuant to an agreement submitted to the Division under section 454(20)(B)(i) of the Social Security Act by the State or local child support enforcement agency.

(3) The amount specified by the individual to the Division to be deducted and withheld.

(c) Agreement to Withhold. – The Department of Health and Human Services and the Division may enter into one or more agreements that provide for the payment to the Department of Health and Human Services of child support obligations withheld from an individual's unemployment compensation benefits. The agreement may provide that these payments will be made on an open account basis. The agreement must provide reimbursement to the Division by the State or local child support agency for all

administrative costs incurred by the Division attributable to the requirements of this section. On or before April 1 of each year, the Division must set a schedule of processing fees applicable for the upcoming fiscal year that reflects the Division's best estimate of the administrative costs to the Division of implementing this section. The Division must forward the fee schedule to the Secretary of Health and Human Services. The Division shall begin withholding child support obligations from a recipient's unemployment compensation benefits on the date it receives a written authorization from the Department of Health and Human Services to charge the processing fee to its account with respect to the individual name in the authorization.

"Part 7. Extended Benefits.

"**§ 96-19.70. Extended benefit period.**

(a) Extended Benefit Period. – The State must provide an extended benefit period for a period beginning the third week after a week for which there is an "on indicator" and ends with the latter of the third week after the first week for which there is an "off indicator" or the 13th consecutive week of such period. No extended benefit period may begin before the 14th week following the end of a prior extended benefit period which was in effect with respect to this State.

(b) "On Indicator". – There is an "on indicator" for this State for a week if the Division determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediate preceding 12 weeks, the rate of insured unemployment, not seasonally adjusted, under this Chapter meets both of the following conditions:

(1) Equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding 13-week period ending in each of the preceding two calendar years.

(2) Equaled or exceeded five percent (5%).

(c) "Off Indicator". – There is an "off indicator" for this State for a week if the Division determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment, not seasonally adjusted, under this Chapter meets at least one of the following conditions:

(1) Was less than one hundred twenty percent (120%) of the average of such rates for the corresponding 13-week period ending in each of the preceding two calendar years and was less than six percent (6%).

(2) Was less than five percent (5%).

"**§ 96-19.71. Federally funded extended benefit period.**

The State may only provide an extended benefit period under this section if the federal government funds one hundred percent (100%) of the costs of the extended benefits.

(1) There may be an "on indicator" for this State for a week if the Division determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediate preceding 12 weeks, the rate of insured unemployment, not seasonally adjusted, under this Chapter equaled or exceeded six percent

(6%). The "off indicator" for this period is the same as provided in G.S. 96-19.70.

(2) There may be an "on indicator" for this State for a week when the average rate of total unemployment, seasonally adjusted, as determined by the United States Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds a six and one-half percent (6.5%), and the average rate of total unemployment in the State, seasonally adjusted, as determined by the United States Secretary of Labor, for the same three-month period equals or exceeds one hundred ten percent (110%) of such average for either or both of the corresponding three-month periods ending in the two preceding calendar years. There is a State "off indicator" for a week under this subdivision, only if, for the period consisting of such week and the immediately preceding 12 weeks, the option specified in this subdivision does not result in an "on indicator".

"**§ 96-19.72. Eligibility for extended benefits.**

(a) Eligibility. – An individual is eligible to receive extended benefits with respect to any week of unemployment in the eligibility period only if the Division finds that with respect to such week:

(1) The individual is an exhaustee, as defined in subsection (b) of this section.

(2) The individual has satisfied the requirements of this Chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits. For purposes of disqualification for extended benefits, the term "suitable work" means any work which is within the individual's capabilities to perform if all of the following conditions are met:

a. The gross average weekly remuneration payable for the work exceeds the sum of the individual's weekly extended benefit amount plus the amount, if any, of supplemental unemployment benefits, as defined in section 501(C)(17)(D) of the Code, payable to such individual for such week.

b. The gross wages payable for the work equal the higher of the minimum wages provided by section 6(a)(1) of the Fair Labor Standards Act of 1938 as amended (without regard to any exemption), or the State minimum wage.

c. The work is offered to the individual in writing and is listed with the State employment service.

d. The considerations contained in G.S. 96-19.53 for determining whether or not work is suitable are applied to the extent that they are not inconsistent with the specific requirements of this subdivision.

e. The individual cannot furnish evidence satisfactory to the Division that the prospects for obtaining work in the individual's customary occupation within a reasonably short period of time are good. If the individual submits evidence that the Division determines is satisfactory for this purpose, the determination of whether or not work is suitable with respect to such individual shall be made in accordance with G.S. 96-19.53 without regard to the definition contained in this subdivision.

(3) The individual has not failed either to apply for or to accept an offer of suitable work referred to the individual by an employment office of the Division, and the individual has furnished the Division with tangible evidence that the individual has actively engaged in a systematic and sustained effort to find work. If an individual is found to be ineligible under this subdivision, the individual shall be ineligible beginning with the week that the individual either failed to apply for or to accept the offer of suitable work or failed to furnish the Division with tangible evidence of being actively engaged in a systematic and sustained effort to find work. An individual determined ineligible under this subdivision remains ineligible for extended benefits until the individual has been employed in each of four subsequent weeks and has earned remuneration equal to not less than four times the individual's weekly benefit amount.

(4) An individual shall not be eligible for extended compensation unless the individual had 20 weeks of full-time insured employment, or the equivalent in insured wages, as determined by a calculation of base period wages based upon total hours worked during each quarter of the base period and the hourly wage rate for each quarter of the base period. For the purposes of this subdivision, the equivalent in insured wages shall be earnings covered by the State law for compensation purposes which exceed 40 times the individual's most recent weekly benefit amount or one and one-half times the individual's insured wages in that calendar quarter of the base period in which the individual's insured wages were the highest.

(b) Exhaustee. – The term "exhaustee" means an individual who, with respect to any week of unemployment in the individual's eligibility period meets each of the following conditions:

(1) Has received, prior to such week, all of the regular benefits that were available to the individual under this Chapter or any other State law. If the individual's benefit year has expired prior to such week, the individual does not have sufficient wages on the basis of which a new benefit year would include such week.

(2) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965,

and such other federal laws as are specified in regulations issued by the United States Secretary of Labor.

(3) Has not received unemployment benefits under the unemployment compensation law of Canada.

"**§ 96-19.73. Benefit Amount and Duration.**

(a) Weekly Extended Benefit Amount. – The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year. For any individual who was paid benefits during the applicable benefit year in accordance with more than one weekly benefit amount, the weekly extended benefit amount shall be the average of such weekly benefit amounts rounded to the nearest lower full dollar amount (if not a full dollar amount). Provided, that for any week during a period in which federal payments to states under Section 204 of the Federal-State Extended Unemployment Compensation Act of 1970, P.L. 91-373, are reduced under an order issued under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, P.L. 99-177, the weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be reduced by a percentage equivalent to the percentage of the reduction in the federal payment. The reduced weekly extended benefit amount, if not a full dollar amount, shall be rounded to the nearest lower full dollar amount.

(b) Extended Benefit Duration. – Except as provided in subsection (c) of this section, the total extended benefit amount payable to any eligible individual with respect to his applicable benefit year is fifty percent (50%) of the total amount of regular benefits which were payable to the individual under this Chapter in the applicable benefit year.

(c) End of Extended Benefit Payments. – If the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits. This amount may not be reduced below zero.

"**§ 96-19.74. Charging of benefits to accounts.**

The federal share of any extended benefits may not be charged to the account of a taxpaying employer, but the State share of those benefits are chargeable to the account of the taxpaying employer to the same extent regular benefits payable to the claimant are chargeable to the account of that employer under G.S. 96-19.41. Any extended benefits that are one hundred percent (100%) federally financed may not be charged in any percentage to a taxpaying employer's account.

The federal and State share of extended benefits is chargeable to the account of a base period employer who is a nonprofit entity, governmental entity, or Indian tribe as provided in G.S. 96-19.32 and G.S. 96-19.33.

"**§ 96-19.75. Administration.**

Extended benefits must be administered in accordance with the Federal-State Unemployment Compensation Act of 1970. Claims and payments of extended benefits are to be administered in the same manner as regular benefits. A claimant who is filing an interstate claim under the interstate benefit payment plan is eligible for extended benefits for no more than two weeks when there is an "off indicator" in the state where the claimant files.

Whenever an extended benefit period is to become effective in this State as a result of an "on" indicator, or an extended benefit period is to be terminated in this State as a result of an "off" indicator, the Division must make an appropriate public announcement.

"Part 8. Administration.

"§ 96-19.80. Claims for benefits.

(a) ~~Filing.~~Generally. – Claims for benefits ~~shall~~ must be made in accordance with ~~such regulations as the Division may prescribe.~~rules adopted by the Division. ~~Employers may file claims for employees through the use of automation in the case of partial unemployment. Each employing unit shall post and maintain in places readily accessible to individuals performing services for it printed statements, concerning benefit rights, claims for benefits, and such other matters relating to the administration of this Chapter as the Division may direct. Each employing unit shall supply to such individuals copies of such printed statements or other materials relating to claims for benefits as the Division may direct. Such~~ An employer must provide individuals providing services for the employer access to information concerning the unemployment compensation program. The Division must supply an employer with any printed statements and other materials ~~shall be supplied by the Division~~the Division requires an employer provide to individuals ~~to each employing unit~~ without cost to the ~~employing unit.~~employer.

(a1) Attached Claims. – An employer may file claims for employees through the use of automation in the case of partial unemployment. An employer may only file an attached claim for an employee once during a calendar year and the period of partial unemployment for which the claim is filed may not exceed six weeks. To file an attached claim, an employer must pay the Division an amount equal to the full cost of unemployment benefits payable to the employee under the attached claim at the time the attached claim is filed. The Division must credit the amounts paid to the UI Fund.

An employer may file an attached claim under this subsection only if the employer has a positive credit balance in its account as determined under Part 4 of this Article. If an employer does not have a positive credit balance in its account, the employer must remit to the Division an amount equal to the amount necessary to bring the employer's negative credit balance to at least zero at the time the employer files the attached claim.

(b) ~~(1) Initial~~Initial Determination. – A representative designated by the Division ~~shall~~ must promptly examine the claim and ~~shall~~ determine whether or not the claim is valid. If the claim is determined to be not valid for any reason other than lack of base period earnings, the claim ~~shall~~ must be referred to an Adjudicator for a decision as to the issues presented. If the claim is determined to be valid, a monetary determination ~~shall be~~must be issued showing the week with respect to when benefits ~~shall~~ commence, the weekly benefit amount payable, and the potential maximum ~~duration thereof.~~duration of benefits. The Division must furnish the claimant ~~shall be furnished~~ a copy of ~~such~~ the

monetary determination showing the amount of wages paid ~~him~~ the individual by each employer during ~~his~~ the individual's base period and the employers by whom ~~such~~ the wages were paid, ~~his~~ the benefit year, weekly benefit amount, and the maximum amount of benefits that may be paid to ~~him~~ the claimant for unemployment during the benefit year. When a claim is not valid due to lack of earnings in ~~his~~ the base period, the ~~determination shall so designate. The claimant shall be~~claimant is allowed 10 days from the earlier of mailing or delivery of ~~his~~ the monetary determination to the claimant ~~him~~ within which to protest ~~his~~ the monetary ~~determination and~~determination. When a protest is ~~upon the filing of such protest, unless said protest be satisfactorily resolved, the claim shall~~ filed, it must be referred to the Assistant Secretary or designee for a decision as to the issues ~~presented.~~ Presented, unless the protest has already been satisfactorily resolved. The Division must notify all ~~All~~ base period employers, as well as the most recent employer of a claimant on a temporary layoff, ~~shall be notified~~ upon the filing of a claim ~~which~~ that establishes a benefit year.

~~At~~ At any time within one year from the date of the making of an initial determination, the Division on its own initiative may reconsider ~~such~~ the determination if it finds that an error in computation or identity has occurred in connection therewith or that additional wages pertinent to the claimant's benefit status have become available, or if such determination of benefit status was made as a result of a nondisclosure or misrepresentation of a material fact.

~~(2) Adjudication.~~ (c) Adjudication. – When a protest is made by the claimant to the initial or monetary determination, or a question or issue is raised ~~or presented~~ as to the eligibility of a claimant ~~under G.S. 96-13,~~ under Part 5 of this Article, or whether any disqualification should be imposed under ~~G.S. 96-14,~~ Part 5 of this Article, or benefits are denied or adjusted ~~pursuant to G.S. 96-18,~~under Parts 5 or 6 of this Article, the Division shall refer the matter ~~shall be referred~~ to an adjudicator. The adjudicator may consider any matter, ~~document~~ document, or statement deemed to be pertinent to the issues, including telephone conversations, and after ~~such~~ consideration shall render a conclusion as to the claimant's benefit entitlements. The adjudicator ~~shall~~ must notify the claimant and all other interested parties of the conclusion reached. The conclusion of the adjudicator ~~shall be deemed~~is the final decision of the Division unless within 30 days after the date of notification or mailing of the conclusion, whichever is earlier, a written appeal is filed pursuant to rules adopted by the Division. The Division shall be deemed an interested party for such purposes and may remove to itself or transfer to an appeals referee the proceedings involving any claim pending before an adjudicator.

~~Provided, any~~ Any interested employer ~~shall be~~ is allowed 10 days from the delivery of the notice of the filing of a claim against the employer's account to protest the claim and have the claim referred to an adjudicator for a decision on the question or issue raised. The Division must send contemporaneously to the employer ~~A~~ a copy of the notice of the filing. ~~filing shall be sent contemporaneously to the employer by telefacsimile transmission if a fax number is on file. Provided further, no~~ No question or issue may be raised ~~or presented~~ by the Division as to the eligibility of a claimant under G.S. 96-13, or whether any disqualification should be imposed under G.S. 96-14, after 45 days from the first day of the first week after the question or issue occurs with respect to

~~which~~ that week an individual filed a claim for benefits. ~~None of the provisions of this subsection shall have the force and effect nor shall the same be construed or interested as repealing any other provisions of G.S. 96-18.~~

~~An~~The Division shall provide an employer ~~shall receive~~ with the written notice of the employer's appeal rights and any forms that are required to allow the employer to protest the claim. The forms ~~shall~~ must include a section referencing the appropriate rules pertaining to appeals and the instructions on how to appeal.

(c) Appeals. – Unless an appeal from the adjudicator is withdrawn, an appeals referee or hearing officer ~~shall~~ must set a hearing in which the parties are given reasonable opportunity to be heard. The conduct of hearings ~~shall be~~is governed by ~~suitable~~ rules adopted by the Division. The rules need not conform to common law or statutory rules of evidence or technical or formal rules of procedure but ~~shall~~ must provide for the conduct of hearings ~~in such~~in a manner ~~as to~~ that will ascertain the ~~substantial~~ rights of the parties. The hearings may be conducted by conference telephone call or other similar means provided that if any party files with the Division prior written objection to the telephone procedure, that party will be afforded an opportunity for an in-person hearing at such place in the State as the Division by rule ~~shall provide.~~ provides. The hearing ~~shall~~ must be scheduled for a time that, as much as practicable, least intrudes on and reasonably accommodates the ordinary business activities of an employer and the return to employment of a claimant. The appeals referee or hearing officer may affirm or modify the conclusion of the adjudicator ~~or~~ and issue ~~a new~~ an appeals decision in which findings of fact and conclusions of law ~~will be~~ are set out or dismiss an appeal when the appellant fails to appear at the appeals hearing to prosecute the appeal after having been duly notified of the appeals hearing. The evidence taken at the hearings before the appeals referee shall be recorded and the ~~decision of the appeals referee shall be deemed to be~~appeals decision is the final decision of the Division unless within 10 days after the date of notification or mailing of the decision, whichever is ~~earlier~~ earlier, a written appeal is filed pursuant to ~~such~~ rules ~~as~~ adopted by the Board of Review and the ~~Division may adopt.~~ Division. No person may be appointed as an appeals referee or hearing officer unless he or she possesses the minimum qualifications necessary to be a staff attorney eligible for designation by the Division as a hearing officer under G.S. 96-4(q). No appeals referee or hearing officer in full-time permanent status may engage in the private practice of law as defined in G.S. 84-2.1 while serving in office as appeals referee or hearing ~~officer;~~officer. A violation of this prohibition ~~shall be~~is grounds for removal. Whenever an appeal is taken from ~~a decision of the appeals referee or hearing officer;~~an appeals decision, the appealing party ~~shall~~ must submit a clear written statement containing the grounds for the appeal within the time allowed by law for taking the appeal, and if ~~such~~ a timely statement is not submitted, the Board of Review may dismiss the appeal.

~~(c1)~~Unless required for disposition of an ex parte matter authorized by law, the ~~Division,~~ Board of Review, appeals referee, or employee assigned to make a decision or to make findings of facts and conclusions of law in a case shall not communicate, directly or indirectly, in connection with any issue of fact, or question of law, with any person or party or his representative, except on notice and opportunity for parties to participate.

~~(c2)~~Whenever a party is notified of the appeals decision ~~the Board of Review's or a hearing officer's decision~~ by mail, G.S. 1A-1, Rule 6(e) shall apply, and three days shall be added to the prescribed period to file a written appeal.

(d) Repealed by Session Laws 1977, c. 727, s. 54.

(d1) Continuance. – No continuance ~~shall~~ may be granted except upon application to the Division, the appeals referee, or other authority assigned to make the decision in the matter to be continued. A continuance may be granted only for good cause shown and upon such terms and conditions as justice may require. Good cause for granting a continuance ~~shall include, but not be limited to,~~includes those instances when a party to the proceeding, a witness, or counsel of record has an obligation of service to the State, such as service as a member of the North Carolina General Assembly, or an obligation to participate in a proceeding in a court of greater jurisdiction.

(e) Review by the Board of Review. – The Board of Review may on its own motion affirm, modify, or set aside any appeals decision ~~of an appeals referee, hearing officer, or other employee assigned to make a decision~~ on the basis of the evidence previously submitted in ~~such~~ a case, or direct the taking of additional evidence, or may permit any of the parties to ~~such~~ the decision to initiate further appeals before it, or may provide for group hearings in ~~such~~ cases as the Board of Review finds appropriate. Upon a motion of a party or the Division, the ~~The~~ Board of Review may remove to itself or transfer to ~~an appeals referee,~~ a hearing ~~officer, or other employee assigned to make a decision~~ officer the proceedings on any claim pending before ~~an~~ a Division appeals referee, hearing officer, or other employee assigned to make a decision. A proceeding transferred by the Board to a hearing officer is subject to review by the Board only upon a request by a party to the proceeding for reconsideration. ~~Interested parties~~ The Board of Review shall ~~be~~ promptly ~~notified~~ notify the interested parties of ~~the~~ its findings and ~~decision of the Board of Review.~~decision.

(f) Procedure. – The manner in which disputed claims ~~shall be~~are presented, the reports ~~thereon~~ required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with rules adopted by the Division for determining the rights of the parties, whether or not such ~~regulations~~ rules conform to common-law or statutory rules of evidence and other technical rules of procedure.

All testimony at any hearing before an appeals referee upon a disputed claim shall be recorded unless the recording is waived by all interested parties. If the testimony is recorded, it need not be transcribed unless the disputed claim is further appealed and, one or more of the parties objects, under ~~such~~ rules as the Division may adopt, to being provided a copy of the tape recording of the hearing. Any other provisions of this Chapter notwithstanding, any individual receiving the transcript shall pay a fee to the Division ~~such reasonable fee~~ for the transcript as the Division may by ~~regulation~~ rule provide. The fee ~~so prescribed~~ set by the Division ~~for a party shall~~may not exceed the lesser of sixty-five cents ~~(65)~~ (65¢) per page or sixty-five dollars ($65.00) per transcript. The Division may by ~~regulation~~ rule provide for the fee to be waived in ~~such~~ circumstances ~~as it~~ that, in its sole ~~discretion~~ discretion, it deems appropriate but in the case of an appeal in forma pauperis supported by ~~such~~ proofs ~~as are~~ required ~~in~~ by G.S. 1-110, the Division shall waive the fee.

The parties may enter into a stipulation of the facts. If the appeals referee, hearing officer, or other employee assigned to make the decision ~~believes~~ determines the stipulation provides sufficient information to make a decision, then the appeals referee, hearing officer, or other employee assigned to make the decision may accept the stipulation and render a decision based on the stipulation. If the appeals referee, hearing officer, or other employee assigned to make the decision ~~does not believe~~ determines the stipulation ~~provides~~ does not provide sufficient information to make a decision, then the appeals referee, hearing officer, or other employee assigned to make the decision must reject the stipulation. The decision to accept or reject a stipulation must occur in a recorded hearing.

(g) Witness Fees. – Witnesses subpoenaed pursuant to this section ~~shall be~~ are allowed fees at a rate fixed by the Division. ~~Such~~ All fees and ~~all~~ expenses of proceedings involving disputed claims ~~shall be deemed~~ are a part of the expense of administering this Chapter.

(h) Judicial Review. – Any decision of the ~~Division,~~Board of Review, in the absence of judicial review as herein provided, or in the absence of an interested party filing a request for reconsideration, ~~shall become~~ becomes final 30 days after the date of notification or mailing thereof, whichever is earlier. Judicial review ~~shall be~~ is permitted only after a party claiming to be aggrieved by the decision has exhausted his remedies before the ~~Division~~ Board as provided in this Chapter and has filed a petition for review in the superior court of the county in which he resides or has his principal place of business. The petition for review shall explicitly state what exceptions are taken to the decision or procedure of the ~~Division~~ Board and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the petitioner shall serve copies of the petition by personal service or by certified mail, return receipt requested, upon the ~~Division~~ Board and upon all parties of record to the ~~Division~~ Board proceedings. ~~Names and addresses of the parties shall be furnished to the petitioner by the Division upon request.~~The Board shall, upon request, furnish to the petitioner the names and addresses of the parties. The ~~Division shall be deemed to be~~ Board is a party to any judicial action involving any of its decisions and may be represented in the judicial action by any qualified attorney who has been designated by it for that purpose. The Superior Court shall determine any ~~Any~~questions regarding the requirements of this subsection concerning the service or filing of a ~~petition shall be determined by the superior court.~~ petition. Any party to the ~~Division~~ Board proceeding may become a party to the review proceeding by notifying the court within 10 days after receipt of the copy of the petition. Any person aggrieved may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24.

Within 45 days after receipt of the copy of the petition for review or within such additional time as the court may allow, the ~~Division~~ Board shall transmit to the reviewing court the original or a certified copy of the entire record of the proceedings under review. With the permission of the court the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional cost as is occasioned by the refusal.

The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(i) Review Proceedings. – If a timely petition for review has been filed and served as provided in G.S. 96-15(h), the court may make party defendant any other party it deems necessary or proper to a just and fair determination of the case. The ~~Division~~ Board may, in its discretion, certify to the reviewing court questions of law involved in any decision by it. In any judicial proceeding under this section, the findings of fact by the ~~Division,~~ Board, if there is any competent evidence to support them and in the absence of fraud, ~~shall be~~ are conclusive, and the jurisdiction of the court ~~shall be~~ is confined to questions of law. Such actions and the questions so certified shall be heard in a summary manner and shall be given precedence over all civil cases. An appeal may be taken from the judgment of the superior court, as provided in civil cases. The ~~Division shall have~~Board has the right to appeal to the appellate division from a decision or judgment of the superior court and for such purpose ~~shall be deemed to be~~ is an aggrieved party. No bond ~~shall be~~ is required of the ~~Division~~ Board upon appeal. Upon the final determination of the case or proceeding, the ~~Division~~ Board shall enter an order in accordance with the determination. When an appeal has been entered to any judgment, order, or decision of the court below, no benefits ~~shall~~ may be paid pending a final determination of the cause, except in those cases in which the final decision of the ~~Division~~ Board allowed benefits.

(j) Repealed by Session Laws 1985, c. 197, s. 9.

(k) Rule-making. – The ~~Irrespective of any other provision of this Chapter, the~~ Division may adopt ~~minimum regulations~~ rules necessary to provide for the payment of benefits to individuals ~~promptly when due as required by section 303(a)(1) of the Social Security Act as amended (42 U.S.C.A., section 503(a)(1)).~~and the administration of this Chapter.

"§ 96-19.81. Seasonal pursuits.

(a) Defined. – A seasonal pursuit is one which, because of seasonal conditions making it impracticable or impossible to do otherwise, customarily carries on production operations only within a regularly recurring active period or periods of less than an aggregate of 36 weeks in a calendar year. ~~No pursuit shall be deemed seasonal unless and until so found by the Division; except that from March 27, 1953, any successor under G.S. 96-8(5)b to a seasonal pursuit shall be deemed seasonal unless such successor shall within 120 days after the acquisition request cancellation of the determination of status of such seasonal pursuit; provided further that this provision shall not be applicable to pending cases nor retroactive in effect.~~

(b) Application. – Upon application ~~therefor by a pursuit,~~by a pursuit, the Division ~~shall~~ may determine or redetermine ~~whether such~~that a pursuit is seasonal and, if seasonal, the active period or periods thereof. The Division may, on its own motion, redetermine the active period or periods of a seasonal pursuit. An application for a seasonal determination must be made on forms prescribed by the Division and must be made at least 20 days prior to the beginning date of the period of production operations for which a determination is requested.

(c) Notice. – Whenever the Division has determined or redetermined a pursuit to be seasonal, it must notify ~~such~~ the pursuit ~~shall be notified immediately;~~immediately ~~and such~~ and the notice ~~shall~~ must contain the beginning and ending dates of the pursuit's active period or periods. ~~Such pursuits shall~~ The pursuit must display notices of its seasonal determination conspicuously on its premises in a sufficient number of places to be available for inspection by its workers. ~~Such~~ The Division must furnish the appropriate ~~notices shall be furnished by the Division.~~notices.

(d) Effective Date. – A seasonal determination ~~shall become~~becomes effective unless an interested party files an application for review within 10 days after the beginning date of the first period of production operations to which it applies. ~~Such an~~ The application for review ~~shall be deemed to be~~ is an application for a determination of status, as provided in G.S. 96-4, subsections (m) through (q), of this Chapter, and shall be heard and determined in accordance with the provisions thereof.

(e) Wages. – All wages paid to a seasonal worker during ~~his~~ the individual's base period ~~shall~~ must be used in determining ~~his~~ the individual's weekly benefit ~~amount; provided however, that all weekly benefit amounts so determined shall be~~amount, rounded to the nearest lower full dollar ~~amount (if not a full dollar amount).~~amount.

(f) Eligibility for Benefits. – A seasonal worker is eligible to receive benefits as provided in this subsection.

(1) A seasonal worker ~~shall be~~ is eligible to receive benefits based on seasonal wages only for a week of unemployment which occurs, or the greater part of which occurs within the active period or periods of the seasonal pursuit or pursuits in which he earned base period wages.

(2) A seasonal worker ~~shall be~~ is eligible to receive benefits based on nonseasonal wages for any week of unemployment which occurs during any active period or periods of the seasonal pursuit in which ~~he~~ the worker has earned base period wages provided ~~he~~ the worker has exhausted benefits based on seasonal wages. ~~Such~~ The worker ~~shall~~ is also ~~be~~ eligible to receive benefits based on nonseasonal wages for any week of unemployment ~~which~~ that occurs during the inactive period or periods of the seasonal pursuit in which he earned base period wages irrespective as to whether he has exhausted benefits based on seasonal wages.

(3) The maximum amount of benefits ~~which~~ that a seasonal worker ~~shall be~~ is eligible to receive based on seasonal wages ~~shall be~~ is an amount, adjusted to the nearest multiple of one dollar ($1.00), determined by multiplying the maximum benefits payable in his benefit year, as provided in G.S. 96-12(d) of this Chapter, by the percentage obtained by dividing the seasonal wages in his base period by all of his base period wages.

(4) The maximum amount of benefits ~~which~~ that a seasonal worker ~~shall be~~ is eligible to receive based on nonseasonal wages ~~shall be~~ is an amount, adjusted to the nearest multiple of one dollar ($1.00), determined by multiplying the maximum benefits payable in his benefit year, as

provided in G.S. 96-12(d) of this Chapter, by the percentage obtained by dividing the nonseasonal wages in his base period by all of his base period wages.

(5) In no case ~~shall~~ is a seasonal worker ~~be~~ eligible to receive a total amount of benefits in a benefit year in excess of the maximum benefits payable for such benefit year, as provided in G.S. 96-12(d) of this Chapter.

(g) Charging of Account. – Benefits paid to a seasonal worker shall be charged in accordance with this subsection.

(1) All benefits paid to a seasonal worker based on seasonal wages shall be charged, as prescribed in G.S. 96-9(c)(2) of this Chapter, against the account of ~~his~~ the worker's base period employer or employers who paid ~~him~~ the worker ~~such~~ the seasonal wages, and for the purpose of this paragraph ~~such~~ the seasonal wages ~~shall be deemed to~~ constitute all of ~~his~~ the worker's base period wages.

(2) All benefits paid to a seasonal worker based on nonseasonal wages shall be charged, as prescribed in G.S. 96-9(c)(2) of this Chapter, against the account of ~~his~~ the worker's base period employer or employers who paid ~~him~~ the worker ~~such~~ the nonseasonal wages, and for the purpose of this paragraph ~~such~~ the nonseasonal wages ~~shall be deemed to~~ constitute all of ~~his~~ the worker's base period wages.

(h) Calculation of Benefits. – The benefits payable to any otherwise eligible individual ~~shall be~~ are calculated in accordance with this section for any benefit year ~~which~~ that is established on or after the beginning date of a seasonal determination applying to a pursuit by which such individual was employed during the base period applicable to such benefit year, as if such determination had been effective in ~~such~~ the base period.

(i) Appeal. – Nothing in this section ~~shall be construed to limit~~limits the right of any individual whose claim for benefits is determined in accordance herewith to appeal from ~~such~~ the determination as provided in G.S. 96-15 of this Chapter.

(j) Definitions. – The following definitions apply in this section:~~As used in this section:~~

(1) ~~"Pursuit" means an~~Pursuit. – An employer or branch of an employer.

(2) ~~"Branch of an employer" means a~~ Branch of an employer. – A part of an employer's activities which is carried on or is capable of being carried on as a separate enterprise.

(3) ~~"Production operations" mean all~~ Production operations. – All the activities of a pursuit which are primarily related to the production of its characteristic goods or services.

(4) ~~"Active period or periods" of a seasonal pursuit means the~~ Active period of a seasonal pursuit. – The longest regularly recurring period or periods within which production operations of the pursuit are customarily carried on.

(5) ~~"Seasonal wages" mean the~~ Seasonal wages. – The wages earned in a seasonal pursuit within its active period or periods. The Division may prescribe by ~~regulation~~ rule the manner in which seasonal wages ~~shall be~~ are reported.

(6) ~~"Seasonal worker" means a~~ Seasonal worker. – A worker at least twenty-five percent (25%) of whose base period wages are seasonal wages.

(7) ~~"Interested party" means any~~ Interested party. – An individual affected by a seasonal determination.

(8) ~~"Inactive period or periods" of a seasonal pursuit means that~~ Inactive period of a seasonal pursuit. – The part of a calendar year ~~which~~ that is not included in the active period or periods of such pursuit.

(9) ~~"Nonseasonal wages" mean the~~Nonseasonal wages. – The wages earned in a seasonal pursuit within the inactive period or periods of such pursuit, or wages earned at any time in a nonseasonal pursuit.

~~(10) "Wages" mean remuneration for employment.~~

"§ 96-19.82. Protection of witnesses from discharge, demotion, or intimidation.

(a) No person may discharge, demote, or threaten any person because that person has testified or has been summoned to testify in any proceeding under the Employment Security Act.

(b) Any person who violates the provisions of this section ~~shall be~~is liable in a civil action for reasonable damages suffered by any person as a result of the violation, and an employee discharged or demoted in violation of this section ~~shall be~~is entitled to be reinstated to his former position. The burden of proof ~~shall be~~ is upon the party claiming a violation to prove a claim under this section.

(c) The General Court of Justice ~~shall have~~has jurisdiction over actions under this section.

(d) The statute of limitations for actions under this section ~~shall be~~ is one year pursuant to G.S. 1-54."

"§ 96-19.83. Protection of witness before the Employment Security Commission.

~~If any~~ A person who does any one or more of the following is guilty of a Class 1 misdemeanor:

(1) ~~shall by threats, menace, or in any other manner intimidate or attempt~~ Intimidates or attempts to intimidate any person who is summoned or ~~acting as~~ who is a witness in any proceeding brought under the Employment Security ~~Act, or prevent~~Act.

(2) Prevents or ~~deter,~~ deters, or ~~attempt~~ attempts to prevent or ~~deter~~ deter, any person summoned or acting as ~~such~~ a witness from ~~attendance upon such~~attending a ~~proceeding, he shall be guilty of a Class 1 misdemeanor.~~proceeding brought under the Employment Security Act.

"§ 96-19.84. Protection of rights and benefits; attorney representation; prohibited ~~fees; deductions for child support obligations.~~fees.

(a) Waiver of Rights Void. – Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this Chapter ~~shall be~~ is void. Any

agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this Chapter from such employer, ~~shall be~~ is void. No employer ~~shall~~ may directly or indirectly make or require or accept any deduction from the remuneration of individuals in his employ to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) or be imprisoned for not more than six months, or both.

(b) Representation. – Any claimant or employer who is a party to any proceeding before the Division may be represented by (i) an attorney; or (ii) any person who is supervised by an attorney, however, the attorney need not be present at any proceeding before the Division.

(b1) Fees Prohibited. – Except as otherwise provided in this Chapter, the Division may not charge fees of any kind to ~~no~~ an individual claiming benefits in any administrative proceeding under this ~~Chapter shall be charged fees of any kind by the Division or its representative,~~ Chapter, and in any court proceeding under this Chapter each party ~~shall bear~~bears its own costs and legal fees.

(c) No Assignment of ~~Benefits; Exemptions.~~ Benefits. – Except as provided in ~~subsection (d) of this section,~~ G.S. 96-19.60, any assignment, pledge, or encumbrance of any right to benefits ~~which~~ that are or may become due or payable under this Chapter ~~shall be~~ is ~~void; and such rights~~void. An individual's ~~to benefits~~benefits ~~shall be~~ are exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of ~~debts; and benefits received by any individual,~~ debts. An individual's benefits, so long as they are not mingled with other funds of the recipient, ~~shall be~~ are exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessaries furnished to ~~such~~ the individual or ~~his~~ the individual's spouse or dependents during the time when ~~such~~ the individual was unemployed. Any waiver of ~~any~~ an exemption provided for in this subsection ~~shall be~~is void.

~~(d) (1) Definitions. – For the purpose of this subsection and when used herein:~~

~~a. "Unemployment compensation" means any compensation found by the Division to be payable to an unemployed individual under the Employment Security Law of North Carolina (including amounts payable by the Division pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment) provided, that nothing in this subsection shall be construed to limit the Division's ability to reduce or withhold benefits, otherwise payable, under authority granted elsewhere in this Chapter including but not limited to reductions for wages or earnings while unemployed and for the recovery of previous overpayments of benefits.~~

~~b. "Child support obligation" includes only obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the Secretary of~~

Health and Human Services under Part D of Title IV of the Social Security Act.

c. "State or local child support enforcement agency" means any agency of this State or a political subdivision thereof operating pursuant to a plan described in subparagraph b. above.

(2) a. An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether the individual owes child support obligations, as defined under subparagraph (1)b. of this subsection. If any such individual discloses that he or she owes child support obligations and is determined by the Division to be eligible for payment of unemployment compensation, the Division shall notify the State or local child support enforcement agency enforcing such obligation that such individual has been determined to be eligible for payment of unemployment compensation.

b. Upon payment by the State or local child support enforcement agency of the processing fee provided for in paragraph (4) of this subsection and beginning with any payment of unemployment compensation that, except for the provisions of this subsection, would be made to the individual during the then current benefit year and more than five working days after the receipt of the processing fee by the Division, the Division shall deduct and withhold from any unemployment compensation otherwise payable to an individual who owes child support obligations:

1. The amount specified by the individual to the Division to be deducted and withheld under this paragraph if neither subparagraph 2. nor subparagraph 3. of this paragraph is applicable; or

2. The amount, if any, determined pursuant to an agreement submitted to the Division under section 454(20)(B)(i) of the Social Security Act by the State or local child support enforcement agency, unless subparagraph 3. of this paragraph is applicable; or

3. Any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to properly served legal process, as that term is defined in section 462(e) of the Social Security Act.

c. Any amount deducted and withheld under paragraph b. of this subdivision shall be paid by the Division to the appropriate State or local child support enforcement agency.

d. The Department of Health and Human Services and the Division are hereby authorized to enter into one or more agreements which may provide for the payment to the Division of the processing fees referred to in subparagraph b. and the payment to

~~the Department of Health and Human Services of unemployment compensation benefits withheld, referred to in subparagraph c., on an open account basis. Where such an agreement has been entered into, the processing fee shall be deemed to have been made and received (for the purposes of fixing the date on which the Division will begin withholding unemployment compensation benefits) on the date a written authorization from the Department of Health and Human Services to charge its account is received by the Division. Such an authorization shall apply to all processing fees then or thereafter (within the then current benefit year) chargeable with respect to any individual name in the authorization. Any agreement shall provide for the reimbursement to the Division of any start-up costs and the cost of providing notice to the Department of Health and Human Services of any disclosure required by subparagraph a. Such an agreement may dispense with the notice requirements of subparagraph a. by providing for a suitable substitute procedure, reasonably calculated to discover those persons owing child support obligations who are eligible for unemployment compensation payments.~~

~~(3) Any amount deducted and withheld under paragraph (2) of this subdivision shall, for all purposes, be treated as if it were paid to the individual as unemployment compensation and then paid by such individual to the State or local child support enforcement agency in satisfaction of the individual's child support obligations.~~

~~(4) a. On or before April 1 of 1983 and each calendar year thereafter, the Division shall set and forward to the Secretary of Health and Human Services for use in the next fiscal year, a schedule of processing fees for the withholding and payment of unemployment compensation as provided for in this subsection, which fees shall reflect its best estimate of the administrative cost to the Division generated thereby.~~

~~b. At least 20 days prior to September 25, 1982, the Division shall set and forward to the Secretary of Health and Human Services an interim schedule of fees which will be in effect until July 1, 1983.~~

~~c. The provisions of this subsection apply only if arrangements are made for reimbursement by the State or local child support agency for all administrative costs incurred by the Division under this subsection attributable to child support obligations enforced by the agency.~~

"Part 9. Enforcement.

"§ 96-19.90. Penalties.

(a) False Representation. – It ~~shall be~~ is unlawful for any person to make a false statement or representation knowing it to be false or to knowingly fail to disclose a material fact to obtain or increase any benefit under this Chapter or under an employment security law of any other state, the federal government, or of a foreign government, either for himself or any other person. Records, with any necessary authentication thereof, required in the prosecution of any criminal action brought by another state or foreign government for misrepresentation to obtain benefits under the law of this State shall be made available to the agency administering the employment security law of any such state or foreign government for the purpose of such prosecution. Photostatic copies of all records of agencies of other states or foreign governments required in the prosecution of any criminal action under this section shall be as competent evidence as the originals when certified under the seal of such agency, or when there is no seal, under the hand of the keeper of ~~such~~ the records.

(1) A person who violates this subsection ~~shall be found~~ is guilty of a Class I felony if the value of the benefit wrongfully obtained is more than four hundred dollars ($400.00).

(2) A person who violates this subsection ~~shall be found~~ is guilty of a Class 1 misdemeanor if the value of the benefit wrongfully obtained is four hundred dollars ($400.00) or less.

(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation, knowing it to be false, or who knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contributions or other payment required from an employing unit under this Chapter, or who willfully fails or refuses to furnish any reports required hereunder, or to produce or permit the inspection or copying of records as required hereunder, ~~shall be~~ is guilty of a Class 1 misdemeanor; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal ~~shall constitute~~ constitutes a separate offense.

(b1) Except as provided in this subsection, the penalties and other provisions in subdivisions (6), (7), (9a), and (11) of G.S. 105-236 apply to unemployment insurance contributions under this Chapter to the same extent that they apply to taxes as defined in G.S. 105-228.90(b)(7). The Division has the same powers under those subdivisions with respect to unemployment insurance contributions as does the Secretary of Revenue with respect to taxes as defined in G.S. 105-228.90(b)(7).

G.S. 105-236(9a) applies to a "contribution tax return preparer" to the same extent as it applies to an income tax preparer. As used in this subsection, a "contribution tax return preparer" is a person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by this Chapter or any claim for refund of tax imposed by this Chapter. For purposes of this definition, the completion of a substantial portion of a return or claim for refund is treated as the preparation of the return or claim for refund. The term does not include a person merely because the person (i) furnishes typing, reproducing, or other mechanical assistance, (ii) prepares a return or claim for refund of the employer, or an officer or employee of the

employer, by whom the person is regularly and continuously employed, (iii) prepares as a fiduciary a return or claim for refund for any person, or (iv) represents a taxpayer in a hearing regarding a proposed assessment.

The penalty in G.S. 105-236(7) applies with respect to unemployment insurance contributions under this Chapter only when one of the following circumstances exist in connection with the violation:

(1) Any employing units employing more than 10 employees.

(2) A contribution of more than two thousand dollars ($2,000) has not been paid.

(3) An experience rating account balance is more than five thousand dollars ($5,000) overdrawn.

If none of the circumstances set forth in subdivision (1), (2), or (3) of this subsection exist in connection with a violation of G.S. 105-236(7) applied under this Chapter, the offender is guilty of a Class 1 misdemeanor and each day the violation continues constitutes a separate offense.

If the Division finds that any person violated G.S. 105-236(9a) and is not subject to a fraud penalty, the person shall pay a civil penalty of five hundred dollars ($500.00) per violation for each day the violations continue, plus the reasonable costs of investigation and enforcement.

(c) Any person who ~~shall~~ willfully ~~violate~~ violates any provisions of this Chapter or any rule ~~or regulation thereunder,~~ adopted under it, the violation of which is made unlawful or the observance of which is required under the terms of this Chapter, or for which a penalty is neither prescribed herein nor provided by any other applicable statute, ~~shall be~~ is guilty of a Class 1 misdemeanor, and each day ~~such~~ the violation continues ~~shall be deemed to be~~ is a separate offense.

(d) Repealed by Session Laws 1983, c. 625, s. 15.

(e) An individual ~~shall not be~~ is not entitled to receive benefits for a period of 52 weeks beginning with the first day of the week following the date that notice of determination or decision is mailed finding that he, or another in his behalf with his knowledge, has been found to have knowingly made a false statement or misrepresentation, or who has knowingly failed to disclose a material fact to obtain or increase any benefit or other payment under this Chapter.

(f) Repealed by Session Laws 1983, c. 625, s. 15.

(g) (1) Repealed by Session Laws 2012-134, s. 4(b), effective October 1, 2012.

(2) Any person who has received any sum as benefits under this Chapter by reason of the nondisclosure or misrepresentation by him or by another of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) or has been paid benefits to which he was not entitled for any reason (including errors on the part of any representative of the Division) shall be liable to repay such sum to the Division as provided in subdivision (3) of this subsection.

(3) The Division may collect the overpayments provided for in this subsection by one or more of the following procedures as the Division may, except as provided herein, in its sole discretion choose:

a. If, after due notice, any overpaid claimant shall fail to repay the sums to which he was not entitled, the amount due may be collected by civil action in the name of the Division, and the cost of such action shall be taxed to the claimant. Civil actions brought under this section to collect overpayments shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this Chapter.

b. If any overpayment recognized by this subsection shall not be repaid within 30 days after the claimant has received notice and demand for same, and after due notice and reasonable opportunity for hearing (if a hearing on the merits of the claim has not already been had) the Division, under the hand of the Assistant Secretary, may certify the same to the clerk of the superior court of the county in which the claimant resides or has property, and additional copies of said certificate for each county in which the Division has reason to believe such claimant has property located; such certificate and/or copies thereof so forwarded to the clerk of the superior court shall immediately be docketed and indexed on the cross index of judgments, and from the date of such docketing shall constitute a preferred lien upon any property which said claimant may own in said county, with the same force and effect as a judgment rendered by the superior court. The Division shall forward a copy of said certificate to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the Division, and when so forwarded and in the hands of such sheriff or agent of the Division, shall have all the force and effect of an execution issued to such sheriff or agent of the Division by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. The Division is further authorized and empowered to issue alias copies of said certificate or execution to the sheriff or sheriffs of such county or counties, or a duly authorized agent of the Division in all cases in which the sheriff or duly authorized agent has returned an execution or certificate unsatisfied; when so issued and in the hands of the sheriff or duly authorized agent of the Division, such alias shall have all the force and effect of an alias execution issued to such sheriff or duly authorized agent of the Division by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, that notwithstanding any provision of this subsection, upon filing one written notice with the Division, the sheriff of any county shall have the sole and exclusive right to serve all executions and make all collections mentioned in this subsection

and in such case, no agent of the Division shall have the authority to serve any executions or make any collections therein in such county. A return of such execution or alias execution, shall be made to the Division, together with all moneys collected thereunder, and when such order, execution or alias is referred to the agent of the Division for service, the said agent of the Division shall be vested with all the powers of the sheriff to the extent of serving such order, execution or alias and levying or collecting thereunder. The agent of the Division to whom such order or execution is referred shall give a bond not to exceed three thousand dollars ($3,000) approved by the Division for the faithful performance of such duties. The liability of said agent shall be in the same manner and to the same extent as is now imposed on sheriffs in the service of execution. If any sheriff of this State or any agent of the Division who is charged with the duty of serving executions shall willfully fail, refuse or neglect to execute any order directed to him by the said Division and within the time provided by law, the official bond of such sheriff or of such agent of the Division shall be liable for the overpayments and costs due by the claimant. Additionally, the Division or its designated representatives in the collection of overpayments shall have the powers enumerated in G.S. 96-10(b)(2) and (3).

c. Any person who has been found by the Division to have been overpaid under subparagraph (1) above shall be liable to have such sums deducted from future benefits payable to him under this Chapter.

d. Any person who has been found by the Division to have been overpaid under subparagraph (2) above shall be liable to have such sums deducted from future benefits payable to him under this Chapter in such amounts as the Division may by ~~regulation~~ rule prescribe but no such benefit payable for any week shall be reduced by more than fifty percent (50%) of that person's weekly benefit amount.

e. To the extent permissible or required under the laws and Constitution of the United States, the Division is authorized to enter into or cooperate in arrangements or reciprocal agreements with appropriate and duly authorized agencies of other states or the United States Secretary of Labor, or both, whereby: (1) Overpayments of unemployment benefits as determined under subparagraphs (1) and (2) above shall be recovered by offset from unemployment benefits otherwise payable under the unemployment compensation law of another state, and overpayments of unemployment benefits as determined under the unemployment compensation law of such other state shall be

recovered by offset from unemployment benefits otherwise payable under this Chapter; and, (2) Overpayments of unemployment benefits as determined under applicable federal law, with respect to benefits or allowances for unemployment provided under a federal program administered by this State under an agreement with the United States Secretary of Labor, shall be recovered by offset from unemployment benefits otherwise payable under this Chapter or any such federal program, or under the unemployment compensation law of another state or any such federal unemployment benefit or allowance program administered by such other state under an agreement with the United States Secretary of Labor if such other state has in effect a reciprocal agreement with the United States Secretary of Labor as authorized by Section 303(g)(2) of the federal Social Security Act, if the United States agrees, as provided in the reciprocal agreement with this State entered into under such Section 303(g)(2) of the Social Security Act, that overpayments of unemployment benefits as determined under subparagraphs (1) and (2) above, and overpayment as determined under the unemployment compensation law of another state which has in effect a reciprocal agreement with the United States Secretary of Labor as authorized by Section 303(g)(2) of the Social Security Act, shall be recovered by offset from benefits or allowances for unemployment otherwise payable under a federal program administered by this State or such other state under an agreement with the United States Secretary of Labor.

f. The Division may in its discretion decline to collect overpayments to claimants if the claimant has deceased after the payment was made. In such a case the Division may remove the debt of the deceased claimant from its records.

(h) **(Effective October 1, 2013)** Mandatory Federal Penalty. – A person who has been held ineligible for benefits under subsection (e) of this section and who, because of those same acts or omissions, has received any sum as benefits under this Chapter to which the person is not entitled shall be assessed a penalty in an amount equal to fifteen percent (15%) of the amount of the erroneous payment. The penalty amount shall be payable to the Unemployment Insurance Fund. The penalty applies to an erroneous payment made under any State program providing for the payment of unemployment compensation as well as an erroneous payment made under any federal program providing for the payment of unemployment compensation. The notice of determination or decision advising the person that benefits have been denied or adjusted pursuant to subsection (e) of this section must include the reason for the finding of an erroneous payment, the penalty amount assessed under this subsection, and the reason the penalty has been applied.

The penalty amount may be collected in any manner allowed for the recovery of the erroneous payment, except that the penalty amount may not be recovered through offsets of future benefits. When a recovery with respect to an erroneous payment is made, any recovery applies first to the principal of the erroneous payment, then to the federally mandated penalty amount imposed under this subsection, and finally to any other amounts due."

"**§ 96-19.91. Attachment and garnishment of fraudulent overpayment.**

(a) Applicability. – This section applies to a claimant that has been provided notice of a determination or an appeals decision finding that the claimant, or another individual acting in the claimant's behalf and with the claimant's knowledge, has knowingly done one or more of the following to obtain or increase a benefit or other payment under this Chapter:

(1) Made a false statement or misrepresentation.

(2) Failed to disclose a material fact.

(b) Attachment and Garnishment. – Intangible property that belongs to a claimant, is owed to a claimant, or has been transferred by a claimant under circumstances that would permit it to be levied upon if it were tangible property is subject to attachment and garnishment in payment of a fraudulent overpayment that is due from the claimant and is collectible under this Article. Intangible personal property includes bank deposits, rent, salaries, wages, property held in the Escheat Fund, and any other property incapable of manual levy or delivery.

A person who is in possession of intangible property that is subject to attachment and garnishment is the garnishee and is liable for the amount the claimant owes. The liability applies only to the amount of the claimant's property in the garnishee's possession, reduced by any amount the claimant owes the garnishee.

The Secretary may submit to a financial institution, as defined in G.S. 53B-2, information that identifies a claimant who owes a fraudulent overpayment that is collectible under this section and the amount of the overpayment. The Secretary may submit the information on a quarterly basis or, with the agreement of the financial institution, on a more frequent basis. A financial institution that receives the information must determine the amount, if any, of intangible property it holds that belongs to the claimant and must inform the Secretary of its determination. The Secretary must reimburse a financial institution for its costs in providing the information, not to exceed the amount payable to the financial institution under G.S. 110-139 for providing information for use in locating a noncustodial parent.

No more than ten percent (10%) of a claimant's wages or salary is subject to attachment and garnishment. The wages or salary of an employee of the United States, the State, or a political subdivision of the State are subject to attachment and garnishment.

(c) Notice. – Before the Department attaches and garnishes intangible property in payment of a fraudulent overpayment, the Department must send the garnishee a notice of garnishment. The notice must be sent either in person, by certified mail with a return receipt requested, or with the agreement of the garnishee, by electronic means. The notice must contain all of the following information:

(1) The claimant's name.
(2) The claimant's social security number or federal identification number.
(3) The amount of fraudulent overpaid benefits the claimant owes.
(4) An explanation of the liability of a garnishee for fraudulent overpayment of unemployment insurance benefits owed by an overpaid claimant.
(5) An explanation of the garnishee's responsibility concerning the notice.

(d) Action. – A garnishee must comply with a notice of garnishment or file a written response to the notice within the time set in this subsection. A garnishee that is a financial institution must comply or file a response within 20 days after receiving a notice of garnishment. All other garnishees must comply or file a response within 30 days after receiving a notice of garnishment. A written response must explain why the garnishee is not subject to garnishment and attachment.

Upon receipt of a written response, the Department must contact the garnishee and schedule a conference to discuss the response or inform the garnishee of the Department's position concerning the response. If the Department does not agree with the garnishee on the garnishee's liability, the Department may proceed to enforce the garnishee's liability for the fraudulent overpayment of unemployment benefits by civil action.

(e) Release. – A notice of garnishment sent to a financial institution is released when the financial institution complies with the notice. A notice of garnishment sent to all other garnishees is released when the Department sends the garnishee a notice of release. A notice of release must state the name and social security number or federal identification number of the taxpayer to whom the release applies.

"§ 96-19.92. Enforcement of Employment Security Law discontinued upon repeal or invalidation of federal acts; suspension of enforcement provisions contested.

(a) It is the purpose of this Chapter to secure for employers and employees the benefits of Title III and Title IX of the Federal Social Security Act, approved August 14, 1935, as to credit on payment of federal taxes, of State contributions, the receipt of federal grants for administrative purposes, and all other provisions of the said Federal Social Security Act; and it is intended as a policy of the State that this Chapter and its requirements for contributions by employers shall continue in force only so long as such employers are required to pay the federal taxes imposed in said Federal Social Security Act by a valid act of Congress. Therefore, if Title III and Title IX of the said Federal Social Security Act shall be declared invalid by the United States Supreme Court, or if such law be repealed by congressional action so that the federal tax cannot be further levied, from and after the declaration of such invalidity by the United States Supreme Court, or the repeal of said law by congressional action, as the case may be, no further levy or collection of contributions shall be made hereunder. The enactment by the Congress of the United States of the Railroad Retirement Act and the Railroad Unemployment Insurance Act shall in no way affect the administration of this law except as herein expressly provided.

All federal grants and all contributions theretofore collected, and all funds in the treasury by virtue of this Chapter, shall, nevertheless, be disbursed and expended, as far

as may be possible, under the terms of this Chapter: Provided, however, that contributions already due from any employer shall be collected and paid into the said fund, subject to such distribution; and provided further, that the personnel of the Division of Employment Security shall be reduced as rapidly as possible.

The funds remaining available for use by the Division of Employment Security shall be expended, as necessary, in making payment of all such awards as have been made and are fully approved at the date aforesaid, and the payment of the necessary costs for the further administration of this Chapter, and the final settlement of all affairs connected with same. After complete payment of all administrative costs and full payment of all awards made as aforesaid, any and all moneys remaining to the credit of any employer shall be refunded to such employer, or his duly authorized assignee: Provided, that the State employment service, created by Chapter 106, Public Laws of 1935, and transferred by Chapter 1, Public Laws of 1936, Extra Session, and made a part of the former Employment Security Commission of North Carolina, and that is now part of the Division of Employment Security of the North Carolina Department of Commerce, shall in such event return to and have the same status as it had prior to enactment of Chapter 1, Public Laws of 1936, Extra Session, and under authority of Chapter 106, Public Laws of 1935, shall carry on the duties therein prescribed; but, pending a final settlement of the affairs of the Division, the said State employment service shall render such service in connection therewith as shall be demanded or required under the provisions of this Chapter or the provisions of Chapter 1, Public Laws of 1936, Extra Session.

(b) The Division of Employment Security may, upon receiving notification from the U.S. Department of Labor that any provision of this Chapter is out of conformity with the requirements of the federal law or of the U.S. Department of Labor, suspend the enforcement of the contested section or provision until the North Carolina Legislature next has an opportunity to make changes in the North Carolina law. The Division shall, in order to implement the above suspension:

(1) Notify the Governor's office and provide that office with a copy of the determination or notification of the U.S. Department of Labor;

(2) Advise the Governor's office as to whether the contested portion or provision of the law would, if not enforced, so seriously hamper the operations of the agency as to make it advisable that a special session of the legislature be called;

(3) Take all reasonable steps available to obtain a reprieval from the implementation of any federal conformity failure sanctions until the State legislature has been afforded an opportunity to consider the existing conflict."

SECTION 5.(b) G.S. 96-19.30 and G.S. 96-19.31, as enacted by subsection (a) of this section, become effective January 1, 2014, and apply to taxable years beginning on or after that date. The remainder of subsection (a) of this section becomes effective July 1, 2013, and applies to claims for benefits filed on or after that date. The remainder of this section is effective when it becomes law.

SECTION 6.(a) G.S. 96-4 reads as rewritten:

"§ 96-4. **Administration; powers and duties of the Assistant Secretary; Board of Review.**

...

(b) Board of Review. – The Governor shall appoint a three-person Board of Review to determine appeals policies and procedures and to hear appeals arising from the decisions and determinations of the ~~Employment Security Section and the Employment Insurance Section.~~Division of Employment Security. The Board of Review shall be comprised of one member representing employers, one member representing employees, and one member representing the general public. Members of the Board of Review are subject to confirmation by the General Assembly and shall serve four-year terms. The member appointed to represent the general public shall serve as chair of the Board of Review and shall be a licensed attorney. The annual salaries of the Board of Review shall be set by the General Assembly in the current Operations Appropriations Act. The Board of Review shall exercise its decision-making processes independent of the Governor, the General Assembly, the Department of Commerce, and the Division of Employment Security.

...

(i) Records and Reports. –

(1) Each employing unit shall keep true and accurate employment records, containing such information as the Division may prescribe. The records shall be open to inspection and be subject to being copied by the Division or its authorized representatives at any reasonable time and as often as may be necessary. Any employing unit doing business in North Carolina shall make available in this State to the Division, such information with respect to persons, firms, or other employing units performing services for it which the Secretary deems necessary in connection with the administration of this Chapter. The Division may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the Secretary deems necessary for the effective administration of this ~~Chapter.~~Chapter, ~~including~~ the employer's quarterly tax and wage report containing the name, social security number, and gross wages of persons employed during that quarter.

(2) If the Division finds that any employer has failed to file any report or return required by this Chapter or any regulation made pursuant hereto, or has filed a report which the Division finds incorrect or insufficient, the Division may make an estimate of the information required from such employer on the basis of the best evidence reasonably available to it at the time, and make, upon the basis of such estimate, a report or return on behalf of such employer, and the report or return so made shall be deemed to be prima facie correct, and the Division may make an assessment based upon such report and proceed to collect contributions due thereon in the manner as set forth in G.S. 96-10(b) of this Chapter: Provided, however, that no such report or return shall be made until the

employer has first been given at least 10 days' notice by registered mail to the last known address of such employer: Provided further, that no such report or return shall be used as a basis in determining whether such employing unit is an employer within the meaning of this Chapter.

...

(q) The ~~Division~~ Board of Review after due notice shall have the right and power to hold and conduct hearings for the purpose of determining the rights, status and liabilities of any "employing unit" or "employer" as said terms are defined ~~by G.S. 96-8(4) and 96-8(5) and subdivisions thereunder.~~ in Article 2A of this Chapter. The ~~Division~~ Board of Review shall have the power and authority to determine any and all questions and issues of fact or questions of law that may arise under the Employment Security Law that may affect the rights, liabilities and status of any employing unit or employer as heretofore defined by the Employment Security Law including the right to determine the amount of contributions, if any, which may be due the Division of Employment Security by any employer. Hearings may be before the Board of Review ~~or the Division~~ and shall be held in the central office of the ~~Division~~ Board of Review or at any other designated place within the State. They shall be open to the public and shall consist of a review of the evidence taken by a hearing officer designated by the Board of Review and a determination of the law applicable to that evidence. The ~~Division~~ Board of Review shall provide for the taking of evidence by a hearing ~~officer.~~ officer employed in the capacity of an attorney by the Department of Commerce. Such hearing officer shall have the same power to issue subpoenas, administer oaths, conduct hearings and take evidence as is possessed by the ~~Division~~ Board and such hearings shall be recorded, and he shall transmit all testimony and records of such hearings to the Board of Review ~~or Division~~ for its determination. All such hearings conducted by such hearing officer shall be scheduled and held in any county in this State in which the employing unit or employer either resides, maintains a place of business, or conducts business; however, the Board of Review ~~or Division~~ may require additional testimony at any hearings held by it at its office. From all decisions or determinations made by the ~~Assistant Secretary or the~~ Board of Review, any party affected thereby shall be entitled to an appeal to the superior court. Before a party shall be allowed to appeal, the party shall within 10 days after notice of such decision or determination, file with the Board of Review exceptions to the decision or the determination, which exceptions will state the grounds of objection to the decision or determination. If any one of the exceptions shall be overruled then the party may appeal from the order overruling the exceptions, and shall, within 10 days after the decision overruling the exceptions, give notice of ~~his~~ its appeal. When an exception is made to the facts as found by the Board of Review, the appeal shall be to the superior court in term time but the decision or determination of the ~~Division~~ Board of Review upon such review in the superior court shall be conclusive and binding as to all questions of fact supported by any competent evidence. When an exception is made to any rulings of law, as determined by the Board of Review, the appeal shall be to the judge of the superior court at chambers. The party appealing shall, within 10 days after the notice of appeal has been served, file with the Board of Review exceptions to the decision or determination overruling the exception which statement shall assign the errors

complained of and the grounds of the appeal. Upon the filing of such statement the Board of Review shall, within 30 days, transmit all the papers and evidence considered by it, together with the assignments of errors filed by the appellant to a judge of the superior court holding court or residing in some district in which such appellant either resides, maintains a place of business or conducts business, or, unless the appellant objects after being given reasonable opportunity to object, to a judge of the Superior Court of Wake County: Provided, however, the 30-day period specified herein may be extended by agreement of parties.

(r) The cause shall be entitled "State of North Carolina on Relationship of the ~~Division of Employment Security,~~Board of Review, Department of Commerce, of North Carolina against (here insert name of appellant)," and if there are exceptions to any facts found by the Board of Review, it shall be placed on the civil issue docket of such court and shall have precedence over other civil actions except those described in G.S. 96-10(b), and such cause shall be tried under such rules and regulations as are prescribed for the trial of other civil causes. By consent of all parties the appeal may be held and determined at chambers before any judge of a district in which the appellant either resides, maintains a place of business or conducts business, or said appeal may be heard before any judge holding court therein, or in any district in which the appellant either resides, maintains a place of business or conducts business. Either party may appeal to the appellate division from the judgment of the superior court under the same rules and regulations as are prescribed by law for appeals, except that if an appeal shall be taken on behalf of the Department of Commerce, it shall not be required to give any undertaking or make any deposit to secure the cost of such appeal and such court may advance the cause on its docket so as to give the same a speedy hearing.

(s) The decision or determination of the ~~Division~~ Board of Review when docketed in the office of the clerk of the superior court of any county and when properly indexed and cross-indexed shall have the same force and effect as a judgment rendered by the superior court, and if it shall be adjudged in the decision or determination of the ~~Division~~ Board of Review that any employer is indebted to the Division of Employment Security for contributions, penalties and interest or either of the same, then said judgment shall constitute a lien upon any realty owned by said employer in the county only from the date of docketing of such decision or determination in the office of the clerk of the superior court and upon personalty owned by said employer in said county only from the date of levy on such personalty, and upon the execution thereon no homestead or personal property exemptions shall be allowed; provided, that nothing herein shall affect any rights accruing to the Division of Employment Security under G.S. 96-10. The provisions of this section, however, shall not have the effect of releasing any liens for contributions, penalties or interest, or either of the same, imposed by other law, nor shall they have the effect of postponing the payment of said contributions, penalties or interest, or depriving the Division of Employment Security of any priority in order of payment provided in any other statute under which payment of the said contributions, penalties and interest or either of the same may be required. The superior court or any appellate court shall have full power and authority to issue any and all executions, orders, decrees, or writs that may be necessary to carry out the terms of said decision or determination of the Division or to

collect any amount of contribution, penalty or interest adjudged to be due the Division by said decision or determination. In case of an appeal from any decision or determination of the Division to the superior court or from any judgment of the superior court to the appellate division all proceedings to enforce said judgment, decision, or determination shall be stayed until final determination of such appeal but no proceedings for the collection of any amount of contribution, penalty or interest due on same shall be suspended or stayed unless the employer or party adjudged to pay the same shall file with the clerk of the superior court a bond in such amount not exceeding double the amount of contribution, penalty, interest or amount due and with such sureties as the clerk of the superior court deems necessary conditioned upon the payment of the contribution, penalty, interest or amount due when the appeal shall be finally decided or terminated.

...."

SECTION 6.(b) This section is effective when it becomes law.

SECTION 7.(a) Committee Established. – There is created the Joint Legislative Oversight Committee on Unemployment Insurance. The Committee consists of four members of the House of Representatives appointed by the Speaker of the House of Representatives and four members of the Senate appointed by the President Pro Tempore of the Senate.

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

The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Committee may meet at any time upon the joint call of the cochairs. The Committee may meet in the Legislative Building or the Legislative Office Building. The Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

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

SECTION 7.(b) Duties. – The Committee is directed to study and review all unemployment insurance matters, workforce development programs, and reemployment assistance efforts of the State. The following duties and powers, which are enumerated by way of illustration, shall be liberally construed to provide maximum review by the Committee of these matters:

(1) Study the unemployment insurance laws of North Carolina and the administration of those laws.

(2) Review the State's unemployment insurance laws to determine which laws need clarification, technical amendment, repeal, or other change to make the laws concise, intelligible, and easy to administer.

(3) Monitor the payment of the debt owed by the Unemployment Trust Fund to the federal government.

(4) Review and determine the adequacy of the balances in the Unemployment Trust Fund and the Employment Security Reserve Fund.

(5) Study the workforce development programs and reemployment assistance efforts of the Division of Workforce Solutions of the Department of Commerce.

(6) Call upon the Department of Commerce to cooperate with it in the study of the unemployment insurance laws and the workforce development efforts of the State.

SECTION 7.(c) Report. – The Committee may report its findings and recommendations to any regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee.

SECTION 7.(d) This section is effective when it becomes law and expires July 1, 2023.

SECTION 8. Except as otherwise provided, this act is effective when it becomes law.

Outline of Bill Draft: 2013-RBx-5

Fund Changes	
Employment Security Reserve Fund	Restrict uses. Cap fund at $50 million or the amount of interest paid the previous year; excess transferred to UI Fund.
Worker Training Trust Fund & Training and Employment Account	Eliminate these accounts. Transfer any balance in these accounts to the UI Fund.
Special Employment Security Administration Fund	Appropriate $10 million of the $16 million balance to the UI Fund.
Financing Change	
SUTA Changes	Increase the minimum and maximum contribution rate by .06. Move to a formula, as opposed to tax tables.
20% surcharge	Trigger "off" surcharge when UI Fund equals or exceeds $1 billion. Does not apply to reimbursing employers.
Reimbursable Entities	Require governmental employers that choose to reimburse benefits paid to maintain a 1% reserve. Treat all nonprofits the same: require 1% reserve if choose to reimburse; remove options of surety bond and other special payments.
Benefit Changes	
Benefits Duration	Reduce maximum duration of benefits from 13 to 26 weeks to 13 to 20 weeks. This range would vary based on total unemployment. With 5.5% unemployment or less, the range would be 5 to 12 weeks.
Calculation of WBA	Base on average of last two quarters worked, rather than high quarter.
Maximum WBA	Statutorily set amount of $350, rather than formula (current amount is $535).
Program Changes	
Partial weekly benefit	Disregard 20% of WBA, rather than 10% of AWW in highest quarter of base period.
Waiting week	Require waiting week for all new claims. Remove all waivers of the waiting week.
Extended base period	Repeal.
Extended benefit triggers	Retain the two OPTIONAL triggers but only when 100% federally funded.
Attached claims	Must have positive-credit balance. Reimburse. Limited to one time per employee for no more than 6 weeks.
Disqualification	Disqualification based on each application for UI.
Substantial fault and good cause provisions	Retain domestic violence and spousal relocation due to military reassignment. Eliminate substantial fault. Eliminate most other good cause provisions, unless federally required.
Suitable work	Define suitable work as any work after 10 weeks of UI benefits.

LEGISLATIVE PROPOSAL #2

REVENUE LAWS TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES

LEGISLATIVE PROPOSAL #2

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2012 REGULAR SESSION OF THE 2011 GENERAL ASSEMBLY

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE REVENUE LAWS AND RELATED STATUTES.

SHORT TITLE: Revenue Laws Technical, Clarifying, and Administrative Changes

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PRIMARY SPONSORS:

BRIEF OVERVIEW: This Legislative Proposal would make technical, clarifying, and administrative changes to the revenue laws and related statutes, many of which were requested by the Department of Revenue.

FISCAL IMPACT:

EFFECTIVE DATE: Except as otherwise provided, this act would become effective when it becomes law.

A copy of the proposed legislation, a bill analysis, and a fiscal analysis begin on the next page.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H **D**

HOUSE DRH10003-SVxz-3* (11/26)

Short Title:	Rev Laws Technical, Clarifying, & Admin. Chg.	(Public)
Sponsors:	Representative Howard.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE REVENUE LAWS AND RELATED STATUTES, AS RECOMMENDED BY THE REVENUE LAWS STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 105-116(b) reads as rewritten:

"(b) ~~Report~~ Return and Payment. – The tax imposed by this section is payable quarterly or monthly as specified in this subsection. A return is due quarterly.

A water company or public sewerage company must pay tax quarterly when filing a return. An electric power company must pay tax in accordance with the schedule and requirements that apply to payments of sales and use tax under G.S. 105-164.16 and must file a return quarterly.

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. A taxpayer must submit a return on a form provided by the Secretary. The return must include the taxpayer's gross receipts from all property it owned or operated during the reporting period in connection with its business taxed under this section. A taxpayer must report its gross receipts on an accrual basis. A return must contain the following information:

(1) The taxpayer's gross receipts for the reporting period from business inside and outside this State, stated separately.

(2) The taxpayer's gross receipts from commodities or services described in subsection (a) that are sold to a vendee subject to the tax levied by this section or to a joint agency established under Chapter 159B of the General Statutes or a city having an ownership share in a project established under that Chapter.

(3) The amount of and price paid by the taxpayer for commodities or services described in subsection (a) that are purchased from others engaged in business in this State and the name of each vendor.

(4) For an electric power company the entity's gross receipts from the sale within each city of the commodities and services described in subsection (a)."

SECTION 1.(b) G.S. 105-120.2 reads as rewritten:

"**§ 105-120.2. Franchise or privilege tax on holding companies.**

(a) Every corporation, domestic and foreign, incorporated or, by an act, domesticated under the laws of this State or doing business in this State ~~which~~ that, at the close of its taxable ~~year~~ year is a holding company as defined in subsection (c) of this section, shall, pursuant to the provisions of G.S. ~~105-122~~ 105-122, do all of the following:

(1) ~~Make a report and statement, and~~File a return.

(2) Determine the total amount of its issued and outstanding capital stock, surplus and undivided ~~profits, and~~profits.

(3) Apportion such outstanding capital stock, surplus and undivided profits to this State.

(b) (1) Every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the ~~report and statement are~~ return is 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 amount determined under subsection (a) of this section, but in no case shall the tax be more than seventy-five thousand dollars ($75,000) nor less than thirty-five dollars ($35.00).

(2) Notwithstanding the provisions of subdivision (1) of this subsection, if the tax produced pursuant to application of this paragraph (2) exceeds the tax produced pursuant to application of subdivision (1), then the tax ~~shall be~~ is levied at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) on the greater of the ~~amounts of~~following:

a. 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 computed under G.S. ~~105-122(d); or~~105-122(d).

b. The total actual investment in tangible property in this State of such corporation as computed under G.S. 105-122(d).

...."

SECTION 1.(c) G.S. 105-122 reads as rewritten:

"**§ 105-122. Franchise or privilege tax on domestic and foreign corporations.**

...

(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 shall 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 corporation 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~~ return is due, a franchise or privilege 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 provided in this section. The tax imposed in this section shall not be less than thirty-five dollars ($35.00) and ~~shall be~~ is for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each corporation in this State. Appraised value of tangible property including real estate is the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. The term "total actual investment in tangible property" as used in this section 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 a corporation may deduct~~ 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 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 the device, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to the devices, plants or equipment, that 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 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 is treated as deductible for the purposes of this section; the deductible liability allowed by this section ~~shall apply~~ applies only with respect to pollution abatement plants or equipment constructed or installed on or after January 1, 1955.

...

(f) The ~~report, statement, return~~ and tax required by this section ~~shall be~~ is in addition to all other reports required or taxes levied and assessed in this State.

...."

SECTION 1.(d) G.S. 105-127(a) reads as rewritten:

"(a) Every corporation, domestic or foreign, that is required to file a return with the Secretary ~~from which a report is required by law to be made to the Secretary of Revenue,~~ shall, unless otherwise provided, pay annually ~~to said Secretary annually~~ the franchise tax as required by G.S. 105-122."

SECTION 1.(e) G.S. 105-134.2(b) reads as rewritten:

"(b) In lieu of the tax imposed by subsection (a) of this section, there is imposed for each taxable year upon the North Carolina taxable income of every individual a tax determined under tables, applicable to the taxable year, which may be prescribed by the Secretary. The amounts of the tax determined under the tables shall be computed on the basis of the rates prescribed by subsection (a) of this section. This subsection does not apply to an individual ~~making filing~~ a return under section 443(a)(1) of the Code for a period of less than 12 months on account of a change in the individual's annual accounting period, or to an estate or trust. The tax imposed by this subsection shall be treated as the tax imposed by subsection (a) of this section."

SECTION 1.(f) G.S. 105-164.19 reads as rewritten:

"**§ 105-164.19. Extension of time for making returns and payment.**

The Secretary for good cause may extend the time for ~~making filing~~ any return under the provisions of this Article and may grant ~~such~~ additional time within which to ~~make such~~ file the return as he may deem ~~proper~~ proper, but the time for filing any ~~such~~ return shall not be extended for more than 30 days after the regular due date of ~~such~~ the return. If the time for filing a return ~~be~~ is extended, interest accrues at the rate established pursuant to G.S. 105-241.21 from the time the return was due to be filed to the date of payment ~~payment shall be added and paid.~~"

SECTION 1.(g) G.S. 105-164.30 reads as rewritten:

"**§ 105-164.30. Secretary or agent may examine books, etc.**

For the purpose of enforcing the collection of the tax levied by this Article, the Secretary or his duly authorized agent is ~~hereby specifically~~ authorized ~~and empowered~~ to examine at all reasonable hours during the day the books, papers, records, documents or other data of all retailers or wholesale merchants bearing upon the correctness of any return or for the purpose of ~~making filing~~ a return where none has been made as required

by this Article, and may require the attendance of any person and take his testimony with respect to any such matter, with power to administer oaths to such person or persons. If any person summoned as a witness ~~shall fail~~ fails to obey any summons to appear before the Secretary or his authorized agent, or ~~shall refuse~~ refuses to testify or answer any material question or to produce any book, record, paper, or other data when required to do so, ~~such~~ the Secretary or his authorized agent shall report the failure or refusal ~~shall be reported~~ to the Attorney General or the district solicitor, who shall thereupon institute proceedings in the superior court of the county where ~~such~~ the witness resides to compel obedience to any summons of the Secretary or his authorized agent. Officers who serve summonses or subpoenas, and witnesses attending, shall receive like compensation as officers and witnesses in the superior courts, to be paid from the proper appropriation for the administration of this Article.

In the event any retailer or wholesale merchant ~~shall fail or refuse~~ fails or refuses to permit ~~examination of~~ the Secretary or his authorized agent to examine his books, papers, accounts, records, documents or other ~~data by the Secretary or his authorized agents as aforesaid, data,~~ the Secretary ~~shall have the power to proceed by citing said~~ may require the retailer or wholesale merchant to show cause before the superior court of the county in which said taxpayer resides or has its principal place of business as to why ~~such~~ the books, records, papers, or documents should not be examined and ~~said~~ the superior court shall have jurisdiction to enter an order requiring the production of all necessary books, records, papers, or documents and to punish for contempt any person who violates the order ~~of such order any person violating the same.~~"

SECTION 1.(h) G.S. 105-236(a)(9) reads as rewritten:

"(9) Willful Failure to File Return, Supply Information, or Pay Tax. – Any person required to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay the tax, ~~make~~ file the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, ~~shall, is,~~ in addition to other penalties provided by law, ~~be~~ guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision ~~shall be~~ is barred before the expiration of six years after the date of the violation."

SECTION 1.(i) G.S. 105-258(a) reads as rewritten:

"(a) Secretary May Examine Data and Summon Persons. – The Secretary of ~~Revenue~~ Revenue is authorized to do any of the following for the purpose of ascertaining the correctness of any return, ~~making~~ filing a return where none has been made, or determining the liability of any person for a tax, or collecting any tax; ~~such tax, shall have the power~~

(1) ~~to examine~~ Examine, personally, or by an agent designated by him, any books, papers, records, or other data ~~which~~ that may be relevant or material to ~~such inquiry, and the Secretary may~~ the inquiry.

(2) ~~summon~~ Summon any of the following persons to appear at a time and place named in the summons, to produce such books, papers, records or other data, and to give such testimony under oath as may be relevant or material to the inquiry:

a. ~~the~~ Any person liable for the tax or required to perform the act, or any officer or employee of such ~~person, or any~~ person.

b. Any person having possession, custody, care or control of books of account containing entries relevant or material to the income and expenditures of the person liable for the tax or required to perform the act, or any other person having knowledge in the premises.~~premises, to appear before the Secretary, or his agent, at a time and place named in the summons, and to produce such books, papers, records or other data, and to give such testimony under oath as may be relevant or material to such inquiry, and the Secretary or his agent may~~

(3) ~~administer~~ Administer oaths to ~~such person or persons.~~ the persons listed in this subsection.

(4) ~~If any person so summoned refuses to obey such summons or to give testimony when summoned, the Secretary may apply~~ Apply to the Superior Court of Wake County for an order requiring ~~such person or persons to comply with the summons of the Secretary, and the failure~~ any person who refuses to obey the summons or to give testimony when summoned. Failure to comply with ~~such~~ the court order shall be punished as for contempt."

SECTION 2.(a) G.S. 105-122(c1) reads as rewritten:

"(c1) Apportionment. – A corporation that is doing business in this State and in one or more other states must apportion its capital stock, surplus, and undivided profits to this State. A corporation must use the apportionment method set out in subdivision (1) of this subsection unless the Department has authorized it to use a different method under subdivision (2) of this subsection. The portion of a corporation's capital stock, surplus, and undivided profits determined by applying the appropriate apportionment method is considered the amount of capital stock, surplus, and undivided profits the corporation uses in its business in this State.

...

(2) Alternative. – A corporation that believes the statutory apportionment method set out in subdivision (1) of this subsection subjects a greater portion of its capital stock, surplus, and undivided profits to tax under this section than is attributable to its business in this State may make a written request to the Secretary for permission to use an alternative method. The request must set out the reasons for the corporation's belief and propose an alternative method. The corporation has the burden of

establishing by clear, cogent, and convincing proof that the statutory apportionment method subjects a greater portion of the corporation's capital stock, surplus, and undivided profits to tax under this section than is attributable to its business in this State and that the proposed alternative method is a better method of determining the amount of the corporation's capital stock, surplus, and undivided profits attributable to the corporation's business in this State.

The Secretary must issue a written decision on a corporation's request for an alternative apportionment method. If the decision grants the request, it must describe the alternative method the corporation is authorized to use and state the tax years to which the alternative method applies. A decision may apply to no more than three tax ~~years, unless the provisions of subdivision (3) of this subsection applies.~~ years. A corporation may renew a request to use an alternative apportionment method by following the procedure in this subdivision. A decision of the Secretary on a request for an alternative apportionment method is final and is not subject to administrative or judicial review. A corporation authorized to use an alternative method may apportion its capital stock, surplus, and undivided profits in accordance with the alternative method or the statutory method."

SECTION 2.(b) G.S. 105-130.4(t1) reads as rewritten:

"(t1) Alternative Apportionment Method. – A corporation that believes the statutory apportionment method that otherwise applies to it under this section subjects a greater portion of its income to tax than is attributable to its business in this State may make a written request to the Secretary for permission to use an alternative method. The request must set out the reasons for the corporation's belief and propose an alternative method.

The statutory apportionment method that otherwise applies to a corporation under this section is presumed to be the best method of determining the portion of the corporation's income that is attributable to its business in this State. A corporation has the burden of establishing by clear, cogent, and convincing proof that the proposed alternative method is a better method of determining the amount of the corporation's income attributable to the corporation's business in this State.

The Secretary must issue a written decision on a corporation's request for an alternative apportionment method. If the decision grants the request, it must describe the alternative method the corporation is authorized to use and state the tax years to which the alternative method applies. A decision may apply to no more than three tax ~~years, unless the provisions of subsection (t2) of this section apply.~~ years. A corporation may renew a request to use an alternative apportionment method by following the procedure in this subsection. A decision of the Secretary on a request for an alternative apportionment method is final and is not subject to administrative or judicial review. A corporation authorized to use an alternative method may apportion its income in

accordance with the alternative method or the statutory method. A corporation may not use an alternative apportionment method except upon written order of the Secretary, and any return in which any alternative apportionment method, other than the method prescribed by statute, is used without permission of the Secretary is not a lawful return."

SECTION 3. G.S. 105-163.41(c) reads as rewritten:

"(c) The period of the underpayment ~~shall run~~runs from the date the installment was required to be paid to the earlier of:

(1) The 15th day of the ~~3rd~~ 4th month following the close of the taxable year, or

(2) With respect to any portion of the underpayment, the date on which the portion is paid. An installment payment of estimated tax ~~shall be~~ is considered a payment of any previous underpayment only to the extent the payment exceeds the amount of the installment determined under subdivision (1) of subsection (b) for that installment date."

SECTION 4. G.S. 105-129.84(c) reads as rewritten:

"(c) Carryforward. – Unless a longer carryforward period applies, any unused portion of a credit allowed under G.S. 105-129.87 or G.S. 105-129.88 may be carried forward for the succeeding five years, and any unused portion of a credit allowed under G.S. 105-129.89 may be carried forward for the succeeding 15 years. If the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease, and place in service in connection with an eligible business within a two-year period, at least one hundred fifty million dollars ($150,000,000) worth of business and real property, any unused portion of a credit under this Article with respect to the establishment that satisfies that condition may be carried forward for the succeeding 20 years. If the taxpayer does not make the required level of investment, the taxpayer shall apply the ~~five-year standard~~ carryforward period rather than the 20-year carryforward period."

SECTION 5.(a) G.S. 105-134.6 reads as rewritten:

"**§ 105-134.6. Modifications to adjusted gross income.**

...

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

...

(17b) An amount equal to twenty percent (20%) of the amount added ~~to federal taxable income as accelerated depreciation~~ under subdivision (c)(8b) of this section. For the amount added to taxable income in the 2010 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2011. For the amount added to taxable income in the 2011 taxable year, the deduction allowed by this subdivision applies to the first five taxable years

beginning on or after January 1, 2012. For the amount added to ~~taxable~~ adjusted gross income in the 2012 taxable year, the deduction allowed by this subdivision applies to the first five taxable years beginning on or after January 1, 2013.

...

(d) Other Adjustments. – In calculating North Carolina taxable income, a taxpayer must make the following adjustments to adjusted gross income.

(1) The amount of inheritance or estate tax attributable to an item of income in respect of a decedent required to be included in gross income under the Code, adjusted as provided in G.S. ~~105-134.5~~ 105-134.5 and 105-134.6, ~~and 105-134.7~~ may be deducted in the year the item of income is included. The amount of inheritance or estate tax attributable to an item of income in respect of a decedent is (i) the amount by which the inheritance or estate tax paid under Article 1 or 1A of this Chapter on property transferred to a beneficiary by a decedent exceeds the amount of the tax that would have been payable by the beneficiary if the item of income in respect of a decedent had not been included in the property transferred to the beneficiary by the decedent, (ii) multiplied by a fraction, the numerator of which is the amount required to be included in gross income for the taxable year under the Code, adjusted as provided in G.S. ~~105-134.5, 105-134.6~~ and 105-134.6, ~~and 105-134.7,~~ and the denominator of which is the total amount of income in respect of a decedent transferred to the beneficiary by the decedent. For an estate or trust, the deduction allowed by this subdivision shall be computed by excluding from the gross income of the estate or trust the portion, if any, of the items of income in respect of a decedent that are properly paid, credited, or to be distributed to the beneficiaries during the taxable year.

The Secretary may provide to a beneficiary of an item of income in respect of a decedent any information contained on an inheritance or estate tax return that the beneficiary needs to compute the deduction allowed by this subdivision.

...

(3) The taxpayer shall add to ~~taxable~~ adjusted gross income the amount of any recovery during the taxable year not included in ~~taxable~~ adjusted gross income, to the extent the taxpayer's deduction of the recovered amount in a prior taxable year reduced the taxpayer's tax imposed by this Part but, due to differences between the Code and this Part, did not reduce the amount of the taxpayer's tax imposed by the Code. The taxpayer may deduct from ~~taxable~~ adjusted gross income the amount of any recovery during the taxable year included in ~~taxable~~ adjusted gross

income under section 111 of the Code, to the extent the taxpayer's deduction of the recovered amount in a prior taxable year reduced the taxpayer's tax imposed by the Code but, due to differences between the Code and this Part, did not reduce the amount of the taxpayer's tax imposed by this Part.

(4) A taxpayer may deduct from ~~taxable~~ adjusted gross income the amount, not to exceed two thousand five hundred dollars ($2,500), contributed to an account in the Parental Savings Trust Fund of the State Education Assistance Authority established pursuant to G.S. 116-209.25. In the case of a married couple filing a joint return, the maximum dollar amount of the deduction is five thousand dollars ($5,000).

(5) The taxpayer shall add to ~~taxable~~ adjusted gross income the amount deducted ~~from taxable income~~ in a prior taxable year under subdivision (4) of this subsection to the extent this amount was withdrawn from the Parental Savings Trust Fund of the State Education Assistance Authority established pursuant to G.S. 116-209.25 and not used to pay for the qualified higher education expenses of the designated beneficiary, unless the withdrawal was made without penalty under section 529 of the Code due to the death or permanent disability of the designated beneficiary.

(6) A taxpayer who is an eligible firefighter or an eligible rescue squad worker may deduct from ~~taxable~~ adjusted gross income the sum of two hundred fifty dollars ($250.00). In the case of a married couple filing a joint return, each spouse may qualify separately for the deduction allowed under this subdivision. In order to claim the deduction allowed under this subdivision, the taxpayer must submit with the tax return any documentation required by the Secretary. An individual may not claim a deduction as both an eligible firefighter and as an eligible rescue squad worker in a single taxable year. The following definitions apply in this subdivision:

a. Eligible firefighter. – An unpaid member of a volunteer fire department who attended at least 36 hours of fire department drills and meetings during the taxable year.

b. Eligible rescue squad worker. – An unpaid member of a volunteer rescue or emergency medical services squad who attended at least 36 hours of rescue squad training and meetings during the taxable year.

...."

SECTION 5.(b) G.S. 105-151(a) reads as rewritten:

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

...

(2) The fraction of the gross income, as calculated under the Code and adjusted as provided in G.S. ~~105-134.6 and G.S. 105-134.7,~~ 105-134.6, that is subject to income tax in another state or country shall be ascertained, and the North Carolina net income tax before credit under this section shall be multiplied by that fraction. The credit allowed is either the product thus calculated or the income tax actually paid the other state or country, whichever is smaller.

...."

SECTION 5.(c) G.S. 105-151.11(c) reads as rewritten:

"(c) Limitations. – A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. No credit shall be allowed under this section for amounts deducted ~~from gross income~~ in calculating North Carolina taxable ~~income under the Code.~~ income. The credit allowed by this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except for payments of tax made by or on behalf of the taxpayer."

SECTION 5.(d) G.S. 105-151.30(e) reads as rewritten:

"(e) No Double Benefit. – A taxpayer who claims a credit under this section must add back to ~~taxable adjusted gross~~ income any amount deducted under G.S. 105-134.6(a2)~~the Code~~ for the donation of the oyster shells."

SECTION 5.(e) G.S. 105-152 reads as rewritten:

"**§ 105-152. Income tax returns.**

...

(c) Information Required With Return. – The income tax return shall show the ~~taxable adjusted gross~~ income and adjustments required by this Part and any other information the Secretary requires. The Secretary may require some or all individuals required to file an income tax return to attach to the return a copy of their federal income tax return for the taxable year. The Secretary may require a taxpayer to provide the Department with copies of any other return the taxpayer has filed with the Internal Revenue Service and to verify any information in the return.

(d) Secretary May Require Additional Information. – When the Secretary has reason to believe that any taxpayer conducts a trade or business in a way that directly or indirectly distorts the taxpayer's ~~taxable adjusted gross~~ income or North Carolina taxable income, the Secretary may require any additional information for the proper computation of the taxpayer's ~~taxable adjusted gross~~ income and North Carolina taxable income. In computing the taxpayer's ~~taxable adjusted gross~~ income and North Carolina taxable

income, the Secretary shall consider the fair profit that would normally arise from the conduct of the trade or business.

...."

SECTION 5.(f) G.S. 105-160.1 reads as rewritten:

"**§ 105-160.1. Definitions.**

The definitions provided in Part 2 of this Article shall apply in this Part except where the context clearly indicates a different meaning. In addition, as used in this Part, "taxable income" is defined in section 63 of the Code."

SECTION 5.(g) G.S. 105-160.2 reads as rewritten:

"**§ 105-160.2. Imposition of tax.**

The tax imposed by this Part ~~shall apply~~ applies to the taxable income of estates and trusts as determined under the provisions of the Code except as otherwise provided in this Part. The taxable income of an estate or trust ~~shall be~~ is the same as taxable income for such an estate or trust under the provisions of the Code, adjusted as provided in G.S. ~~105-134.6 and G.S. 105-134.7~~ 105-134.6, except that the adjustments provided in G.S. 105-134.6 and ~~G.S. 105-134.7 shall be~~ are apportioned between the estate or trust and the beneficiaries based on the distributions made during the taxable year. The tax ~~shall be~~ is computed on the amount of the taxable income of the estate or trust that is for the benefit of a resident of this State, or for the benefit of a nonresident to the extent that the income (i) is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State or (ii) is derived from a business, trade, profession, or occupation carried on in this State. For purposes of the preceding sentence, taxable income and gross income ~~shall be~~ is computed subject to the adjustments provided in G.S. ~~105-134.6 and G.S. 105-134.7~~ 105-134.6. The tax on the amount computed above ~~shall be~~ is at the rates levied in G.S. 105-134.2(a)(3). The fiduciary responsible for administering the estate or trust shall pay the~~The~~ tax computed under the provisions of this ~~Part shall be paid by the fiduciary responsible for administering the estate or trust~~ Part."

SECTION 6.(a) The first sentence of G.S. 105-134.7(a)(3) is recodified as G.S. 105-134.6(c)(17).

SECTION 6.(b) G.S. 105-134.7(a)(6) is recodified as G.S. 105-134.6(c)(18) and reads as rewritten:

"(18) A loss or deduction that was incurred or paid and deducted from State taxable income in a taxable year beginning before January 1, 1989, and is carried forward and deducted in a taxable year beginning on or after January 1, 1989, under the ~~Code shall be added to taxable income~~ Code."

SECTION 6.(c) The second sentence of G.S. 105-134.7(a)(3) is recodified as G.S. 105-134.6(b)(24).

SECTION 6.(d) G.S. 134.7(a)(7) is recodified as G.S. 105-134.6(d)(9).

SECTION 6.(e) G.S. 134.7(b) is recodified as G.S. 105-134.6(d)(10).

SECTION 6.(f) The remainder of G.S. 105-134.7 is repealed.

SECTION 7. G.S. 105-151.18 reads as rewritten:

"**§ 105-151.18. Credit for the disabled.**

(a) Disabled Taxpayer. – A taxpayer who (i) is retired on disability, (ii) at the time of retirement, was permanently and totally disabled, and (iii) claims a federal income tax credit under section 22 of the Code for the taxable year, is allowed as a credit against the tax imposed by this Part an amount equal to one-third of the amount of the federal income tax credit for which the taxpayer is eligible under section 22 of the Code.

(b) Disabled Dependent. – If a dependent or spouse for whom a taxpayer is allowed an exemption under the Code is permanently and totally disabled, the taxpayer is allowed a credit against the tax imposed by this Part. In order to claim the credit allowed by this subsection, the taxpayer must attach to the tax return on which the credit is claimed a statement from a physician or local health department certifying that the dependent or spouse for whom the credit is claimed is permanently and totally disabled, as defined in this section. The amount of the credit allowed ~~shall be~~ is determined as follows: For a taxpayer whose North Carolina ~~adjusted gross~~ taxable income does not exceed the appropriate income amount provided in the table below, based on the taxpayer's filing status, the credit allowed is the appropriate initial credit provided in the table below. For a taxpayer whose North Carolina ~~adjusted gross~~ taxable income does exceed the appropriate income amount, the credit allowed is the appropriate initial credit reduced by four dollars ($4.00) for every one thousand dollars ($1,000) by which the taxpayer's North Carolina ~~adjusted gross~~ taxable income exceeds the appropriate income amount.

Filing Status	Initial Credit	Income Amount
Head of Household	$64.00	$16,000
Surviving Spouse or Joint Return	$80.00	$20,000
Single	$48.00	$12,000
Married Filing Separately	$40.00	$10,000

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

(1) North Carolina ~~Adjusted Gross Income~~ taxable income. – ~~Defined in G.S. 105-134.5 Adjusted gross income, as determined under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7.~~

(2) Permanently and ~~Totally Disabled~~ totally disabled. – Unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For the purpose of this section, a minor is permanently and totally disabled if the impact of the impairment on the minor's ability to function is equivalent in severity to

that which would make an adult unable to engage in any substantial gainful activity.

(d) Limitations. – A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. The credit allowed under this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except payments of tax made by or on behalf of the taxpayer."

SECTION 8. G.S. 105-164.3 reads as rewritten:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(37b) School instructional material. – Written material commonly used by a student in a course of study as a reference and to learn the subject being taught. The following is an all-inclusive list:

a. Reference books.

b. Reference maps and globes.

c. Textbooks.

d. Workbooks. ~~Defined in the Streamlined Agreement.~~

...

(44) Storage. – The keeping or retention in this State for any purpose, except sale in the regular course of business, of tangible personal property or digital property purchased from a retailer. The term does not include a purchaser's storage of tangible personal property or digital property in any of the following circumstances:

a. When the purchaser is able to document that at the time the purchaser acquires the property the property is designated for the purchaser's use outside the State and the purchaser subsequently takes it outside the State and uses it solely outside the State.

b. When the purchaser acquires the property to process, fabricate, manufacture, or otherwise incorporate it into or attach it to other property for the purchaser's use outside the State and, after incorporating or attaching the purchased property, the purchaser subsequently takes the other property outside the State and uses it solely outside the State.

...

(45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement as amended as of ~~December 19, 2011~~ May 24, 2012.

...."

SECTION 9. G.S. 105-164.4(a)(3) reads as rewritten:

"(3) A tax at the general rate applies to the gross receipts derived from the rental of an accommodation. The tax does not apply to (i) a private residence or cottage that is rented for fewer than 15 days in a calendar year; (ii) an accommodation rented to the same person for a period of 90 or more continuous days; or (iii) an accommodation arranged or provided to a person by a school, camp, or similar entity where a tuition or fee is charged to the person for enrollment in the school, camp, or similar entity.

Gross receipts derived from the rental of an accommodation include the sales price of the rental of the accommodation. The sales price of the rental of an accommodation is determined as if the rental were a rental of tangible personal property. The sales price of the rental of an accommodation marketed by a facilitator includes charges designated as facilitation fees and any other charges necessary to complete the rental.

A person who provides an accommodation that is offered for rent is considered a retailer under this Article. A facilitator must report to the retailer with whom it has a contract the sales price a consumer pays to the facilitator for an accommodation rental marketed by the facilitator. A retailer must notify a facilitator when an accommodation rental marketed by the facilitator is completed ~~and, within three business days of receiving the notice,~~ and the facilitator must send the retailer the portion of the sales price the facilitator owes the retailer and the tax due on the sales ~~price~~ price no later than 10 days after the end of each calendar month. A facilitator that does not send the retailer the tax due on the sales price is liable for the amount of tax the facilitator fails to send. A facilitator is not liable for tax sent to a retailer but not remitted by the retailer to the Secretary. Tax payments received by a retailer from a facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment from a facilitator must remit the amount received to the Secretary. A retailer is not liable for tax due but not received from a facilitator. The requirements imposed by this subdivision on a retailer and a facilitator are considered terms of the contract between the retailer and the facilitator.

A person who, by written contract, agrees to be the rental agent for the provider of an accommodation is considered a retailer under this Article and is liable for the tax imposed by this subdivision. The liability of a rental agent for the tax imposed by this subdivision relieves the provider of the accommodation from liability. A rental agent includes a real estate broker, as defined in G.S. 93A-2.

The following definitions apply in this subdivision:

a. Accommodation. – A hotel room, a motel room, a residence, a cottage, or a similar lodging facility for occupancy by an individual.

b. Facilitator. – A person who is not a rental agent and who contracts with a provider of an accommodation to market the accommodation and to accept payment from the consumer for the accommodation."

SECTION 10. 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.~~ State, provided the tax is stated and charged separately on the invoices or other documents of the retailer given to the purchaser at the time of the sale, except as otherwise provided in G.S. 105-164.7, or provided the retailer remitted the tax subsequent to the sale and the purchaser obtains such documentation. 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 due and 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 11. 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, digital property, and services are specifically exempted from the tax imposed by this Article:

...

(33a) Tangible personal property sold by a retailer to a purchaser ~~within or without~~ inside or outside this State, when the property is delivered by the retailer in this State to a common carrier or to the United States Postal Service for delivery to the purchaser or the purchaser's designees outside this State and the purchaser does not subsequently use the property in this State. This exemption includes printed material sold by a retailer to a purchaser inside or outside this State when the printed material is delivered directly to a mailing house, or to a common carrier, or to the United States Postal Service for delivery to a mailing house in this State that will preaddress and presort the material and deliver it to a

common carrier or to the United States Postal Service for delivery to recipients outside this State designated by the purchaser.

...

(43a) Computer software that meets any of the following descriptions:

a. It is ~~designed~~ purchased to run on an enterprise server operating system. The exemption includes a purchase or license of computer software for high-volume, simultaneous use on multiple computers, that is housed or maintained on an enterprise server or end users' computers. The exemption includes software designed to run a computer system, an operating program, or application software.

b. It is sold to a person who operates a datacenter and is used within the datacenter.

c. It is sold to a person who provides cable service, telecommunications service, or video programming and is used to provide ancillary service, cable service, Internet access service, telecommunications service, or video programming.

...."

SECTION 12. G.S. 105-164.14(b) reads as rewritten:

"(b) Nonprofit Entities and Hospital Drugs. – A nonprofit entity is allowed a semiannual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services, other than electricity, telecommunications service, and ancillary service, for use in carrying on the work of the nonprofit entity. Sales and use tax liability indirectly incurred by a nonprofit entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the nonprofit entity and is being erected, altered, or repaired for use by the nonprofit entity for carrying on its nonprofit activities is considered a sales or use tax liability incurred on direct purchases by the nonprofit entity. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund for the first six months of a calendar year is due the following October 15; a request for a refund for the second six months of a calendar year is due the following April 15.

The refunds allowed under this subsection do not apply to an entity that is owned and controlled by the United States or to an entity that is owned or controlled by the State and is not listed in this subsection. A hospital that is not listed in this subsection is allowed a semiannual refund of sales and use taxes paid by it on ~~medicines and over-the-counter~~ drugs purchased for use in carrying out its work. The following nonprofit entities are allowed a refund under this subsection:

(1) Hospitals not operated for profit, including hospitals and medical accommodations operated by an authority or other public hospital described in Article 2 of Chapter 131E of the General Statutes.

(2) An organization that is exempt from income tax under section 501(c)(3) of the Code, other than an organization that is properly classified in any of the following major group areas of the National Taxonomy of Exempt Entities:

a. Community Improvement and Capacity Building.

b. Public and Societal Benefit.

c. Mutual and Membership Benefit.

(2a) An organization that is exempt from income tax under the Code and is one of the following:

a. A volunteer fire department.

b. A volunteer emergency medical services squad.

(2b) An organization that is a single member LLC that is disregarded for income tax purposes and satisfies all of the following conditions:

a. The owner of the LLC is an organization that is exempt from income tax under section 501(c)(3) of the Code.

b. The LLC is a nonprofit entity that would be eligible for an exemption under 501(c)(3) of the Code if it were not disregarded for income tax purposes.

c. The LLC is not an organization that would be properly classified in any of the major group areas of the National Taxonomy of Exempt Entities listed in subdivision (2) of this subsection."

SECTION 13. G.S. 105-164.27A(a) reads as rewritten:

"(a) General. – A general direct pay permit authorizes its holder to purchase any tangible personal property, digital property, or service without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the permit holder. A person who purchases an item under a direct pay permit issued under this subsection is liable for use tax due on the purchase. The tax is payable when the property is placed in use or the service is received. A direct pay permit issued under this subsection does not apply to taxes imposed under G.S. 105-164.4 on ~~electricity~~ sales of electricity or the gross receipts derived from rentals of accommodations.

A person who purchases an item for storage, use, or consumption in this State whose tax status cannot be determined at the time of the purchase because of one of the reasons listed below may apply to the Secretary for a general direct pay permit:

(1) The place of business where the item will be stored, used, or consumed is not known at the time of the purchase and a different tax consequence applies depending on where the item is used.

(2) The manner in which the item will be stored, used, or consumed is not known at the time of the purchase and one or more of the potential uses is taxable but others are not taxable."

SECTION 14. G.S. 105-164.35 is repealed.

SECTION 15. G.S. 105-164.42L reads as rewritten:

"§ 105-164.42L. ~~Databases on taxing jurisdictions.~~Liability relief for erroneous information or insufficient notice by Department.

~~(a)~~ The Secretary may develop databases that provide information on the boundaries of taxing jurisdictions and the tax rates applicable to those taxing jurisdictions. A person who relies on the information provided in these databases is not liable for underpayments of tax attributable to erroneous information provided by the Secretary in those databases.

~~(a)~~ The Secretary may develop a taxability matrix that provides information on the taxability of certain items. A person who relies on the information provided in the taxability matrix is not liable for underpayments of tax attributable to erroneous information provided by the Secretary in the taxability matrix.

~~(a)~~ A retailer is not liable for an underpayment of tax attributable to a rate change when the State fails to provide for at least 30 days between the enactment of the rate change and the effective date of the rate change if the conditions of this subsection are satisfied. However, if the State establishes the retailer fraudulently failed to collect at the new rate or solicited customers based on the immediately preceding effective rate this liability relief does not apply. Both of the following conditions must be satisfied for liability relief:

~~(1)~~ The retailer collected tax at the immediately preceding rate.

~~(2)~~ The retailer's failure to collect at the newly effective rate does not extend beyond 30 days after the date of enactment of the new rate."

SECTION 16. G.S. 105-187.51(a) reads as rewritten:

"(a) Scope. – A privilege tax is imposed on the following persons:

(1) A manufacturing ~~industry or~~ plant that purchases mill machinery or mill machinery parts or accessories for storage, use, or consumption in this ~~State~~State to produce a product for sale. A manufacturing ~~industry or~~ plant does not include the following:

a. A delicatessen, cafe, cafeteria, restaurant, or another similar retailer that is principally engaged in the retail sale of foods prepared by it for consumption on or off its premises.

b. A production company.

(2) A contractor or subcontractor that purchases mill machinery or mill machinery parts or accessories for use in the performance of a contract with a manufacturing ~~industry or~~ plant.

(3) A subcontractor that purchases mill machinery or mill machinery parts or accessories for use in the performance of a contract with a general contractor that has a contract with a manufacturing ~~industry or~~ plant."

SECTION 17. G.S. 105-187.52(b) reads as rewritten:

"(b) Credit. – A credit is allowed against the tax imposed by this Article for the amount of a sales or use tax, privilege or excise tax, or substantially equivalent tax due and paid to another ~~state.~~ state or for the amount of sales and use tax paid to this State.

The credit allowed by this subsection does not apply to tax paid to another state that does not grant a similar credit for the privilege tax paid in North Carolina."

SECTION 18. G.S. 105-236.1(a) reads as rewritten:

"(a) General. – The Secretary may appoint employees of the Unauthorized Substances Tax Section of the Tax Enforcement Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the excise tax on unauthorized substances imposed by Article 2D of this Chapter.

The Secretary may appoint up to 11 employees of the Motor Fuels ~~Tax Investigations~~ Section of the Tax Enforcement Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the taxes on motor fuels imposed by Articles 36B, 36C, and 36D of this Chapter and by Chapter 119 of the General Statutes.

The Secretary may appoint employees of the Criminal Investigations Section of the Tax Enforcement Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the following tax violations and criminal offenses:

(1) The felony and misdemeanor tax violations in G.S. 105-236.

(2) The misdemeanor tax violations in G.S. 105-449.117 and G.S. 105-449.120.

(3) The following criminal offenses when they involve a tax imposed under Chapter 105 of the General Statutes:

a. G.S. 14-91 (Embezzlement of State Property).

b. G.S. 14-92 (Embezzlement of Funds).

c. G.S. 14-100 (Obtaining Property By False Pretenses).

c1. G.S. 14-113.20 (Identity Theft).

c2. G.S. 14-113.20A (Trafficking in Stolen Identities).

d. G.S. 14-119 (Forgery).

e. G.S. 14-120 (Uttering Forged Paper).

f. G.S. 14-401.18 (Sale of Certain Packages of Cigarettes)."

SECTION 19. G.S. 105-242.2(b) reads as rewritten:

"(b) Responsible Person. – Each responsible person in a business entity is personally and individually liable for all of the taxes listed in this subsection. In each case, the term 'taxes' specifically includes any interest and penalties included in the assessment against the business entity that remain unpaid. 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 the business entity upon its taxable transactions.

(2) All sales and use taxes due upon taxable transactions of 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 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 the business entity."

SECTION 20. G.S. 105-256(a)(9) is repealed.

SECTION 21. G.S. 105-259(b) reads as rewritten:

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

...

(15a) To furnish to ~~the head of~~ the appropriate ~~State or local~~ state, or federal law enforcement ~~agency~~ agency, including a prosecutorial agency, information concerning the commission of an offense under the jurisdiction of that agency ~~discovered by~~ when the Department ~~during~~ has initiated a criminal investigation of the taxpayer.

...

(29) To provide to the Economic Investment Committee established pursuant to G.S. ~~143B-437.48~~ 143B-437.54 information necessary to implement ~~Part 2F of Article 10 of Chapter 143B of the General Statutes~~ economic development programs under the responsibility of the Committee."

SECTION 22. Section 6A.3(d) of S.L. 2012-142 reads as rewritten:

"**SECTION 6A.3.(d)** Funding. – Of funds generated from increased revenues or cost savings as compared to the baselines established by subdivision (1) of subsection (c) of this section, in the General Fund, the Highway Fund, and that State portion of the Unauthorized Substance Tax collections of the Special Revenue Fund, the sum of up to a total of sixteen million dollars ($16,000,000) may be ~~used~~ authorized by the Office of State Budget and Management to make purchases related to the implementation of the additional public-private arrangement authorized by this section, including payment for services from non-State entities."

SECTION 23. G.S. 105-113.112 reads as rewritten:

"**§ 105-113.112. Confidentiality of information.**

(a) 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~~ provisions of G.S. 105-259.

(b) Information obtained by the Department from the taxpayer 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, may not be used as evidence, as defined in G.S. 15A-971, by a prosecutor in a criminal prosecution of the taxpayer for an offense ~~other than an offense under this Article or under Article 9 of this Chapter,~~ related to the manufacturing, possession, transportation, distribution, or sale of the unauthorized substance. Under this prohibition, no officer, employee, or agent of the Department may testify about ~~the~~this information in a criminal prosecution of the taxpayer for an offense related to the manufacturing, possession, transportation, distribution, or sale of the unauthorized substance ~~other than an offense under this Article or under Article 9 of this Chapter.~~ This ~~subdivision~~ subsection 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 24.(a) G.S. 105-113.4A reads as rewritten:

"**§ 105-113.4A. Licenses.**

(a) General. – To obtain a license required by this Article, an applicant must ~~apply to~~ file an application with the Secretary on a form provided by the Secretary and pay the tax due for the license. An application must include the applicant's name, address, federal employer identification number, and any other information required by the Secretary. A license is not transferable or assignable and must be displayed at the place of business for which it is issued.

(b) Requirements. – An applicant for a license must meet the following requirements:

(1) If the applicant is a corporation, the applicant must either be incorporated in this State or be authorized to transact business in this State.

(2) If the applicant for a license is a limited liability company, the applicant must either be organized in this State or be authorized to transact business in this State.

(3) If the applicant for a license is a limited partnership, the applicant must either be formed in this State or be authorized to transact business in this State.

(4) If the applicant for a license is an individual or a general partnership, the applicant must designate an agent for service of process and give the agent's name and address.

(c) Denial. – The Secretary may investigate an applicant for a license required under this Article to determine if the information the applicant submits with the application is accurate and if the applicant is eligible to be licensed under this Article. The Secretary may refuse to issue a license to an applicant that has done any of the following:

(1) Submitted false or misleading information on its application.

(2) Had a license issued under this Article cancelled by the Secretary for cause.

(3) Had a tobacco products license or registration issued by another state cancelled for cause.

(4) Been convicted of fraud or misrepresentation.

(5) Been convicted of any other offense that indicates the applicant may not comply with this Article if issued a license.

(6) Failed to remit payment for a tax debt under this Chapter. The term 'tax debt' has the same meaning as defined in G.S. 105-243.1.

(7) Failed to file a return due under this Chapter.

~~(b)~~(d) Refund. – A refund of a license tax is allowed only when the tax was collected or paid in error. No refund is allowed when a license holder surrenders a license or the Secretary revokes a license.

~~(c)~~(e) Duplicate or Amended License. – Upon application to the Secretary, a license holder may obtain without charge ~~one of the following:~~a duplicate or amended license as provided in this subsection. A duplicate or amended license must state that it is a duplicate or amended license, as appropriate.

(1) A duplicate license, if the license holder establishes that the original license has been lost, destroyed, or defaced.

(2) An amended license, if the license holder establishes that the location of the place of business for which the license was issued has changed.

~~A duplicate or amended license shall state that it is a duplicate or amended license, as appropriate.~~

(f) Information on License. – The Secretary must include the following information on each license required by this Article:

(1) The legal name of the license holder.

(2) The name under which the license holder conducts business.
(3) The physical address of the place of business of the license holder.
(4) The account number assigned to the license by the Department.

(g) Records. – The Secretary must keep a record of the following:
(1) Applicants for a license under this Article.
(2) Persons to whom a license has been issued under this Article.
(3) Persons that hold a current license issued under this Article, by license category.

(h) Lists. – The Secretary must provide the list required under subsection (g) of this section upon request of a manufacturer that is a license holder under this Article. The list must state the name, account number, and business address of each license holder on the list."

SECTION 24.(b) G.S. 105-113.4B reads as rewritten:

"**§ 105-113.4B. Reasons why the Secretary can cancel a license.**

(a) Reasons. – The Secretary may cancel a license issued under this Article upon the written request of the license holder. The Secretary may summarily cancel the license of a license holder when the Secretary finds that the license holder is incurring liability for the tax imposed under this Article after failing to pay a tax when due under this Article. In addition, the Secretary may cancel the license of a license holder that commits one or more of the following acts after holding a hearing on whether the license should be cancelled:

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

(b) Procedure. – The Secretary must send a person whose license is summarily cancelled a notice of the cancellation and must give the person an opportunity to have a hearing on the cancellation within 10 days after the cancellation. The Secretary must give a person whose license may be cancelled after a hearing at least 10 days' written notice of the date, time, and place of the hearing. A notice of a summary license cancellation and a

notice of hearing must be sent by registered mail to the last known address of the license holder.

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

(1) Return an irrevocable letter of credit to the license holder.

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

SECTION 24.(c) G.S. 105-113.13 reads as rewritten:

"**§ 105-113.13. Secretary may ~~investigate applicant for distributor's license and~~ require a ~~bond.~~bond or irrevocable letter of credit.**

~~(a) Investigation. – The Secretary may investigate an applicant for a distributor's license to determine if the information the applicant submits with the application is accurate and if the applicant is eligible to be licensed as a distributor. The Secretary may decline to issue a distributor's license to an applicant when the Secretary has reasonable cause to believe any of the following:~~

~~(1) That the applicant has willfully withheld information requested by the Secretary for the purpose of determining the applicant's eligibility for the license.~~

~~(2) That information submitted with the application is false or misleading.~~

~~(3) That the application is not made in good faith.~~

~~(b) Bond. –~~ The Secretary may require a distributor to furnish a bond in an amount that adequately protects the State from loss if the distributor fails to pay taxes due under this Part. A bond shall be conditioned on compliance with this Part, shall be payable to the State, and shall be in the form required by the Secretary. The Secretary shall set the bond amount based on the anticipated tax liability of the distributor. The Secretary shall periodically review the sufficiency of bonds required of the distributor and shall increase the amount of a required bond if the bond amount no longer covers the anticipated tax liability of the distributor. The Secretary shall decrease the amount of a required bond if the Secretary finds that a lower bond amount will protect the State adequately from loss. For purposes of this section, a bond may also include an irrevocable letter of credit."

SECTION 25.(a) G.S. 105-164.3 reads as rewritten:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

(1) Advertising and promotional direct mail. – Printed material that meets the definition of 'direct mail' and the primary purpose of which is to attract public attention to a product, person, business, or organization, or to attempt to sell, popularize, or secure financial support for a product,

person, business, or organization. As used in this subdivision, 'product' means tangible personal property, digital property, or a service.

~~(1)~~(1a) Analytical services. – Testing laboratories that are included in national industry 541380 of NAICS or medical laboratories that are included in national industry 621511 of NAICS.

~~(1a)~~(1b) Ancillary service. – A service associated with or incidental to the provision of a telecommunications service. The term includes detailed communications billing, directory assistance, vertical service, and voice mail service. A vertical service is a service, such as call forwarding, caller ID, three-way calling, and conference bridging, that allows a customer to identify a caller or manage multiple calls and call connections.

~~(1b)~~(1c) through ~~(1d)~~(1e) Reserved for future codification purposes.

~~(1e)~~(1f) Audio work. – A series of musical, spoken, or other sounds, including a ringtone.

~~(1f)~~(1g) Reserved for future codification purposes.

~~(1g)~~(1h) Audiovisual work. – A series of related images and any sounds accompanying the images that impart an impression of motion when shown in succession.

~~(1h)~~(1i) Reserved for future codification purposes.

~~(1i)~~(1j) Bundled transaction. – A retail sale of two or more distinct and identifiable products, at least one of which is taxable and one of which is exempt, for one nonitemized price. Products are not sold for one nonitemized price if an invoice or another sales document made available to the purchaser separately identifies the price of each product. A bundled transaction does not include the retail sale of any of the following:

a. A product and any packaging item that accompanies the product and is exempt under G.S. 105-164.13(23).
b. A sale of two or more products whose combined price varies, or is negotiable, depending on the products the purchaser selects.
c. A sale of a product accompanied by a transfer of another product with no additional consideration.
d. A product and the delivery or installation of the product.
e. A product and any service necessary to complete the sale.

~~(1j)~~(1k) Reserved for future codification purposes.

~~(1k)~~(1l) Business. – An activity a person engages in or causes another to engage in with the object of gain, profit, benefit, or advantage, either direct or indirect. The term does not include an occasional and isolated sale or transaction by a person who does not claim to be engaged in business.

~~(11)~~(lm) Reserved for future codification purposes.

~~(12)~~(ln) Cable service. – The one-way transmission to subscribers of video programming or other programming service and any subscriber interaction required to select or use the service.

...."

SECTION 25.(b) G.S. 105-164.4B(d) reads as rewritten:

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

(1) Telecommunications services. – Telecommunications services are sourced in accordance with G.S. 105-164.4C.

(2) Direct mail. – Direct mail ~~that meets one of the following descriptions is sourced to the location where the property is delivered, and direct mail that does not meet one of these descriptions is sourced to the location from which the direct mail was shipped.~~ is sourced as follows:

a. ~~Direct mail~~ To the location where the direct mail is delivered if it (i) is purchased pursuant to a direct pay ~~permit.~~permit; or (ii) when

b. ~~When~~ the purchaser provides the seller with information to show the jurisdictions to which the direct mail is to be delivered.

b. To the location from which the direct mail was shipped if (i) it is advertising and promotional direct mail; and (ii) sub-subdivision a. of this subdivision does not apply.

c. To the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith if neither sub-subdivision a. nor b. of this subdivision applies.

(3) Florist wire sale. – A florist wire sale is sourced to the business location of the florist that takes an order for the sale. A "florist wire sale" is a sale in which a retail florist takes a customer's order and transmits the order to another retail florist to be filled and delivered."

SECTION 26.(a) Section 7 of S.L. 2011-296 reads as rewritten:

"**SECTION 7.** This act becomes effective October 1, 2011, and applies to instruments registered on or after that date. ~~Sections 1 through 3 of this act expire July 1, 2013.~~"

SECTION 26.(b) The lead-in language for Section 2.16 of S.L. 2012-79 reads as rewritten:

"**SECTION 2.16.** Effective when it becomes ~~law, but expiring at the same time as Section 1 of S.L. 2011-296 expires (currently July 1, 2013),~~ law, G.S. 161-10(a), as rewritten by S.L. 2011-296, reads as rewritten:"

SECTION 27. Sections 5, 6, and 7 of this act are effective for taxable years beginning on or after January 1, 2012. Section 24 of this act becomes effective July 1, 2013. The remainder of this act is effective when it becomes law.

Bill Draft 2013-SVxz-3:
Rev Laws Technical, Clarifying, & Admin. Chg .

2011-2012 General Assembly

Committee:	Revenue Laws Study Committee	**Date:**	December 4, 2012
Introduced by:		**Prepared by:**	Trina Griffin Committee Counsel
Analysis of:	2013-SVxz-3		

SUMMARY: ***This legislative proposal includes several technical, administrative, and clarifying changes to the revenue laws and related statutes, most of which have been requested by the Department of Revenue.***

EFFECTIVE DATE: Except as otherwise provided, this act would become effective when it becomes law.

BILL ANALYSIS:

Section	Explanation
1	Corrects several references to "reports and statements" where there is no longer a requirement to submit a statement and substitutes the more appropriate term "return." Also replaces "make" or "making" a return with "file" or "filing." Makes other grammatical and stylistic changes to conform to drafting conventions.
2	Deletes a statutory reference due to repeal of another subsection.[1]
3	Corrects reference to period of underpayment to reflect the change in the due date of the corporate return from the third month (March 15) to the fourth month (April 15).
4	Corrects reference to the proper carryforward period under Article 3J when a taxpayer fails to qualify for an extended carryforward period due to a large investment.[2]

[1] In S.L. 2010-89, the General Assembly provided an alternative apportionment formula for a corporation that signed a letter of commitment by September 15, 2010, certifying that it planned to invest at least $500 million in private funds to construct a facility in a development tier one area. No company signed such a letter. The General Assembly enacted the provision at the request of Microsoft; Microsoft announced in August of 2010 that it would be locating in Virginia. Since the alternative apportionment formula provided in G.S. 105-130.4(t2) and G.S. 105-122(c1)(3) was no longer needed, the General Assembly repealed those provision in S.L. 2011-330, s. 5. Therefore, the references to the repealed subdivisions in G.S. 105-122(c1)(2) and G.S. 105-130.4(t1) should be deleted.

[2] The Article 3J credits for creating jobs and for investing in business property have a 5-year carryforward period and the credit for investing in real property has a 15-year carryforward period. S.L. 2012-74 temporarily allows for

5	Makes technical corrections related to the shift from taxable income to AGI as the starting point for determining NC taxable income.[3]
6	Ensures that relevant transitional adjustments under G.S. 105-134.7 are retained by adding them to G.S. 105-134.6 with corresponding changes throughout.
7	Clarifies the method for determining the amount of credit that a taxpayer is eligible for under the credit for the disabled. The amount of the credit depends on whether a taxpayer's "North Carolina adjusted gross income" is greater than or less than a threshold income amount set out in the statute. However, the definition of "North Carolina Adjusted Gross Income" is unclear. The Department has interpreted the term to mean North Carolina taxable income with the additions of the personal exemptions, the standard deduction (or federal itemized deductions), and some of the adjustments in G.S. 105-134.6(d). The term becomes even more unclear now that the starting point for determining NC taxable income has been changed to AGI. Changing "North Carolina AGI" to "NC taxable income" closely parallels how the Department has been interpreting this credit.
8	Amends definitions related to the Streamlined Agreement and adjusts the definition of 'storage' to clarify that the purchaser must know the original purpose and location where items will be used at the time of purchase.
9	Amends the facilitator reporting requirements to recognize various business practices and recordkeeping by facilitators. The Department was advised that some facilitators provide a credit card number for use by the hotelier before, during, or after the rental of accommodations.
10	Clarifies that a credit is allowed for use tax if the tax is shown on the invoice or other documentation issued by the retailer.
11	Clarifies that the sales and use tax exemption for tangible personal property delivered by the retailer for use outside the State applies to certain printed material. This exemption was adjusted during the 2011 Session at the request of the Department to add "by the retailer." However, additional adjustments are needed to retain the exemption for printed material that is not delivered by the retailer to the United States Postal Service or that is not purchased with a direct pay permit.[4]

a 20-year carryforward period under Article 3J for a taxpayer who makes an investment of $100 million in business and real property in a tier one county.

[3] Section 31A.1 of S.L. 2001-145 changed the starting point for calculating NC taxable income from federal taxable income to federal adjusted gross income. This change did not change the tax base or increase NC tax in any way.

[4] The proposed language tracks the language that is in Sales and Use Tax Bulletin 7.

	Amends the exemption for computer software "designed to run on an enterprise server operating system." The inclusion of the term "designed" has been problematic. The Department issued an "Important Notice" in February 2010 in an attempt to further clarify this issue. At issue are products that are designed but may not be run on an enterprise server operating system. It is burdensome for the Department to attempt to determine if the products meet the "designed" requirement.
12	Clarifies that a single member LLC that is disregarded for federal income tax purposes qualifies for a refund if the owner of the single member LLC is a 501(c)(3) and the LLC engages in qualifying activities. Replaces the term "medicines" with "over-the-counter drugs" in the statute that permits a refund of sales and use taxes to nonprofit entities and hospitals.
13	Ensures that statute is consistent with the Sales and Use Tax Technical Bulletin Section 46-1 E., which provides that the issuance of a direct pay permit to avoid payment of State and local sales taxes levied on hotel accommodations is a prohibited use.
14	Repeals G.S. 105-164.35, which authorizes the Secretary to recompute sales and use tax if, after examining a return, he determines the correct amount of tax is greater or less than the amount shown on the return and to credit or refund excessive payments. This statute, which is specific to sales and use tax, is unnecessary because G.S. 105-241.7 gives the Secretary this authority for all tax types.
15	Provides liability relief to retailers for erroneous information provided by the Department regarding the taxability of certain items or insufficient notice regarding a sales tax rate change as required by the Streamlined Agreement.
16	Clarifies that the 1%/$80 privilege tax rate applies at a plant regardless of the overall industry of the taxpayer and to clarify that items must be produced for sale.
17	Clarifies that the credit allowed under Article 5F for similar tax paid to another state also applies to sales and use tax paid in this State and not just paid to another state.
18	Corrects references to Department Divisions based on reorganization. Adds various forms of identity theft to the subject matter jurisdiction of revenue law enforcement officers. Generally speaking, revenue law enforcement officers have the authority to serve and execute notices, orders, warrants, and demands, have full powers of arrest, and must be certified as criminal justice officers.

19	Clarifies that penalties and interest that accrue for a business entity are transferrable to a responsible person. The Department has received questions where the sales tax was collected, but a representative argues that the penalty and interest due on the collection at the entity level should not be transferred to the responsible person. This issue was recently addressed in Final Agency Decision issued September 18, 2012.
20	Deletes obsolete provision. The Secretary no longer makes a final agency decision in contested tax cases. Substantive final decisions are published on the OAH website.
21	Modifies the circumstances under which the Department may share information with law enforcement agencies. On occasion, the Department has shared information with the IRS or another taxing jurisdiction under G.S. 105-259(b)(3) that is connected to a criminal investigation. However, some of the information shared may be information that is not "discovered" in the course of the investigation (i.e. audits that occurred prior to the criminal investigation that led the Department to initiate the criminal investigation). While those records may be shared with other taxing agencies (i.e. the IRS) under (b)(3), there may not be specific authorization to share the information with prosecutors (i.e. the US Attorney) who later are working on the criminal case. In addition, the change gets rid of awkward language regarding who may receive the information. The Department has agreements with all agencies with whom it is allowed to share information listing the specific individuals allowed to receive the information. A literal reading of the current language would allow the Department to share the info only with the head of the agency. It clarifies that a prosecutorial agency is a law enforcement agency. Finally, it allows the share of information with local law enforcement or law enforcement from another state.
22	Conforms payment for TIMS to current practice. The language in the 2012-13 budget bill differed from standard practice used by DOR since the beginning of benefits funding for the project. Technically, OSBM authorizes DOR to make purchases rather than making those purchases itself.
23	Modifies the circumstances under which the Department may share information regarding the unauthorized substances tax. The current restriction on disclosure could prevent Department employees from sharing information in situations that do not present concerns about Constitutional protections for criminal defendants like double jeopardy or self-incrimination such as: • A prosecutor investigates allegations of law enforcement unlawfully seizing property from specific individuals. Law enforcement personnel report the property has been turned over the Department to

	satisfy a tax debt. • A prosecutor requests information from the Department in order to satisfy his obligation to provide the defendant in a criminal case with potentially exculpatory information. • A Department employee serving a tax warrant witnesses a crime committed by the taxpayer against a third party.
24	Subsection (a) clarifies the procedure and requirements for obtaining a license for the distribution of tobacco products and provides the Department with specific guidance as to when a license may be denied. This subsection also requires the Department to include certain information on the face of each license, and directs the Department to keep a record of license holders that may be provided to other license holders upon request. Subsection (b) clarifies the violations for which the Secretary, after a hearing, may cancel a license for the distribution of tobacco products. Subsection (c) clarifies a distributor of cigarettes may provide security to the Secretary in the form of an irrevocable letter of credit as an alternative to a bond. This subsection also deletes a redundant provision for investigation of license applicants.
25	Makes changes to the sourcing of direct mail to comply with Streamlined requirements. Under current law, direct mail is sourced to the location from which it is shipped unless it was purchased using a direct pay permit or the purchaser provides the seller with information showing the jurisdictions to which the mail is to be delivered. In those instances, the mail is sourced to the delivery location. Under the Streamlined Agreement, direct mail categorized into "advertising and promotional direct mail" and "other direct mail." The current law as stated above is accurate except that "other direct mail" (direct mail other than advertising and promotional direct mail) should be sourced to the purchaser's address available from the seller's business records if the mail is not purchased using a direct pay permit or if the purchaser does not provide the seller with jurisdictional delivery information.

26	Removes the sunset on recent changes to certain fees collected by the register of deeds. S.L. 2011-296 changed the fees collected by register of deeds for the purpose of simplifying their collection and remittance. The provision included a July 1, 2013 sunset to determine whether the changes were easy to administer and to ensure that the registers of deeds were satisfied with the change. The provision was modified in 2012 to clarify confusion that some registers of deeds had regarding how to apply the new fee applicable to subsequent instruments that contain references to multiple recorded documents, such as cancellations of multiple deeds of trust or substitution of trustee in multiple documents.

2013-SVz-3-SMSV-1 v7

APPENDIX A

AUTHORIZING LEGISLATION
ARTICLE 12L OF CHAPTER 120
OF THE
GENERAL STATUTES

ALL MATERIALS DISTRIBUTED AT MEETINGS MAY BE VIEWED ON THE COMMITTEE'S WEBSITE:
http://www.ncleg.net/committees/revenuelaws

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 20 members as follows:

(1) Ten members appointed by the President Pro Tempore of the Senate; the persons appointed may be members of the Senate or public members.

(2) Ten 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; 2009-574, s. 51.1.)

§ 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.

(c) The Revenue Laws Study Committee must review the effect Article 42 of Chapter 66 of the General Statutes, as enacted by S.L. 2006-151, has on the issues listed in this section to determine if any changes to the law are needed:

(1) Competition in video programming services.

(2) The number of cable service subscribers, the price of cable service by service tier, and the technology used to deliver the service.

(3) The deployment of broadband in the State.

The Committee must review the impact of this Article on these issues every two years and report its findings to the North Carolina General Assembly. The Committee must make its first report to the 2008 Session of the North Carolina General Assembly. (1997-483, s. 14.1; 2006-151, s. 21.)

§ 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.)

APPENDIX B

DISPOSITION OF COMMITTEE'S RECOMMENDATIONS TO THE 2012 REGULAR SESSION OF THE 2011 GENERAL ASSEMBLY

ALL MATERIALS DISTRIBUTED AT MEETINGS MAY BE VIEWED ON THE COMMITTEE'S WEBSITE:
http://www.ncleg.net/committees/revenuelaws

DISPOSITION OF REVENUE LAWS STUDY COMMITTEE RECOMMENDATIONS TO THE 2012 REGULAR SESSION OF THE 2011 GENERAL ASSEMBLY

SHORT TITLE	SENATE SPONSORS	HOUSE SPONSORS	BILL #	FINAL STATUS*
Expedited Rule Making for Forced Combination	Rucho; Hartsell	Howard; Starnes	HB 1027 SB 824	Enacted* SL 2012-43, [SB 824]
Unemployment Insurance Changes	Rucho; Hartsell	Howard; Starnes	HB 1024 SB 828	Enacted* SL 2012-134, [SB 828]
Extend Tax Provisions	Rucho; Hartsell; Blue	Howard; Starnes	HB 1025 SB 827	Enacted* SL 2012-36, [HB 1025]
Appraisal Management Company Reported to Department of Revenue	Rucho; Hartsell	Howard; Starnes	HB 1028 SB 825	Enacted* SL 2012-65, [HB 1028]
Revenue Laws Technical, Clarifying, & Administrative Changes	Rucho; Hartsell	Howard; Starnes	HB 1026 SB 826	Enacted* SL 2012-79, [SB 826]

*Bills were modified prior to enactment.

APPENDIX C

MEETING AGENDAS

ALL MATERIALS DISTRIBUTED AT MEETINGS MAY BE VIEWED ON THE COMMITTEE'S WEBSITE:
http://www.ncleg.net/committees/revenuelaws

REVENUE LAWS STUDY COMMITTEE AGENDA

Rep. Julia Howard ***Sen. Bob Rucho***

Wednesday, October 3, 2012
Room 544, Legislative Office Building
9:30 a.m.

I. **Welcome and Introductions**

II. **2012 Finance Law Changes**
- *Trina Griffin, Research Division*

III. **General Fund Revenue Outlook**
- *Barry Boardman, Fiscal Research Division*

IV. **Department of Revenue Update : Compliance, Collections, & Appeals**
- *David Hoyle, Secretary*
- *Linda Millsaps, Chief Operating Officer*

V. **Administrative and Modernization Changes to the Excise Tax on Tobacco (Proposed Legislation)**
- *Heather Fennell, Research Division*
- *Al Milak, Excise Tax Division, Department of Revenue*
- *Louise Butler, NC Wholesalers Association*

VI. **Overview of the Taxation and Valuation of Leasehold Interests in Exempt Real Property**
- *Greg Roney, Research Division*
- *Public Comment*
- *David Baker, Local Government Division, Department of Revenue*

VII. **Adjournment**

Next Meeting Date: Wednesday, November 7, 2012
in Room 544, LOB, at 9:30 a.m.

REVENUE LAWS STUDY COMMITTEE AGENDA

Rep. Julia Howard ***Sen. Bob Rucho***

Thursday, November 8, 2012
Room 544, Legislative Office Building
9:30 a.m.

I. Approval of Minutes from October 3 Meeting

II. "It's Never the Best Time for NC Tax Reform"

- *Brent Lane, Director, UNC Center for Competitive Economies*

III. Unemployment Insurance Program

Overview of the Unemployment Insurance Trust Fund Issues and Policy Options

- *Cindy Avrette, Research Division*

UI Program Integrity, Workforce Development, and Administrative Changes related to the Merger of the Department of Commerce and the Employment Security Division

- Dempsey Benton, Assistant Secretary, Division of Employment Security, Department of Commerce

"North Carolina's Unemployment Insurance System: A Simulation and Policy Analysis", *Final Report prepared for The NC Department of Commerce, DES, by the W.E. Upjohn Institute for Employment Research*

- *Dr. Christopher J. O'Leary, Co-Principal Investigator, W.E. Upjohn Institute*
- *Dr. Richard Hobbie, Executive Director, National Association of State Workforce Agencies*

Comments

- *Alexandra Sirota, Director, Budget & Tax Center*
- *Gary Salamido, Vice President-Government Affairs, NC Chamber of Commerce*

IV. Adjournment

Next Meeting Date: Wednesday, December 5, 2012
in Room 544, LOB, at 9:30 a.m.

REVENUE LAWS STUDY COMMITTEE AGENDA

Rep. Julia Howard *Sen. Bob Rucho*

Wednesday, December 5, 2012
Room 544, Legislative Office Building
9:30 a.m.

I. Approval of Minutes from November 8, 2012, Meeting

II. Bill Draft: Unemployment Insurance Trust Fund Solvency & Program Changes

- Trust Fund Solvency: Benefit Changes, Contribution Changes, and Fund Balance Changes
  Cindy Avrette, Research Division

- Simulation of UI Tax and Benefit Reforms
  Rodney Bizzell, Fiscal Research Division

- Considerations for Refinancing the Debt
  State Treasurer's Office

- Workforce Development Initiatives
  Aubrey Incorvaia, Fiscal Research Division
  Roger Shackleford, Assistant Secretary, Division of Workforce Solutions, Department of Commerce

- UI Programmatic Changes
  Greg Roney, Research Division

- Comments from Interested Parties

III. Bill Draft: Revenue Laws Technical, Clarifying, and Administrative Changes
Trina Griffin, Research Division

IV. Adjournment

Next Meeting Date: Tuesday, January 8, 2013
in Room 544, LOB, at 9:30 a.m.

REVENUE LAWS STUDY COMMITTEE AGENDA

Rep. Julia Howard *Sen. Bob Rucho*

Tuesday, January 8, 2013
Room 544, Legislative Office Building
9:30 a.m.

I. Approval of Minutes from the December 5, 2012, Meeting

II. Overview of Draft Report

Legislative Proposal #1: UI Fund Solvency & Program Changes
Cindy Avrette, Research Division, NCGA

Legislative Proposal #2: Revenue Laws Technical, Clarifying, and Administrative Changes
Trina Griffin, Research Division, NCGA

III. Approval of Final Report

IV. Adjournment