

# THE GENERAL STATUTES OF NORTH CAROLINA

— replaced —

## 1973 SUPPLEMENT

Completely Annotated, under the Supervision of the  
Department of Justice, by the Editorial Staff  
of the Publishers

UNDER THE DIRECTION OF

W. M. WILLSON, J. H. VAUGHAN AND  
SYLVIA FAULKNER

## Volume 2D

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# Preface

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This Supplement to Replacement Volume 2D contains the general laws of a permanent nature enacted at the 1973 Session of the General Assembly which are within the scope of such volume, and brings to date the annotations included therein.

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

Chapter analyses show new sections and also old sections with changed captions. An index to all statutes codified herein appears in Replacement Volumes 4B, 4C and 4D and the 1973 Supplements thereto.

A majority of the Session Laws are made effective upon ratification but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after thirty days after the adjournment of the session" in which passed. All legislation appearing herein became effective upon ratification, unless noted to the contrary in an editor's note or an effective date note.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute will be cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.



# Scope of Volume

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## **Statutes:**

Permanent portions of the general laws enacted at the 1973 Session of the General Assembly affecting Chapters 97 through 105 of the General Statutes.

## **Annotations:**

Sources of the annotations:

North Carolina Reports volumes 279 (p. 192)-283 (p. 588).

North Carolina Court of Appeals Reports volumes 11 (p. 597)-18 (p. 351).

Federal Reporter 2nd Series volumes 443 (p. 1217)-476 (p. 656).

Federal Supplement volumes 328 (p. 225)-356.

United States Reports volumes 403 (p. 443)-411 (p. 525).

Supreme Court Reporter volumes 91 (p. 1977)-93 (p. 2788).

North Carolina Law Review volume 49 (pp. 592-1006).

Opinions of the Attorney General.





# The General Statutes of North Carolina

## 1973 Supplement

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### VOLUME 2D

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#### Chapter 97.

#### Workmen's Compensation Act.

##### Article 1.

##### Workmen's Compensation Act.

Sec.

97-41. Total compensation not to exceed  
\$32,500.

##### ARTICLE 1.

##### *Workmen's Compensation Act.*

##### § 97-1. Official title.

###### **Construction. —**

The Workmen's Compensation Act should be liberally construed so that the benefits under it will not be denied by narrow, technical or strict interpretation. *Stevenson v. City of Durham*, 281 N.C. 300, 188 S.E.2d 281 (1972).

The Workmen's Compensation Act should be liberally construed so that its benefits are not denied upon technical, narrow and strict interpretations. *West v. J.P. Stevens Co.*, 12 N.C. App. 456, 183 S.E.2d 876 (1971).

**An injury to be compensable must result from an accident**, which is to be considered as a separate event preceding and causing the injury, and the mere fact of injury does not of itself establish the fact of accident. *Bigelow v.*

*Tire Sales Co.*, 12 N.C. App. 220, 182 S.E.2d 856 (1971).

**Conflicts in the evidence are for the Industrial Commission to resolve.** The only question on appeal is whether there was sufficient evidence to support the Commission's findings, not whether different findings might have been made. *Bigelow v. Tire Sales Co.*, 12 N.C. App. 220, 182 S.E.2d 856 (1971).

**Applied** in *Gay v. Guaranteed Supply Co.*, 12 N.C. App. 149, 182 S.E.2d 664 (1971); *Dowell v. Aetna Life Ins. Co.*, 468 F.2d 802 (4th Cir. 1972); *Benfield v. Troutman*, 17 N.C. App. 572, 195 S.E.2d 75 (1973).

**Cited** in *Barham v. Kayser-Roth Hosiery Co.*, 15 N.C. App. 519, 190 S.E.2d 306 (1972).

**§ 97-2. Definitions. —** When used in this Article, unless the context otherwise requires—

- (2) **Employee. —** The term "employee" means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business, profession or occupation of his employer, and as relating to those so employed by the State, the term "employee" shall include all officers and employees of the State, including such as are elected by the people, or by the General Assembly, or appointed by the Governor to serve on a per diem,



part-time or fee basis, either with or without the confirmation of the Senate; as relating to municipal corporations and political subdivisions of the State, the term "employee" shall include all officers and employees thereof, including such as are elected by the people. The term "employee" shall include members of the North Carolina national guard, except when called into the service of the United States, and members of the North Carolina State guard, and members of these organizations shall be entitled to compensation for injuries arising out of and in the course of the performance of their duties at drill, in camp, or on special duty under orders of the Governor. The term "employee" shall include deputy sheriffs and all persons acting in the capacity of deputy sheriffs, whether appointed by the sheriff or by the governing body of the county and whether serving on a fee basis or on a salary basis, or whether deputy sheriffs serving upon a full-time basis or a part-time basis, and including deputy sheriffs appointed to serve in an emergency, but as to those so appointed, only during the continuation of the emergency. The sheriff shall furnish to the board of county commissioners a complete list of all deputy sheriffs named or appointed by him immediately after their appointment, and notify the board of commissioners of any changes made therein promptly after such changes are made. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representative, dependents, and other persons to whom compensation may be payable: Provided, that the third and fourth sentences herein shall not apply to Alleghany, Avery, Bladen, Carteret, Cherokee, Gates, Hyde, Macon, Pender, Perquimans, Watauga and Wilkes Counties: Provided, further, that any employee as herein defined of a municipality, county, or of the State of North Carolina while engaged in the discharge of his official duty outside the jurisdictional or territorial limits of the municipality, county, or the State of North Carolina and while acting pursuant to authorization or instruction from any superior officer, shall have the same rights under this Article as if such duty or activity were performed within the territorial boundary limits of his employer.

Every executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation, other than a charitable, religious, educational or other nonprofit corporation, shall be an employee of such corporation under this Article.

Any such executive officer of a charitable, religious, educational, or other nonprofit corporation may, notwithstanding any other provision of this Article, be brought within the coverage of its insurance contract by any such corporation by specifically including such executive officer in such contract of insurance and the election to bring such executive officer within the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus brought within the coverage of the insurance contract shall be employees of such corporation under this Article.

A county agricultural extension service employee holding an appointment as a member of the staff of the United States Department of Agriculture shall not be an employee of the county under this Article.

- (5) Average Weekly Wages. — "Average weekly wages" shall mean the earnings of the injured employee in the employment in which he was working at the time of the injury during the period of 52 weeks immediately preceding the date of the injury, including the subsistence allowance paid to veteran trainees by the United States



government, provided the amount of said allowance shall be reported monthly by said trainee to his employer, divided by 52; but if the injured employee lost more than seven consecutive calendar days at one or more times during such period, although not in the same week, then the earnings for the remainder of such 52 weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. Where the employment prior to the injury extended over a period of less than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed; provided, results fair and just to both parties will be thereby obtained. Where, by reason of a shortness of time during which the employee has been in the employment of his employer or the casual nature or terms of his employment, it is impractical to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the 52 weeks previous to the injury was being earned by a person of the same grade and character employed in the same class of employment in the same locality or community.

But where for exceptional reasons the foregoing would be unfair, either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury.

Wherever allowances of any character made to an employee in lieu of wages are specified part of the wage contract they shall be deemed a part of his earnings.

Where a minor employee, under the age of 18 years, sustains a permanent disability or dies, the compensation payable for permanent disability or death shall be calculated, first, upon the average weekly wage paid to adult employees employed by the same employer at the time of the accident in a similar or like class of work which the injured minor employee would probably have been promoted to if not injured, or, second, upon a wage sufficient to yield the maximum weekly compensation benefit. Compensation for temporary total disability shall be computed upon the average weekly wage at the time of the accident, unless the total disability extends more than 52 weeks and then the compensation may be increased in proportion to his expected earnings.

In case of disabling injury or death to a volunteer fireman or member of an organized rescue squad or duly appointed and sworn member of an auxiliary police department organized pursuant to G.S. 160A-282 under compensable circumstances, compensation payable shall be calculated upon the average weekly wage the volunteer fireman or member of an organized rescue squad or member of an auxiliary police department was earning in the employment wherein he principally earned his livelihood as of the date of injury.  
(1973, c. 521, ss. 1, 2; c. 763, ss. 1-3.)

#### I. IN GENERAL.

##### Editor's Note. —

The first 1973 amendment substituted, at the end of the first sentence of the fourth paragraph of subdivision (5), "a wage sufficient to yield the maximum weekly compensation benefit" for "such other method as may be used to compute the average weekly wage as will most nearly approximate the amount which the

injured employee would be earning as an adult if it were not for the accident." The amendment also substituted "G.S. 160A-282" for "G.S. 160-20.3" in the fifth paragraph of subdivision (5). Section 4 of the amendatory act provides that it shall apply only to cases originating on and after July 1, 1973.

The second 1973 amendment, effective Jan. 1, 1974, substituted "including" for "except only"



near the middle and for "except" near the end of the first sentence of subdivision (2) and deleted a proviso to that sentence, which allowed the governing body of a political subdivision to bring officers elected by the people within the coverage of this Article by resolution.

As the rest of the section was not changed by the amendments, only the introductory language and subdivisions (2) and (5) are set out.

**Liberal construction. —**

In accord with original. See *Bartlett v. Duke Univ.*, 17 N.C. App. 598, 195 S.E.2d 371 (1973).

**Applied** in *Bass v. Mooresville Mills*, 15 N.C. App. 206, 189 S.E.2d 581 (1972).

**Cited** in *Hudson v. J.P. Stevens & Co.*, 12 N.C. App. 366, 183 S.E.2d 296 (1971).

## II. EMPLOYMENT; EMPLOYEE; EMPLOYER.

### B. Employee.

#### 2. Casual Employees; Employment in the Course of Trade, etc.

**Casual Employment Defined. —** Casual employment is employment at uncertain times or irregular intervals, by chance, fortuitous for no fixed time, not in usual course of trade, business, occupation or profession of employer, for short time, occasional, irregular or incidental. *Clark v. Waverly Mills, Inc.*, 12 N.C. App. 535, 183 S.E.2d 855 (1971).

Employment is casual when it is irregular, unpredictable, sporadic and brief in nature. *Clark v. Waverly Mills, Inc.*, 12 N.C. App. 535, 183 S.E.2d 855 (1971).

**Employment Held Casual. —** A plaintiff's employment for a period of only two days to help prepare for an annual company picnic was strictly a chance employment for a brief period of time. It was not the sort of work that plaintiff could rely upon as a regular source of income. There was no reasonable probability that she would be employed in future years to assist in preparing for the annual picnics. Thus, plaintiff's employment was "casual" within the meaning of subdivision (2) of this section. *Clark v. Waverly Mills, Inc.*, 12 N.C. App. 535, 183 S.E.2d 855 (1971).

**Casual Employee Not Entitled to Compensation Where Employment Is Not in Course of Employer's Business. —** For an employee to be excluded from benefits under the Workmen's Compensation Act his employment must be casual, and in addition thereto, not in the course of the trade, business, profession or occupation of his employer. *Clark v. Waverly Mills, Inc.*, 12 N.C. App. 535, 183 S.E.2d 855 (1971).

**Picnic Sponsored by Manufacturing Firm Not Part of Regular Business. —** Sponsoring and paying for a picnic for the optional pleasure

of its employees and selected community citizens was not an essential part of the employer's habitual and regular business of manufacturing yarn and cotton goods. *Clark v. Waverly Mills, Inc.*, 12 N.C. App. 535, 183 S.E.2d 855 (1971).

Preparing food for an annual employee outing does not constitute engaging in a function inherent in an employer's usual business of manufacturing. *Clark v. Waverly Mills, Inc.*, 12 N.C. App. 535, 183 S.E.2d 855 (1971).

## IV. INJURY BY ACCIDENT ARISING OUT OF AND IN THE COURSE OF THE EMPLOYMENT.

### A. In General.

**The threefold conditions antecedent to the right of compensation, etc. —**

In accord with 5th paragraph in original. See *Robbins v. Nicholson*, 281 N.C. 234, 188 S.E.2d 350 (1972).

To obtain an award of compensation for an injury, an employee must always show three things: (1) that he suffered a personal injury by accident; (2) that his injury arose in the course of his employment; and (3) that his injury arose out of his employment. *Loflin v. Loflin*, 13 N.C. App. 574, 186 S.E.2d 660 (1972).

**Fourth Condition. —** An employee must establish a fourth essential element, that his injury caused him disability, unless it is included in the schedule of injuries made compensable by § 97-31 without regard to loss of wage-earning power. *Loflin v. Loflin*, 13 N.C. App. 574, 186 S.E.2d 660 (1972).

### A compensable death, etc. —

In accord with 1st paragraph in original. See *Robbins v. Nicholson*, 281 N.C. 234, 188 S.E.2d 350 (1972).

In accord with 4th paragraph in original. See *Bartlett v. Duke Univ.*, 17 N.C. App. 598, 195 S.E.2d 371 (1973).

### When Industrial Commission's Findings Conclusive. —

If the findings made by the Commission are supported by competent evidence, they must be accepted as final truth. *Blalock v. Roberts Co.*, 12 N.C. App. 499, 183 S.E.2d 827 (1971).

The findings of fact of the Industrial Commission are conclusive and binding on appeal if supported by competent evidence in the record even though the record contains evidence which would support a contrary finding. *Blalock v. Roberts Co.*, 12 N.C. App. 499, 183 S.E.2d 827 (1971).

### B. Accident.

**Accident and injury are considered separate. —**

In accord with third paragraph of original. See *Russell v. Pharr Yarns, Inc.*, 18 N.C. App. 249, 196 S.E.2d 571 (1973).



**Accident involves the interruption of the work routine, etc. —**

In accord with 1st paragraph in original. See *Bigelow v. Tire Sales Co.*, 12 N.C. App. 220, 182 S.E.2d 856 (1971).

In order to have a compensable accident, there must be interruption of the work routine and the introduction of unusual conditions likely to result in unexpected consequences. *Garmon v. Tridair Indus., Inc.*, 14 N.C. App. 574, 188 S.E.2d 523 (1972).

**C. Arising Out of and in the Course of Employment.**

**1. In General.**

**“Out of” and “in the Course of” Distinguished. —**

In accord with 1st paragraph in original. See *Robinson v. North Carolina State Highway Comm'n.*, 13 N.C. App. 208, 185 S.E.2d 333 (1971); *Enroughty v. Black Indus., Inc.*, 13 N.C. App. 400, 185 S.E.2d 597 (1972); *Battle v. Bryant Elec. Co.*, 15 N.C. App. 246, 189 S.E.2d 788 (1972); *Lee v. Henderson & Associates*, 17 N.C. App. 475, 195 S.E.2d 48 (1973); *Bartlett v. Duke Univ.*, 17 N.C. App. 598, 195 S.E.2d 371 (1973).

An accident occurring during the course of employment does not ipso facto arise out of it. *Robbins v. Nicholson*, 281 N.C. 234, 188 S.E.2d 350 (1972).

The phrases “arising out of” and “in the course of” are not synonymous; they involve two ideas and impose a double condition, both of which must be satisfied in order to bring a case within the act. *Robbins v. Nicholson*, 281 N.C. 234, 188 S.E.2d 350 (1972); *Battle v. Bryant Elec. Co.*, 15 N.C. App. 246, 189 S.E.2d 788 (1972).

**“In the Course of” the Employment Construed. —**

The words “in the course of” the employment refer to the time, place, and circumstances of the accident, and an accident arises in the course of the employment if it occurs while the employee is engaged in a duty which he is authorized or directed to undertake or in an activity incidental thereto. *Battle v. Bryant Elec. Co.*, 15 N.C. App. 246, 189 S.E.2d 788 (1972).

**“Arising Out of” Defined. —**

In accord with 18th paragraph in original. See *Robbins v. Nicholson*, 281 N.C. 234, 188 S.E.2d 350 (1972); *Bartlett v. Duke Univ.*, 17 N.C. App. 598, 195 S.E.2d 371 (1973).

The phrase “arising out of the employment” refers to the origin or cause of the accidental injury. *Robbins v. Nicholson*, 281 N.C. 234, 188 S.E.2d 350 (1972).

**The test for determining whether an accidental injury arises out of an employment, etc. —**

The injury arises “out of” the employment, when there is apparent to the rational mind upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. *Robbins v. Nicholson*, 281 N.C. 234, 188 S.E.2d 350 (1972).

Where the cause of the accident is unexplained but the accident is a natural and probable result of a risk of the employment, the finding of the Industrial Commission that the accident arose out of the employment will be sustained. *Battle v. Bryant Elec. Co.*, 15 N.C. App. 246, 189 S.E.2d 788 (1972).

In order for an injury to arise out of the employment, it must be a natural and probable consequence or incident of the employment and a natural result of one of its risks. *Lee v. Henderson & Associates*, 17 N.C. App. 475, 195 S.E.2d 48 (1973).

**Rule of Causal Relation. —**

The words “out of” refer to the origin or cause of the accident, and an accident arises out of the employment if there is a causal connection between the accident and the employment, or if the accident is the result of a risk originating in the employment or incidental to it. *Battle v. Bryant Elec. Co.*, 15 N.C. App. 246, 189 S.E.2d 788 (1972).

**Mixed Question of Law and Fact. —**

In accord with 1st paragraph in original. See *Enroughty v. Black Indus., Inc.*, 13 N.C. App. 400, 185 S.E.2d 597 (1972); *Lee v. Henderson & Associates*, 17 N.C. App. 475, 195 S.E.2d 48 (1973).

**Injury Must Be Fairly Traceable to Employment, etc. —**

An injury does not arise out of and in the course of the employment unless it is fairly traceable to the employment as a contributing proximate cause. *Battle v. Bryant Elec. Co.*, 15 N.C. App. 246, 189 S.E.2d 788 (1972).

**Acts of negligence of the employee, etc. —**

In accord with original. See *Bartlett v. Duke Univ.*, 17 N.C. App. 598, 195 S.E.2d 371 (1973).

**2. Origin and Cause of Accident.**

**a. Risks Incident to the Employment Generally.**

**No Recovery for Injury Not Arising Out of Risk Incidental to Employment. —**

The injury must come from a risk which might have been contemplated by a reasonable person as incidental to the service when he entered the employment. *Robbins v. Nicholson*, 281 N.C. 234, 188 S.E.2d 350 (1972).



Injury by accident is not compensable if it results from a hazard to which the public generally is subject. *Battle v. Bryant Elec. Co.*, 15 N.C. App. 246, 189 S.E.2d 788 (1972).

Where the cause of the accident is known and such cause is independent of, unrelated to, and apart from the employment, and results from a hazard to which others are equally exposed, compensation is not recoverable. *Battle v. Bryant Elec. Co.*, 15 N.C. App. 246, 189 S.E.2d 788 (1972).

**The causative danger must be peculiar to the work, etc. —**

In accord with original. See *Robbins v. Nicholson*, 281 N.C. 234, 188 S.E.2d 350 (1972).

**The causative danger need not have been foreseen or expected**, but after the event it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence. *Robbins v. Nicholson*, 281 N.C. 234, 188 S.E.2d 350 (1972); *Bartlett v. Duke Univ.*, 17 N.C. App. 598, 195 S.E.2d 371 (1973).

**When Risk Is Incidental to Employment. —**

The risk may be said to be incidental to the employment when it is either an ordinary risk directly connected with the employment, or any extraordinary risk which is only indirectly connected with the service owing to the special nature of the employment. *Robbins v. Nicholson*, 281 N.C. 234, 188 S.E.2d 350 (1972).

#### **e. Assaults and Fights.**

**In General. —**

Although an assault is an intentional act, it may be an accident within the meaning of the Workmen's Compensation Act when it is unexpected and without design on the part of the employee who suffers from it. *Robbins v. Nicholson*, 281 N.C. 234, 188 S.E.2d 350 (1972).

**No Compensation Where Cause of Assault Is Personal. —** When the moving cause of an assault upon an employee by a third person is personal, or the circumstances surrounding the assault furnish no basis for a reasonable inference that the nature of the employment created the risk of such an attack, the injury is not compensable. This is true even though the employee was engaged in the performance of his duties at the time, for even though the employment may have provided a convenient opportunity for the attack it was not the cause. *Robbins v. Nicholson*, 281 N.C. 234, 188 S.E.2d 350 (1972).

**The risk of murder by a jealous spouse** is not one which a rational mind would anticipate as an incident of the employment of both sexes in a business or industry. The possibility that an employee's spouse will become jealous of an associate — with or without cause — is a hazard common to the neighborhood; it is independent of the relation of master and

servant and is not a risk arising out of the nature of the employment. *Robbins v. Nicholson*, 281 N.C. 234, 188 S.E.2d 350 (1972).

### **3. Time, Place and Circumstances of Accident.**

#### **a. Injuries While Acting for Benefit of Self or Third Person.**

**Injury While Working on Doghouse in Employer's Shop. —** Injury to plaintiff salesman's hand sustained while he was operating a power saw in defendant employer's shop arose out of and in the course of his employment where plaintiff was working in the shop at the specific instruction of his employer but without any specific assignment, plaintiff had previously obtained permission to work on a doghouse in the shop during working hours when he had nothing else to do, plaintiff was allowed to use scrap material of the employer to build the doghouse and plaintiff was operating the saw at the time of the injury to cut wood for the doghouse. *Lee v. Henderson & Associates*, 17 N.C. App. 475, 195 S.E.2d 48 (1973).

#### **b. Injuries While Going to and from Work.**

##### **(3) On Employer's Premises.**

**Adjacent Premises Used as Means of Ingress and Egress. —**

Injuries received by employees when their car went out of control as they were leaving work on a private road controlled and maintained by employer and leading from the area where the employees reported to work were held to have arisen out of and in the course of their employment. *Robinson v. North Carolina State Highway Comm'n*, 13 N.C. App. 208, 185 S.E.2d 333 (1971).

##### **(4) Where Employer Furnishes Transportation.**

**Where Employer Furnishes Transportation as Incident to Contract of Employment. —**

Injuries sustained by an employee while being transported to or from work in a conveyance furnished by his employer pursuant to an express or implied term of the contract of employment are compensable. *Enroughty v. Black Indus., Inc.*, 13 N.C. App. 400, 185 S.E.2d 597 (1972).

When the journey to or from work is made in the employer's conveyance, the journey is in the course of employment, the reason being that the risks of the employment continue throughout the journey. *Battle v. Bryant Elec. Co.*, 15 N.C. App. 246, 189 S.E.2d 788 (1972).

The rule that traveling to and from work on a conveyance furnished by the employer is in the course of employment is applicable to trips to



and from lunch. *Enroughty v. Black Indus., Inc.*, 13 N.C. App. 400, 185 S.E.2d 597 (1972).

**d. Injuries during Lunch Hour.**

**Conveyance Furnished by Employer during Lunch Hour.** — The rule that traveling to and from work on a conveyance furnished by the employer is in the course of employment is applicable to trips to and from lunch. *Enroughty v. Black Indus., Inc.*, 13 N.C. App. 400, 185 S.E.2d 597 (1972).

**e. Injuries While Traveling.**

**Employees whose work entails travel away from the employer's premises, etc.** —

In accord with original. See *Bartlett v. Duke Univ.*, 17 N.C. App. 598, 195 S.E.2d 371 (1973).

**Injuries arising out of the necessity of sleeping in hotels or eating in restaurants, etc.** —

In accord with original. See *Bartlett v. Duke Univ.*, 17 N.C. App. 598, 195 S.E.2d 371 (1973).

**4. Evidence and Burden of Proof.**

**The Commission is the sole judge of the credibility and weight to be given the testimony;** it may accept or reject all of the testimony of a witness; it may accept a part and reject a part. *Blalock v. Roberts Co.*, 12 N.C. App. 499, 183 S.E.2d 827 (1971).

The Commission has the duty and authority to resolve conflicts in the testimony of a witness or witnesses. *Blalock v. Roberts Co.*, 12 N.C. App. 499, 183 S.E.2d 827 (1971).

**Evidence Explaining Exact Cause of Accident Need Not Be Offered.** — It is not necessary for a plaintiff to offer evidence explaining the exact cause of the accident. *Battle v. Bryant Elec. Co.*, 15 N.C. App. 246, 189 S.E.2d 788 (1972).

**V. DISABILITY.**

**Evidence Supported Determination of Total and Permanent Disability to Employee's Legs.** — The evidence was sufficient to support the Industrial Commission's determination that plaintiff was totally and permanently disabled by reason of extensive burns sustained on both legs when he set fire to his trousers while using an electric welder's torch. *Martin v. Bahnson Serv. Co.*, 17 N.C. App. 359, 194 S.E.2d 223 (1973).

**§ 97-7. State or subdivision and employees thereof.** — Neither the State nor any municipal corporation within the State, nor any political subdivision thereof, nor any employee of the State or of any such corporation or subdivision, shall have the right to reject the provisions of this Article relative to payment and acceptance of compensation, and the provisions of G.S. 97-4, 97-5, 97-14, 97-15, 97-16, and 97-100(j) shall not apply to them: Provided, that all such corporations or subdivisions are hereby authorized to self-insure or purchase insurance to secure its liability under this Article and to include

**VII. CHILD, GRANDCHILD, ETC.**

**Subdivision (12) Not to be Construed with § 97-40.** — The doctrine of *pari materia* does not apply and the provisions of § 97-40 should not be construed with the provisions of subdivision (12) of this section. *Stevenson v. City of Durham*, 281 N.C. 300, 188 S.E.2d 281 (1972).

The imposition of the restrictions of dependency and age contained in subdivision (12) of this section upon § 97-40 would result in a narrow and technical interpretation of the Workmen's Compensation Act. *Stevenson v. City of Durham*, 281 N.C. 300, 188 S.E.2d 281 (1972).

**Person over 18 Not Considered a Child.** — Subdivision (12) of this section defines a person over 18 at the time of father's death as not a child. *Stevenson v. City of Durham*, 12 N.C. App. 632, 184 S.E.2d 411 (1971).

**VIII. WIDOW; WIDOWER.**

**"Justifiable Cause" for Living Separate and Apart.** — A husband and wife are not living separate and apart for "justifiable cause" if they are living separate and apart as a result of a mutual agreement evidenced by a legally executed separation agreement. *Bass v. Mooresville Mills*, 11 N.C. App. 631, 182 S.E.2d 246 (1971).

If a separation agreement is in full force and effect at the time of the employee's death, the employee and his wife are, as a matter of law, living separate and apart by mutual consent, which is not "justifiable cause" within the meaning of this section. *Bass v. Mooresville Mills*, 11 N.C. App. 631, 182 S.E.2d 246 (1971).

While "justifiable cause" is usually equated to some form of marital misconduct, it would also seem to be applicable where the separation is not intended by the parties to be permanent, the temporary living apart being merely for reasons of convenience. *Bass v. Mooresville Mills*, 11 N.C. App. 631, 182 S.E.2d 246 (1971).

**Right to Compensation if Living Apart for Mutual Convenience.** — If the living apart of the husband and wife is merely for the mutual convenience or the joint advantage of the parties and the obligation of the husband to support her is recognized, the right of the wife to compensation exists as though they were living together. *Bass v. Mooresville Mills*, 11 N.C. App. 631, 182 S.E.2d 246 (1971).



thereunder the liability of such subordinate governmental agencies as the county board of health, the school board, and other political and quasi-political subdivisions supported in whole or in part by the municipal corporation or political subdivision of the State. Each municipality is authorized to make appropriations for these purposes and to fund them by levy of property taxes pursuant to G.S. 153-65 and G.S. 160A-209 and by the allocation of other revenues whose use is not otherwise restricted by law. (1929, c. 120, s. 8; 1931, c. 274, s. 1; 1945, c. 766; 1957, c. 1396, s. 1; 1961, c. 1200; 1973, c. 803, s. 34.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1973, deleted, at the end of the first sentence, "and to appropriate an amount

sufficient for this purpose and levy a special tax if a special tax is necessary to pay the costs of same" and added the second sentence.

### § 97-10.1. Other rights and remedies against employer excluded.

**Employee's Rights and Remedies under This Chapter Are Exclusive.** — The rights and remedies granted to an employee who has accepted and is bound by the provisions of the Workmen's Compensation Act are exclusive of all other rights and remedies of such employee against his employer, at common law or otherwise. *Cox v. E.I. Du Pont de Nemours & Co.*, 39 F.R.D. 47 (W.D.S.C. 1965), construing North Carolina statutes.

**A third-party tort-feasor cannot enforce contribution against the employer** which would defeat the purpose and intent of the Workmen's Compensation Act by requiring the employer, in effect, to pay an amount in excess of the workmen's compensation award to the employee. *Cox v. E.I. Du Pont de Nemours & Co.*, 39 F.R.D. 47 (W.D.S.C. 1965), construing North Carolina statutes.

Notwithstanding the existence of joint

tort-feasor contribution acts, a third-party tort-feasor is not entitled to contribution from an employer whose negligence concurred in causing the death of an employee where the employer has paid a workmen's compensation award. *Cox v. E.I. Du Pont de Nemours & Co.*, 39 F.R.D. 47 (W.D.S.C. 1965), construing North Carolina statutes.

The Workmen's Compensation Act abrogates all liability of the employer to the employee as a tort-feasor under the laws of negligence for an injury by accident in the employment, and consequently, there is no joint tort liability through which contribution can be enforced against the employer. *Cox v. E.I. Du Pont de Nemours & Co.*, 39 F.R.D. 47 (W.D.S.C. 1965), construing North Carolina statutes.

**Stated** in *Sharpe v. Bradley Lumber Co.*, 446 F.2d 152 (4th Cir. 1971).

### § 97-10.2. Rights under Article not affected by liability of third party; rights and remedies against third parties.

#### **Purpose of Section.** —

This section was enacted to protect the employee, employer, and the employer's workmen's compensation carrier. *Long v. Coble*, 11 N.C. App. 624, 182 S.E.2d 234 (1971).

**The purpose of this section is to provide protection to the employer or his carrier.** *DuBois v. Stokes*, 51 F.R.D. 474 (D.S.C. 1971), construing North Carolina statutes.

**An action could be maintained in the District Court for South Carolina** in the name of an injured employee, covered by the North Carolina Workmen's Compensation Act, for injuries received in the course of employment, but caused by the negligence of third persons where that action was brought more than 12 months after the cause of action arose and more than 60 days before the applicable statute of limitations ran. *DuBois v. Stokes*, 51 F.R.D. 474 (D.S.C. 1971), construing North Carolina statutes.

**A third-party tort-feasor cannot use a federal district court or the pleadings there**

**to defeat the purpose and intent of this Chapter** by requiring the employer, in effect, to pay an amount in excess of the workmen's compensation award. *Cox v. E.I. Du Pont de Nemours & Co.*, 39 F.R.D. 47 (W.D.S.C. 1965), construing North Carolina statutes.

#### **Third Person Cannot Hold Employer for Contribution or Indemnity.** —

Notwithstanding the existence of joint tort-feasor contribution acts, a third-party tort-feasor is not entitled to contribution from an employer whose negligence concurred in causing the death of an employee where the employer has paid a workmen's compensation award. *Cox v. E.I. Du Pont de Nemours & Co.*, 39 F.R.D. 47 (W.D.S.C. 1965), construing North Carolina statutes.

The Workmen's Compensation Act abrogates all liability of the employer to the employee as a tort-feasor under the laws of negligence for an injury by accident in the employment, and consequently, there is no joint tort liability through which contribution can be enforced



against the employer. *Cox v. E.I. Du Pont de Nemours & Co.*, 39 F.R.D. 47 (W.D.S.C. 1965), construing North Carolina statutes.

**Amounts Paid as Compensation Constitute a Lien on Wrongful Death Action Recovery.**

— Under the provisions of this section the amounts paid by an employer and the employer's insurance carrier as compensation or other benefits to a decedent under the

Workmen's Compensation Act for disability, disfigurement, or death caused under circumstances creating a liability in some person other than the employer to pay damages therefor, constitute a lien on the amount recovered in a wrongful death action; and this is a lawful claim against the estate. *Long v. Coble*, 11 N.C. App. 624, 182 S.E.2d 234 (1971).

**§ 97-12. Intoxication or willful neglect of employee; willful disobedience of statutory duty, safety regulation or rule.**

**Forfeiture for Intoxication Only if Causing the Injury.** — This statute does not provide for forfeiture of benefits if an employee was intoxicated at the time of the injury, but only if the injury or death "was occasioned by the intoxication." *Lassiter v. Town of Chapel Hill*, 15 N.C. App. 98, 189 S.E.2d 769 (1972).

**Finding of Intoxication by Commissioner Not Required.** — This statute does not require the Commissioner to find whether the employee was intoxicated or not as a matter of law. *Lassiter v. Town of Chapel Hill*, 15 N.C. App. 98, 189 S.E.2d 769 (1972).

**§ 97-18. Prompt payment of compensation required; installments; notice to Commission; penalties.**

**Notice of Final Payment to Employee Not Required by Section.** — This section does not require that the employer provide a copy of notice of final payment, Form 28B, to the employee, and no such requirement is found in any of the other provisions of this Chapter. *Willis v. J.M. Davis Indus., Inc.*, 280 N.C. 709, 186 S.E.2d 913 (1972).

**But Commission Rule XI 5 Requires Notice of Final Payment.** — Rule XI 5 now provides that employers will send a copy of Form 28B to

the claimant within 16 days after his last payment of compensation. *Willis v. J.M. Davis Indus., Inc.*, 280 N.C. 709, 186 S.E.2d 913 (1972).

**Commission Rule XI 5 Conforms to this Section.** — Industrial Commission Rule XI 5, adopted pursuant to the authority granted in § 97-80, conforms to subsection (f) of this section insofar as the time of sending Form 28B is concerned. *Willis v. J.M. Davis Indus., Inc.*, 280 N.C. 709, 186 S.E.2d 913 (1972).

**§ 97-22. Notice of accident to employer.**

**Power of Commission to Find Failure to Give Notice.** — The fact that no reference was made to a failure to give written notice of an alleged accident to the employer in compliance

with this section by the hearing Commissioner does not preclude such finding by the full Commission. *Garmon v. Tridair Indus., Inc.*, 14 N.C. App. 574, 188 S.E.2d 523 (1972).

**§ 97-24. Right to compensation barred after two years; destruction of records.**

**Editor's Note.** —

Session Laws 1973, c. 476, s. 48, effective July 1, 1973, substitutes "Department of Cultural Resources" for "Department of Archives and History" throughout the General Statutes.

**Limited Jurisdiction of the Industrial Commission.** — The Industrial Commission has a special or limited jurisdiction created by statute, and confined to its terms. Viewed as a court, it is one of limited jurisdiction, and it is a universal rule of law that parties cannot, by consent, give a court, as such, jurisdiction over subject matter of which it would otherwise not have jurisdiction. Jurisdiction in this sense cannot be obtained by consent of the parties, waiver, or estoppel. *Barham v. Kayser-Roth Hosiery Co.*, 15 N.C. App. 519, 190 S.E.2d 306 (1972).

**The requirement that claim be filed within a certain time is a condition precedent, etc.** —

The requirement of filing a claim in accord with the provisions of this statute is a condition precedent to the right to compensation and not a statute of limitation. *Barham v. Kayser-Roth Hosiery Co.*, 15 N.C. App. 519, 190 S.E.2d 306 (1972).

**Timely Filing of Claim or Submission of Settlement Agreement Jurisdictional.** — Where there was no evidence that the Industrial Commission acquired jurisdiction either by the timely filing of a claim or by the submission of a voluntary settlement agreement to the Commission for approval, the Industrial Commission properly dismissed plaintiff's claim for lack of jurisdiction.



Barham v. Kayser-Roth Hosiery Co., 15 N.C. App. 519, 190 S.E.2d 306 (1972).

**Payment of Medical Expenses by Defendant Carrier Does Not Constitute Waiver of Limitation.** — The voluntary payment of a medical bill by defendant carrier

is not an admission of liability and does not dispense with the necessity of filing a claim with the Industrial Commission within two years of the date of the accident. Barham v. Kayser-Roth Hosiery Co., 15 N.C. App. 519, 190 S.E.2d 306 (1972).

**§ 97-25. Medical treatment and supplies.** — Medical, surgical, hospital, nursing services, medicines, sick travel, rehabilitation services, and other treatment including medical and surgical supplies as may reasonably be required to effect a cure or give relief and for such additional time as in the judgment of the Commission will tend to lessen the period of disability, and in addition thereto such original artificial members as may be reasonably necessary at the end of the healing period shall be provided by the employer. In case of a controversy arising between the employer and employee relative to the continuance of medical, surgical, hospital, or other treatment, the Industrial Commission may order such further treatments as may in the discretion of the Commission be necessary.

The Commission may at any time upon the request of an employee order a change of treatment and designate other treatment suggested by the injured employee subject to the approval of the Commission, and in such a case the expense thereof shall be borne by the employer upon the same terms and conditions as hereinbefore provided in this section for medical and surgical treatment and attendance.

The refusal of the employee to accept any medical, hospital, surgical or other treatment or rehabilitative procedure when ordered by the Industrial Commission shall bar said employee from further compensation until such refusal ceases, and no compensation shall at any time be paid for the period of suspension unless in the opinion of the Industrial Commission the circumstances justified the refusal, in which case, the Industrial Commission may order a change in the medical or hospital service.

If in an emergency on account of the employer's failure to provide the medical or other care as herein specified a physician other than provided by the employer is called to treat the injured employee, the reasonable cost of such service shall be paid by the employer if so ordered by the Industrial Commission: Provided, however, if he so desires, an injured employee may select a physician of his own choosing to attend, prescribe and assume the care and charge of his case, subject to the approval of the Industrial Commission. (1929, c. 120, s. 25; 1931, c. 274, s. 4; 1933, c. 506; 1955, c. 1026, s. 2; 1973, c. 520, s. 1.)

**Editor's Note.** —

The 1973 amendment, effective July 1, 1973, inserted "rehabilitation services" and deleted "for a period not exceeding 10 weeks from date

of injury" following "required" in the first sentence of the first paragraph and inserted "or rehabilitative procedure" near the beginning of the third paragraph.

**§ 97-27. Medical examination; facts not privileged; refusal to be examined suspends compensation; autopsy.** — (a) After an injury, and so long as he claims compensation, the employee, if so requested by his employer or ordered by the Industrial Commission, shall, subject to the provisions of subsection (b), submit himself to examination, at reasonable times and places, by a duly qualified physician or surgeon designated and paid by the employer or the Industrial Commission. The employee shall have the right to have present at such examination any duly qualified physician or surgeon provided and paid by him. No fact communicated to or otherwise learned by any physician or surgeon or hospital or hospital employee who may have attended or examined the employee, or who may have been present at any examination, shall be privileged. If the employee refuses to submit himself to or in any way obstructs such examination requested by and provided for by the employer, his



right to compensation and his right to take or prosecute any proceedings under this Article shall be suspended until such refusal or objection ceases, and no compensation shall at any time be payable for the period of obstruction, unless in the opinion of the Industrial Commission the circumstances justify the refusal or obstruction. The employer, or the Industrial Commission, shall have the right in any case of death to require an autopsy at the expense of the party requesting the same.

(1973, c. 520, s. 2.)

**Editor's Note. —**

The 1973 amendment, effective July 1, 1973, inserted "or hospital or hospital employee" in the third sentence of subsection (a) and deleted, at the end of that sentence, "either in hearings provided for by this article or any action at law

brought to recover damages against any employer who may have accepted the compensation provisions of this Article."

As subsection (b) was not changed by the amendment, it is not set out.

**§ 97-29. Compensation rates for total incapacity. —** Except as hereinafter otherwise provided, where the incapacity for work resulting from the injury is total, the employer shall pay or cause to be paid, as hereinafter provided, to the injured employee during such total disability a weekly compensation equal to sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of his average weekly wages, but not more than eighty dollars (\$80.00), nor less than twenty dollars (\$20.00) per week during not more than 400 weeks from the date of the injury, provided that the total amount of compensation paid shall not exceed thirty-two thousand five hundred dollars (\$32,500).

In cases in which total and permanent disability results from paralysis resulting from an injury to the brain or spinal cord or from loss of mental capacity resulting from an injury to the brain, or in cases in which total and permanent disability results from the loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof, compensation, including reasonable and necessary nursing services, medicines, sick travel, medical, hospital, and other treatment or care shall be paid during the life of the injured employee, without regard to the 400 weeks limited herein or to the thirty-two thousand five hundred dollars (\$32,500) maximum compensation under this Article. In all such cases, however, if death results from the injury and within 350 weeks from the date of accident and before the compensation paid totals thirty-two thousand five hundred dollars (\$32,500), then compensation shall be paid for the remainder of the 350-week period or until the full thirty-two thousand five hundred dollars (\$32,500), including the five-hundred-dollar (\$500.00) funeral benefit, shall have been paid, whichever is sooner, as in any other death case.

The weekly compensation payment for members of the North Carolina national guard and the North Carolina State guard shall be the maximum amount of eighty dollars (\$80.00) per week as fixed herein. The weekly compensation payment for deputy sheriffs, or those acting in the capacity of deputy sheriffs, who serve upon a fee basis, shall be twenty dollars (\$20.00) a week as fixed herein, provided that the last sentence herein shall not apply to Ashe, Avery, Bladen, Carteret, Caswell, Cherokee, Gates, Hyde, Macon, Pender, Perquimans, Union, Watauga, and Wilkes Counties.

An officer or member of the State Highway Patrol shall not be awarded any weekly compensation under the provisions of this section for the first two years of any incapacity resulting from an injury by accident arising out of and in the course of the performance by him of his official duties if, during such incapacity, he continues to be an officer or member of the State Highway Patrol, but he shall be awarded any other benefits to which he may be entitled under the provisions of this Article. (1929, c. 120, s. 29; 1939, c. 277, s. 1; 1943, c. 502, s. 3; c. 543; c. 672, s. 2; 1945, c. 766; 1947, c. 823; 1949, c. 1017; 1951, c. 70, s. 1; 1953, c. 1135, s. 1; c. 1195, s. 2; 1955, c. 1026, s. 5; 1957, c. 1217; 1963, c. 604, s. 1;



1967, c. 84, s. 1; 1969, c. 143, s. 1; 1971, c. 281, s. 1; c. 321, s. 1; 1973, c. 515, s. 1; c. 759, s. 1.)

**Editor's Note. —**

The first 1973 amendment substituted "eighty dollars (\$80.00)" for "fifty-six dollars (\$56.00)" in the first and third paragraphs and substituted "thirty-two thousand five hundred dollars (\$32,500)" for "twenty thousand dollars (\$20,000)" at the end of the first paragraph and in three places in the second paragraph. Section 9 of the amendatory act provides that it shall apply only to cases originating on and after July 1, 1973.

The second 1973 amendment substituted "sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ )" for "sixty percent (60%)" in the first paragraph. Section 8 of the amendatory act provides that it shall apply only to cases occurring on or after July 1, 1973.

**Applied** in *Blalock v. Roberts Co.*, 12 N.C. App. 499, 183 S.E.2d 827 (1971); *Gaddy v. Kern*, 17 N.C. App. 680, 195 S.E.2d 141 (1973).

**Cited** in *Dudley v. Downtowner Motor Inn*, 13 N.C. App. 474, 186 S.E.2d 188 (1972).

**§ 97-30. Partial incapacity. —** Except as otherwise provided in G.S. 97-31, where the incapacity for work resulting from the injury is partial, the employer shall pay, or cause to be paid, as hereinafter provided, to the injured employee during such disability, a weekly compensation equal to sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, but not more than eighty dollars (\$80.00) a week, and in no case shall the period covered by such compensation be greater than 300 weeks from the date of injury. In case the partial disability begins after a period of total disability, the latter period shall be deducted from the maximum period herein allowed for partial disability. An officer or member of the State Highway Patrol shall not be awarded any weekly compensation under the provisions of this section for the first two years of any incapacity resulting from an injury by accident arising out of and in the course of the performance by him of his official duties if, during such incapacity, he continues to be an officer or member of the State Highway Patrol, but he shall be awarded any other benefits to which he may be entitled under the provisions of this Article. (1929, c. 120, s. 30; 1943, c. 502, s. 4; 1947, c. 823; 1951, c. 70, s. 2; 1953, c. 1195, s. 3; 1955, c. 1026, s. 6; 1957, c. 1217; 1963, c. 604, s. 2; 1967, c. 84, s. 2; 1969, c. 143, s. 2; 1971, c. 281, s. 2; 1973, c. 515, s. 2; c. 759, s. 2.)

**Editor's Note. —**

The first 1973 amendment substituted "eighty dollars (\$80.00)" for "fifty-six dollars (\$56.00)" in the first sentence. Section 9 of the amendatory act provides that it shall apply only to cases originating on and after July 1, 1973.

The second 1973 amendment substituted "sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ )" for "sixty per centum (60%)" in the first sentence. Section 8 of the amendatory act provides that it shall apply only to cases occurring on or after July 1, 1973.

**Showing Necessary to Secure Award under**

**Section. —** In order to secure an award under this section the claimant has the burden of proving (1) that the injury resulted from accident arising out of and in the course of his employment; (2) that there resulted from that injury a loss of earning capacity (disability); and (3) that he must prove the extent of that disability. Without such proof there is no authority upon which to make an award even though permanent physical injury may have been suffered. *Gaddy v. Kern*, 17 N.C. App. 680, 195 S.E.2d 141 (1973).

**§ 97-31. Schedule of injuries; rate and period of compensation. —** In cases included by the following schedule the compensation in each case shall be paid for disability during the healing period and in addition the disability shall be deemed to continue for the period specified, and shall be in lieu of all other compensation, including disfigurement, to wit:

- (1) For the loss of a thumb, sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during 65 weeks.
- (2) For the loss of a first finger, commonly called the index finger, sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during 40 weeks.



- (3) For the loss of a second finger, sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during 35 weeks.
- (4) For the loss of a third finger, sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during 22 weeks.
- (5) For the loss of a fourth finger, commonly called the little finger, sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during 16 weeks.
- (6) The loss of the first phalange of the thumb or any finger shall be considered to be equal to the loss of one half of such thumb or finger, and the compensation shall be for one half of the periods of time above specified.
- (7) The loss of more than one phalange shall be considered the loss of the entire finger or thumb: Provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.
- (8) For the loss of a great toe, sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during 35 weeks.
- (9) For the loss of one of the toes other than a great toe, sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during 10 weeks.
- (10) The loss of the first phalange of any toe shall be considered to be equal to the loss of one half of such toe, and the compensation shall be for one half of the periods of time above specified.
- (11) The loss of more than one phalange shall be considered as the loss of the entire toe.
- (12) For the loss of a hand, sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during 200 weeks.
- (13) For the loss of an arm, sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during 240 weeks.
- (14) For the loss of a foot, sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during 144 weeks.
- (15) For the loss of a leg, sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during 200 weeks.
- (16) For the loss of an eye, sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during 120 weeks.
- (17) The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof, shall constitute total and permanent disability, to be compensated according to the provisions of G.S. 97-29.
- (18) For the complete loss of hearing in one ear, sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during 70 weeks; for the complete loss of hearing in both ears, sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during 150 weeks.
- (19) Total loss of use of a member or loss of vision of an eye shall be considered as equivalent to the loss of such member or eye. The compensation for partial loss of or for partial loss of use of a member or for partial loss of vision of an eye or for partial loss of hearing shall be such proportion of the periods of payment above provided for total loss as such partial loss bears to total loss, except that in cases where there is eighty-five per centum (85%), or more, loss of vision in any eye, this shall be deemed "industrial blindness" and compensated as for total loss of vision of such eye.
- (20) The weekly compensation payments referred to in this section shall all be subject to the same limitations as to maximum and minimum as set out in G.S. 97-29.
- (21) In case of serious facial or head disfigurement, the Industrial Commission shall award proper and equitable compensation not to exceed seven thousand five hundred dollars (\$7,500). In case of



enucleation where an artificial eye cannot be fitted and used, the Industrial Commission may award compensation as for serious facial disfigurement.

- (22) In case of serious bodily disfigurement for which no compensation is payable under any other subdivision of this section, but excluding the disfigurement resulting from permanent loss or permanent partial loss of use of any member of the body for which compensation is fixed in the schedule contained in this section, the Industrial Commission may award proper and equitable compensation not to exceed seven thousand five hundred dollars (\$7,500).
- (23) For the total loss of use of the back, sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during 300 weeks. The compensation for partial loss of use of the back shall be such proportion of the periods of payment herein provided for total loss as such partial loss bears to total loss, except that in cases where there is seventy-five per centum (75%) or more loss of use of the back, in which event the injured employee shall be deemed to have suffered "total industrial disability" and compensated as for total loss of use of the back.
- (24) In case of the loss of or permanent injury to any important external or internal organ or part of the body for which no compensation is payable under any other subdivision of this section, the Industrial Commission may award proper and equitable compensation not to exceed seven thousand five hundred dollars (\$7,500). (1929, c. 120, s. 31; 1931, c. 164; 1943, c. 502, s. 2; 1955, c. 1026, s. 7; 1957, c. 1221; c. 1396, ss. 2, 3; 1963, c. 424, ss. 1, 2; 1967, c. 84, s. 3; 1969, c. 143, s. 3; 1973, c. 515, s. 3; c. 759, s. 3; c. 761, ss. 1, 2.)

**Editor's Note. —**

The first 1973 amendment increased the maximum compensation in subdivisions (21), (22) and (24) from \$5,000 to \$7,500. Section 9 of the first amendatory act provides that it shall apply only to cases originating on and after July 1, 1973.

The second 1973 amendment substituted "sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ )" for "sixty per centum (60%)" in subdivisions (1) through (5), (8), (9), (12) through (16), (18) and (23). Section 8 of the second amendatory act provides that it shall apply only to cases occurring on or after July 1, 1973.

The third 1973 amendment substituted "200 weeks" for "170 weeks" in subdivision (12) and "240 weeks" for "220 weeks" in subdivision (13). Section 4 of the third amendatory act provides that it shall apply only to cases occurring on or after July 1, 1973.

**"Disability" Construed. —** As used in this section, the term "disability" signifies an impairment of wage-earning capacity rather than a physical impairment. *Loflin v. Loflin*, 13 N.C. App. 574, 186 S.E.2d 660 (1972).

A disability is deemed to continue after the healing period of employee's injuries and is made compensable under the provisions of this section without regard to the loss of wage-earning power and in lieu of all other compensation. *Loflin v. Loflin*, 13 N.C. App. 574, 186 S.E.2d 660 (1972).

**Employee Must Establish Disability Unless It Is Included in the Schedule. —**

In order to obtain compensation, an employee must establish that his injury caused his "disability" unless it is included in the schedule of injuries made compensable by this section without regard to loss of wage-earning power. *Loflin v. Loflin*, 13 N.C. App. 574, 186 S.E.2d 660 (1972).

**Injuries Enumerated in Schedule Not Compensated under Other Provisions. —** The fact that an injury is one of those enumerated in the schedule of payments set forth under this section precludes the Commission from awarding compensation under any other provision of the act. *Loflin v. Loflin*, 13 N.C. App. 574, 186 S.E.2d 660 (1972).

**Provisions Are Mandatory. —**

In accord with 1st paragraph in original. See *Loflin v. Loflin*, 13 N.C. App. 574, 186 S.E.2d 660 (1972).

**Specific Disability Following Temporary Total Disability. —**

In accord with original. See *Loflin v. Loflin*, 13 N.C. App. 574, 186 S.E.2d 660 (1972).

**Applied** in *Sides v. G.B. Weaver & Sons Elec. Co.*, 12 N.C. App. 312, 183 S.E.2d 308 (1971); *Blalock v. Roberts Co.*, 12 N.C. App. 499, 183 S.E.2d 827 (1971); *Dudley v. Downtowner Motor Inn*, 13 N.C. App. 474, 186 S.E.2d 188 (1972).

**Cited** in *Mabe v. North Carolina Granite Corp.*, 15 N.C. App. 253, 189 S.E.2d 804 (1972).



**§ 97-38. Where death results proximately from the accident; dependents; burial expenses; compensation to aliens; election by partial dependents. —**

If death results approximately from the accident and within two years thereafter, or while total disability still continues and within six years after the accident, the employer shall pay or cause to be paid, subject to the provisions of other sections of this Article, weekly payments of compensation equal to sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages of the deceased employee at the time of the accident, but not more than eighty dollars (\$80.00), nor less than twenty dollars (\$20.00), per week for a period of 350 weeks from the date of the accident, and burial expenses not exceeding five hundred dollars (\$500.00), to the person or persons entitled thereto as follows:

- (1) Persons wholly dependent for support upon the earnings of the deceased employee at the time of the accident shall be entitled to receive the entire compensation payable share and share alike to the exclusion of all other persons. If there be only one person wholly dependent, then that person shall receive the entire compensation payable.
- (2) If there is no person wholly dependent, then any person partially dependent for support upon the earnings of the deceased employee at the time of the accident shall be entitled to receive a weekly payment of compensation computed as hereinabove provided, but such weekly payment shall be the same proportion of the weekly compensation provided for a whole dependent as the amount annually contributed by the deceased employee to the support of such partial dependent bears to the annual earnings of the deceased at the time of the accident.
- (3) If there is no person wholly dependent, and the person or all persons partially dependent is or are within the classes of persons defined as "next of kin" in G.S. 97-40, whether or not such persons or such classes of persons are of kin to the deceased employee in equal degree, and all so elect, he or they may take, share and share alike, the commuted value of the amount provided for whole dependents in (1) above instead of the proportional payment provided for partial dependents in (2) above; provided, that the election herein provided may be exercised on behalf of any infant partial dependent by a duly qualified guardian; provided, further, that the Industrial Commission may, in its discretion, permit a parent or person standing in loco parentis to such infant to exercise such option in its behalf, the award to be payable only to a duly qualified guardian except as in this Article otherwise provided; and provided, further, that if such election is exercised by or on behalf of more than one person, then they shall take the commuted amount in equal shares.

When weekly payments have been made to an injured employee before his death, the compensation to dependents shall begin from the date of the last of such payments, but shall not continue more than 350 weeks from the date of the injury.

Compensation payable under this Article to aliens not residents (or about to become nonresidents) of the United States or Canada, shall be the same in amount as provided for residents, except that dependents in any foreign country except Canada shall be limited to surviving wife and child or children, or if there be no surviving wife or child or children, to the surviving father or mother whom the employee has supported, either in whole or in part, for a period of one year prior to the date of the injury; provided, that the Commission may, in its discretion, or, upon application of the employer or insurance carrier shall commute all future installments of compensation to be paid to such aliens to their present value and payment of one half of such



commuted amount to such aliens shall fully acquit the employer and the insurance carrier. (1929, c. 120, s. 38; 1943, c. 163; c. 502, s. 5; 1947, c. 823; 1951, c. 70, s. 3; 1953, c. 53, s. 1; 1955, c. 1026, s. 8; 1957, c. 1217; 1963, c. 604, s. 3; 1967, c. 84, s. 4; 1969, c. 143, s. 4; 1971, c. 281, s. 3; 1973, c. 515, s. 4; c. 759, s. 4.)

**Editor's Note. —**

The first 1973 amendment increased the maximum weekly benefits from \$56.00 to \$80.00. Section 9 of the first amendatory act provides that it shall apply only to cases originating on and after July 1, 1973.

The second 1973 amendment substituted "sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ )" for "sixty percent (60%)" in the introductory paragraph. Section 8 of the second amendatory act provides that it shall apply only to cases occurring on or after July 1, 1973.

**This section classifies those persons eligible to receive**, and determines the amount of, death benefits payable under the Workmen's Compensation Act to persons wholly or partially dependent upon the earnings of a deceased employee. *Stevenson v. City of Durham*, 281 N.C. 300, 188 S.E.2d 281 (1972).

**When Employee Has No Dependents. —** Where the Commission has found that the deceased employee left no one who was dependent upon him, wholly or partially, § 97-40 determines the person or persons entitled

to receive the death benefits provided in this act, but the amount payable to the person or persons entitled thereto is determined by this section, commuted to its present, lump sum value. *Smith v. Allied Exterminators, Inc.*, 279 N.C. 583, 184 S.E.2d 296 (1971).

Section 97-40 determines the person or persons entitled to receive the death benefits in the absence of dependents, but the amount payable to the person or persons entitled thereto is determined by this section, commuted to its present, lump sum value. *Stevenson v. City of Durham*, 281 N.C. 300, 188 S.E.2d 281 (1972).

If the deceased employee leaves neither whole nor partial dependents, then § 97-40 provides for the commutation and payment of compensation to the "next of kin" as therein defined. *Stevenson v. City of Durham*, 281 N.C. 300, 188 S.E.2d 281 (1972).

**Applied** in *Bass v. Mooresville Mills*, 15 N.C. App. 206, 189 S.E.2d 581 (1972).

**Cited** in *Robbins v. Nicholson*, 281 N.C. 234, 188 S.E.2d 350 (1972).

**§ 97-39. Widow, widower, or child to be conclusively presumed to be dependent; other cases determined upon facts; division of death benefits among those wholly dependent; when division among partially dependent.**

**Only widows who come within the definition in subdivision (14) of § 97-2 are entitled to the presumption** provided by this section. *Bass v. Mooresville Mills*, 11 N.C. App. 631, 182 S.E.2d 246 (1971).

**Applied** in *Bass v. Mooresville Mills*, 15 N.C. App. 206, 189 S.E.2d 581 (1972).

**Cited** in *Robbins v. Nicholson*, 281 N.C. 234, 188 S.E.2d 350 (1972).

**§ 97-40. Commutation and payment of compensation in absence of dependents; "next of kin" defined; commutation and distribution of compensation to partially dependent next of kin; payment in absence of both dependents and next of kin.**

**This Section Determines Who Receives Benefits. —** Where the Commission has found that the deceased employee left no one who was dependent upon him, wholly or partially, this section determines the person or persons entitled to receive the death benefits provided in this act, but the amount payable to the person or persons entitled thereto is determined by § 97-38, commuted to its present, lump sum value. *Smith v. Allied Exterminators, Inc.*, 279 N.C. 583, 184 S.E.2d 296 (1971).

This section determines the person or persons entitled to receive the death benefits in the absence of dependents, but the amount payable to the person or persons entitled thereto is determined by § 97-38, commuted to its present, lump sum value. *Stevenson v. City of Durham*, 281 N.C. 300, 188 S.E.2d 281 (1972).

**This Section Not Limited by Provisions of § 97-2(12). —** The doctrine of *pari materia* does not apply, and the provisions of this section should not be construed with the provisions of § 97-2(12). *Stevenson v. City of Durham*, 281 N.C. 300, 188 S.E.2d 281 (1972).

The imposition of the restrictions of dependency and age contained in § 97-2(12) upon this section would result in a narrow and technical interpretation of the Workmen's Compensation Act. *Stevenson v. City of Durham*, 281 N.C. 300, 188 S.E.2d 281 (1972).

By the 1971 amendment, which includes adult children or adult brothers and adult sisters in the definition of "next of kin" contained in this section, the General Assembly evidenced its intent that the definition of "next of kin" should not be narrowly and strictly



limited by the provisions of § 97-2(12). *Stevenson v. City of Durham*, 281 N.C. 300, 188 S.E.2d 281 (1972).

**Removal of Requirements of Dependency, Age and Marital Status from Definition of "Next of Kin".** — The General Assembly has shown a clear intent to remove the requirements of dependency, age and marital status from the definition of "next of kin" who are entitled to death benefits under this section. *Stevenson v. City of Durham*, 281 N.C. 300, 188 S.E.2d 281 (1972).

**Married Siblings over 18 Are "Next of Kin".** — Brothers and sisters who are 18 years of age or older, and who are married, are "next of kin" as defined in this section. *Stevenson v. City of Durham*, 281 N.C. 300, 188 S.E.2d 281 (1972).

**"Abandoning Father Loses Share of Death Benefits of Child."** — Where the father wilfully abandoned the care and maintenance of the deceased during the latter's minority, § 31A-2 provides that the father loses all right to intestate succession in the distribution of the personal estate of his intestate, deceased child; and consequently, he does not share in the death benefits for which the employer or its carrier is liable under § 97-38. *Smith v. Allied Exterminators, Inc.*, 279 N.C. 583, 184 S.E.2d 296 (1971).

**Benefits Not to Become Assets of Estate of Decedent.** — The determination of the taker or takers is to be made in accordance with the general law governing the distribution of the personal property of the deceased employee not because the benefits are or become part of the assets of the estate of the decedent. They do not. *Smith v. Allied Exterminators, Inc.*, 279 N.C. 583, 184 S.E.2d 296 (1971).

**§ 97-41. Total compensation not to exceed \$32,500.** — In cases where permanent total disability results from paralysis or loss of mental capacity caused by an injury to the brain or spinal cord, or in cases in which total and permanent disability results from the loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof, compensation shall be payable for the life of the injured employee as provided by G.S. 97-29. In all other cases, the total compensation paid, including the funeral benefit, shall not exceed thirty-two thousand five hundred dollars (\$32,500). (1929, c. 120, s. 41; 1947, c. 823; 1951, c. 70, s. 4; 1953, c. 1135, s. 3; 1955, c. 1026, s. 9; 1963, c. 604, s. 5; 1967, c. 84, s. 6; 1969, c. 143, s. 5; 1971, c. 281, s. 4; c. 1182, s. 1; 1973, c. 515, s. 5.)

**Editor's Note.** —

The 1973 amendment increased the maximum compensation from \$20,000 to \$32,500. Section 9 of the amendatory act provides that it shall

apply only to cases originating on and after July 1, 1973.

**Cited** in *Robbins v. Nicholson*, 281 N.C. 234, 188 S.E.2d 350 (1972).

**Order of Priority for Benefits among Next of Kin.** — Where the deceased leaves surviving him a person or persons in two or more of these categories of relationship, the benefits are not distributed among all of such surviving "next of kin." In that event this section directs the Commission to "the general law applicable to the distribution of the personal estate of persons dying intestate" to determine "the order of priority" among these several persons. *Smith v. Allied Exterminators, Inc.*, 279 N.C. 583, 184 S.E.2d 296 (1971).

The Commission is directed to the general law governing intestate succession simply because, for this purpose only, the general law of intestate succession is incorporated by reference into this section. *Smith v. Allied Exterminators, Inc.*, 279 N.C. 583, 184 S.E.2d 296 (1971).

**The meaning of an "order of priority"** is that the person or persons in one category takes to the exclusion of the others. *Smith v. Allied Exterminators, Inc.*, 279 N.C. 583, 184 S.E.2d 296 (1971).

**Amount Payable Not Reduced Where Employee Leaves No Dependent.** — Where the deceased employee left no dependent, whole or partial, the amount payable is not reduced from the amount which would have been payable had the deceased employee left a person wholly dependent upon him unless there is no person surviving who falls within the term "next of kin," as defined in this section. *Smith v. Allied Exterminators, Inc.*, 279 N.C. 583, 184 S.E.2d 296 (1971); *Stevenson v. City of Durham*, 281 N.C. 300, 188 S.E.2d 281 (1972).

**Stated** in *Bass v. Mooresville Mills*, 11 N.C. App. 631, 182 S.E.2d 246 (1971).

**§ 97-42. Deduction of payments.**

**Applied** in *Loflin v. Loflin*, 13 N.C. App. 574, 186 S.E.2d 660 (1972).



### § 97-47. Change of condition; modification of award.

**A change of condition means an actual change** and not a mere change of opinion with respect to a preexisting condition. *West v. J.P. Stevens Co.*, 12 N.C. App. 456, 183 S.E.2d 876 (1971).

**A change in the degree of permanent disability is a change in condition.** *West v. J.P. Stevens Co.*, 12 N.C. App. 456, 183 S.E.2d 876 (1971).

**Question of Fact and Question of Law.** — Whether there has been a change of condition is a question of fact; whether the facts found amount to a change of condition is a question of law. *West v. J.P. Stevens Co.*, 12 N.C. App. 456, 183 S.E.2d 876 (1971).

**Any Party May Be Estopped to Rely on It.** —

When the request for a review of an award for changed conditions is not made until more than 12 months after delivery and acceptance of a check in final payment, review of the award is barred, but the employer and his insurance carrier, by their conduct, may be estopped to plead the lapse of time. *Willis v. J.M. Davis Indus., Inc.*, 280 N.C. 709, 186 S.E.2d 913 (1972).

**Failure to Furnish Form 28B Estops Employer from Pleading Lapse of Time.** — Under the Commission's Rule XI(5), an employer must execute Form 28B and furnish a copy to a claimant with his last compensation check. A failure to furnish a copy will estop the employer from pleading the lapse of time in bar of a claim asserted for additional compensation on the grounds of a change in condition. *Sides v. G.B. Weaver & Sons Elec. Co.*, 12 N.C. App. 312, 183 S.E.2d 308 (1971).

**But Furnishing Copy Late Does Not Estop Employer from Asserting Limitation.** — Failure of the employer or the insurance carrier to furnish a copy of Industrial Commission Form 28B to an employee with his last compensation payment as required by former Industrial Commission Rule XI(5) did not estop them from asserting the one-year limitation of this section as a defense to employee's claim for additional compensation for change of condition; consequently, employee's claim filed more than one year after receipt of his last compensation payment was

barred notwithstanding it was filed within a year of his receipt of Form 28B from the carrier. *Willis v. J.M. Davis Indus., Inc.*, 280 N.C. 709, 186 S.E.2d 913 (1972).

**The importance of Form 28B with respect to starting the running of the statutory period** under this section is that this form serves as explicit notice to a claimant that if further benefits are claimed the Commission must be notified in writing within one year from the date of receipt of claimant's last compensation check. *Sides v. G.B. Weaver & Sons Elec. Co.*, 12 N.C. App. 312, 183 S.E.2d 308 (1971).

The 12 months' limitation within which an employee can claim additional compensation commences to run from the date on which he receives the last payment of compensation and not from the time he receives Form 28B. *Willis v. J.M. Davis Indus., Inc.*, 280 N.C. 709, 186 S.E.2d 913 (1972).

To allow an employee's claim for additional compensation for the reason such claim was made within 12 months from the time he was furnished a copy of Form 28B would be contrary to the express provisions of this section. *Willis v. J.M. Davis Indus., Inc.*, 280 N.C. 709, 186 S.E.2d 913 (1972).

The expression, "If the carrier failed to comply with the rule by giving employee notice of the limited time within which he could claim additional compensation, it failed to put the statute of limitations in operation, found in *White v. Shoup Boat Corp.*, 261 N.C. 495, 135 S.E.2d 216 (1964), is an inaccurate expression of the law and is disapproved. *Willis v. J.M. Davis Indus., Inc.*, 280 N.C. 709, 186 S.E.2d 913 (1972).

**Failure to Appeal from Adverse Finding Bars Claim for Change of Condition.** — A plaintiff who failed to appeal from the Industrial Commission's finding that there was no causal relation between the immobility in his right leg and an accident arising out of his employment was barred from asserting a subsequent claim for change of condition with respect to the right leg. *West v. J.P. Stevens Co.*, 12 N.C. App. 456, 183 S.E.2d 876 (1971).

**Cited in** *Barham v. Kayser-Roth Hosiery Co.*, 15 N.C. App. 519, 190 S.E.2d 306 (1972).

**§ 97-53. Occupational diseases enumerated; when due to exposure to chemicals.** — The following diseases and conditions only shall be deemed to be occupational diseases within the meaning of this Article:

- (1) Anthrax.
- (2) Arsenic poisoning.
- (3) Brass poisoning.
- (4) Zinc poisoning.
- (5) Manganese poisoning.
- (6) Lead poisoning. Provided the employee shall have been exposed to the hazard of lead poisoning for at least 30 days in the preceding 12



months' period; and, provided further, only the employer in whose employment such employee was last injuriously exposed shall be liable.

- (7) Mercury poisoning.
- (8) Phosphorous poisoning.
- (9) Poisoning by carbon bisulphide, menthanol, naphtha or volatile halogenated hydrocarbons.
- (10) Chrome ulceration.
- (11) Compressed-air illness.
- (12) Poisoning by benzol, or by nitro and amido derivatives of benzol (dinitrolbenzol, anilin, and others).
- (13) Any disease, other than hearing loss covered in another subdivision of this section, which is proven to be due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation or employment, but excluding all ordinary diseases of life to which the general public is equally exposed outside of the employment.
- (14) Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil, or paraffin, or any compound, product, or residue of any of these substances.
- (15) Radium poisoning or disability or death due to radioactive properties of substances or to roentgen rays, X rays or exposure to any other source of ionizing radiation; provided, however, that the disease under this subdivision shall be deemed to have occurred on the date that disability or death shall occur by reason of such disease.
- (16) Blisters due to use of tools or appliances in the employment.
- (17) Bursitis due to intermittent pressure in the employment.
- (18) Miner's nystagmus.
- (19) Bone felon due to constant or intermittent pressure in employment.
- (20) Synovitis, caused by trauma in employment.
- (21) Tenosynovitis, caused by trauma in employment.
- (22) Carbon monoxide poisoning.
- (23) Poisoning by sulphuric, hydrochloric or hydrofluoric acid.
- (24) Asbestosis.
- (25) Silicosis.
- (26) Psittacosis.
- (27) Undulant fever.
- (28) Loss of hearing caused by harmful noise in the employment. The following rules shall be applicable in determining eligibility for compensation and the period during which compensation shall be payable:
  - a. The term "harmful noise" means sound in employment capable of producing occupational loss of hearing as hereinafter defined. Sound of an intensity of less than 90 decibels, A scale, shall be deemed incapable of producing occupational loss of hearing as defined in this section.
  - b. "Occupational loss of hearing" shall mean a permanent sensorineural loss of hearing in both ears caused by prolonged exposure to harmful noise in employment. Except in instances of preexisting loss of hearing due to disease, trauma, or congenital deafness in one ear, no compensation shall be payable under this subdivision unless prolonged exposure to harmful noise in employment has caused loss of hearing in both ears as hereinafter provided.
  - c. No compensation benefits shall be payable for temporary total or temporary partial disability under this subdivision and there shall be no award for tinnitus or a psychogenic hearing loss.
  - d. An employer shall become liable for the entire occupational



- hearing loss to which his employment has contributed, but if previous deafness is established by a hearing test or other competent evidence, whether or not the employee was exposed to harmful noise within six months preceding such test, the employer shall not be liable for previous loss so established, nor shall he be liable for any loss for which compensation has previously been paid or awarded and the employer shall be liable only for the difference between the percent of occupational hearing loss determined as of the date of disability as herein defined and the percentage of loss established by the preemployment and audiometric examination excluding, in any event, hearing losses arising from nonoccupational causes.
- e. In the evaluation of occupational hearing loss, only the hearing levels at the frequencies of 500, 1,000 and 2,000 cycles per second shall be considered. Hearing losses for frequencies below 500 and above 2,000 cycles per second are not to be considered as constituting compensable hearing disability.
  - f. The employer liable for the compensation in this section shall be the employer in whose employment the employee was last exposed to harmful noise in North Carolina during a period of 90 working days or parts thereof, and an exposure during a period of less than 90 working days or parts thereof shall be held not to be an injurious exposure; provided, however, that in the event an insurance carrier has been on the risk for a period of time during which an employee has been injuriously exposed to harmful noise, and if after insurance carrier goes off the risk said employee has been further exposed to harmful noise, although not exposed for 90 working days or parts thereof so as to constitute an injurious exposure, such carrier shall, nevertheless, be liable.
  - g. The percentage of hearing loss shall be calculated as the average, in decibels, of the thresholds of hearing for the frequencies of 500, 1,000 and 2,000 cycles per second. Pure tone air conduction audiometric instruments, properly calibrated according to accepted national standards such as American Standards Association, Inc., (ASA), International Standards Organization (ISO), or American National Standards Institute, Inc., (ANSI), shall be used for measuring hearing loss. If more than one audiogram is taken, the audiogram having the lowest threshold will be used to calculate occupational hearing loss. If the losses of hearing average 15 decibels (26 db if ANSI or ISO) or less in the three frequencies, such losses of hearing shall not constitute any compensable hearing disability. If the losses of hearing average 82 decibels (93 db if ANSI or ISO) or more in the three frequencies, then the same shall constitute and be total or one hundred percent (100%) compensable hearing loss. In measuring hearing impairment, the lowest measured losses in each of the three frequencies shall be added together and divided by three to determine the average decibel loss. For each decibel of loss exceeding 15 decibels, (26 db if ANSI or ISO) an allowance of one and one-half percent ( $1\frac{1}{2}\%$ ) shall be made up to the maximum of one hundred percent (100%) which is reached at 82 decibels (93 db if ANSI or ISO). In determining the binaural percentage of loss, the percentage of impairment in the better ear shall be multiplied by five. The resulting figure shall be added to the percentage of impairment in the poorer ear, and the sum of the two divided by six. The final percentage shall represent the binaural hearing impairment.



- h. There shall be payable for total occupational loss of hearing in both ears 150 weeks of compensation, and for partial occupational loss of hearing in both ears such proportion of these periods of payment as such partial loss bears to total loss.
- i. No claim for compensation for occupational hearing loss shall be filed until after six months have elapsed since exposure to harmful noise with the last employer. The last day of such exposure shall be the date of disability. The regular use of employer-provided protective devices capable of preventing loss of hearing from the particular harmful noise where the employee works shall constitute removal from exposure to such particular harmful noise.
- j. No consideration shall be given to the question of whether or not the ability of an employee to understand speech is improved by the use of a hearing aid. The North Carolina Industrial Commission may order the employer to provide the employee with an original hearing aid if it will materially improve the employee's ability to hear.
- k. No compensation benefits shall be payable for the loss of hearing caused by harmful noise after October 1, 1971, if employee fails to regularly utilize employer-provided protection device or devices, capable of preventing loss of hearing from the particular harmful noise where the employee works.

Occupational diseases caused by chemicals shall be deemed to be due to exposure of an employee to the chemicals herein mentioned only when as a part of the employment such employee is exposed to such chemicals in such form and quantity, and used with such frequency as to cause the occupational disease mentioned in connection with such chemicals. (1935, c. 123; 1949, c. 1078; 1953, c. 1112; 1955, c. 1026, s. 10; 1957, c. 1396, s. 6; 1963, c. 553, s. 1; c. 965; 1971, c. 547, s. 1; c. 1108, s. 1; 1973, c. 760, ss. 1, 2.)

**Editor's Note. —**

The 1973 amendment deleted the former seventh sentence of subdivision (28)g, which provided for a deduction, before determining the percentage of hearing impairment, from the total average decibel loss of one-half decibel for

each year of the employee's age over 38 at the time of last exposure to harmful noise. The amendment also rewrote the second sentence of subdivision (28)j. Section 4 of the amendatory act provides that it shall apply only to cases originating on and after July 1, 1973.

**§ 97-54. "Disablement" defined.**

**Disability Refers to Diminished Capacity to Earn Money. —** Under the Workmen's Compensation Act disability refers not to physical infirmity but to a diminished capacity to earn money. *Mabe v. North Carolina Granite Corp.*, 15 N.C. App. 253, 189 S.E.2d 804 (1972).

**But Earning Capacity Must Be That of Particular Plaintiff. —** With respect to disability, the question is what effect has the disease had upon the earning capacity of this particular plaintiff; not what effect a like physical impairment would have upon an employee of average age and intelligence. *Mabe*

*v. North Carolina Granite Corp.*, 15 N.C. App. 253, 189 S.E.2d 804 (1972).

Where the plaintiff is fully incapacitated because of silicosis to earn wages through work at hard labor, which is the only work he is qualified to do by reason of his age and education, the plaintiff is totally incapacitated because of silicosis to earn, in the same or any other employment, the wages he was earning at the time of his last injurious exposure. *Mabe v. North Carolina Granite Corp.*, 15 N.C. App. 253, 189 S.E.2d 804 (1972).

**§ 97-61.1. First examination of and report on employee having asbestosis or silicosis.**

**Editor's Note. —** Session Laws 1973, c. 476, s. 128, effective July 1, 1973, amends this

section by substituting "Department of Human Resources" for "State Board of Health."



**§ 97-61.5. Hearing after first examination and report; removal of employee from hazardous occupation; compensation upon removal from hazardous occupation.**

(b) If the Industrial Commission finds at the first hearing that the employee has either asbestosis or silicosis or if the parties enter into an agreement to the effect that the employee has silicosis or asbestosis, it shall by order remove the employee from any occupation which exposes him to the hazards of asbestosis or silicosis, and if the employee thereafter engages in any occupation which exposes him to the hazards of asbestosis or silicosis without having obtained the written approval of the Industrial Commission as provided in G.S. 97-61.7, neither he, his dependents, personal representative nor any other person shall be entitled to any compensation for disablement or death resulting from asbestosis or silicosis; provided, that if the employee is removed from the industry the employer shall pay or cause to be paid as in this subsection provided to the employee affected by such asbestosis or silicosis a weekly compensation equal to sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of his average weekly wages before removal from the industry, but not more than eighty dollars (\$80.00) or less than twenty dollars (\$20.00) a week, which compensation shall continue for a period of 104 weeks. Payments made under this subsection shall be credited on the amounts payable under any final award in the cause entered under G.S. 97-61.6. (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 2; c. 1354; 1957, c. 1217; c. 1396, s. 8; 1963, c. 604, s. 6; 1967, c. 84, s. 7; 1969, c. 143, s. 6; 1971, c. 281, s. 5; 1973, c. 515, s. 6; c. 759, s. 5.)

**Editor's Note. —**

The first 1973 amendment increased the maximum weekly compensation in subsection (b) from \$56.00 to \$80.00. Section 9 of the amendatory act provides that it shall apply only to cases originating on and after July 1, 1973.

The second 1973 amendment substituted

"sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ )" for "sixty percent (60%)" near the end of the first sentence of subsection (b). Section 8 of the second amendatory act provides that it shall apply only to cases occurring on or after July 1, 1973.

As subsection (a) was not changed by the amendment, it is not set out.

**§ 97-61.6. Hearing after third examination and report; compensation for disability and death from asbestosis or silicosis. —** After receipt by the employer and employee of the advisory medical committee's third report, the Industrial Commission, unless it has approved an agreement between the employee and employer, shall set a final hearing in the cause, at which it shall receive all competent evidence bearing on the cause, and shall make a final disposition of the case, determining what compensation, if any, the employee is entitled to receive in addition to the 104 weeks already received.

Where the incapacity for work resulting from asbestosis or silicosis is found to be total, the employer shall pay, or cause to be paid, to the injured employee during such total disability a weekly compensation equal to sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of his average weekly wages, but not more than eighty dollars (\$80.00), nor less than twenty dollars (\$20.00), a week; and in no case shall the period covered by such compensation be greater than 400 weeks, nor shall the total amount of all compensation exceed thirty-two thousand five hundred dollars (\$32,500).

When the incapacity for work resulting from asbestosis or silicosis is partial, the employer shall pay, or cause to be paid, to the affected employee, a weekly compensation equal to sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the difference between his average weekly wages at the time of his last injurious exposure, and the average weekly wages which he is able to earn thereafter, but not more than eighty dollars (\$80.00) a week, and provided that the total compensation so paid shall not exceed a period of 196 weeks, in addition to the 104 weeks for which the employee has already been compensated.

Provided, however, should death result from asbestosis or silicosis within



two years from the date of last exposure, or should death result from asbestosis or silicosis, or from a secondary infection or diseases developing from asbestosis or silicosis within 350 weeks from the date of last exposure and while the employee is entitled to compensation for disablement due to asbestosis or silicosis, either partial or total, then in either of these events, the employer shall pay, or cause to be paid, by one of the methods set forth in G.S. 97-38 a total compensation which, when added to the payments already made for partial or total disability to time of death, shall not exceed thirty-two thousand five hundred dollars (\$32,500) including burial expenses.

Provided further that if the employee has asbestosis or silicosis and dies from any other cause, the employer shall pay, or cause to be paid by one of the methods set forth in G.S. 97-38 compensation for any remaining portion of the 104 weeks specified in G.S. 97-61.5 for which the employee has not previously been paid compensation, and in addition shall pay compensation for such number of weeks as the percentage of disability of the employee bears to 196 weeks. (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 2; c. 1354; 1957, c. 1217; 1963, c. 604, s. 7; 1965, c. 907; 1967, c. 84, s. 8; 1969, c. 143, s. 7; 1971, c. 281, s. 6; c. 631; 1973, c. 515, s. 7; c. 759, s. 6.)

**Editor's Note. —**

The first 1973 amendment increased the maximum weekly compensation in the second and third paragraphs from \$56.00 to \$80.00 and the maximum total compensation in the second and fourth paragraphs from \$20,000 to \$32,500. Section 9 of the first amendatory act provides that it shall apply only to cases originating on and after July 1, 1973.

The second 1973 amendment substituted "sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ )" for "sixty per centum (60%)" in the second and third paragraphs. Section 8 of the second amendatory act provides that it shall apply only to cases occurring on or after July 1, 1973.

For article on administrative evidence rules, see 49 N.C.L. Rev. 635 (1971).

**"Death Resulting from Asbestosis" Construed.** — "Death resulting from asbestosis" was construed to mean that a compensable death occurs when job-related asbestosis only accelerates and contributes to the death but is not the immediate or primary cause. *Self v. Starr-Davis Co.*, 13 N.C. App. 694, 187 S.E.2d 466 (1972), decided prior to the 1971 amendment to this section.

**Disability Refers to Diminished Capacity to Earn Money.** — Under the Workmen's Compensation Act disability refers not to physical infirmity but to a diminished capacity to earn money. *Mabe v. North Carolina Granite Corp.*, 15 N.C. App. 253, 189 S.E.2d 804 (1972).

**But Earning Capacity Must Be That of Particular Plaintiff.** — With respect to disability, the question is what effect has the disease had upon the earning capacity of this particular plaintiff; not what effect a like physical impairment would have upon an employee of average age and intelligence. *Mabe v. North Carolina Granite Corp.*, 15 N.C. App. 253, 189 S.E.2d 804 (1972).

Where the plaintiff is fully incapacitated because of silicosis to earn wages through work at hard labor, which is the only work he is qualified to do by reason of his age and education, the plaintiff is totally incapacitated because of silicosis to earn, in the same or any other employment, the wages he was earning at the time of his last injurious exposure. *Mabe v. North Carolina Granite Corp.*, 15 N.C. App. 253, 189 S.E.2d 804 (1972).

**When Findings of Industrial Commission Accepted as Final Truth.** — If the findings of fact of the Industrial Commission are supported by competent evidence and are determinative of all the questions at issue in the proceeding, the court must accept such findings as final truth, and merely determine whether or not they justify the legal conclusions and decision of the Commission. *Mabe v. North Carolina Granite Corp.*, 15 N.C. App. 253, 189 S.E.2d 804 (1972).

**§ 97-80. Rules and regulations; subpoena of witnesses; examination of books and records; depositions; costs.**

**Editor's Note. —**

For article on administrative evidence rules, see 49 N.C.L. Rev. 635 (1971).

**Commission Held without Authority to Allow Claim.** — To allow an employee's claim for additional compensation for the reason such claim was made within 12 months from the time he was furnished a copy of Form 28B

would be allowing the Commission by its rule-making authority to amend § 97-47; this would exceed the authority granted the Commission by this section. *Willis v. J.M. Davis Indus., Inc.*, 280 N.C. 709, 186 S.E.2d 913 (1972).

**Cited in** *Sides v. G.B. Weaver & Sons Elec. Co.*, 12 N.C. App. 312, 183 S.E.2d 308 (1971).



**§ 97-83. In event of disagreement, Commission is to make award after hearing.**

**Failure to File Claim Did Not Bar Father's Participation in Award.** — A father was not barred from participation in a workmen's compensation award for the death of his son by his failure to file a claim therefor, where the

matter was heard by the Industrial Commission upon the request of the employer's insurance carrier pursuant to this section. *Smith v. Allied Exterminators, Inc.*, 279 N.C. 583, 184 S.E.2d 296 (1971).

**§ 97-84. Determination of disputes by Commission or deputy.**

**Editor's Note.** —

For article on administrative evidence rules, see 49 N.C.L. Rev. 635 (1971).

**Motions for Additional Evidence and for Rehearing Held Properly Denied.** — The Industrial Commission properly denied employee's motion to take additional evidence on appeal and motion for a rehearing on all issues, where employee's claim was denied by the hearing commissioner on the ground that

he did not sustain an injury by accident arising out of and in the course of his employment, additional medical testimony proposed had no bearing on how the accident occurred, and additional testimony proposed was only more elaborative than his testimony at the original hearing. *Cooke v. Thurston Motor Lines*, 13 N.C. App. 342, 185 S.E.2d 445 (1971).

**Stated** in *Smith v. Allied Exterminators, Inc.*, 279 N.C. 583, 184 S.E.2d 296 (1971).

**§ 97-85. Review of award.**

**Power to Modify or Strike Out Findings of Fact.** —

The Industrial Commission has authority to review, modify, adopt, or reject findings of a hearing commissioner and may ex mero motu strike out a finding of the hearing commissioner and his conclusion of law based thereon in order to make the record comply with the law, even though there is no exception to the finding or conclusion. *Garmon v. Tridair*

*Indus., Inc.*, 14 N.C. App. 574, 188 S.E.2d 523 (1972).

**Plaintiff's contention that the Commission erred in remanding the proceeding for further hearing was waived** by the plaintiff when she stipulated the questions to be determined at that hearing. *Grigg v. Pharr Yarns, Inc.*, 15 N.C. App. 497, 190 S.E.2d 285 (1972).

**§ 97-86. Award conclusive as to facts; appeal; certified questions of law.**

**Editor's Note.** —

For article on administrative evidence rules, see 49 N.C.L. Rev. 635 (1971).

**Scope of Review.** —

Upon review of an order of the Industrial Commission, the Supreme Court does not weigh the evidence, but may only determine whether there is evidence in the record to support the finding made by the Commission. *Russell v. Pharr Yarns, Inc.*, 18 N.C. App. 249, 196 S.E.2d 571 (1973).

**The findings of fact of the Industrial Commission are conclusive, etc.** —

In accord with 23rd paragraph in original. See *Benfield v. Troutman*, 17 N.C. App. 572, 195 S.E.2d 75 (1973).

If there is any evidence of substance which directly or by reasonable inference tends to support the findings, the court is bound by such evidence, even though there is evidence that would have supported a finding to the contrary. *Russell v. Pharr Yarns, Inc.*, 18 N.C. App. 249, 196 S.E.2d 571 (1973).

**§ 97-88. Expenses of appeals brought by insurers.**

**Award Modified on Appeal to Require Defendant to Pay Costs.** — Where plaintiff ultimately prevailed against the defendants and since costs follow the final judgment, the opinion and award of the Commission in which

it was provided that "Each side shall pay its own costs as the same relate to the appeal" was modified so as to require the defendants to pay the costs of the appeal. *Grigg v. Pharr Yarns, Inc.*, 15 N.C. App. 497, 190 S.E.2d 285 (1972).

**§ 97-89. Commission may appoint qualified physician to make necessary examinations; expenses; fees.** — The Commission or any member thereof may, upon the application of either party, or upon its own motion, appoint a disinterested and duly qualified physician or surgeon to make any necessary medical examination of the employee, and to testify in respect thereto. Said physician or surgeon shall be allowed traveling expenses and a reasonable fee to be fixed by the Commission. The fees and expenses of such physician or



surgeon shall be paid by the employer. (1929, c. 120, s. 63; 1931, c. 274, s. 12; 1973, c. 520, s. 3.)

**Editor's Note.** — The 1973 amendment, (\$10.00) for each examination and report, but effective July 1, 1973, deleted, at the end of the the Commission may allow additional second sentence, "not exceeding ten dollars reasonable amounts in extraordinary cases."

**§ 97-90. Legal and medical fees to be approved by Commission; misdemeanor to receive fees unapproved by Commission, or to solicit employment in adjusting claims; agreement for fee or compensation. —**

(a) Fees for attorneys and physicians and charges of hospitals for services and charges for nursing services, medicines and sick travel under this Article shall be subject to the approval of the Commission; but no physician or hospital or other medical facilities shall be entitled to collect fees from an employer or insurance carrier until he has made the reports required by the Industrial Commission in connection with the case.

(1973, c. 520, s. 4.)

**Editor's Note.** —

The 1973 amendment, effective July 1, 1973, inserted "or hospital or other medical facilities" near the middle of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.



**Chapter 98.****Burnt and Lost Records.**

**§ 98-3. Establishing boundaries and interest, where conveyance and copy lost.** — When any conveyance of real estate, or of any right or interest therein, is lost, the registry thereof being also destroyed, any person claiming under the same may cause the boundaries thereof to be established in the manner provided in the Chapter entitled Boundaries, or he may proceed in the following manner to establish both the boundaries and the nature of his estate:

He shall file his petition before the clerk of the superior court, setting forth the whole substance of the conveyance as truly and specifically as he can, the location and boundaries of his land, whose land it adjoins, the estate claimed therein, and a prayer to have his own boundaries established and the nature of his estate declared.

All persons claiming any estate in the premises, and those whose lands adjoin, shall be notified of the proceedings. Unless they or some of them, by answer on oath, deny the truth of all or some of the matters alleged, the clerk shall order a surveyor to run and designate the boundaries of the petitioner's land, and return his survey, with a plot thereof, to the court. This, when confirmed, shall, with the declaration of the court as to the nature of the estate of the petitioner, be registered and have, as to the persons notified, the effect of a deed for the same, executed by the person possessed of the same next before the petitioner. But in all cases, however, wherein the process of surveying is disputed, and the surveyor is forbidden to proceed by any person interested, the same proceedings shall be had as under the Chapter entitled Boundaries.

If any of the persons notified deny by answer the truth of the conveyance, the clerk shall transfer the issues of fact to the superior court, to be tried as other issues of fact are required by law to be tried; and on the verdict and the pleadings the judge shall adjudge the rights of the parties, and declare the contents of the deed, if any deed is found by the jury, and allow the registration of such judgment and declaration, which shall have the force and effect of a deed. (1865-6, c. 41, s. 3; Code, s. 56; Rev., s. 328; C. S., s. 367; 1973, c. 108, s. 44.)

**Editor's Note.** — The 1973 amendment deleted "at term" following "superior court" in the last paragraph.

**§ 98-6. Establishing contents of will, where original and copy destroyed.** — Any person desirous of establishing the contents of a will destroyed as aforesaid, there being no copy thereof, may file his petition in the office of the clerk of the superior court, setting forth the entire contents thereof, according to the best of his knowledge, information and belief. All persons having an interest under the same shall be made parties, and if the truth of such petition is denied, the issues of fact shall be transferred to the superior court for trial by a jury, whether the will was recorded, and if so recorded, the contents thereof, and the declarations of the judge shall be recorded as the will of the testator. Any devisee or legatee is a competent witness as to the contents of every part of said will, except such as may concern his own interest in the same. (1865-6, c. 41, s. 4; Code, s. 59; Rev., s. 331; S. C., s. 370; 1973, c. 108, s. 45.)

**Editor's Note.** — The 1973 amendment deleted "at term" following "superior court" in the second sentence.

**§ 98-14. Rules for petitions and motions.** — The following rules shall be observed in petitions and motions under this Chapter:

(4) Petitions to establish a record of any court shall be filed in the superior



court of the county where the record is sought to be established. Other petitions may be filed in the office of the clerk.

- (6) Appeals shall be allowed as in all other cases, and where the error alleged shall be a finding by the superior court of a matter of fact, the same may be removed on appeal to the appellate division, and the proper judgments directed to be entered below.

(1973, c. 108, s. 46.)

**Editor's Note.—**

The 1973 amendment deleted "at term" subdivisions changed by the amendment are set following "filed" in the first sentence of out. subdivision (4) and following "superior court" in subdivision (6).

**Chapter 99A.****Civil Remedies for Criminal Actions.**

Sec.

99A-1. Recovery of damages for interference  
with property rights.

**§ 99A-1. Recovery of damages for interference with property rights. —** Notwithstanding any other provisions of the General Statutes of North Carolina, when personal property is wrongfully taken and carried away from the owner or person in lawful possession of such property without his consent and with the intent to permanently deprive him of the use, possession and enjoyment of said property, a right of action arises for recovery of actual and punitive damages from any person who has, or has had, possession of said property knowing the property to be stolen.

An agent having possession, actual or constructive, of property lawfully owned by his principal, shall have a right of action in behalf of his principal for any unlawful interference with that possession by a third person.

In cases of bailments where the possession is in the bailee, a trespass committed during the existence of the bailment shall give a right of action to the bailee for the interference with his special property and a concurrent right of action to the bailor for the interference with his general property.

Any abuse of, or damage done to, the personal property of another or one who is in possession thereof, unlawfully, is a trespass for which damages may be recovered. (1973, c. 809.)



**Chapter 100.****Monuments, Memorials and Parks.****Article 1.****Sec.****Approval of Memorials, Works of Art,  
etc.**

100-4. Governor to accept works of art approved by Art Commission or North Carolina Historical Commission.

**Sec.**

100-1. [Repealed.]

**ARTICLE 1.***Approval of Memorials, Works of Art, etc.*

**§ 100-1:** Repealed by Session Laws 1973, c. 476, s. 48, effective July 1, 1973.

**Cross References.** — As to the Art Commission, see §§ 143B-54 through 143B-57. As to the North Carolina Historical Commission, see §§ 143B-62 through 143B-65.

**§ 100-2. Approval of memorials before acceptance by State; regulation of existing memorials, etc.; “work of art” defined; highway markers.** — No memorial or work of art shall hereafter become the property of the State by purchase, gift or otherwise, unless such memorial or work of art or a design of the same, together with the proposed location of the same, shall first have been submitted to and approved by the Art Commission or the North Carolina Historical Commission as appropriate; nor shall any memorial or work of art, until so submitted and approved, be contracted for, placed in or upon or allowed to extend over any property belonging to the State. No existing memorial or work of art owned by the State shall be removed, relocated, or altered in any way without approval of the Art Commission or the North Carolina Historical Commission as appropriate. The term “work of art” as used in this section shall include any painting, portrait, mural decoration, stained glass, statue, bas-relief, sculpture, monument, tablet, fountain, or other article or structure of a permanent character intended for decoration or commemoration. This section, however, shall not apply to markers set up by the Board of Transportation in cooperation with the Department of Conservation and Development and the Department of Cultural Resources as provided by Chapter 197 of the Public Laws of 1935. (1941, c. 341, s. 2; 1957, c. 65, s. 11; 1973, c. 476, s. 48; c. 507, s. 5.)

**Editor’s Note.** —

The first 1973 amendment, effective July 1, 1973, substituted “the Art Commission or the North Carolina Historical Commission as appropriate” for “said Memorials Commission” in the first sentence and for “the Memorials Commission” in the second sentence and

substituted “Department of Cultural Resources” for “State Department of Archives and History” in the last sentence.

The second 1973 amendment, effective July 1, 1973, substituted “Board of Transportation” for “State Highway Commission” in the last sentence.

**§ 100-3. Approval of design, etc., of certain bridges and other structures.** — No bridge, arch, gate, fence or other structure intended primarily for ornamental or memorial purposes and which is paid for either wholly or in part by appropriation from the State treasury, or which is to be placed on or allowed to extend over any property belonging to the State, shall be begun unless the design and proposed location thereof shall have been submitted to the Art Commission or the North Carolina Historical Commission as appropriate and approved by it. Furthermore, no existing structures of the kind named and described in the preceding part of this section owned by the State, shall be removed or remodeled without submission of the plans therefor to the Art Commission or the North Carolina Historical Commission as appropriate and approval of said plans by the Art Commission or the North Carolina Historical Commission as appropriate. This section shall



not be construed as amending or repealing Chapter 197 of the Public Laws of 1935. (1941, c. 341, s. 3; 1973, c. 476, s. 48.)

**Editor's Note.** — The 1973 amendment, Commission as appropriate" for "said effective July 1, 1973, substituted "the Art Memorials Commission" and for "the Commission or the North Carolina Historical Commission."

**§ 100-4. Governor to accept works of art approved by Art Commission or North Carolina Historical Commission.** — The Governor of North Carolina is hereby authorized to accept, in the name of the State of North Carolina, gifts to the State of works of art as defined in G.S. 100-2. But no work of art shall be so accepted unless and until the same shall have been first submitted to the Art Commission or the North Carolina Historical Commission as appropriate and by it judged worthy of acceptance. (1941, c. 341, s. 4; 1973, c. 476, s. 48.)

**Editor's Note.** — The 1973 amendment, Commission as appropriate" for "said effective July 1, 1973, substituted "the Art Memorials Commission."

**§ 100-5. Duties as to buildings erected or remodeled by State.** — Upon request of the Governor and the Board of Public Buildings and Grounds, the Art Commission or the North Carolina Historical Commission as appropriate shall act in an advisory capacity relative to the artistic character of any building constructed, erected, or remodeled by the State. The term "building" as used in this section shall include structures intended for human occupation, and also bridges, arches, gates, walls, or other permanent structures of any character not intended primarily for purposes of decoration or commemoration. (1941, c. 341, s. 5; 1973, c. 476, s. 48.)

**Editor's Note.** — The 1973 amendment, Commission as appropriate" for "said effective July 1, 1973, substituted "the Art Memorials Commission."

**§ 100-6. Disqualification to vote on work of art, etc.; vacancy.** — Any member of the Art Commission or the North Carolina Historical Commission as appropriate who shall be employed by the State to execute a work of art or structure of any kind requiring submission to the Art Commission or the North Carolina Historical Commission as appropriate, or who shall take part in a competition for such work of art or structure, shall be disqualified from voting thereon, and the temporary vacancy thereby created may be filled by appointment by the Governor. (1941, c. 341, s. 6; 1973, c. 476, s. 48.)

**Editor's Note.** — The 1973 amendment, Commission as appropriate" for "said effective July 1, 1973, substituted "the Art Memorials Commission" and for "the Commission or the North Carolina Historical Commission."

**§ 100-7. Construction.** — The provisions of this Article shall not be construed to include exhibits of an educational nature arranged by museums or art galleries administered by the State or any of its agencies or institutions, or to prevent the placing of portraits of officials, officers, or employees of the State in the offices or buildings of the departments, agencies, or institutions with which such officials, officers, or employees are or have been connected. But upon request of such museums or agencies, the Art Commission or the North Carolina Historical Commission as appropriate shall act in an advisory capacity as to the artistic qualities and appropriations of memorial exhibits or works of art submitted to it. (1941, c. 341, s. 7; 1973, c. 476, s. 48.)

**Editor's Note.** — The 1973 amendment, Commission as appropriate" for "said effective July 1, 1973, substituted "the Art Memorials Commission."



**Chapter 102.****Official Survey Base.****§ 102-1. Name and description.**

**Editor's Note.** — For article on rules, ethics and reform in connection with transferring North Carolina real estate, see 49 N.C.L. Rev. 593 (1971).

**§ 102-13. Recording tax.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, amends this section by substituting "Secretary of Revenue" for "Commissioner of Revenue."



**Chapter 103.****Sundays, Holidays and Special Days.**

**§ 103-3. Execution of process on Sunday.** — It shall be lawful for any sheriff or other lawful officer to execute any summons, capias, or other process on Sunday. (1957, c. 1052; 1973, c. 108, s. 47.)

**Editor's Note.** — The 1973 amendment deleted "constable" following "sheriff."

**§ 103-4. Dates of public holidays.** — (a) The following are declared to be legal public holidays:

- (1) New Year's Day, January 1.
- (2) Robert E. Lee's Birthday, January 19.
- (3) Washington's Birthday, the third Monday in February.
- (4) Anniversary of signing of Halifax Resolves, April 12.
- (5) Confederate Memorial Day, May 10.
- (6) Anniversary of Mecklenburg Declaration of Independence, May 20.
- (7) Memorial Day, the last Monday in May.
- (8) Easter Monday.
- (9) Independence Day, July 4.
- (10) Labor Day, the first Monday in September.
- (11) Columbus Day, the second Monday in October.
- (12) Veterans Day, November 11.
- (13) Tuesday after the first Monday in November in years in which a general election is to be held.
- (14) Thanksgiving Day, the fourth Thursday in November.
- (15) Christmas Day, December 25.

Provided that Easter Monday and Memorial Day, the last Monday in May, shall be a holiday for all State and national banks only.

(b) Whenever any public holiday shall fall upon Sunday, the Monday following shall be a public holiday. (1881, c. 294; Code, s. 3784; 1891, c. 58; 1899, c. 410; 1901, c. 25; Rev., s. 2838; 1907, c. 996; 1909, c. 888; 1919, c. 287; C. S., s. 2959; 1935, c. 212; 1959, c. 1011; 1969, c. 521; 1973, c. 53.)

**Editor's Note.** —

The 1973 amendment changed the date of Veterans Day from the fourth Monday in October to November 11.



**Chapter 104.****United States Lands.****ARTICLE 2.***Inland Waterways.*

**§ 104-17. Construction, maintenance, etc., of bridges over waterway.** — The Board of Transportation or the road governing body of any political subdivision of the State of North Carolina is hereby authorized and directed to construct, maintain and operate in perpetuity, all bridges over the waterway without cost to the United States. (1931, c. 2, s. 7; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5.)

**Editor's Note.** — The 1973 amendment, "Transportation" for "State Highway Commission." effective July 1, 1973, substituted "Board of mission."

**§ 104-23. Maintenance and operation of bridges over waterway.** — The Board of Transportation or the road governing body of any political subdivision of the State of North Carolina is hereby authorized and directed to take over and maintain and operate in perpetuity, by contract with the United States government, if necessary, or otherwise, any bridge or bridges which may be subject to their respective control and which the United States government may construct across said inland waterway. (1927, c. 44, s. 6; 1929, c. 4; c. 7, s. 2; 1957, c. 65, s. 11; 1973, c. 507, s. 5.)

**Editor's Note.** — The 1973 amendment, "Transportation" for "State Highway Commission." effective July 1, 1973, substituted "Board of mission."



**Chapter 104B.****Hurricanes or Other Acts of Nature.****Article 3.****Protection of Sand Dunes  
along Outer Banks.**

Sec.

104B-9. Regulations by board of county commissioners; appropriations and taxes.

**ARTICLE 3.***Protection of Sand Dunes along Outer Banks.***§ 104B-3. Legislative findings.****Editor's Note.** —

For note on the public trust doctrine as

a tool in the preservation of sand dunes, see 49 N.C.L. Rev. 973 (1971).

**§ 104B-4. Damaging or removing without permit; establishment of shore protection line.**

(b) Any board of county commissioners may establish a shore protection line, for the purpose of limiting the territorial application of the provisions of subsection (a) of this section to those dunes within the county which in the judgment of said board serve as protective barriers. In any county which so elects to establish a shore protection line, the provisions of subsection (a) of this section shall apply only with respect to sand dunes (or parts thereof and vegetation growing thereon) located on the ocean side of said shore protection line. In establishing any such shore protection line the board of county commissioners may hold such hearings as it deems desirable, and may consult with the Department of Water Resources and others. (1957, c. 995, s. 1; 1965, c. 237; 1973, c. 803, s. 6.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1973, deleted "whose county includes a portion of the outer banks of this State" following "commissioners" near the beginning of the first sentence of subsection (b).

As subsection (a) was not changed by the amendment, it is not set out.

For article on legal aspects of North Carolina coastal problems, see 49 N.C.L. Rev. 857 (1971). For note on the public trust doctrine as a tool in the preservation of sand dunes, see 49 N.C.L. Rev. 973 (1971).

**§ 104B-6. Appointment or designation of shoreline protection officers; compensation; joint shoreline protection department.** — (a) Any board of county commissioners may appoint and empower with police authority one or more shoreline protection officers, to serve at the will of the board. In the alternative the board of county commissioners may designate to perform the powers, duties and functions of a shoreline protection officer:

- (1) A shoreline protection officer of any other county or counties, with the approval of the board of county commissioners of such other county or counties;
- (2) A municipal employee or official of any municipality or municipalities within the county, with the approval of the municipal governing body; or
- (3) Any employee or official of the county.

In the absence of such appointment or designation, the board of county commissioners shall itself have the powers, duties and functions of the shoreline protection officer as specified herein.

(b) The board of county commissioners may pay a shoreline protection officer a fixed salary or compensation in such other measure as it deems



appropriate. The board of county commissioners may also accept and disburse any funds which may be made available by the State or federal governments as contributions towards the salary or expenses of a shoreline protection officer.

(1973, c. 803, ss. 7, 8.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1973, deleted "whose county includes a portion of the area subject to this Article" following "commissioners" in the first sentence of subsection (a) and deleted the

former third sentence of subsection (b), which related to appropriations and the levy of taxes.

As subsection (c) was not changed by the amendment, it is not set out.

### **§ 104B-8. Inspection and enforcement powers of shoreline protection officers.**

(b) A shoreline protection officer shall have within the county or counties where he holds his appointment the powers of peace officers vested in the sheriffs, for the purpose of enforcing the provisions of this Article and the rules and regulations adopted pursuant to this Article, and for the purpose of initiating prosecutions under this Article. (1965, c. 237; 1973, c. 108, s. 48.)

**Editor's Note.** — The 1973 amendment deleted "and constables" following "sheriffs" in subsection (b).

As subsection (a) was not changed by the amendment, it is not set out.

### **§ 104B-9. Regulations by board of county commissioners; appropriations and taxes.**

(b) Each county is authorized to make appropriations for the purposes of this Article and to fund them by levy of property taxes pursuant to G.S. 153-65 and by the allocation of other revenues whose use is not otherwise restricted by law. (1965, c. 237; 1973, c. 803, s. 9.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1973, rewrote subsection (b).

As subsection (a) was not changed by the amendment, it is not set out.

**§ 104B-10. Appeal from decision of shoreline protection officer; review of decision of county commissioners.** — (a) In the event that a shoreline protection officer denies a permit under this Article, the applicant may within 30 days file an appeal with the board of county commissioners. In the event that a shoreline protection officer grants a permit under this Article, any property owner whose property may be damaged by action taken under the permit or any interested State agency may within 30 days file an appeal with the board of county commissioners. On receipt of any appeal, the board of county commissioners shall be entitled to consider the matter ab initio and may take any action which the shoreline protection officer could have taken under this Article.

(1973, c. 548.)

**Editor's Note.** —

The 1973 amendment deleted the former third sentence of subsection (a), which duplicated the second sentence.

As subsection (b) was not changed by the amendment, it is not set out.

### **§ 104B-12. Violations of Article or regulations.**

**Editor's Note.** — For note on the public trust doctrine as a tool in the preservation of sand dunes, see 49 N.C.L. Rev. 973 (1971).



**Chapter 104C.****Atomic Energy, Radioactivity and Ionizing Radiation.**

Sec.

104C-4. Authority and duty of Commission for Health Services; rules and regulations; licenses; impounding source of radiation; registration,

educational and protection programs; right of entry; inspection and advisory service.

**§ 104C-4. Authority and duty of Commission for Health Services; rules and regulations; licenses; impounding source of radiation; registration, educational and protection programs; right of entry; inspection and advisory service.** — The Commission for Health Services is specifically authorized to adopt reasonable rules and regulations relating to the use, storage, transportation and disposal of radiation, radiation machines, and radioactive materials so as to provide protection against hazard from radioactivity and ionizing radiation, and so as to insure safety to all persons at, or in the vicinity of, the place of use, storage, transportation or disposal thereof. To this end, the Commission for Health Services is authorized to require registration of all persons, firms, corporations, associations or institutions who possess or use such machines or materials, such registration program to be of such scope and in such form as the Commission deems necessary to provide an adequate protection and supervision program.

As used in this Chapter, the word "person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this State, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States Atomic Energy Commission, or any successor thereto, and other than federal government agencies licensed by the United States Atomic Energy Commission, or any successor thereto.

The Commission for Health Services shall provide by rule or regulation for general or specific licensing of by-product, source, special nuclear materials, or devices or equipment utilizing such materials. Such rule or regulation shall provide for amendment, suspension or revocation of licenses.

Said Commission is authorized to adopt reasonable rules and regulations necessary to carry out an effective licensing program designed to protect the public health or safety in this field. Provision shall be made for applications for licenses, conditions for issuance of licenses, and suspension and revocation of licenses. Said Commission is authorized to exempt certain sources of ionizing radiation or kinds of uses or users from the licensing or registration requirements set forth in this section when the said Commission makes a finding that the exemption of such sources of ionizing radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public. Rules and regulations promulgated pursuant to this Chapter may provide for recognition of other state or federal licenses as the said Commission may deem desirable, subject to such registration requirements as the said Commission may prescribe.

The Commission shall have authority to impose a right to inspect premises as a condition of issuance of a license. Neither local boards of health nor counties nor cities shall adopt regulations inconsistent with those adopted by the Commission for Health Services pursuant to this Chapter.

Authorized representatives of the Department of Human Resources shall have the authority in the event of an emergency to impound or order the impounding of sources of ionizing radiation, in the possession of any person who is not equipped to observe or fails to observe the provisions of this Chapter or any rules or regulations issued thereunder.



Insofar as practicable, all the provisions of Chapter 150 of the General Statutes shall be applicable with respect to licenses and the licensing procedure herein provided for.

Authorized representatives of the Department of Human Resources shall have authority to enter any premises, other than a private dwelling, where any activities or conditions therein or thereon are the subject of regulations adopted pursuant to this section, for the purpose of determining whether applicable laws and regulations are being properly observed.

The Department is authorized but not required to provide an inspection service and an advisory service, to make surveys, to sponsor educational programs on approved radiation protection practices, and to do any and all other acts deemed desirable in providing an effective protection program. In the performance of these duties, to the end that an environment favorable to the development of the peaceful uses of nuclear energy will be maintained, consistent with public health and safety, the Commission for Health Services shall not impose standards any more restrictive than the radiation standards established by the Atomic Energy Act of 1954 and amendments, or successor acts, and regulations issued thereunder; in those situations where no such standards are imposed under said Atomic Energy Act, said Commission shall be authorized to impose reasonable standards.

No rules or regulations shall be adopted by the Commission for Health Services pursuant to this section except with the approval of the Governor.

Recognizing the rapid pace of discovery in the atomic field, the Commission for Health Services or Department shall keep itself informed regarding the regulatory activities of other states and of the government of the United States and shall endeavor to maintain maximum coordination pending the establishment from time to time of clear lines of regulatory authority between the State and the federal governments. All regulations adopted shall be subject to the provisions of G.S. 130-9(a) and the provisions of Article 18 of Chapter 143 of the General Statutes. Any violation of any rule or regulation adopted pursuant to this section is hereby declared to be a misdemeanor.

Whenever the Commission for Health Services or Department has reasonable cause to believe that any person, firm, corporation, association or institution is violating or threatening to violate any regulation adopted pursuant to this section, the Commission may enter an order requiring such violator to desist or refrain from such violation; and an action may be brought in the name of the Commission on the relation of the State of North Carolina to enjoin such violator from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper. (1959, c. 481, s. 4; 1963, c. 1211, s. 1; 1973, c. 476, s. 128.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1973, substituted "Department of Human Resources" for "State Board of Health" in the sixth and eighth paragraphs, "Department" for "Board" in the first sentence of the ninth paragraph, "Commission for Health Services or Department" for "State Board of Health" in the first sentence of the

eleventh paragraph and near the beginning of the first sentence of the twelfth paragraph and "Commission for Health Services" for "State Board of Health" and "Commission" for "Board" throughout the rest of the section.

Section 130-9(a) was repealed by Session Laws 1973, c. 476, s. 128, effective July 1, 1973.

#### **§ 104C-5. Governor may enter into agreements with federal government; effect on federal licenses.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 128, effective July 1, 1973, amends this section by substituting "Department of Human

Resources" for "State Board of Health" in subsection (b).



## Chapter 105.

### Taxation.

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105-454. [Repealed.]

105-457. [Repealed.]

**SUBCHAPTER I. LEVY OF TAXES.****ARTICLE 1.****Schedule A. Inheritance Tax.****§ 105-2. General provisions.****Liberal Construction. —**

A law imposing an inheritance tax is to be liberally construed to effectuate the intention of the legislature, and all property fairly and reasonably coming within the provision of such law may be taxed. *Korschun v. Clayton*, 13 N.C. App. 273, 185 S.E.2d 417 (1971).

**"Transfer" Construed. —**

A gift made under the provisions of the Uniform Gifts to Minors Act is a "transfer" within the meaning of this section. *Korschun v. Clayton*, 13 N.C. App. 273, 185 S.E.2d 417 (1971).

**Where the donor makes the gift to himself as custodian under the Uniform Gifts to**

**Minors Act** and dies prior to the donee's reaching age 21, the important determinative factors requiring inclusion of the value of a gift in decedent donor's taxable estate are the rights reserved to the donor. Where these rights existed at the time of the transfer, and continued to be possessed by donor until the time of his death, it is of no consequence whether the rights were ever exercised. *Korschun v. Clayton*, 13 N.C. App. 273, 185 S.E.2d 417 (1971).

The value of property which is the subject of a gift to the donor's unemancipated minor child under the Uniform Gifts to Minors Act is



includable in the gross estate of the donor for State inheritance tax purposes where the donor appoints himself as custodian of the property and dies while serving in that capacity before the minor donee attains his majority. *Korschun v. Clayton*, 13 N.C. App. 273, 185 S.E.2d 417 (1971).

**If a parent donor wishes to avoid inheritance tax on a transfer under the Uniform Gifts to Minors Act** he need only choose as custodian one of those persons or corporations allowed by the act other than himself. *Korschun v. Clayton*, 13 N.C. App. 273, 185 S.E.2d 417 (1971).

### § 105-3. Property exempt.

#### Editor's Note. —

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.

### § 105-4. Rate of tax—Class A.

(b) The persons mentioned in this class shall be entitled to the following exemptions: Surviving spouses, ten thousand dollars (\$10,000); each child under 21 years of age and each child 21 years of age, or older, who is mentally incapacitated, or by reason of physical disability is unable to support himself, is unmarried and residing with the decedent in his home at the time of such decedent's death, or who is then institutionalized on account of such mental incapacity or physical disability five thousand dollars (\$5,000); all other beneficiaries mentioned in this section, two thousand dollars (\$2,000) each: Provided that where one or more children predecease their parent (the parent in such instance being the person who died possessed of the property referred to in subsection (a) above), the total exemption which would otherwise have been applicable if such child or children had survived their parent shall be divided per capita among the surviving children of the predeceased child or children; provided further that a grandchild or grandchildren shall be allowed the single exemption or so much thereof as is not applied to the share of the parent, or a pro rata part thereof, when the parent is living and does not share in the estate to the full extent of said exemption. The same rule shall apply to the taking under a will, and also in the case of a specific legacy or devise. When a person shall die, testate or intestate, leaving a spouse and child or children, and such surviving spouse receives, whether under a will or otherwise than by will, all or substantially all the decedent's property, such surviving spouse shall be allowed at his or her option an additional exemption of five thousand dollars (\$5,000) for each child under 21 years of age, and each child 21 years of age, or older, who is mentally incapacitated, or by reason of physical disability is unable to support himself, is unmarried and residing with the decedent in his or her home at the time of such decedent's death, or who is then institutionalized by reason of such mental incapacity or physical disability; provided that whenever such spouse elects to claim such additional exemption, the child or children shall not be allowed the exemption of five thousand dollars (\$5,000) for each child hereinabove provided for. (1939, c. 158, s. 3; 1957, c. 1340, s. 1; 1965, c. 583; 1967, c. 1222; 1971, c. 651; 1973, c. 49, s. 1.)

**Editor's Note.** — The 1973 amendment substituted "Surviving spouses" for "Widows" near the beginning of subsection (b).

As subsection (a) was not changed by the amendment, it is not set out.

Session Laws 1973, c. 49, s. 2, provides: "This act shall become effective July 1, 1973, and shall

apply to estates of all persons dying on or after that date."

#### **Great-Grandchildren Are Entitled to Share in the Exemption of Their Parents, Pro Rata.**

— See opinion of Attorney General to Mr. B.E. Rogers, N.C. Department of Revenue, 41 N.C.A.G. 562 (1971).

**§ 105-8. Treatment allowed for gift tax paid.** — In case a tax has been imposed under Schedule G of the Revenue Act of 1937, or under subsequent acts, upon any gift, and thereafter upon the death of the donor, the amount thereof is required by any provision of this Article to be included in the gross estate of the decedent, then there shall be credited against and applied in reduction of the tax, which would otherwise be chargeable against the beneficiaries of the estate under the provisions of this Article, an amount equal



to the tax paid with respect to such gift. Any additional tax found to be due because of the inclusion of gifts in the gross estate of the decedent, as provided herein, shall be a tax against the estate and shall be paid out of the same funds as any other tax against the estate. (1939, c. 158, s. 6<sup>1</sup>/<sub>2</sub>; 1967, c. 1220; 1973, c. 51, s. 1.)

**Editor's Note.**—

The 1973 amendment rewrote the portion of the first sentence that follows "gross estate of the decedent," substituted "gifts" for "such gift" in the second sentence and deleted the former third sentence, which provided for a refund to the estate of any excess of the gift tax

over the tax found to be due because of the inclusion of the gift in the gross estate.

Session Laws 1973, c. 51, s. 2, provides: "This act shall become effective upon its ratification and it shall apply to estates of all persons dying on or after that date." The act was ratified March 5, 1973.

**§ 105-9. Deductions.**

**Gift Taxes Paid by an Executor and Imposed upon the Transfer of Assets Found to Be Includable in a Decedent's Estate Are Not Deductions for Inheritance**

**Tax Purposes.** — See opinion of Attorney General to Mr. B.E. Rogers, Inheritance & Gift Tax Division, Department of Revenue, 42 N.C.A.G. 32 (1972).

**§ 105-10. Where no personal representative appointed, clerk of superior court to certify same to Secretary of Revenue.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the

title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-11. Tax to be paid on shares of stock before transferred, and penalty for violation.**

**Editor's Note.** —

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.

**§ 105-11.1. Transfer of shares of stock or bonds of nonresident decedent.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

**§ 105-12. Secretary of Revenue to furnish blanks and require reports of value of shares of stock.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

**§ 105-16. Interest and penalty.**

**Editor's Note.** —

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.

**§ 105-17. Collection to be made by sheriff if not paid in one year.**

**Editor's Note.** —

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.

**§ 105-19. Transfer for life, etc., tax to be retained, etc., upon the whole amount.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

**§ 105-20. Legacy charged upon real estate, heir or devisee to deduct and pay to executor, etc.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.



### § 105-21. Computation of tax on resident and nonresident decedents.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-22. Duties of the clerks of the superior court.** — (a) It shall be the duty of the clerk of the superior court to obtain from any executor or administrator, at the time of the qualification of such executor or administrator, the address of the personal representative qualifying, the names and addresses of the heirs-at-law, legatees, distributees, devisees, etc., as far as practical; the approximate value and character of the property or estate, both real and personal; the relationship of the heirs-at-law, legatees, devisees, etc., to the decedents, and forward the same to the Secretary of Revenue on or before the tenth day of each month; and the Secretary of Revenue shall furnish the several clerks blanks upon which to make said report, but the failure to so furnish blanks shall not relieve the clerk from the duty herein imposed. The clerk shall make no report of a death where the estate of a decedent is less than two thousand dollars (\$2,000) in value, when the beneficiary is husband or wife or child or grandchild of the decedent. Any clerk of the superior court who shall fail, neglect, or refuse to file such monthly reports as required by this section shall be liable to a penalty in the sum of one hundred dollars (\$100.00) to be recovered by the Secretary of Revenue in an action to be brought by the Secretary of Revenue.

(b) It shall also be the duty of the clerk of the superior court of each of the several counties of the State to enter in a book, prepared and furnished by the Secretary of Revenue, to be kept for that purpose, and which shall be a public record, a condensed copy of the settlement of inheritance taxes of each estate, together with a copy of the receipt showing payment, or a certificate showing no tax due, as shall be certified to him by the Secretary of Revenue. (1939, c. 158, s. 20; 1943, c. 400, s. 1; 1953, c. 1302, s. 1; 1973, c. 108, s. 49; c. 476, s. 193.)

**Editor's Note.** — The first 1973 amendment deleted former subsection (c), which related to clerk's fees.

The second 1973 amendment, effective July 1, 1973, changed the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-23. Information by administrator and executor.

**Editor's Note.** —

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.

**§ 105-24. Access to safe deposits of a decedent; withdrawal of bank deposit, etc., payable to either husband or wife or the survivor.** — No safe deposit company, trust company, corporation, bank, or other institution, person or persons having in possession or control or custody, in whole or in part, securities, deposits, assets, or property belonging to or standing in the name of a decedent, or belonging to or standing in the joint names of a decedent and one or more persons, shall deliver or transfer the same to any person whatsoever, whether in a representative capacity or not, or to the survivor or to the survivors when held in the joint names of a decedent and one or more persons, without retaining a sufficient portion or amount thereof to pay taxes or interest which would thereafter be assessed thereon under this Article; but the Secretary of Revenue may consent in writing to such delivery or transfer, and such consent shall relieve said safe deposit company, trust company, corporation, bank or other institution, person or persons from the obligation herein imposed. Provided: The clerk of superior court of the resident county of a decedent may authorize in writing any bank, safe deposit company, trust company, or any other institution to transfer to the properly qualified representative of the estate any funds on deposit in the name of the decedent or the decedent and one or more persons when the total amount of



such deposit or deposits is three hundred dollars (\$300.00) or less, and when such deposit or deposits compose the total cash assets of the estate. Such authorization shall have the same force and effect as when issued in writing by the Secretary of Revenue. Every safe deposit company, trust company, corporation, bank or other institution, person, or persons engaged in the business of renting lock boxes for the safekeeping of valuable papers and personal effects, or having in their possession or supervision in such lock boxes such valuable papers or personal effects shall, upon the death of any person using or having access to such lock box, as a condition precedent to the opening of such lock box by the executor, administrator, personal representative, lessee or cotenant of such deceased person, require the presence of the clerk of the superior court of the county in which such lock box is located. It shall be the duty of the clerk of the superior court, or his representative, in the presence of an officer or representative of the safe deposit company, trust company, corporation, bank, or other institution, person or persons, to make an inventory of the contents of any such lock box and to furnish a copy of such inventory to the Secretary of Revenue, to the executor, administrator, personal representative, or cotenant of the decedent, and a copy to the safe deposit company, trust company, corporation, bank, or other institution, person, or persons having possession of such lock box; provided, that for lock boxes to which decedent merely had access the inventory shall include only assets in which the decedent has or had an interest. Notwithstanding any of the provisions of this section any life insurance company may pay the proceeds of any policy upon the life of a decedent to the person entitled thereto as soon as it shall have mailed to the Secretary of Revenue a notice, in such form as the Secretary of Revenue may prescribe, setting forth the fact of such payment; but if such notice be not mailed, all of the provisions of this section shall apply.

Notwithstanding any of the provisions of this section, in any case where a bank deposit has been heretofore made or is hereafter made, or where building and loan stock has heretofore been issued or is hereafter issued, in the names of a husband and wife and payable to either or the survivor of them, such bank or building and loan association may, upon the death of either of such persons, upon mailing notice to the Secretary of Revenue in such form as may be prescribed by the Secretary stating the facts with respect to such deposits or stock, allow the survivor to withdraw as much as eighty percent (80%) of such deposit or stock, and the balance thereof shall be retained by the bank or building and loan association to cover any taxes that may thereafter be assessed against such deposit or stock under this Article. When such taxes as may be due on such deposit or stock are paid, or when it is ascertained that there is no liability of such deposit or stock for taxes under this Article, the Secretary of Revenue shall furnish the bank or building and loan association his written consent for the payment of the retained percentage to the survivor; and the Secretary of Revenue may furnish such written consent to the bank or building and loan association upon the qualification of a personal representative of the deceased. No bank or building and loan association shall be liable for any failure to withhold the specified percentage of such deposit or stock if the same was paid out prior to actual notice of the death of the deceased.

Failure to comply with the provisions of this section shall render such safe deposit company, trust company, corporation, bank or other institution, person or persons liable for the amount of the taxes and interest due under this Article on the succession to such securities, deposits, assets, or property, but in any action brought under this provision it shall be a sufficient defense that the delivery or transfer of securities, deposits, assets, or property was made in good faith without knowledge of the death of the decedent and without



knowledge of circumstances sufficient to place the defendant on inquiry. (1939, c. 158, s. 21<sup>1</sup>/<sub>2</sub>; 1943, c. 400, s. 1; 1959, c. 1192; 1973, c. 108, s. 50; c. 476, s. 193.)

**Editor's Note.**—The first 1973 amendment deleted the former sixth and seventh sentences of the first paragraph, relating to clerk's fees.

The second 1973 amendment, effective July 1, 1973, changed the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-25. Supervision by Secretary of Revenue.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-26. Proportion of tax to be repaid upon certain conditions.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-27. Secretary of Revenue may order executor, etc., to file account, etc.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-28. Failure of administrator, executor, or trustee to pay tax.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-29. Uniform valuation.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-31. Additional remedies for enforcement of tax.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

## ARTICLE 2.

### *Schedule B. License Taxes.*

### § 105-33. Taxes under this Article.

**Cross Reference.** — As to power of county to levy license taxes as authorized by this Article, see § 153A-152.

**Editor's Note.** —

Session Laws 1973, c. 476, s. 193, effective

July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-34. Amusement parks.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-35. Amusements — traveling theatrical companies, etc.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-36. Amusements—manufacturing, selling, leasing, or distributing moving picture films or checking attendance at moving picture shows.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.



### § 105-36.1. Amusements—outdoor theatres.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-37. Amusements—moving pictures or vaudeville shows—admission.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-37.1. Amusements—forms of amusement not otherwise taxed.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-38. Amusements—circuses, menageries, wild west, dog and/or pony shows, etc.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-39. Amusements—carnival companies, etc.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-41. Attorneys-at-law and other professionals.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

#### **Exemption under Subsection (b) Does Not Revive the Right of a County to Levy a Tax.**

— See opinion of Attorney General to Mr. John R. Parker, 42 N.C.A.G. 286 (1973).

**Faith healers are "persons practicing any professional art of healing for fee or reward"** within the purview of this section. Opinion of Attorney General to Mr. John R. Parker, 42 N.C.A.G. 286 (1973).

### § 105-41.1. Bondsmen.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-42. Private protective services.** — (a) Every person, whether acting as an individual, as a member of a partnership, or as an officer and/or agent of a corporation, who is engaged in a business included in the definition of private protective services, shall apply for and obtain from the Secretary of Revenue a statewide license for the privilege of engaging in such business; and shall pay for such license a tax of twenty-five dollars (\$25.00). Provided, any person regularly employed by the United States government, any state or political subdivision of any state, shall not be required to pay the license herein provided for. This shall not apply, however, to guards employed by guard and patrol licensees, nor to employees of retail shopping services.

(b) No privilege tax license shall be issued pursuant to this section until the applicant exhibits to the Secretary of Revenue an original or certified copy of the license required by G.S. 49.2 [G.S. 66-49.1] which is current and has been issued to the applicant.



(c) No county, city, or town shall levy any license tax on the business taxed under this section. (1939, c. 158, s. 110; 1971, c. 814, s. 14; 1973, c. 476, s. 193; c. 794.)

**Editor's Note. —**

The first 1973 amendment, effective July 1, 1973, changed the title of the Commissioner of Revenue to Secretary of Revenue.

The second 1973 amendment, effective July 1, 1973, rewrote this section.

**§ 105-43. Real estate auction sales**

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

**§ 105-44. Coal and coke dealers.**

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

**§ 105-45. Collecting agencies.**

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

**§ 105-46. Undertakers and retail dealers in coffins.**

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

**§ 105-47. Dealers in horses and/or mules.**

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

**§ 105-48. Phrenologists.**

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

**§ 105-49. Bicycle dealers.**

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

**§ 105-51. Cash registers, adding machines, typewriters, refrigerating machines, washing machines, etc.**

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

**§ 105-52. Sewing machines.**

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

**§ 105-53. Peddlers.**

**Editor's Note. —**

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.



### § 105-54. Contractors and construction companies.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-55. Installing elevators and automatic sprinkler systems.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-56. Repairing and servicing elevators and automatic sprinkler systems.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-57. Mercantile agencies.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-58. Gypsies and fortunetellers.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-60. Day-care facilities.

**Private Day-Care Facilities Receiving Largely Public Moneys Must Secure Privilege License; Facilities Operated by a Public Agency Need Not Secure a Privilege**

**License.** — See opinion of Attorney General to Mr. Clifton M. Craig, Department of Social Services, 41 N.C.A.G. 887 (1972).

### § 105-61. Hotels, motels, tourist courts and tourist homes.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

#### § 105-61.1. Campgrounds, trailer parks, tent camping areas.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-62. Restaurants.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-64. Billiard and pool tables.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

#### § 105-64.1. Bowling alleys.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-65. Music machines.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.



### § 105-65.1. Merchandising dispensers and weighing machines.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-66. Bagatelle tables, merry-go-rounds, etc.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-67. Security dealers.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-68. Cotton buyers and sellers on commission.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-69. Manufacturers, producers, bottlers and distributors of soft drinks.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-70. Packinghouses.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-71. Newspaper contests.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-72. Persons, firms, or corporations selling certain oils.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**A City May Levy a License Tax Upon a Service Station Which Sells Gasoline but Only if (1) All Persons, Firms or Corporations Engaged in the Business of Selling Illuminating Oil or Greases or Benzine, Naphtha, Gasoline or Other Products of Like Kind Are Similarly Taxed and (2) Each Taxpayer Maintains in the City an Agency, Station or Warehouse for the Distribution or Sale of Such Products.** — See opinion of Attorney General to Mr. Nelson W. Taylor, 42 N.C.A.G. 18 (1972).

### § 105-74. Pressing clubs, dry cleaning plants, and hat blockers.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-75. Barbershops.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-76. Shoeshine parlors.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-77. Tobacco warehouses.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.



§ 105-78. News dealers on trains.

Editor's Note. — Session Laws 1973, c. 476,  
s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of  
Revenue.

§ 105-79. Soda fountains, soft drink stands.

Editor's Note. — Session Laws 1973, c. 476,  
s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of  
Revenue.

§ 105-80. Dealers in pistols, etc.

Editor's Note. — Session Laws 1973, c. 476,  
s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of  
Revenue.

§ 105-82. Pianos, organs, victrolas, records, radios, accessories.

Editor's Note. — Session Laws 1973, c. 476,  
s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of  
Revenue.

§ 105-83. Installment paper dealers.

Editor's Note. — Session Laws 1973, c. 476,  
s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of  
Revenue.

§ 105-84. Tobacco and cigarette retailers and jobbers.

Editor's Note. — Session Laws 1973, c. 476,  
s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of  
Revenue.

§ 105-85. Laundries.

Editor's Note. — Session Laws 1973, c. 476,  
s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of  
Revenue.

§ 105-86. Outdoor advertising. — (a) Every person, firm, or corporation who or which is engaged in the business of outdoor advertising by placing, erecting or maintaining one or more outdoor advertising signs or structures of any nature by means of signboards, poster boards, or painted bulletins, or other painted matter, or any other outdoor advertising devices, erected upon the grounds, walls or roofs of buildings, shall apply for and obtain from the Secretary of Revenue a State license for the privilege of engaging in such business in this State, and shall pay annually for said license as follows:

For posting or erecting 20 or more signs or panels .....	\$25.00
For posting or erecting less than 20 signs or panels, for each sign or panel .....	1.00

And in addition thereto the following license tax for each city, town or other place in which such signboards, poster boards, painted bulletins and other painted or printed matter or other outdoor advertising devices are maintained in cities and towns of:

Less than 1,000 population .....	\$ 5.00
1,000 to 1,999 population .....	10.00
2,000 to 2,999 population .....	15.00
3,000 to 3,999 population .....	20.00
4,000 to 4,999 population .....	25.00
5,000 to 7,499 population .....	30.00
7,500 to 14,999 population .....	50.00
15,000 to 24,999 population .....	100.00
25,000 to 49,999 population .....	150.00
50,000 population and over .....	200.00
In each county outside of cities and towns .....	25.00

Provided, that the tax levied in this section shall not apply to regularly



licensed motion picture theatres taxed under G.S. 105-37 upon any advertising signs, structures, boards, bulletins, or other devices erected by or placed by the theatre upon property which the theatre has secured by permission of the owner.

Every person, firm, or corporation who or which places, erects or maintains one or more outdoor advertising signs, structures, boards, bulletins or devices as specified in this section shall be deemed to be engaged in the business of outdoor advertising, but when the applicant intends to advertise his own business exclusively by the erection or placement of such outdoor advertising signs, structures, boards, bulletins or devices as specified in this section, he may be licensed to do so upon the payment annually of one dollar (\$1.00) for each sign up to 1,000 in number, and for 1,000 or more, the sum of one thousand dollars (\$1,000) for the privilege in lieu of all other taxation as provided in this section, except such further taxation as may be imposed upon him by cities or towns, acting under the power to levy not in excess of one half of that specified in paragraph two of subsection (a) of this section.

(b) Every person, firm, or corporation shall show in its application for the State license herein provided for the name of each incorporated city or town within which, and the county within which, it is maintaining or proposes to maintain said signboards, poster boards, painted bulletins or other painted or printed signs or other outdoor advertising devices within the State of North Carolina. No person, firm, or corporation, licensed under the provisions of this section, shall erect or maintain any outdoor advertising structure, device or display until a permit for the erection of such structure, device or display shall have been obtained from the Secretary of Revenue. Application for such permit shall be in writing, signed by the applicant or his duly authorized agent, upon blanks furnished by the Secretary of Revenue, in such form and requiring such information as said Secretary of Revenue may prescribe. Each application shall have attached thereto the written consent of the owners or duly authorized agent of the property on which structures, device or display is to be erected or maintained, and shall state thereon the beginning and ending dates of such written permission: Provided, the subsection shall not apply to persons, firms, or corporations who or which advertise their or its own business exclusively, and who or which have been licensed therefor pursuant to subsection (a) of this section.

(d) It shall be unlawful for any person, firm, or corporation to paint, print, place, post, tack or affix any advertising matter within the limits of the right-of-way of public highways of the State without the permission of the Board of Transportation, or upon the streets of the incorporated towns of the State without permission of the governing authorities, and if and when signs of any nature are placed without permission within the highways of the State, or within the streets of incorporated towns, it shall be the duty of the Board of Transportation or any other administrative body or other governing authorities of the cities and towns of said State to remove said advertising matters therefrom.

(f) A license shall not be granted any person, firm, or corporation having his or its principal place of business outside the State for the display of any advertising of any nature whatsoever, designed or intended for the display of advertising matter, until such person, firm, or corporation shall have furnished and filed with the Secretary of Revenue a surety bond to the State, approved by him, in such sum as he may fix, not exceeding five thousand dollars (\$5,000), conditioned that such licensee shall fulfill all requirements of law, and lawful regulations and orders of said Secretary of Revenue, relative to the display of advertisements. Such surety bond shall remain in full force and effect as long as any obligations of such licensee to the State shall remain unsatisfied.

(g) No advertising, or other signs specified in this section, shall be erected in the highway right-of-way so as to obstruct the vision or otherwise to increase



the hazards, and all signs upon the highways shall be placed in a manner to be approved by the said Board of Transportation.

(h) Any person, firm, or corporation who or which shall refuse to or neglect to comply with the terms and provisions of this section, and who shall fail to pay the tax herein provided for within 30 days after the same shall become due, or who shall paint, print, place, post, tack, affix or display any advertising sign or other matter contrary to the provisions of this section, the Board of Transportation of the State of North Carolina or other governing body having jurisdiction over the roads and highways of the State, and the governing authorities of cities and towns and its agents and employees, and the board of county commissioners of the various counties of said State and its employees are directed to forthwith seize and remove or cause to be removed all advertisements, signs or other matter displayed contrary to the provisions of this section.

For the purpose of more effectually carrying into effect the provisions of this section, the Secretary of Revenue is authorized and directed to prepare and furnish to the Board of Transportation or other governing body having jurisdiction over the roads and highways of the State a sufficient number of permits to be executed by the owner, lessee or tenant occupying the lands adjacent to the highways of the State, upon which advertisements, signs or other matter displayed contrary to the provisions of this section, in words as follows:

"I, (we), (owner), (lessee), (tenant), authorize and direct the Board of Transportation of the State of North Carolina to remove from my lands the following signs and advertising matter placed upon my lands unlawfully or without my permission: .....

"This ..... day of ....., 19....."

And the said Board of Transportation or other governing body having jurisdiction over the roads and highways of the State shall forthwith proceed, through its agents, servants and employees, wherever and whenever in its opinion it is necessary to secure the consent to the removal of said signs or other advertising matter from the lands of the owner, lessee or tenant, to secure said consent and to immediately remove said signs or other advertising matter from the lands adjacent to the highways of the State of North Carolina as herein directed.

(1973, c. 476, s. 193; c. 507, s. 5.)

**Editor's Note.** — The first 1973 amendment, effective July 1, 1973, changed the title of the Commissioner of Revenue to Secretary of Revenue.

The second 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for

"State Highway Commission" in subsection (d) and for "Highway Commission" in subsections (d), (g) and (h).

Only the subsections changed by the amendments are set out.

## § 105-87. Motor advertisers.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

## § 105-88. Loan agencies or brokers.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

## § 105-89. Automobiles, wholesale supply dealers and service stations.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.



**§ 105-89.1. Motorcycle dealers.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-90. Emigrant and employment agents.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-90.1. Emigrant and employment agents—hiring or soliciting labor for employment in state having similar law.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-91. Plumbers, heating contractors, and electricians.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-92. Trading stamps.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-93. Process tax.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-96. Marble yards.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-97. Manufacturers of ice cream.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-98. Branch or chain stores.** — Every person, firm, or corporation engaged in the business of operating or maintaining in this State, under the same general management, supervision, or ownership, two or more stores, or mercantile establishments where goods, wares, and/or merchandise are sold or offered for sale, or from which such goods, wares, and/or merchandise are sold and/or distributed at wholesale or retail, or who or which controls by lease, either as lessor or lessee, or by contract, the manner in which any such store or stores are operated, or the kinds, character, or brands of merchandise which are sold therein, shall be deemed a branch or chain store operator, and shall apply for and obtain from the Secretary of Revenue a State license for the privilege of engaging in such business of a branch or chain store operator, and shall pay for such license a tax according to the following schedule:

On each and every such store operated in this State in excess of one, sixty-five dollars (\$65.00).

The term "chain store" as used in this section shall include stores operated under separate charters of incorporation, if there is common ownership of a majority of stock in such separately incorporated companies, and/or if there is similarity of name of such separately incorporated companies, and/or if such separately incorporated companies have the benefit in whole or in part of



group purchase of merchandise, or of common management. And in like manner the term "chain store" shall apply to any group of stores where a majority interest is owned by an individual or partnership.

The term "chain store" as used in this section shall not include retail outlets owned and operated by wholesale bakeries at locations separate and apart from the wholesale bakery under the same ownership, management and control of the wholesale bakery and used solely as outlets for the disposition at retail of surplus or broken products of the wholesale bakery operating same and which do not deal in any other products and where the operation of such stores is only incidental to the operation of the wholesale bakery, such stores being commonly known as "bakery thrift stores."

Counties shall not levy a license tax on the business taxed under this section. Cities and towns may levy a license tax not in excess of fifty dollars (\$50.00) for each chain store located in such city or town, except as to those which are so denominated merely because the manner in which they are operated, or the kinds, character or brands of merchandise sold therein are controlled by lease or by contract. For the purpose of ascertaining the particular unit in each chain of stores not subject to taxation by the State under this section, and therefore not liable for city license tax, the particular store in which the principal office of the chain is located in this State shall be designated as the unit in the chain not subject to this tax.

In enforcing the provisions of this section, the Secretary of Revenue may prorate the total amount of tax for a chain to the several units and the amount so prorated may be recovered from each unit in the chain in the same way as other taxes levied in this Article.

This section shall not apply to retail or wholesale dealers in motor vehicles and automotive equipment and supply dealers at wholesale who are not liable for tax hereunder on account of the sale of other merchandise, nor shall it apply to retail stores of nonprofit organizations engaged exclusively in the sale of merchandise processed by handicapped persons employed by any nonprofit organization in the State. This section shall not apply to manufacturers, retail or wholesale dealers solely by reason of the sales of fertilizers, farm chemicals, soil preparants or seeds. (1939, c. 158, s. 162; 1945, c. 708, s. 2; 1949, c. 392, s. 1; 1965, c. 607; 1967, cc. 551, 553; 1973, c. 205; c. 476, s. 193.)

**Editor's Note. —**

The first 1973 amendment, effective July 1, 1973, divided the former first sentence of the fifth paragraph into two sentences, added to the present second sentence of that paragraph the language beginning "except as to those which are so denominated" and substituted "is

located in this State" for "in this State is located" in the present third sentence of that paragraph.

The second 1973 amendment, effective July 1, 1973, changed the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-99. Wholesale distributors of motor fuels.**

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

**§ 105-100. Patent rights and formulas.**

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

**§ 105-102. Junk dealers.**

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

**§ 105-102.1. Certain cooperative associations.**

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.



**§ 105-102.2. Scrap processors.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**Administrative Provisions of Schedule B.****§ 105-104. Manner of obtaining license from the Secretary of Revenue.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-107. License may be changed when place of business is changed.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-109. Engaging in business without a license.**

(b) If any person, firm, or corporation shall continue the business, trade, employment, or profession, or to do the act, after the expiration of a license previously issued, without obtaining a new license, he or it shall be guilty of a misdemeanor, and upon conviction shall be fined and/or imprisoned in the discretion of the court, but the fine shall not be less than twenty percent (20%) of the tax in addition to the tax and the costs; and if such failure to apply for and obtain a new license be continued, such person, firm, or corporation shall pay additional tax of five per centum (5%) of the amount of the State license tax which was due and payable on the first day of July of the current year, in addition to the State license tax imposed by this Article, for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Secretary of Revenue and paid with the State license tax, and shall become a part of the State license tax. The penalties for delayed payment hereinbefore provided shall not impair the obligation to procure a license in advance or modify any of the pains and penalties for failure to do so.

The provisions of this section shall apply to taxes levied by the counties of the State under authority of this Article in the same manner and to the same extent as they apply to taxes levied by the State.

(c) If any person, firm, or corporation shall commence to exercise any privilege or to promote any business, trade, employment, or profession, or to do any act requiring a State license under this Article without such State license, he or it shall be guilty of a misdemeanor, and shall be fined and/or imprisoned in the discretion of the court; and if such failure, neglect, or refusal to apply for and obtain such State license be continued, such person, firm, or corporation shall pay an additional tax of five per centum (5%) of the amount of such State license tax which was due and payable at the commencement of the business, trade, employment or profession, or doing the act, in addition to the State license tax imposed by this Article, for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Secretary of Revenue and paid with the State license tax and shall become a part of the State license tax.

(d) If any person, firm, or corporation shall fail, refuse, or neglect to make immediate payment of any taxes due and payable under this Article, additional taxes, and/or any penalties imposed pursuant thereto, upon demand, the Secretary of Revenue shall certify the same to the sheriff of the county in which such delinquent lives or has his place of business, and such sheriff shall have the power and shall levy upon any personal or real property owned by



such delinquent person, firm, or corporation, and sell the same for the payment of the said tax or taxes, penalty and costs, in the same manner as provided by law for the levy and sale of property for the collection of other taxes; and if sufficient property is not found, the said sheriff or deputy commissioner shall swear out a warrant for the violation of the provisions of this Article and as provided in this Article.

(1973, c. 108, s. 51; c. 476, s. 193.)

**Editor's Note.** — The first 1973 amendment deleted "before some justice of the peace or recorder in the county" following "warrant" near the end of subsection (d).

1973, changed the title of the Commissioner of Revenue to Secretary of Revenue.

As subsections (a) and (e) were not changed by the amendments, they are not set out.

The second 1973 amendment, effective July 1,

### § 105-111. Duties of Secretary of Revenue.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-112. License to be procured before beginning business.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-113. Sheriff and city clerk to report.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

## ARTICLE 2A.

### *Schedule B-A. Cigarette Tax.*

#### § 105-113.4. Definitions.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

#### § 105-113.7. Tax with respect to inventory on effective date of Article.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

#### § 105-113.9. Out-of-state shipments.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

#### § 105-113.10. Manufacturers shipping to distributors exempt.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.

#### § 105-113.11. Licenses required.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

#### § 105-113.13. Issuance of licenses.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.



**§ 105-113.15. Duplicate or amended license.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.16. Revocation of license.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.17. Exhibit of license; identification of dispensers.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.18. Reports.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.19. Secretary to provide stamps.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.21. Discount on sales of stamps.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.22. Manner of affixing and cancelling stamps.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.23. Stamp metering machines.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.24. Sale of stamps to out-of-state distributors.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.25. Redemption and refund.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.26. Records to be kept.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.30. Records and reports.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.31. Possession and transportation of unstamped cigarettes; seizure and confiscation of vehicle or vessel.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.



**§ 105-113.34. Forging or counterfeiting revenue stamps.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.36. General administrative provisions of Revenue Act applicable.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.37. Secretary to make rules and regulations.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.40. Effective date of this Article.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**ARTICLE 2B.***Schedule B-B. Soft Drink Tax.***§ 105-113.44. Definitions.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.45. Taxation rate.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.47. Natural fruit or vegetable juice or natural liquid milk drinks exempted from tax.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.48. Exemption of goods intended for out-of-state sale.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.50. Soft drink licenses required.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.51. Affixing of crowns and stamps to containers; crowns and stamps not transferable.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.52. Taxpaid stamps; rules and regulations; cancellation; discount.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.



**§ 105-113.53. Stamps not required when crowns used.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.54. Taxpaid crowns; rules and regulations; discount on sale of crowns.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.55. Payment for stamps and crowns.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.56. Provisions for refund; discount.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.56A. Alternate method of payment of tax.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.57. Records required of ingredients received.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.58. Records of sale to be kept.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.59. Theoretical calculation of tax.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.63. Rules and regulations**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.65. Tax with respect to October 1, 1969, inventory.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-113.67. Effective date of this Article.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**ARTICLE 2C.*****Intoxicating Liquors Tax.*****§ 105-113.68. Definitions.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.



**§ 105-113.70. Resident manufacturers of malt beverages and unfortified wines.** — (a) The brewing or manufacture of malt beverages shall be permitted in this State upon the payment of an annual license tax to the Secretary of Revenue in the sum of five hundred dollars (\$500.00) for a period ending on the next succeeding thirtieth day of April and annually thereafter. Persons licensed under this subsection may sell such beverages in barrels, bottles, or other closed containers only to persons licensed under the provisions of this Article to sell at wholesale, and no other license tax shall be levied upon the business taxed in this subsection. Provided, that pursuant to the rules and regulations of the State Board of Alcoholic Control, the sale of malt beverages to nonresident wholesalers is authorized when the purchase is not for resale in this State. The sale of malt, hops, and other ingredients used in the manufacture of malt beverages is hereby permitted and allowed.

When a licensed resident manufacturer of malt beverages procures a proper license under this subsection, said manufacturer may receive the malt beverages that are manufactured by him at some point outside this State, but within the United States, for transshipment to dealers in this or other states, provided that such resident manufacturer is actually engaged in the manufacturing in this State of malt beverages. Such shipments of malt beverages for transshipment to other states shall be kept segregated by the resident manufacturer in his warehouse from any such North Carolina taxpaid beverages and shall comply with any and all rules and regulations promulgated by the Secretary of Revenue and the State Board of Alcoholic Control.

(b) The manufacture of unfortified wine shall be permitted in this State upon the payment of an annual license tax to the Secretary of Revenue in the sum of one hundred dollars (\$100.00) for a period ending on the next succeeding thirtieth day of April and annually thereafter. Persons licensed under this section may sell such wine in barrels, bottles, or other closed containers only to persons licensed under the provisions of this Article or under the laws of any other state to sell at wholesale and no other license tax shall be levied upon the business taxed in this section. Provided, that pursuant to the rules and regulations of the State Board of Alcoholic Control, the sale of fortified or unfortified wine to nonresident wholesalers is authorized when the purchase is not for resale in this State. The sale of ingredients used in the manufacture of unfortified wine is hereby permitted and allowed.

Nothing in this Article shall be construed to impose any tax upon any resident citizen of this State who makes native wines for the use of himself, his family and his guests from fruits, grapes and berries cultivated or grown wild upon his own land. (1939, c. 158, s. 504; 1945, c. 903, s. 4; 1967, c. 162, s. 1; c. 867, s. 1; 1969, cc. 732, 1057; 1971, c. 872, s. 2; 1973, c. 476, s. 193; c. 511, s. 7.)

**Editor's Note.** — The first 1973 amendment, effective July 1, 1973, changed the title of the Commissioner of Revenue to Secretary of Revenue. The second 1973 amendment rewrote this section.

### **§ 105-113.73. Malt beverage and unfortified wine wholesaler's license.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### **§ 105-113.75. Sales on railroad trains.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### **§ 105-113.76. Salesman's license.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.



**§ 105-113.78. Retail unfortified wine license.**

**Editor's Note.** — Under § 143B-142 as enacted by Session Laws 1973, c. 476, s. 123, effective July 1, 1973, the Commission for Health Services is authorized to regulate food and lodging establishments as provided by Article 5 of Chapter 72. Under § 72-46, as amended by Session Laws 1973, c. 476, s. 128,

effective July 1, 1973, the Commission for Health Services is authorized and directed to prepare a system of grading food and lodging establishments. Therefore, "Commission for Health Services" should be substituted for "State Department of Health" in subdivision (1) of this section, pursuant to the 1973 act.

**§ 105-113.80. Application for retail or wholesale municipal license.** — Every person making application for a license to sell at retail or wholesale malt beverages or unfortified wine, if the place where such sale is to be made is within a municipality, shall make application first to the governing board of such municipality, and the application shall contain:

- (1) The name and residence of the applicant and the length of his residence within the State of North Carolina;
- (2) The particular place for which the license is desired, designating the same by a street and number, if practicable; if not, by such other apt description as definitely locates it;
- (3) The name of the owner of the premises upon which the licensed business is to be carried on;
- (4) That the applicant intends to carry on the business authorized by the license for himself or under his immediate supervision and direction;
- (5) A statement that the applicant is a citizen and resident of North Carolina and is not less than 21 years of age; that he has not been convicted of, or entered a plea of guilty or nolo contendere to, a felony or other crime involving moral turpitude within the past three years; or a violation of the liquor laws, either State or federal, within the past two years; provided, that no provision of this Chapter or any rule or regulation adopted pursuant thereto, shall be construed to prohibit a person who is 18 years of age or older from being a manager, employee or other person in charge of any establishment which has a license and permit for on-or off-premises sales of malt beverages or wine (fortified or unfortified).

The application must be verified by the affidavit of the petitioner made before a notary public or other person duly authorized by law to administer oaths. If it appears from the statement of the applicant or otherwise that he has at any time been convicted of, or entered a plea of guilty or nolo contendere to, a felony or other crime involving moral turpitude within the past three years, or that he has, within the two years prior to the filing of the application, been adjudged guilty of violating the liquor laws, either State or federal, or that he has within two years prior to the filing of the application completed a sentence for violation of the liquor laws, such license shall not be granted. If it appears that any false statement is knowingly made in any part of the application and a license received thereon, the license shall be revoked and the applicant subjected to the penalty provided for misdemeanors. Before issuing a license, the governing body of the municipality shall be satisfied that the statements required by subdivisions (1), (2), (3), (4), and (5) of this section are true.

Neither the State nor any city or county shall issue a license under this Article to any person, firm, or corporation who is not a citizen of the United States and who has not been a bona fide resident of the State of North Carolina for one year. Provided, that if the applicant is a corporation, the requirement as to residence shall not apply to the officers, directors, or stockholders of the corporation; however, such residence requirements shall apply to any officer, director, stockholder, agent, or employee who is also the manager and in charge of the premises for which the license is applied for, but the governing body of



the county or municipality may, in its discretion, waive such requirement. No resident of the State shall obtain a license under this Article and employ or receive aid from a nonresident for the purpose of defeating this requirement. (1939, c. 158, s. 511; 1945, c. 708, s. 6; 1947, c. 1098, s. 1; 1963, c. 426, s. 3; c. 1188; 1971, c. 872, s. 2; 1973, c. 758, s. 2.)

**Editor's Note.** — The 1973 amendment added the proviso at the end of subdivision (5).

Henderson, 17 N.C. App. 335, 194 S.E.2d 213 (1973).

**Applied** in *Food Fair, Inc. v. City of*

### § 105-113.81. Annual county license to sell at retail.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-113.82. Issuance of license mandatory.

**History of Section.** — See *Food Fair, Inc. v. City of Henderson*, 17 N.C. App. 335, 194 S.E.2d 213 (1973).

### § 105-113.83. Annual State license to sell unfortified wine at retail.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-113.84. Annual retail malt beverage State license; sale of "short-filled" packages by manufacturers to employees.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-113.85. Retail fortified wine licenses.

**Editor's Note.** — Session Laws 1973, c. 476, s. 128, effective July 1, 1973, amends this

section by substituting "Department of Human Resources" for "State Board of Health."

**§ 105-113.86. Additional tax.** — (a) In addition to the license taxes herein levied, a tax is hereby levied upon the sale of malt beverages of seven dollars and fifty cents (\$7.50) per barrel of 31 gallons, or the equivalent of such tax in containers of more or less than 31 gallons, and in bottles or other containers of not more than six ounces, a tax of one and one-fourth cents ( $1\frac{1}{4}\text{¢}$ ) per bottle or container, and in bottles or other containers of more than six ounces and not more than 12 ounces, a tax of two and one-half cents ( $2\frac{1}{2}\text{¢}$ ) per bottle or container, and in bottles or containers of the capacity of one quart, or its equivalent, a tax of six and two-thirds cents ( $6\frac{2}{3}\text{¢}$ ) per bottle or container: Provided that fruit cider of alcoholic content not exceeding that provided in this Article may be sold in bottles or other containers of not more than six ounces at a tax of five-eighths of a cent ( $\frac{5}{8}\text{ths of } 1\text{¢}$ ) per bottle or container.

Wholesale distributors and importers may, at their option, pay the tax levied in this subsection at the rate of twenty-one one-hundredths of a cent (.21¢) per ounce when the beverages taxed herein contained in bottles of over six ounces.

- (1) In addition to all other taxes levied in this Chapter, there is hereby levied an additional tax or surtax upon the sale of malt beverages of seven dollars and fifty cents (\$7.50) per barrel of 31 gallons, or the equivalent of such tax in containers of more or less than 31 gallons, and in bottles or other containers of not more than six ounces, a tax of one and one-fourth cents ( $1\frac{1}{4}\text{¢}$ ) per bottle or container, and in bottles or other containers of more than six ounces and not more than 12 ounces, a tax of two and one-half cents ( $2\frac{1}{2}\text{¢}$ ) per bottle or container and in bottles or containers of the capacity of one quart, or its equivalent, a tax of six and two-thirds cents ( $6\frac{2}{3}\text{¢}$ ) per bottle or



container. Notwithstanding any provisions of subsection (p) of this section, none of the revenues collected pursuant to the tax imposed by this subsection shall be allocated or distributed to any county or municipality, but all of said revenue derived from the increase in tax rates imposed by this subsection shall be paid into the general fund of the State. Every person, firm, or corporation who owns or possesses any malt beverages on July 1, 1955, for the purpose of sale in this State shall file with the Secretary of Revenue not later than July 20, 1955, a complete inventory of such beverages and pay to the Secretary of Revenue the tax imposed by this subsection with respect to all such beverages on hand on said July 1, 1955. The Secretary of Revenue shall prescribe the form and manner of making such inventory reports and the method of evidencing the payment of the tax herein imposed with respect to said inventory of said beverages.

Wholesale distributors and importers may, at their option, pay the tax levied in this subsection at the rate of twenty-one one-hundredths of a cent (.21¢) per ounce when the beverages taxed herein are contained in bottles of over six ounces.

- (2) Notwithstanding any other provisions of subsection (a) of this section, as amended by Chapter 1313 of the 1955 Session Laws, the rate of the tax therein imposed in said subsection (a) with respect to malt beverages shall be one and one-half cents ( $1\frac{1}{2}$ ¢) per bottle or container with respect to such beverages in bottles or other containers of exactly seven ounces.

Notwithstanding any other provisions of subdivision (a)(1) of this section, as enacted by Chapter 1313 of the 1955 Session Laws, the rate of additional tax or surtax therein imposed in said subdivision (a)(1) with respect to malt beverages shall be one and one-half cents ( $1\frac{1}{2}$ ¢) per bottle or container with respect to such beverages in bottles or other containers of exactly seven ounces.

Except as herein provided, all provisions of this Article shall be applicable with respect to the taxes imposed by this subsection in the same manner and to the same extent that said provisions are applicable to other taxes imposed in this Article with respect to malt beverages.

The provisions of this subsection shall not be applicable with respect to beverages in bottles or containers in other than those of exactly seven ounces, and the provisions of this section, as amended by said Chapter 1313, above referred to, shall be applicable to said beverages in any other size containers, and the taxes therein imposed with respect to beverages in containers of more than six but not more than 12 ounces shall be applicable with respect to said beverages in containers of more than seven but not more than 12 ounces.

(b) Each licensed wholesale distributor and importer of malt beverages shall pay the excise tax levied by this Article on said beverages on or before the fifteenth day of the month following the calendar month in which they are first sold or disposed of within this State by said wholesale distributor and importer.

(c) Each of the licensees responsible for the payment of the excise tax levied by this Article shall, on or before the fifteenth of each month, file a report, verified on forms provided by the Secretary of Revenue, showing, for the preceding calendar month, the exact quantities of malt beverages, by size and type of container:

- (1) Constituting his beginning and ending inventory for the month;
- (2) Shipped to him from inside this State and received by him in this State;
- (3) Shipped to him from outside this State and received by him in this State;
- (4) Sold or disposed of by him in this State;



- (5) Sold by him in this State to army, navy, air force, and coast guard services of the United States and their organized personnel separately indicating those sales or transactions of malt beverages to which the excise tax is not applicable;
- (6) Sold or disposed of by him to persons outside this State, separately indicating those sales or transactions of malt beverages to which the excise tax is not applicable.

The report, on forms prescribed by the Secretary of Revenue, shall also show the amount of excise tax payable, after allowance for all proper deductions, for all such beverages sold or disposed of by him in this State, and shall include such additional information as the Secretary of Revenue may require for the proper administration of this Article. Payment of the excise tax levied by this Article in the amount disclosed by the report shall accompany the report and shall be paid to the Secretary of Revenue. Each wholesale distributor and importer required to file a return shall keep complete and accurate books, papers, invoices, and other records as may be necessary to substantiate the accuracy of his report and the amount of excise tax due, and shall retain such records for a period of three years, subject to the use and inspection of the Secretary of Revenue or his agents.

(d) Any person required by this section to retain books, papers, invoices, and other records who fails to produce the same upon demand by the Secretary of Revenue or his agent, unless such nonproduction is due to providential or other causes beyond his control, shall be guilty of a misdemeanor.

(e) Each manufacturer, nonresident wholesaler, and foreign wholesaler licensed by the North Carolina Secretary of Revenue to sell and/or deliver any malt beverages in North Carolina, at the time it sells and/or delivers such beverages to a licensed North Carolina wholesale distributor or importer, shall furnish to each such wholesale distributor or importer a sales ticket or invoice in duplicate, furnishing a third copy to the Secretary of Revenue, with the following information written thereon:

- (1) The name and address of the manufacturer, nonresident wholesaler, or foreign wholesaler making the delivery and/or sale;
- (2) The name, address, and license number of the wholesale distributor or importer receiving the shipment, and/or making the purchase;
- (3) The exact number of barrels, kegs, or cases delivered and/or purchased, specifying the size and type of container.

(f) Each manufacturer, nonresident wholesaler, or foreign wholesaler licensed by the Secretary of Revenue to sell and/or deliver malt beverages, unfortified wine, and fortified wine in North Carolina shall prepare and file a monthly report, verified on forms provided by the Secretary of Revenue, showing the exact number of barrels, kegs, or cases, specifying the size and type of container, of such beverages sold to licensed wholesale distributors or importers during the previous calendar month. This report must be filed with the Secretary of Revenue on or before the fifteenth day of each calendar month following the month during which the sales are made. Each manufacturer, nonresident wholesaler, or foreign wholesaler shall retain copies of such sales records for a period of three years, subject to the use and inspection of the Secretary of Revenue or his agents.

(g) Persons operating boats, dining cars, buffet cars or club cars upon or in which malt beverages are sold shall keep such records of the sales of such beverages in this State as the Secretary of Revenue shall prescribe and shall submit monthly reports of such sales to the Secretary of Revenue upon a form prescribed therefor by the Secretary of Revenue and shall pay the excise tax levied under this Article at the time such reports are filed.

(h) On the total excise tax due upon the sale of malt beverages, unfortified wine, and fortified wine levied by this Article, the Secretary of Revenue shall allow a discount of four percent (4%). Said discount shall constitute



compensation allowed by the State of North Carolina to wholesale distributors and importers for spoilage and breakage and for expenses incurred in the preparation of monthly reports and the maintenance of books, papers and invoices, and bond required by this Article. Provided that no compensation or refund shall be made for taxpaid beverages given as free goods for advertising.

(i) In addition to the allowance of a discount on the excise tax due from wholesale distributors or importers, as provided in subsection (h) of this section, the wholesale distributor or importer shall not be required to pay the excise tax on any malt beverages, unfortified wine, and fortified wine, destroyed or spoiled or otherwise rendered unsalable in a major disaster, upon adequate proof of same. For the purposes of this subsection a major disaster shall be defined as the destruction, spoilage or unsalability of 50 or more cases, or their equivalent, of malt beverages or of 25 or more cases, or their equivalent, of unfortified wine and fortified wine.

The Secretary of Revenue shall promulgate rules and regulations to relieve licensed resident manufacturers from the liability of paying the excise taxes levied under this section on malt beverages and unfortified wine that are furnished free of charge to customers, visitors and employees on the manufacturers' licensed premises for consumption on said premises.

(j) The Secretary of Revenue shall promulgate rules and regulations to relieve resident manufacturers, wholesale distributors, and importers from the liability of paying the excise tax levied and imposed on malt beverages that are intended to be sold and are thereafter sold to army, navy, air force and coast guard services of the United States and their organized personnel in this State; or which are intended to be shipped and are thereafter shipped out of this State by such resident manufacturers, wholesale distributors, or importers for resale outside of this State; or which are intended for use or consumption by or on ocean-going vessels that ply the high seas in interstate or foreign commerce in the transport of freight and/or passengers for hire exclusively, when delivered to an officer or agent of such vessel for use by or on such vessel.

Each manufacturer or bottler manufacturing beverages within or outside the State of North Carolina which are intended to be sold and are thereafter sold to the army, navy, air force, coast guard services, or any other military establishment in North Carolina shall identify such beverages by placing on the label, crown, can end, or kegs the phrase "For Military Use Only," any and all laws, regulations, and requirements to the contrary notwithstanding. Provided that all other malt beverages intended for sale in North Carolina shall bear no special identification other than proprietary crowns, lids, or stamps.

(k) If the excise tax levied and imposed in this section shall not be paid when due by the wholesale distributor or importer responsible therefor, there shall be added to the amount of the tax as a penalty a sum equivalent to ten percent (10%) thereof, and in addition thereto interest on the tax and penalty at the rate of one half of one percent ( $\frac{1}{2}$  of 1%) per month or fraction of a month from the date the tax became due until paid. Nothing herein contained shall be construed to relieve any licensee otherwise liable from liability for payment of the excise tax.

(l) Any person who shall fail, neglect, refuse to comply with or violate any provisions of this section, for which no specific penalty is provided, or who shall refuse to permit the Secretary of Revenue or his agents to examine his books, papers, invoices, and other records or his store of intoxicating liquors in and upon any premises where the same are manufactured, bottled, stored, sold, offered for sale, or held for sale, shall be guilty of a misdemeanor.

(m) The Secretary of Revenue is hereby charged with the enforcement of the provisions of this section and hereby authorized and empowered to prescribe, adopt, promulgate, and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of



this section, and the collection of taxes, penalties, and interest imposed by this Article.

(n) The Secretary of Revenue is hereby authorized to prescribe, adopt, promulgate, and enforce the rules and regulations relating to the transportation of malt beverages and unfortified wine through this State, and from points outside of this State to points within this State, and to prescribe, adopt, promulgate, and enforce rules and regulations reciprocal to those of, or laws of, any other state or territory affecting the transportation of beverages manufactured in this State.

(o) In addition to the license taxes herein levied, a tax is hereby levied upon the sale of unfortified wine at the rate of sixty cents (60¢) per gallon. Provided, however, that the tax upon the sale of unfortified wine manufactured in North Carolina and composed principally of fruits or berries grown in North Carolina shall be taxed at the rate of five cents (5¢) per gallon.

Each licensed wholesale distributor and importer of unfortified wine shall pay the excise tax levied by this Article on said beverages on or before the fifteenth day of the month following the calendar month in which they are first sold or disposed of within the State by said licensed wholesale distributor or importer. The provisions of subsections (c) through (l) inclusive, of this section, shall also be applicable to the control of the sale of unfortified wine and fortified wine.

(p) From the taxes collected annually under subsection (a) an amount equivalent to forty-seven and one-half percent ( $47\frac{1}{2}\%$ ) thereof, and from the taxes collected annually under subsection (o) an amount equivalent to one half thereof shall be allocated and distributed, upon the basis herein provided, to counties and municipalities wherein such beverages may be licensed to be sold at retail under the provisions of this Article. The amount distributable to each county and municipality entitled to the same under the provisions of this subsection shall be determined upon the basis of population therein according to the most recent annual estimates of population as certified to the Secretary of Revenue by the Secretary of the North Carolina Department of Administration. Where such beverages may be licensed to be sold at retail in both county and municipality, allocation of such amounts shall be made to both the county and the municipality on the basis of population. Where such beverages may be licensed to be sold at retail in a municipality in a county wherein the sale of such beverages is otherwise prohibited, allocation of such amounts shall be made to the municipality on the basis of population; provided, however, that where the sale of such beverages is prohibited within defined areas within a county or municipality, the amounts otherwise distributable to such county or municipality on the basis of population shall be reduced in the same ratio that such areas bear to the total area of the county or municipality, and the amount of such reduction shall be retained by the State: Provided, further, that if said area within a county is a municipality for which the population is shown by the latest federal decennial census, reduction of such amounts shall be based on such population rather than on area. The Secretary of Revenue shall determine the amounts distributable to each county and municipality, for the period July 1, 1947, to September 30, 1947, inclusive, and shall distribute such amounts within 60 days thereafter; and the Secretary of Revenue annually thereafter shall determine the amounts distributable to each county and municipality for each 12-month period ending September 30 and shall distribute such amounts within 60 days thereafter.

The taxes levied in this section are in addition to the taxes levied in Schedule E of the Revenue Act.

(q) Each nonresident manufacturer, nonresident wholesaler, and foreign wholesaler of malt beverages then licensed by the Secretary of Revenue to sell and/or deliver such beverages in North Carolina shall, if required by the Secretary of Revenue, on or before January 15, 1968, make an advance



lump-sum excise tax payment, in cash or equivalent, to the Secretary of Revenue, in an amount equal to each such nonresident manufacturer's, nonresident wholesaler's and foreign wholesaler's highest two months' tax liability for tax crowns, lids, and stamps during the 12-month period ending June 30, 1967. Each such advance lump-sum excise tax payment shall be credited to the account of such nonresident manufacturer, nonresident wholesaler, and foreign wholesaler by the Secretary of Revenue, and, beginning on the first day of January, 1969, and on the first day of each month thereafter, a refund in the amount of one-twelfth of each advance lump-sum excise tax payment shall be made by the Secretary of Revenue to such nonresident manufacturer, nonresident wholesaler, or foreign wholesaler until the total amount of such refunds equals the total amount of such advance lump-sum excise tax payment.

(r) As of the close of business on December 31, 1967, each nonresident manufacturer, nonresident wholesaler, and foreign wholesaler then licensed by the Secretary of Revenue to sell and/or deliver in North Carolina malt beverages, unfortified wine, and fortified wine shall take an inventory of all North Carolina taxpaid crowns, lids, and stamps, affixed and unaffixed, in his possession and control and shall submit the results of such inventory to the North Carolina Secretary of Revenue no later than January 15, 1968, verified on forms provided by the Secretary.

Upon receipt of each such verified inventory, the Secretary of Revenue shall satisfy himself as to the accuracy of each such inventory and shall determine the total amount of tax payment represented thereby.

(s) Each nonresident manufacturer, nonresident wholesaler, and foreign wholesaler in possession of unaffixed taxpaid stamps as of the close of business on December 31, 1967, shall surrender such taxpaid stamps to the Secretary of Revenue within 60 days thereafter and shall claim refund therefor.

(t) Each nonresident manufacturer, nonresident wholesaler, and foreign wholesaler may claim refunds on his monthly report due on or before January 15, 1968, for the full amount of tax paid by the affixation, before January 1, 1968, of stamps, crowns, or lids to the original containers of malt beverages, unfortified wine, and fortified wine, which containers are still in his possession and control on January 1, 1968. The Secretary of Revenue shall provide for a refund in the amount of the tax paid:

- (1) For said stamps, crowns, and lids affixed before January 1, 1968, to containers in the possession and control of such manufacturer or wholesaler on January 1, 1968;
- (2) For tax stamps returned unused to the Secretary within 60 days after January 1, 1968; and
- (3) For tax crowns and lids as to which the nonresident manufacturer, nonresident wholesaler or foreign wholesaler has submitted satisfactory proof to the Secretary, on or before January 15, 1968, that said tax crowns and lids were in his possession as unused inventory on January 1, 1968.

The total of the refunds provided for in this subsection shall be credited to the account of said nonresident manufacturer, nonresident wholesaler, or foreign wholesaler in the same manner as that provided in subsection (q) of this section and shall be refunded to said nonresident manufacturer, nonresident wholesaler, or foreign wholesaler in the same manner and in accordance with the schedule set forth in that subsection.

Each nonresident manufacturer, nonresident wholesaler, and foreign wholesaler shall, after determination of the amount of refund due him for his crown and lid inventory on January 1, 1968, thereafter be permitted to use the crowns and lids constituting that inventory on malt beverages, unfortified wine, and fortified wine, solely as closures, without such use indicating payment of the North Carolina excise tax.



(u) As of the close of business on December 31, 1967, each wholesale distributor and importer licensed to sell malt beverages, unfortified wine, and fortified wine shall take inventory of all such beverages in his possession and control having taxpaid crowns, lids, and stamps affixed thereto and shall submit, verified on forms provided by the Secretary, the results of such verified inventory to the Secretary of Revenue no later than January 15, 1968. Upon receipt of each such verified inventory, the Secretary of Revenue shall satisfy himself as to the accuracy of each such inventory and shall determine the total amount of the tax payment represented thereby.

Each wholesale distributor and importer may claim credit or refund on his monthly report due on or before January 15, 1968, for the full amount of the tax represented by the inventory filed as required by this subsection. The Secretary of Revenue shall provide for a credit or refund equal to the full amount of said tax to each wholesale distributor or importer claiming same.

Each wholesale distributor or importer shall, after determination of the amount of credit or refund due him, thereafter be permitted to sell or otherwise dispose of all malt beverages, unfortified wine, and fortified wine to which taxpaid crowns, lids, or stamps are affixed, which are in his possession and control as of the close of business on December 31, 1967, and which have been reported in the inventory required by this subsection; provided that said crowns, lids, or stamps shall not be considered evidence that the excise tax has been paid on the beverages to which they are affixed.

(v) For purposes of subsection (b), the term municipality includes any urban service district defined by the governing body of a consolidated city-county, and the amount due thereby shall be distributed to the government of the consolidated city-county. (1939, c. 158, s. 517; c. 370, s. 1; 1941, c. 50, s. 7; c. 339, s. 4; 1943, c. 400, s. 6; cc. 564, 565; 1945, c. 708, s. 6; 1947, c. 1084, ss. 7-9; 1951, c. 1162, s. 1; 1955, c. 1313, s. 6; c. 1370; 1957, c. 1340, s. 11; 1963, c. 460, s. 3; c. 992, s. 2; 1967, c. 162, s. 3; c. 759, ss. 1-20; 1969, c. 1075, s. 1; cc. 1239, 1268; 1971, c. 872, s. 2; 1973, c. 476, s. 193; c. 500, s. 2; c. 511, ss. 3, 5; c. 537, s. 2.)

**Editor's Note.** — The first 1973 amendment, effective July 1, 1973, changed the title of the Commissioner of Revenue to Secretary of Revenue.

The second 1973 amendment substituted the language beginning "according to the most recent annual estimates" for "as shown by the latest federal decennial census" at the end of the second sentence of subsection (p).

The third 1973 amendment inserted "and

unfortified wine" in the second paragraph of subsection (i) and added the second sentence of the first paragraph of subsection (o).

The fourth 1973 amendment, effective July 1, 1973, added subsection (v).

The reference to subsection (b) in new subsection (v), added by the fourth 1973 amendment, is apparently erroneous.

Session Laws 1973, c. 537, s. 8, contains a severability clause.

### § 105-113.88. By whom excise taxes payable.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-113.89. Nonresident manufacturers and wholesale dealers to be licensed.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-113.91. Malt beverages and wine importer's license.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-113.92. Payment of tax by retailers.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.



**§ 105-113.95. Tax on fortified wines.** — In addition to all other taxes levied in this Article, there is hereby levied a tax upon the sale of fortified wines of seventy cents (70¢) per gallon. Provided, however, that the tax upon the sale of fortified wine manufactured in North Carolina and composed principally of fruits or berries grown in North Carolina shall be taxed at the rate of five cents (5¢) per gallon. (1951, c. 1162, s. 3; 1955, c. 1313, s. 6; 1967, c. 759, s. 23; 1971, c. 872, s. 2; 1973, c. 511, s. 6.)

**Editor's Note.** — The 1973 amendment inserted "all" in the first sentence and added the second sentence.

### **§ 105-113.98. Books, records, reports.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### **§ 105-113.101. Administrative provisions.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### **§ 105-113.102. Rules and regulations.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### **§ 105-113.103. Revocation of license upon revocation of permit.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

## **ARTICLE 3.**

### ***Schedule C. Franchise Tax.***

**§ 105-115. Franchise or privilege tax on railroads.** — Every person, firm, or corporation, domestic or foreign, owning and/or operating a railroad in this State shall, in addition to all other taxes levied and assessed in the State, pay annually to the Secretary of Revenue a franchise, license, or privilege tax for the privilege of engaging in such railroad business within the State of North Carolina as follows:

- (1) Such person, firm or corporation shall during the month of June each year furnish to the Secretary of Revenue a copy of the report and statement required to be made to the Property Tax Commission by the Machinery Act in effect at the time such report is due, and such other and further information as the Secretary of Revenue may require.
- (2) The value upon which the tax herein levied shall be assessed by the Secretary of Revenue and the measure of the extent to which every such railroad company is carrying on intrastate commerce within the State of North Carolina shall be fifty-five percent (55%) of the appraised value of the total property, tangible and intangible, in this State, for each such railroad company, as determined for ad valorem taxation during the calendar year in which such report is due.
- (3) The franchise or privilege tax which every such railroad company shall pay for the privilege of carrying on or engaging in intrastate commerce within this State shall be seventy-five one-hundredths of one percent (75/100%) of the value ascertained as above by the Secretary of Revenue, and tax shall be due and payable within 30 days after date of notice of such tax.



- (4) If any such person, firm, or corporation shall fail, neglect, or refuse to make and deliver the report or statements provided for in this section, the Secretary of Revenue shall estimate, from the reports and records on file with the Department of Revenue, the value upon which the amount of tax due by such company under this section shall be computed, and shall assess the franchise or privilege tax upon such estimate, and shall collect the same, together with such penalties herein imposed for failure to make the report and statement.

(1973, c. 476, s. 193; c. 695, s. 16.)

**Editor's Note.** — The first 1973 amendment, effective July 1, 1973, substituted "Secretary of Revenue" for "Commissioner of Revenue" throughout the section and substituted "Property Tax Commission" for "State Board of Assessment" in subdivision (1) and "Department of Revenue" for "State Board of Assessment" in subdivision (4).

The second 1973 amendment, effective for taxable years beginning on and after January 1, 1973, substituted "fifty-five percent (55%) of the appraised" for "the" and "determined" for "assessed" in subdivision (2).

**§ 105-116. Franchise or privilege tax on electric light, power, gas, water, sewerage, and other similar public service companies not otherwise taxed.**—(a) Every person, firm or corporation, domestic or foreign, other than municipal corporations, engaged in the business of furnishing electricity, electric lights, current, power or piped gas, or owning and/or operating a water system subject to regulation by the North Carolina Utilities Commission, or owning and/or operating a public sewerage system, or owning and/or operating a street transportation system for the transportation of freight for hire, shall, within 30 days after the first day of January, April, July and October of each year, make and deliver to the Secretary of Revenue, upon such forms and blanks as required by him, a report verified by the affirmation of the officer or authorized agent making such report and statement, containing the following information:

- (1) The total gross receipts for the three months ending the last day of the month immediately preceding such return from such business within and without this State.
- (2) The total gross receipts for the same period from such business within this State.
- (3) The total gross receipts from the commodities or services described in this section sold to any other person, firm, or corporation engaged in selling such commodities or services to the public, and actually sold by such vendee to the public for consumption and tax paid to this State by the vendee, together with the name of such vendee, with the amount sold and the price received therefor.
- (4) The total amount and price paid for such commodities or services purchased from others engaged in the above-named business in this State, and the name or names of the vendor.
- (5) As to gas companies, the gross receipts derived from sales of piped gas to manufacturers which is to be used as an ingredient or component of a manufactured product.

(b) From the total gross receipts within this State there shall be deducted the gross receipts reported in subsection (a)(3) of this section: Provided, that this deduction shall not be allowed where the sale of such commodities was made to any person, firm, or corporation or municipality which is exempted by law from the payment of the tax herein imposed upon such commodities when sold or used by it and this deduction shall not be allowed where the sale was made to any electric membership corporation. From the total gross receipts



within this State of an electric membership corporation, there shall also be deducted the amounts paid by such corporation for the purchase of electricity from vendors taxed on such amounts under this section.

(c) On every such person, firm or corporation there is levied an annual franchise or privilege tax of six percent (6%), payable quarterly, of the total gross receipts derived from such business within this State, after the deductions allowed as herein provided for, which said tax shall be for the privilege of carrying on or engaging in the business named in this State, and shall be paid to the Secretary of Revenue at the time of filing the report herein provided for: Provided, the tax upon privately owned water companies shall be four percent (4%) of the total gross receipts derived from such business within this State: Provided further, the tax on gas companies shall be at the rate of four percent (4%) upon the first twenty-five thousand dollars (\$25,000) of the total gross receipts from piped gas, and the tax on all gross receipts in excess of twenty-five thousand dollars (\$25,000) from piped gas shall be at the rate of six percent (6%).

(d) Any person, firm, or corporation failing to file report and pay tax found to be due in accordance with the provisions of this section at the time herein provided for shall, in addition to all other penalties prescribed by this Article, pay an additional tax of ten percent (10%) and interest at the rate of six percent (6%) per annum on the total amount of tax due and additional tax incurred, which said additional tax shall in no case be less than two dollars (\$2.00), and shall be added to the tax, together with interest accrued, and shall become an integral part of the tax.

(e) The report herein required of gross receipts within and without the State, shall include the total gross receipts for the period stated of all properties owned and operated by the reporting person, firm, or corporation on the first day of each calendar quarter year, whether operated by it for the previous annual period, or whether intermediately acquired by purchase or lease, it being the intent and purpose of this section to measure the amount of privilege or franchise tax in each calendar quarter year with reference to the gross receipts of the property operated for the previous calendar quarter year and to fix liability for the payment of the tax on the owner, operator, or lessor on the first day of January, April, July and October of each year.

(f) Companies taxed under this section shall not be required to pay the franchise tax imposed by G.S. 105-122 or G.S. 105-123 unless the tax levied by G.S. 105-122 or G.S. 105-123 exceeds the tax levied in this section, and no county shall impose a franchise, license or privilege tax upon the business taxed under this section.

(g) The Secretary of Revenue shall ascertain the total gross receipts derived from the sale within any municipality of the commodities or services described in this section, except water and sewerage services, and out of the tax of six percent (6%) of gross receipts levied by this section, an amount equal to a tax of three percent (3%) of the gross receipts from sales within any municipality shall be distributed to such municipality: Provided, that out of the tax of four percent (4%) of the first twenty-five thousand dollars (\$25,000) of gross receipts of gas companies an amount equal to a tax of three percent (3%) of the gross receipts from sales within any municipality, and out of the tax of six percent (6%) of gross receipts of gas companies in excess of twenty-five thousand dollars (\$25,000) an amount equal to a tax of three percent (3%) of the gross receipts from sales within any municipality, shall be distributed to such municipality. If the gross receipts of any gas company from sales within and without any municipality exceed twenty-five thousand dollars (\$25,000), receipts from sales without the municipality shall be allocated to the first twenty-five thousand dollars (\$25,000) of total gross receipts. Provided, that in determining the amount to be distributed to a municipality pursuant to this subsection, "gross receipts" shall mean gross receipts less receipts from



sales of piped gas to manufacturers for use as an ingredient or component part of a manufactured product.

As soon as practicable after the date on which each quarterly payment of taxes is due under this section, the Secretary of Revenue shall certify to the State Disbursing Officer and to the State Treasurer the amount distributable to each municipality under this section. The State Disbursing Officer shall thereupon issue a warrant on the State Treasurer to each municipality in the amount so certified.

So long as there is a distribution to municipalities of the amount herein provided from the tax imposed by this section, no municipality shall impose or collect any greater franchise, privilege or license taxes, in the aggregate, on the businesses taxed under this section, than was imposed and collected on or before January 1, 1947. If any municipality shall have collected any privilege, license or franchise tax between January 1, 1947, and April 1, 1949, in excess of the tax collected by it prior to January 1, 1947, then upon distribution of the taxes imposed by this section to municipalities, the amount distributable to any municipality shall be credited with such excess payment.

(h) For purposes of subsection (g) and of G.S. 105-120(d), the term "municipality" includes any urban service district defined by the governing board of a consolidated city-county, and the amounts due thereby shall be distributed to the government of the consolidated city-county. (1939, c. 158, s. 203; 1949, c. 392, s. 2; 1951, c. 643, s. 3; 1955, c. 1313, s. 2; 1957, c. 1340, s. 3; 1959, c. 1259, s. 3; 1963, c. 1169, s. 1; 1965, c. 517; 1967, c. 519, ss. 1, 3; c. 1272, ss. 1, 3; 1971, c. 298, s. 1; c. 833, s. 1; 1973, c. 476, s. 193; c. 537, s. 3.)

**Editor's Note. —**

The first 1973 amendment, effective July 1, 1973, changed the title of the Commissioner of Revenue to Secretary of Revenue.

The second 1973 amendment, effective July, 1973, added subsection (h).

Session Laws 1973, c. 537, s. 8, contains a severability clause.

**§ 105-117. Franchise or privilege tax on Pullman, sleeping, chair, and dining cars.**

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-118. Franchise or privilege tax on express companies.**

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-119. Franchise or privilege tax on telegraph companies.**

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-120. Franchise or privilege tax on telephone companies.**

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-120.1. Franchise or privilege tax on street bus or similar street transportation system for the transportation of passengers for hire.**

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**Franchise Tax Levied on Street Bus**

**Systems Prior to July 1, 1971, Not Subject to Partial Refund because Authority to Tax Removed. —** See opinion of Attorney General to Mr. Charles M. Brown, Jr., 41 N.C.A.G. 713 (1972).



**§ 105-121.1. Mutual burial associations.**

**Editor's Note.** — Session Laws 1973, c. 476, the Commissioner of Revenue to Secretary of s. 193, effective July 1, 1973, changes the title of Revenue.

**§ 105-122. Franchise or privilege tax on domestic and foreign corporations.**—(a) Every corporation, domestic and foreign, incorporated, or, by an act, domesticated under the laws of this State or doing business in this State, except as otherwise provided in this Article or schedule, shall, on or before the fifteenth day of the third month following the end of its income year, annually, make and deliver to the Secretary of Revenue in such form as he may prescribe a full, accurate and complete report and statement signed by either its president, vice-president, treasurer, assistant treasurer, secretary or assistant secretary, containing such facts and information as may be required by the Secretary of Revenue as shown by the books and records of the corporation at the close of such income year.

There shall be annexed to the return required by this subsection the affirmation of the officer signing the return in the following form: "Under penalties prescribed by law, I hereby affirm that to the best of my knowledge and belief this return, including any accompanying schedules and statements, is true and complete. If prepared by a person other than taxpayer, his affirmation is based on all information of which he has any knowledge."

(b) Every such corporation taxed under this section shall determine the total amount of its issued and outstanding capital stock, surplus and undivided profits; no reservation or allocation from surplus or undivided profits shall be allowed other than for definite and accrued legal liabilities, except as herein provided; taxes accrued, dividends declared and reserves for depreciation of tangible assets as permitted for income tax purposes shall be treated as deductible liabilities. There shall also be treated as a deductible liability 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 streams, lakes, or rivers, upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Board of Water and Air Resources certifying that said Board has found as a fact that the air cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such plant or equipment complies with the requirements of said Board with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Board of Water and Air Resources and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas shall be treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955. Treasury stock shall not be considered in computing the capital stock, surplus and undivided profits as the basis for franchise tax, but shall be excluded proportionately from said capital stock, surplus and undivided profits as the case may be upon the basis and to the extent of the cost thereof.



Every corporation doing business in this State which is a parent, subsidiary, or affiliate of another corporation shall add to its capital stock, surplus and undivided profits all indebtedness owed to or endorsed or guaranteed by a parent, subsidiary or affiliated corporation as a part of its capital used in its business and as a part of the base for franchise tax under this section. The term "indebtedness" as used in this paragraph shall include all loans, credits, goods, supplies or other capital of whatsoever nature furnished by a parent, subsidiary, or affiliated corporation. The terms "parent," "subsidiary," and "affiliate" as used in this paragraph shall have the meaning specified in G.S. 105-130.6. If any part of the capital of the creditor corporation is capital borrowed from a source other than a parent, subsidiary or affiliate, the debtor corporation, which is required under this paragraph to include in its tax base the amount of debt by reason of being a parent, subsidiary, or affiliate of the said creditor corporation, may deduct from the debt thus included a proportionate part determined on the basis of the ratio of such borrowed capital as above specified of the creditor corporation to the total assets of the said creditor corporation. Further, in case the creditor corporation as above specified is also taxable under the provisions of this section, such creditor corporation shall be allowed to deduct from the total of its capital, surplus and undivided profits the amount of any debt owed to it by a parent, subsidiary or affiliated corporation to the extent that such debt has been included in the tax base of said parent, subsidiary or affiliated debtor corporation reporting for taxation under the provisions of this section.

- (c) (1) After ascertaining and determining the amount of its capital stock, surplus and undivided profits, as provided herein, every corporation permitted to allocate and apportion its net income for income tax purposes under the provisions of Article 4 of this Chapter shall apportion said capital stock, surplus and undivided profits to this State through use of the fraction computed for apportionment of its business income under said Article.

Provided, that although a corporation is authorized by the Tax Review Board to apportion its business income by use of an alternative formula or method, the corporation may not use such alternative formula or method for apportioning its capital stock, surplus and undivided profits unless specifically authorized to do so by order of the Tax Review Board.

Provided, further, that a corporation which is required to pay an income tax to this State on its entire net income shall apportion its entire capital stock, surplus and undivided profits to this State.

- (2) If any corporation believes that the method of allocation or apportionment hereinbefore described as administered by the Secretary of Revenue has operated or will so operate as to subject it to taxation on a greater portion of its capital stock, surplus and undivided profits than is reasonably attributable to business within the State, it shall be entitled to file with the Tax Review Board a petition setting forth the facts upon which its belief is based and its argument with respect to the application of the allocation formula. This petition shall be filed in such form and within such time as the Tax Review Board may prescribe. The Board shall grant a hearing thereon. At least three members of the Tax Review Board shall attend any hearing pursuant to such petition. In such cases the Tax Review Board's membership shall be augmented by the addition of the Secretary of Revenue, who shall sit as a member of said Board with full power to participate in its deliberations and decisions with respect to petitions filed under the provisions of this section. An informal record containing in substance the evidence, contentions and



arguments presented at the hearing shall be made. All members of the augmented Tax Review Board shall consider such evidence, contentions and arguments, and the decision thereon shall be made by a majority vote of the augmented Board. If the Board shall find that the application of the allocation formula subjects the corporation to taxation on a greater portion of its capital stock, surplus and undivided profits than is reasonably attributable to its business within this State:

- a. If the corporation shall employ in its books of account a detailed allocation of receipts and expenditures which reflects more clearly than the applicable allocation formula or alternative formulas prescribed by this section the portion of the capital stock, surplus and undivided profits attributable to the business within this State, application for permission to base the return upon the taxpayer's books of account shall be considered by the Tax Review Board. The Board shall be authorized to permit such separate accounting method in lieu of applying the applicable allocation formula if the Board deems such method proper as best reflecting the portion of the capital stock, surplus and undivided profits attributable to this State.
- b. If the corporation shall show that any other method of allocation than the applicable allocation formula or alternative formulas prescribed by this section reflects more clearly the portion of the capital stock, surplus and undivided profits attributable to the business within this State, application for permission to base the return upon such other method shall be considered by the Tax Review Board. The application shall be accompanied by a statement setting forth in detail, with full explanations, the method the taxpayer believes will more nearly reflect the portion of its capital stock, surplus and undivided profits attributable to the business within this State. If the Board shall conclude that the allocation formula and the alternative formulas prescribed by this section allocate to this State a greater portion of the capital stock, surplus and undivided profits of the corporation than is reasonably attributable to business within this State, it shall determine the allocable portion by such other method as it shall find best calculated to assign to this State for taxation the portion reasonably attributable to its business within this State.

There shall be a presumption that the appropriate allocation formula reasonably attributes to this State the portion of the corporation's capital stock, surplus and undivided profits reasonably attributable to its business in this State and the burden shall rest upon the corporation to show the contrary. The relief herein authorized shall be granted by the Board only in cases of clear, cogent and convincing proof that the petitioning taxpayer is entitled thereto. No corporation shall use any alternative formula or method other than the applicable allocation formula provided by statute in making a franchise tax report or return to this State except upon order in writing of the Board and any return in which any alternative formula or other method other than the applicable allocation formula prescribed by statute is used without the permission of the Board, shall not be a lawful return.

When the Board determines, pursuant to the provisions of this Article, that an alternative formula or other method more



accurately reflects the portion of the capital stock, surplus and undivided profits allocable to North Carolina and renders its decision with regard thereto, the corporation shall allocate its capital stock, surplus and undivided profits for future years in accordance with such determination and decision of the Board so long as the conditions constituting the basis upon which the decision was made remain unchanged or until such time as the business method of operation of the corporation changes. Provided, however, that the Secretary of Revenue may, in his discretion, with respect to any subsequent year, require the corporation to furnish information relating to its property, operations and activities.

A corporation which proposes to do business in this State may file a petition with the Board setting forth the facts upon which it contends that the applicable allocation formula will allocate a greater portion of the corporation's capital stock, surplus and undivided profits to North Carolina than will be reasonably attributable to its proposed business within the State. Upon a proper showing in accordance with the procedure described above for determination by the Board, the Board may authorize such corporation to allocate its capital stock, surplus and undivided profits to North Carolina on the basis prescribed by the Board under the provisions of this section for such future years as the conditions constituting the basis upon which the Board's decision is made remain unchanged and the business operations of the corporation continue to conform to the statement of proposed methods of business operations presented by the corporation to the Board.

When the Secretary of Revenue asserts liability under the formula adjustment decision of the Tax Review Board, an aggrieved taxpayer may pay the tax under protest and bring a civil action for recovery under the provisions of G.S. 105-241.4.

- (3) The proportion of the total capital stock, surplus and undivided profits of each such corporation so allocated shall be deemed to be the proportion of the total capital stock, surplus and undivided profits of each such corporation used in connection with its business in this State and liable for annual franchise tax under the provisions of this section.

(d) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection (c) of this section, which amount so determined shall in no case be less than fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each such corporation plus the total appraised value of intangible property returned for taxation of intangible personal property as herein specified nor less than its total actual investment in tangible property in this State, every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the report and statement are due, a franchise or privilege tax, which is hereby levied at the rate of one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) of the total amount of capital stock, surplus and undivided profits as herein provided. The tax imposed in this section shall in no case be less than ten dollars (\$10.00) and shall be for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each such corporation in this State: Provided, that the basis for the franchise tax on all corporations, eighty percent (80%) of whose outstanding capital stock is owned by persons or corporations to whom or to which such stock was issued prior to January 1, 1935, in part payment or settlement of their respective deposits in



any closed bank of the State of North Carolina, shall be one-half the appraised value as determined for ad valorem taxation of the real and tangible personal property of such corporation in this State for the calendar year next preceding the date on which report and statement is due under the provisions of this section. Appraised value of tangible property including real estate shall be the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. Appraised value of intangible property, except for bank deposits subject to tax under the provisions of G.S. 105-199, shall be the total gross valuation required to be reported for intangible tax purposes on April 15 coincident with or next preceding the due date of the franchise tax return. Appraised value of bank deposits subject to tax under the provisions of G.S. 105-199 shall be the average balance determined under such section 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 shall be construed to mean the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax purposes, and also less any indebtedness incurred and existing by virtue of the purchase of any real estate and any permanent improvements made thereon. In computing "total actual investment in tangible personal property" there shall also be deducted reserves for the entire cost of any air cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or into streams, lakes, or rivers, upon condition that the corporation claiming such deduction shall furnish to the Secretary a certificate from the Board of Water and Air Resources certifying that said Board has found as a fact that the air cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such device, plant or equipment complies with the requirements of said Board with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Board of Water and Air Resources and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas shall be treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955.

In determining the total tax payable by any corporation under this section, there shall be allowed as credit on such tax the amount of intangible tax paid on bank deposits under the provisions of G.S. 105-199 to the extent that such deposits have been concurrently included in the alternative appraised value tax base pursuant to the provisions of this subsection except that the minimum tax herein provided shall not be less than ten dollars (\$10.00). In determining the total tax payable by any corporation under G.S. 105-115 there shall be allowed as credit on such tax the amount of intangible tax paid during the preceding franchise tax year on bank deposits under the provisions of G.S. 105-199.

(1973, c. 476, s. 193; c. 695, s. 17.)

**Editor's Note. —**

The first 1973 amendment, effective July 1,

1973, changed the title of the Commissioner of Revenue to Secretary of Revenue.



The second 1973 amendment, effective for taxable years beginning on and after Nov. 1, 1972, rewrote the first sentence, substituted "one-half the appraised value as determined for ad valorem taxation" for "the total assessed value" in the proviso to the second sentence and substituted "Appraised" for "Assessed" at the beginning of the third, fourth and fifth

sentences, both in the first paragraph of subsection (d), and substituted "appraised" for "assessed" near the middle of the first sentence of the second paragraph of subsection (d).

As subsections (e) through (h) were not changed by the amendments, they are not set out.

### § 105-123. New corporations.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-125. Corporations not mentioned.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.

### § 105-127. When franchise or privilege taxes payable.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-128. Power of attorney.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-129. Extension of time for filing returns.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-129.1. Reimbursement of certain manufacturers authorized.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

## ARTICLE 4.

### *Schedule D. Income Tax.*

#### DIVISION I. CORPORATION INCOME TAX.

### § 105-130.2. Definitions.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-130.3. Corporations.

**Taxable Income Determined by 1967 Internal Revenue Code.** — Since this section provides that "The net income or net loss of such corporation shall be the same as 'taxable income' as defined in the Internal Revenue Code in effect on the effective date of this Division, subject to the adjustments provided in § G.S. 105-130.5," the Supreme Court looks to the provisions of the Internal Revenue Code in effect on Jan. 1, 1967 to determine taxable income. *Mutual Sav. & Loan Ass'n v. Lanier*, 279 N.C. 299, 182 S.E.2d 368 (1971).

**"Taxable Income" Defined.** — Under the Internal Revenue Code, "taxable income" means gross income minus specified allowable deductions. *Mutual Sav. & Loan Ass'n v. Lanier*, 279 N.C. 299, 182 S.E.2d 368 (1971).

**Intent to Achieve Conformity in Computing Taxable Income.** — The provisions of 26 U.S.C.A. § 166 are in accord with those of § 105-147(10) prior to the 1967 Act, Session Laws 1967, c. 1110 (§ 105-130 et seq.), with this exception: § 105-147(10) authorized a reasonable addition to a reserve for bad debts "in the



discretion of the Commissioner." 26 U.S.C.A. § 166(c) authorizes a reasonable addition to a reserve for bad debts "in the discretion of the Secretary or his delegate." Reliance upon the exercise of this discretionary power by a federal rather than a State official indicates the legislative intent to achieve simplicity and conformity when computing "taxable income" for State and federal tax purposes. *Mutual Sav. & Loan Ass'n v. Lanier*, 279 N.C. 299, 182 S.E.2d 368 (1971).

**No Deduction for Worthless Debts in Computing Corporate Net Income.** — Under the 1967 Act, Session Laws 1967, c. 1110 (§ 105-130 et seq.), § 105-147(10) provides for a deduction for worthless debts in the computation of the net income of an individual. However, it does not include that provision or any provision for a deduction for worthless debts in computing the net income of a corporation. *Mutual Sav. & Loan Ass'n v. Lanier*, 279 N.C. 299, 182 S.E.2d 368 (1971).

#### § 105-130.4. Allocation and apportionment of income for corporations.

**Editor's Note.** —

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

Cited in *In re Dickinson*, 281 N.C. 552, 189 S.E.2d 141 (1972).

#### § 105-130.6. Subsidiary and affiliated corporations.

**Editor's Note.** —

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.

#### § 105-130.7. Deductible portion of dividends.

**Editor's Note.** —

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.

#### § 105-130.10. Amortization of air cleaning devices and waste treatment facilities.

**Editor's Note.** —

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.

#### § 105-130.11. Conditional and other exemptions.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**Excise Tax Imposed on Savings Associations Based on "Net Taxable Income".** — Although building and loan associations, and savings and loan associations subject to capital stock tax and/or excise tax

under Article 8D are exempt from the income tax imposed by this Article, the amount of the annual excise tax imposed by § 105-228.24 is based on "net taxable income" as that term is defined for purposes of the income tax levied against corporations in this Article. *Mutual Sav. & Loan Ass'n v. Lanier*, 279 N.C. 299, 182 S.E.2d 368 (1971).

#### § 105-130.12. Regulated investment companies and real estate investment trusts.

**Editor's Note.** —

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.

#### § 105-130.14. Corporations filing consolidated returns for federal income tax purposes.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

#### § 105-130.15. Basis of return of net income.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.



**§ 105-130.16. Returns.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-130.17. Time and place of filing returns.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-130.18. Failure to file returns; supplementary returns.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-130.19. Time and place of payment of tax.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-130.20. Corrections and changes.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-130.21. Information at the source.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**DIVISION II. INDIVIDUAL INCOME TAX.****§ 105-133. Short title.**

**Cited** in *In re Dickinson*, 281 N.C. 552, 189 S.E.2d 141 (1972)

**§ 105-135. Definitions.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.

**§ 105-136. Individuals.**

**This section imposes a tax on all of a resident's net income.** In *re Dickinson*, 281 N.C. 552, 189 S.E.2d 141 (1972).

**Basis on Which Income Tax Is Levied on Nonresident Partner.** — Section 105-142(c) determines the basis on which this section levies an income tax on a nonresident partner. In *re Dickinson*, 281 N.C. 552, 189 S.E.2d 141 (1972).

**Only the Portion of the Income Derived from State Taxed.** — This section imposes a tax only on that portion of the net income of a nonresident which is derived from North Carolina sources. In *re Dickinson*, 281 N.C. 552, 189 S.E.2d 141 (1972).

**§ 105-140. Net income defined.**

**Quoted** in *In re Dickinson*, 281 N.C. 552, 189 S.E.2d 141 (1972).

**§ 105-141. Gross income defined.**

(b) The words "gross income" do not include the following items, which shall be exempt from taxation under this Division, but shall be reported in such form and manner as may be prescribed by the Secretary of Revenue:

(1) The proceeds of life insurance policies and contracts paid upon the death of the insured to beneficiaries or to the estate of the insured.



- (2) The amount received by the insured as a return of premium or premiums paid by him under life insurance endowment contracts, either during the term or at the maturity of the term mentioned in the contracts or upon surrender of the contract.
- (3) The value of property acquired by gift, bequest, devise or descent (but the income from such property shall be included in gross income).
- (4) Interest upon the obligations of the United States or its possessions, or of the State of North Carolina, or of a political subdivision thereof, or of nonprofit educational institutions organized or chartered under the laws of the State of North Carolina: Provided, interest upon the obligations of the United States shall not be excluded from gross income unless interest upon obligations of the State of North Carolina or any of its political subdivisions is excluded from income taxes imposed by the United States.
- (5) Any amounts received (i) through accident or health insurance, (ii) through health or accident plans financed by profit-sharing trusts or pension trusts, or through self-funded reimbursement plans adopted by an employer for the benefit of his employees, reimbursing such employees for expenses incurred for their medical care or for the medical care of their spouses or their dependents, (iii) under workmen's compensation acts or similar acts (which have been judicially declared to provide benefits in the nature of workmen's compensation benefits, by whatever name called) as compensation for personal injuries or sickness, and (iv) for damages, whether by suit or agreement on account of injuries or sickness; provided, that any amounts received from the sources mentioned in this subsection as reimbursement for medical expenses incurred and claimed in a prior year or in prior years shall be excluded only to the extent that such amounts exceed the deduction claimed under subdivision (11) of G.S. 105-147 (relating to medical, etc., expenses), except that nothing in this subsection shall be construed as preventing a taxpayer from filing an amended return for a taxable year in which a medical deduction was claimed and allowed for the purpose of reducing the amount of the medical-expense deduction claimed in such year by any reimbursement for such medical expenses received in a later year when a change in the prior year is not barred by the provisions of this Division.
- (6) The rental value of a home and the appurtenances thereof furnished to a minister of the gospel as a part of his compensation, or the rental allowance paid to him as a part of his compensation to the extent used by him to rent or provide a home including the appurtenances thereof; also the rental value of any homes and quarters and the appurtenances thereof furnished the officers and employees of orphanages, whose duties require them to live on the premises and in buildings owned by such institutions, as a part of their compensation.
- (7) The amounts received in lump sum or monthly payments of benefits under the Social Security Act.
- (8) The amounts received in lump sum or monthly payment benefits from retirement or pension systems of other states by former teachers or State employees of such states: Provided, this exclusion shall apply only to individuals receiving benefits from states which grant similar exclusions or exemptions for individual income tax purposes to retired members of the North Carolina Retirement System for Teachers and State Employees or which levy no income tax on individuals.
- (9) The gross income of an employee shall not include:
  - a. The value of any meals or lodging furnished by his employer for the convenience of the employer provided, in the case of meals,



the meals are furnished on the business premises of the employer, and, in the case of lodging, the employee is required to accept such lodging on the business premises of his employer as a condition of his employment; and

- b. Amounts expended by his employer for premiums on group life, accident, health, or hospitalization insurance plans for the benefit of the employee.
- (10) The amounts received as a scholarship at an educational institution (as defined in G.S. 105-135) or as a fellowship grant, including the value of contributed services and accommodations; and the amounts received to cover expenses for travel, research, clerical help, or equipment, which are incident to such scholarship or fellowship grant to the extent that such amounts are exempt for federal income tax purposes under the provisions of § 117 of the Internal Revenue Code of 1954 as amended.
- (11) Amounts received by the estate, widow or heirs of an employee paid by or on behalf of one or more employers and paid by reason of death of any one employee to the extent of five thousand dollars (\$5,000) with respect to the death of any one employee regardless of the number of employers making such payments, except that such exclusion shall not apply to amounts with respect to which the employee possessed, immediately before his death, a nonforfeitable right to receive the amounts while living, except that even though an employee possessed a nonforfeitable right immediately before his death to receive the amounts while living, the exclusion provided in this subdivision will still apply in those cases in which the total distributions are payable within one taxable year of the distributee to such a distributee by a pension, profit-sharing, stock bonus or annuity trust qualifying under the provisions of subsection (f)(1)a of G.S. 105-161.
- (12) Compensation received for active service as a member of the armed forces of the United States below the grade of commissioned officer; and so much of the compensation of a commissioned officer in such armed forces as does not exceed five hundred dollars (\$500.00), for any month during any part of which such member served in a combat zone during any induction period, or was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone during an induction period, except that this subdivision shall not apply for any month during any part of which there are no combatant activities in the combat zone. For the purposes of this subdivision the term "commissioned officer" does not include a warrant officer; the term "combat zone" means an area which the President of the United States by executive order designates as an area in which armed forces of the United States are or have been engaged in combat; service is performed in a combat zone only if performed on or after the date designated by the President by executive order as the date of the commencing of combatant activities in such zone; the term "compensation" does not include pension and retirement pay; and the term "induction period" means any period during which individuals are liable for induction for training and service in the armed forces of the United States.
- (13) The amounts received in lump sum or monthly payments of benefits from retirement and pension funds established for firemen or law-enforcement officers by or under the control of cities or counties located in North Carolina; provided, that such amounts shall be exempt from income tax only if they would have been exempt under the provisions of either G.S. 143-166 (relating to the Law-Enforcement



Officers' Benefit and Retirement Fund) or G.S. 128-31 (relating to North Carolina Local Governmental Employees' Retirement Fund) if such cities or counties had elected to provide such benefits for firemen or law-enforcement officers under the provisions of such laws.

- (14) Any amount, not to exceed three thousand dollars (\$3,000) received during any year under a federal employee retirement program to which the employee made contributions during his working years.
- (15) Amounts received by members of the armed forces as hostile-fire duty pay which is authorized by Public Law 88-132 enacted by the Congress of the United States on October 2, 1963.
- (16) All disability pay received from the United States government by reason of service in either the army, navy, marine corps, nurses' corps, air corps, air force, or any of the armed services of the United States.
- (17) a. A portion of amounts contributed for the purchase of an annuity contract for an employee by an employer described in section 501(c)(3) of the Federal Internal Revenue Code which is exempt from federal income tax under section 501(a) of such Code, or for an employee who performs services for an educational institution (as defined in G.S. 105-135(3)) by an employer which is a state, a political subdivision of a state, or an agency or instrumentality of any one or more of the foregoing, if such annuity contract is not purchased under a plan which meets the requirement of G.S. 105-161(f)(1)a, and if the employee's rights under the annuity contract are nonforfeitable except for failure to pay future premiums. However, such portion of amounts contributed by such employer for such annuity contract on or after such rights become nonforfeitable shall be excluded from the gross income of the employee for the taxable year only to the extent that the aggregate of such amounts does not exceed the exclusion allowance (as herein defined) for such taxable year. In addition, the employee shall include in his gross income the amounts received under such annuity contract for the year received as provided in G.S. 105-141.1 (relating to annuities).
- b. For purposes of this subdivision, the "exclusion allowance" for an employee for the taxable year is an amount equal to the excess, if any, of (i) the amount determined by multiplying twenty percent (20%) of his includible compensation (as herein defined) by the number of years of service, over (ii) the aggregate of the amounts contributed by the employer for annuity contracts and excludible from gross income of the employee for any prior taxable year.

For purposes of this subdivision, the term "includible compensation" means, in the case of any employee, the amount of compensation which is received from the employer described in the first paragraph of this subdivision, and which is includible in gross income for the most recent period (ending not later than the close of the taxable year) which under the following paragraph may be counted as one year of service. Such term does not include any amount contributed by the employer for any annuity contract to which this subdivision applies.

In determining the number of years of service for purposes of this subdivision there shall be included (i) one year for each full year during which the individual was a full-time employee of the organization purchasing the annuity for him, and (ii) a fraction of a year (determined as the Secretary of Revenue may prescribe) for each full year during which such individual was a part-time employee of such organization and for each part of a



year during which such individual was a full-time or part-time employee of such organization. In no case shall the number of years of service be less than one.

If for any taxable year of the employee this subdivision applies to two or more annuity contracts purchased by the employer, such contracts shall be treated as one contract.

For purposes of this subdivision and G.S. 105-141.1(e) (relating to specific rules for computing employees' contributions to annuity contract), if rights of the employee under an annuity contract described in the first paragraph of this subdivision change from forfeitable to nonforfeitable rights, then the amount (determined without regard to this subsection) includible in gross income by reason of such change shall be treated as an amount contributed by the employer for such annuity contract as of the time such rights become nonforfeitable.

The provisions of this subdivision shall not apply to any amounts contributed by an employer pursuant to an agreement to take a reduction in salary or to forego an increase in salary.

- (18) Any amount, not to exceed three thousand dollars (\$3,000) received by a taxpayer during any year as retired or retainer pay as a result of service in any of the armed forces of the United States. (1939, c. 158, s. 317; 1941, c. 50, s. 5; c. 283; 1943, c. 400, s. 4; 1945, c. 708, s. 4; c. 752, s. 3; 1951, c. 643, s. 4; 1957, c. 1224; c. 1340, s. 4; 1961, c. 893; 1963, c. 1169, s. 2; 1965, c. 833; c. 1003, s. 1; 1967, c. 716, s. 1; cc. 871, 1025; c. 1110, s. 3; cc. 1151, 1221; 1969, cc. 178, 1272; 1971, cc. 792, 996; 1973, c. 287; c. 476, s. 193.)

**Editor's Note. —**

The first 1973 amendment, effective for income years beginning on and after Jan. 1, 1973, substituted "three thousand dollars (\$3,000)" for "twelve hundred fifty dollars (\$1,250)" in subdivision (18) of subsection (b).

The second 1973 amendment, effective July 1, 1973, changed the title of the Commissioner of Revenue to Secretary of Revenue.

As subsection (a) was not changed by the amendments, it is not set out.

### § 105-141.1. Gross income—annuities.

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-142. Basis of return of net income.

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**Statutes providing exemption from taxation are strictly construed.** In re Dickinson, 281 N.C. 552, 189 S.E.2d 141 (1972).

**Taxation is the rule; exemption the exception.** In re Dickinson, 281 N.C. 552, 189 S.E.2d 141 (1972).

**Determining Basis of Income Tax on Nonresident Partner. —** Subsection (c) determines the basis on which § 105-136 levies an income tax on a nonresident partner. In re Dickinson, 281 N.C. 552, 189 S.E.2d 141 (1972).

**Determination of Net Income of Multistate Partnerships Attributable to This State. —** The proviso following the third sentence of

subsection (c) relates solely to the second and third sentences of that subsection and its sole purpose is to provide how the net income of a multistate partnership attributable to North Carolina is to be determined. In re Dickinson, 281 N.C. 552, 189 S.E.2d 141 (1972).

The proviso of subsection (c) relates solely to the method for determining the portion of the net income attributable to North Carolina of a multistate partnership with nonresident members. In re Dickinson, 281 N.C. 552, 189 S.E.2d 141 (1972).

**Subsection (c) Not Enacted in Substitution for Former § 105-147(10)(b). —** The contention that the proviso of subsection (c) was enacted in substitution for former § 105-147(10)(b) is without substance. In re Dickinson, 281 N.C. 552, 189 S.E.2d 141 (1972).

### § 105-144.1. Involuntary conversions; recognition of gain.

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.



**§ 105-145. Exchanges of property.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-146. Inventory.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-147. Deductions.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue. **Cited in** Mutual Sav. & Loan Ass'n v. Lanier, 279 N.C. 299, 182 S.E.2d 368 (1971).

**§ 105-149. Exemptions.** — (a) There shall be deducted from the net income the following exemptions:

- (1) In the case of a single individual, a personal exemption of one thousand dollars (\$1,000).
- (2) In the case of a married man with a wife living with him, two thousand dollars (\$2,000). Provided, that a husband living with his wife may by agreement with his wife allow her to claim the two thousand dollars (\$2,000) exemption provided in this subsection and the husband in such case shall be entitled to claim an exemption of only one thousand dollars (\$1,000), in which case the husband must file a return for the same year, regardless of whether he shall have reportable income for such year, and shall claim thereon only a one thousand dollar (\$1,000) exemption exclusive of any other exemptions to which he may be entitled under this subsection.
- (2a) In the case of an individual who qualifies as "head of household" as defined in subdivision (8) of G.S. 105-135, two thousand dollars (\$2,000), but the "head of household" exemption shall not be allowable to a married woman living with her husband except as provided in subsection (c)(2) of this section. The "head of household" exemption shall be in lieu of and not in addition to the exemptions established in subdivisions (1), (2), (4), (6) and (7) of subsection (a). Only one "head of household" exemption shall be allowable with respect to any one household, as the term "household" is defined in subdivision (8) of G.S. 105-135, and no individual shall be entitled to more than one "head of household" exemption.
- (3) A married woman having a separate and independent income, one thousand dollars (\$1,000).
- (4) In the case of a widow or widower having minor child or children, natural or adopted, two thousand dollars (\$2,000).
- (5) Six hundred dollars (\$600.00) for each dependent (as defined below) whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than one thousand dollars (\$1,000), or who is a child of the taxpayer either under 19 years of age or a student regularly enrolled for full-time study in a school, college, or other institution of learning. For the purpose of the preceding sentence, the term "child" means an individual who is a son or daughter (natural or adopted), or a stepson or stepdaughter of the taxpayer.

An additional exemption of six hundred dollars (\$600.00) for a dependent (as defined in this subdivision) who is a full-time student at an accredited college or university or other institution of higher learning under such rules or regulations as may be prescribed by the Secretary of Revenue. For the purposes of this paragraph, the



words "full-time student" shall mean a dependent enrolled in full-time study on the last day of the income year or enrolled for full-time study for a period of at least five months (whether or not consecutive) during the income year.

For the purposes of this subsection, the term "dependent" means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer:

- a. A son or daughter (or a descendent of either), a stepson, or stepdaughter, a brother or sister (including a brother or sister of the half blood), a stepbrother, stepsister, father or mother (or an ancestor of either), a stepfather, a stepmother, a son or daughter of a brother or sister, a brother or sister of the father or mother, a son-in-law, a daughter-in-law, a father-in-law, a mother-in-law, a brother-in-law, or a sister-in-law of the taxpayer;
- b. An individual who was a member of the same household as the taxpayer;
- c. A former member of the same household as the taxpayer or an individual who otherwise qualifies as a dependent of the taxpayer, who for the taxable year of such taxpayer receives institutional care required by reason of a physical or mental disability.

The exemption provided in this subdivision for children of taxpayers shall be allowed only to the person claiming the two thousand dollar (\$2,000) exemption provided in subdivision (2) of this subsection except, however, that where husband and wife are divorced and have children of their marriage for which they would otherwise be entitled to an exemption hereunder, the parent furnishing the chief support of his (or her) child during the income year shall be entitled to said exemption, irrespective of whether said parent has custody of said child or children or is head of the household during said year.

For the purpose of determining the chief support of an individual other than a son or daughter (natural or adopted) or a stepson or stepdaughter of the taxpayer, over one half of the support of the individual for the calendar year shall be treated as received from the taxpayer if:

- a. No one individual contributed over half of such support;
- b. Over half of such support was received from individuals each of whom, but for the fact that he did not contribute over half of such support, would have been entitled to claim such individual as a dependent for a taxable year beginning in such calendar year;
- c. The taxpayer contributed over ten percent (10%) of such support; and
- d. Each individual described in paragraph b (other than the taxpayer) who contributed over ten percent (10%) of such support files a written declaration (in such manner and form as the Secretary of Revenue may prescribe) that he will not claim such individual as a dependent for any taxable year beginning in such calendar year.

Nothing in this subdivision shall be construed to allow one spouse to claim a six-hundred-dollar (\$600.00) exemption for the other spouse.

- (6) In the case of a fiduciary filing a return for the net income received during the income year of a deceased resident or nonresident individual who has died during the tax year or income year without having made a return, two thousand dollars (\$2,000) if the individual



was a married man, and one thousand dollars (\$1,000) if the individual was single or a married woman not qualifying as "head of a household."

In the case of a fiduciary filing a return for an insolvent or incompetent individual resident or nonresident where the fiduciary has complete charge of such net income the same exemption to which the beneficiary would be entitled.

- (7) In the case of a divorced person having the sole custody of a minor child or children and receiving no alimony for the support of himself, herself, child, or children two thousand dollars (\$2,000).
- (8) In the case of any person who is totally blind, such person shall be entitled to an additional exemption of one thousand dollars (\$1,000) in addition to all other exemptions allowed by law. Provided, such person shall submit to the Department of Revenue a certificate from a physician, an optometrist or from the Department of Human Resources certifying that such condition exists.
- (9) In the case of an individual who has reached the age of 65 years on or before the last day of the taxable year, an exemption of one thousand dollars (\$1,000) in addition to all other exemptions allowed by this section.
- (10) In the case of each severely retarded person over half of whose support for the taxable year has been provided by a parent or guardian, there shall be allowed an exemption of two thousand dollars (\$2,000) in addition to all other exemptions allowed by this subsection. For the purposes of this subdivision, "severely retarded" shall mean a person whose intelligence quotient falls below 40.

In order to qualify for such exemption the parents or guardian of said persons shall provide the Department of Revenue with a statement verifying the condition of said persons from any doctor or psychiatrist.

(1973, c. 468, ss. 1, 2; c. 476, ss. 143, 193.)

**Editor's Note. —**

The first 1973 amendment, effective for taxable years beginning on and after Jan. 1, 1973, added subdivision (10) to subsection (a).

The second 1973 amendment, effective July 1, 1973, substituted "Secretary of Revenue" for "Commissioner of Revenue" in subdivision (5), and "Department of Human Resources" for "State Commission for the Blind" in subdivision (8), of subsection (a).

As the rest of the section was not changed by the amendments, only subsection (a) is set out.

**A Court May Not Assign Dependency Exemption to One Spouse without Regard to Which Furnished More Than One Half the Support.** — See opinion of Attorney General to Representative Marcus Short, 41 N.C.A.G. 866 (1972).

**Cited in** *In re Dickinson*, 281 N.C. 552, 189 S.E.2d 141 (1972).

## § 105-151. Tax credits for income taxes paid to other states by individuals.

**Editor's Note. —**

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**Statutes providing exemption from taxation are strictly construed.** *In re Dickinson*, 281 N.C. 552, 189 S.E.2d 141 (1972).

**Taxation is the rule; exemption the exception.** *In re Dickinson*, 281 N.C. 552, 189 S.E.2d 141 (1972).

**Credit Allowed on Income Tax for Payments to Another State.** — Under this section, instead of allowing a deduction in

computing taxable net income, a credit is allowed against North Carolina tax for the amount of the tax paid to another state or country on the same income. *In re Dickinson*, 281 N.C. 552, 189 S.E.2d 141 (1972).

That "another state or country" can lawfully impose an income tax only on that portion of the income of a resident of North Carolina derived from sources in that "state or country," implies that such income is to be taxed by North Carolina, but allows a credit on the North Carolina income tax for payments, if any, to "another state or country." *In re Dickinson*, 281 N.C. 552, 189 S.E.2d 141 (1972).



**Tax Computed on Basis of Resident's Entire Net Income.** — The income tax of a resident is computed on the basis of his entire

net income. In re Dickinson, 281 N.C. 552, 189 S.E.2d 141 (1972).

### § 105-152. Returns.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-154. Information at the source.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-155. Time and place of filing returns.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.

### § 105-156. Failure to file returns; supplementary returns.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-157. Time and place of payment of tax.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-159. Corrections and changes.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

## DIVISION III. INCOME TAX—ESTATES, TRUSTS, AND BENEFICIARIES.

### § 105-161. Estates and trusts.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.

### § 105-162. Beneficiaries of estates and trusts.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

## ARTICLE 4A.

### *Withholding of Income Taxes from Wages and Filing of Declarations of Estimated Income and Payment of Income Tax by Individuals.*

### § 105-163.1. Definitions.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-163.2. Withholding.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.



**§ 105-163.3. Withholding in accordance with regulations.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-163.5. Exemptions allowable; certificates.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-163.6. Payment of amounts withheld; personal liability for failure to withhold; limitation of recovery.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-163.7. Statement to employees; information to Secretary.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-163.8. Liability of employer.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-163.9. Refund to employer; application.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-163.10. Withheld amounts credited to individual for calendar year.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-163.11. Estimated declaration of income and income tax; contents; when and where filed; amendments to declaration; option of amendment.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-163.13. Affirmation; penalty for false declaration.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-163.14. Payment of tax.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-163.15. Failure by individual to pay estimated income tax; penalty.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-163.16. Overpayment refunded.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-163.17. Enforcement.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-163.18. Rules and regulations.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.



**§ 105-163.22. Reciprocity.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-163.23. Withholding from federal employees.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**ARTICLE 4B.***Filing of Declarations of Estimated Income Tax and Installment Payments of Estimated Income Tax by Corporations.***§ 105-163.25. Definitions.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-163.26. Declarations of estimated income tax by corporations.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-163.27. Time for filing declarations of estimated income tax by corporations.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-163.28. Installment payments of estimated income tax by corporations.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-163.30. Failure by corporation to pay estimated income tax.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-163.32. Affirmation; penalties for false declaration.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-163.33. Overpayment refunded.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-163.37. Rules and regulations.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**ARTICLE 5.***Schedule E. Sales and Use Tax.***DIVISION 1. TITLE, PURPOSE AND DEFINITIONS.****§ 105-164.3. Definitions.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.



## DIVISION II. TAXES LEVIED.

## Part 1. Retail Sales Tax.

## § 105-164.4. Imposition of tax; retailer.

**Editor's Note. —**

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**The sales tax is a tax on the retailer. —**

This section imposes the sales tax on all retailers, as a class, and applies it alike in its exactions and exemptions to all persons belonging to the prescribed class. *Fisher v. Jones*, 15 N.C. App. 737, 190 S.E.2d 663 (1972).

**And is Privilege Tax. —**

This section imposes a privilege or license tax upon retailers and not a tax on purchasers or consumers. *Fisher v. Jones*, 15 N.C. App. 737, 190 S.E.2d 663 (1972).

**Perfect Equality in Collection of Tax Is Impossible. —** Perfect equality in the collection of the tax by retailers from consumers is, as a practical matter, impossible as between almost any two or more retailers by reason of the differences in types of merchandise sold and selling methods. *Fisher v. Jones*, 15 N.C. App. 737, 190 S.E.2d 663 (1972).

If the accidents of trade lead to inequality or hardships, the consequences must be accepted as inherent in government by law instead of government by edict. *Fisher v. Jones*, 15 N.C. App. 737, 190 S.E.2d 663 (1972).

**Coin-operated Laundry Subject to Tax under Subdivision (4). —** A coin-operated laundry, which is a commercial establishment in which automatic washing machines, dryers and dry-cleaning machines are installed for the use and convenience of the general public, is a "launderette" or "launderall" as those terms are used in subdivision (4) of this section and is subject to the tax levied upon laundries in that subdivision. *Fisher v. Jones*, 15 N.C. App. 737, 190 S.E.2d 663 (1972).

**A sales tax on retailers who sell merchandise through vending machines** (including items sold for less than ten cents where it is impossible to recoup the tax from the purchaser) does not violate constitutional provisions relating to due process and equal protection. *Fisher v. Jones*, 15 N.C. App. 727, 190 S.E.2d 663 (1972).

**Applicability of Sales Tax. —** Sales tax is applicable to gross receipts from rug cleaning services conducted on the business premises of a rug cleaner but is not applicable to gross receipts from rug cleaning services conducted on the premises of the rug cleaner's customer. Opinion of Attorney General to Mr. Eric L. Gooch, Sales & Use Tax Division, N.C. Department of Revenue, 42 N.C.A.G. 35 (1972).

## Part 2. Wholesale Tax.

## § 105-164.5. Imposition of tax; wholesale merchant.

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

## Part 3. Use Tax.

## § 105-164.6. Imposition of tax.

**Editor's Note. —**

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.

## Part 4. General Provisions.

## § 105-164.7. Sales tax part of purchase price.

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

*Fisher v. Jones*, 15 N.C. App. 737, 190 S.E.2d 663 (1972).

**Failure to Charge or Collect Tax, etc. —**

In accord with 2nd paragraph in original. See

Failure to charge or collect the tax from purchaser does not relieve the retailer of any tax liability. *Fisher v. Jones*, 15 N.C. App. 737, 190 S.E.2d 663 (1972).

## § 105-164.9. Advertisement to absorb tax unlawful.

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.



**§ 105-164.10. Retail bracket system.**

**Editor's Note.** — Session Laws 1973, c. 476, the Commissioner of Revenue to Secretary of s. 193, effective July 1, 1973, changes the title of Revenue.

**§ 105-164.11. Excessive and erroneous collections.**

**Editor's Note.** — Session Laws 1973, c. 476, the Commissioner of Revenue to Secretary of s. 193, effective July 1, 1973, changes the title of Revenue.

**DIVISION III. EXEMPTIONS AND EXCLUSIONS.**

**§ 105-164.13. Retail sales and use tax.** — The sale at retail, the use, storage or consumption in this State of the following tangible personal property is specifically exempted from the tax imposed by this Article:

**Industrial Group.**

- (9) Sales of boats, fuel oil, lubricating oils, machinery, equipment, nets, rigging, paints, parts, accessories and supplies to commercial fishermen for use by them in the taking or catching commercially of shrimp, crab, oysters, clams, scallops, and fish, both edible and nonedible. "Commercial fishermen" as used in this section means only those persons licensed by the Department of Natural and Economic Resources to fish commercially, under the provisions of G.S. 113-154 and 113-155. An unexpired identification card issued to a licensed commercial fisherman pursuant to the provisions of G.S. 113-155.1 shall be proof of the licensee's status as a commercial fisherman for the purposes of this section. However, the exemption provided for herein shall not be denied to a commercial fisherman merely because he does not have or display such identification card.

**Unclassified Group.**

- (20) Sales by blind merchants operating under supervision of the Department of Human Resources.

(1973, c. 476, s. 143; c. 708, s. 1.)

**Editor's Note.** —

The first 1973 amendment, effective July 1, 1973, substituted "Department of Human Resources" for "Commission for the Blind" in subdivision (20).

The second 1973 amendment, effective July 1, 1973, added the second, third and fourth sentences of subdivision (9).

As the rest of the section was not changed by the amendments, only the introductory

paragraph and subdivisions (9) and (20) are set out.

**Sand and Crushed Stone Which Have Been Washed and Screened Remain in Their "Original or Unmanufactured State," and Sale by Producer As Producer and Not Retail Merchant Is Exempt from the Sales Tax.** —

See opinion of Attorney General to Mr. Eric L. Gooch, Department of Revenue, 41 N.C.A.G. 511 (1971).

**§ 105-164.14. Certain refunds authorized.****Editor's Note.** —

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.

**DIVISION IV. REPORTING AND PAYMENT.****§ 105-164.15. Secretary shall provide forms.**

**Editor's Note.** — Session Laws 1973, c. 476, the Commissioner of Revenue to Secretary of s. 193, effective July 1, 1973, changes the title of Revenue.



**§ 105-164.16. Taxes due monthly; reports and payment of tax.**

**Editor's Note.** — Session Laws 1973, c. 476, the Commissioner of Revenue to Secretary of  
s. 193, effective July 1, 1973, changes the title of Revenue.

**§ 105-164.17. Reports and payment of use tax.**

**Editor's Note.** — Session Laws 1973, c. 476, the Commissioner of Revenue to Secretary of  
s. 193, effective July 1, 1973, changes the title of Revenue.

**§ 105-164.18. Remittances; how made.**

**Editor's Note.** — Session Laws 1973, c. 476, the Commissioner of Revenue to Secretary of  
s. 193, effective July 1, 1973, changes the title of Revenue.

**§ 105-164.19. Extension of time for making returns and payment.**

**Editor's Note.** — Session Laws 1973, c. 476, the Commissioner of Revenue to Secretary of  
s. 193, effective July 1, 1973, changes the title of Revenue.

**§ 105-164.20. Cash or accrual basis of reporting.**

**Editor's Note.** — Session Laws 1973, c. 476, the Commissioner of Revenue to Secretary of  
s. 193, effective July 1, 1973, changes the title of Revenue.

**§ 105-164.21. Discount for payment of taxes when due.**

**Editor's Note.** — Session Laws 1973, c. 476, the Commissioner of Revenue to Secretary of  
s. 193, effective July 1, 1973, changes the title of Revenue.

**DIVISION V. RECORDS REQUIRED TO BE KEPT.****§ 105-164.22. Retailer must keep records.**

**Editor's Note.** — Session Laws 1973, c. 476, the Commissioner of Revenue to Secretary of  
s. 193, effective July 1, 1973, changes the title of Revenue.

**§ 105-164.23. Consumer must keep records.**

**Editor's Note.** — Session Laws 1973, c. 476, the Commissioner of Revenue to Secretary of  
s. 193, effective July 1, 1973, changes the title of Revenue.

**§ 105-164.24. Separate accounting required.**

**Editor's Note.** — Session Laws 1973, c. 476, the Commissioner of Revenue to Secretary of  
s. 193, effective July 1, 1973, changes the title of Revenue.

**§ 105-164.25. Wholesale merchant must keep records.**

**Editor's Note.** — Session Laws 1973, c. 476, the Commissioner of Revenue to Secretary of  
s. 193, effective July 1, 1973, changes the title of Revenue.

**§ 105-164.26. Presumption that sales are taxable.**

**Quoted** in *Fisher v. Jones*, 15 N.C. App. 737,  
190 S.E.2d 663 (1972).

**§ 105-164.28. Resale certificate.**

**Editor's Note.** — Session Laws 1973, c. 476, the Commissioner of Revenue to Secretary of  
s. 193, effective July 1, 1973, changes the title of Revenue.



**§ 105-164.29. Application for licenses by wholesale merchants and retailers.**

**Editor's Note.** — Session Laws 1973, c. 476, the Commissioner of Revenue to Secretary of s. 193, effective July 1, 1973, changes the title of Revenue.

**DIVISION VI. EXAMINATION OF RECORDS.****§ 105-164.30. Secretary or agent may examine books, etc.**

**Editor's Note.** — Session Laws 1973, c. 476, the Commissioner of Revenue to Secretary of s. 193, effective July 1, 1973, changes the title of Revenue.

**§ 105-164.31. Complete records must be kept for three years.**

**Editor's Note.** — Session Laws 1973, c. 476, the Commissioner of Revenue to Secretary of s. 193, effective July 1, 1973, changes the title of Revenue.

**§ 105-164.32. Incorrect returns; estimate.**

**Editor's Note.** — Session Laws 1973, c. 476, the Commissioner of Revenue to Secretary of s. 193, effective July 1, 1973, changes the title of Revenue.

**DIVISION VII. FAILURE TO MAKE RETURNS; OVERPAYMENT.****§ 105-164.35. Excessive payments; recomputing tax.**

**Editor's Note.** — Session Laws 1973, c. 476, the Commissioner of Revenue to Secretary of s. 193, effective July 1, 1973, changes the title of Revenue.

**§ 105-164.37. Bankruptcy, receivership, etc.**

**Editor's Note.** — Session Laws 1973, c. 476, the Commissioner of Revenue to Secretary of s. 193, effective July 1, 1973, changes the title of Revenue.

**§ 105-164.38. Tax shall be a lien.**

**Editor's Note.** — Session Laws 1973, c. 476, the Commissioner of Revenue to Secretary of s. 193, effective July 1, 1973, changes the title of Revenue.

**§ 105-164.39. Attachment.**

**Editor's Note.** — Session Laws 1973, c. 476, the Commissioner of Revenue to Secretary of s. 193, effective July 1, 1973, changes the title of Revenue.

**§ 105-164.40. Jeopardy assessment.**

**Editor's Note.** — Session Laws 1973, c. 476, the Commissioner of Revenue to Secretary of s. 193, effective July 1, 1973, changes the title of Revenue.

**§ 105-164.41. Excess payments; refunds.**

**Editor's Note.** — Session Laws 1973, c. 476, the Commissioner of Revenue to Secretary of s. 193, effective July 1, 1973, changes the title of Revenue.

**DIVISION VIII. ADMINISTRATION AND ENFORCEMENT.****§ 105-164.43. Secretary to make regulations.**

**Editor's Note.** — Session Laws 1973, c. 476, the Commissioner of Revenue to Secretary of s. 193, effective July 1, 1973, changes the title of Revenue.

**§ 105-164.44. Penalty and remedies of Article 9 applicable.**

**Editor's Note.** — Session Laws 1973, c. 476, the Commissioner of Revenue to Secretary of s. 193, effective July 1, 1973, changes the title of Revenue.



## ARTICLE 6.

*Schedule G. Gift Taxes.***§ 105-188. Gift taxes; classification of beneficiaries; exemptions; rates of tax.**

(g) A donor shall be entitled to a total exemption of thirty thousand dollars (\$30,000) to be deducted from gifts made to donees named in subdivision (1) of subsection (f), less the sum of amounts claimed and allowed as an exemption in prior calendar years. The exemption, at the option of the donor, may be taken in its entirety in a single year, or may spread over a period of years. When this exemption has been exhausted, no further exemption is allowable. When the exemption or any portion thereof is applied to gifts to more than one donee in any one calendar year, said exemption shall be apportioned against said gifts in the same ratio as the gross value of the gifts to each donee is to the total value of said gifts in the calendar year in which said gifts are made. No exemption shall be allowed to a donor for gifts made to donees named in subdivisions (2) and (3) of subsection (f).

(1973, c. 505.)

**Editor's Note. —**

The 1973 amendment, effective Jan. 1, 1974, substituted "thirty thousand dollars (\$30,000)" for "twenty-five thousand dollars (\$25,000)" in the first sentence of subsection (g).

As the rest of the section was not changed by the amendment, only subsection (g) is set out.

**§ 105-191. Manner of determining tax; time of payment; application to Department of Revenue for correction of assessment.**

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

**§ 105-195. Tax to be assessed upon actual value of property; manner of determining value of annuities, life estates and interests less than absolute interest.**

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

**§ 105-196. Application for relief from taxes assessed; appeal.**

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

## ARTICLE 7.

*Schedule H. Intangible Personal Property.***§ 105-199. Money on deposit.****Editor's Note. —**

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.

**§ 105-201. Accounts receivable.**

**Accrued Rent Which Remains Unpaid on the Taxable Date** is an account receivable to the lessor and an account payable to the lessee.

Opinion of Attorney General to Mr. A. R. Waters, Jr., Intangibles Tax Division, N.C. Department of Revenue, 43 N.C.A.G. 74 (1973).

**§ 105-202. Bonds, notes, and other evidences of debt.**

**Applicable to Annuity Contracts. —** See opinion of Attorney General to Mr. A.R.

Waters, Revenue Department, 42 N.C.A.G. 199 (1973).



### § 105-205. Funds on deposit with insurance companies.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-206. When taxes due and payable; date lien attaches; nonresidents; forms for returns; extensions.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-209. Information from the source.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-210. Moneyed capital coming into competition with the business of banks.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-212. Institutions exempted; conditional and other exemptions.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-213. Separate records by counties; disposition and distribution of taxes collected; purpose of tax.** — (a) The Secretary of Revenue shall keep a separate record by counties of the taxes collected under the provisions of this Article and shall, as soon as practicable after the close of each fiscal year, certify to the State Disbursing Officer and to the State Treasurer the amount of such taxes to be distributed to each county and municipality in the State. The State Disbursing Officer shall thereupon issue a warrant on the State Treasurer to each county and municipality in the amount so certified.

In determining the amount to be distributed there shall be deducted from net collections (total collections less refunds) the following:

- (1) The tax credit specified in the second paragraph of G.S. 105-122(d), and
- (2) The cost to the State to administer and collect the taxes levied under this Article for the preceding fiscal year, and
- (3) The cost to the State for the operation of the Department of Revenue for the preceding fiscal year.

The net amount after such deductions shall be distributed to the counties and municipalities of the State as follows:

The amount distributable to each county and to the municipalities therein from the revenue collected under G.S. 105-200, 105-201, 105-202, 105-203 and 105-204 shall be determined upon the basis of the amounts collected in each county; and the amount distributable to each county and to the municipalities therein from the revenue collected under G.S. 105-199 and 105-205 shall be determined upon the basis of population in each county according to the most recent annual estimates of population as certified to the Secretary of Revenue by the Secretary of the North Carolina Department of Administration. The amounts so allocated to each county shall in turn be divided between the county and all municipalities therein in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding such distribution.

It shall be the duty of the chairman of the board of county commissioners of each county and the mayor of each municipality therein to report to the



Secretary of Revenue such information as he may request for his guidance in making said allotments. In the event any county or municipality fails to make such report within the time prescribed, the Secretary of Revenue may disregard such defaulting unit in making said allotments. The amounts so allocated to each county and municipality shall be distributed and used by said county or municipality in proportion to other property tax levies made for the various funds and activities of the taxing unit receiving said allotment.

(b) For purposes of this section, the term "municipality" includes any urban service district defined by the governing board of a consolidated city-county, and the amounts due thereby shall be distributed to the government of the consolidated city-county. (1939, c. 158, s. 715; 1941, c. 50, s. 8; 1947, c. 501, s. 7; 1957, c. 1340, s. 7; 1967, c. 1196, s. 5; 1971, c. 298, s. 3; 1973, c. 476, s. 193; c. 500, s. 3; c. 537, s. 4.)

**Editor's Note. —**

The first 1973 amendment, effective July 1, 1973, substituted "Secretary of Revenue" for "Commissioner of Revenue" throughout subsection (a) and substituted "Department of Revenue" for "State Board of Assessment" in subdivision (3) of the second paragraph of subsection (a).

The second 1973 amendment substituted the language beginning "according to the most

recent annual estimates" for "as shown by the latest federal decennial census" at the end of the first sentence of the third paragraph of present subsection (a).

The third 1973 amendment, effective July 1, 1973, designated the former provisions of this section as subsection (a) and added subsection (b).

Session Laws 1973, c. 537, s. 8, contains a severability clause.

## § 105-217. Power of attorney.

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

## ARTICLE 8A

### *Schedule I-A. Gross Earnings Taxes in Lieu of Ad Valorem Taxes.*

## § 105-228.2. Tax upon freight car line companies.

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

## ARTICLE 8B.

### *Schedule I-B. Taxes upon Insurance Companies.*

**§ 105-228.5. Taxes measured by gross premiums. —** Each and every insurance company shall annually pay to the Commissioner of Insurance at the time and at the rates hereinafter specified, a tax measured by gross premiums as hereinafter defined from business done in this State during the preceding calendar year.

Gross premiums from business done in this State in the case of life insurance and annuity contracts, including any supplemental contracts thereto providing for disability benefits, accidental death benefits, or other special benefits, shall for the purposes of the taxes levied in this section mean any and all premiums collected in the calendar year (other than for contracts for reinsurance) for policies the premiums on which are paid by or credited to persons, firms or corporations resident in this State, or in the case of group policies for any contracts of insurance covering persons resident within this State, with no deduction for considerations paid for annuity contracts which are subsequently returned except as below specified, and with no other deduction whatsoever except for premiums returned under one or more of the following conditions; premiums refunded on policies rescinded for fraud or other breach of contract; premiums which were paid in advance on life insurance contracts and subsequently refunded to the insured, premium payer, beneficiary or estate;



and in the case of group annuity contracts the premiums returned by reason of a change in the composition of the group covered. Said gross premiums shall be deemed to have been collected for the amounts as provided in the policy contracts for the time in force during the year, whether satisfied by cash payment, notes, loans, automatic premium loans, applied dividend or in any other manner whatsoever, except in the case of premiums waived by any of said companies pursuant to a contract for waiver of premium in case of disability.

Every insurer, in computing the premium tax, shall exclude from the gross amount of premiums all premiums received on or after July 1, 1973, from policies or contracts, issued in connection with the funding of a pension, annuity or profit-sharing plan, qualified or exempt under section 401, 403, 404 or 501 of the United States Internal Revenue Code as now or hereafter amended and the gross amount of all such premiums shall be exempt from the tax levied by this section.

Gross premiums from business done in this State in the case of contracts for fire insurance, casualty insurance, and any other type of insurance except life and annuity contracts as above specified, including contracts of insurance required to be carried by the Workmen's Compensation Act, shall for the purposes of the taxes levied in this section mean any and all premiums written during the calendar year, or the equivalent thereof in the case of self-insurers under the Workmen's Compensation Act, for contracts covering property or risks in this State, other than for contracts of reinsurance, whether such premiums are designated as premiums, deposits, premium deposits, policy fees, membership fees, or assessments. Gross premiums shall be deemed to have been written for the amounts as provided in the policy contracts, new and renewal, becoming effective during the year irrespective of the time or method of making payment or settlement for such premiums, and with no deduction for dividends whether returned in cash or allowed in payment or reduction of premiums or for additional insurance, and without any other deduction except for return of premiums, deposits, fees or assessments for adjustment of policy rates or for cancellation or surrender of policies.

In determining the amount of gross premiums from business in this State all gross premiums received in this State, or credited to policies written or procured in this State, or derived from business written in this State shall be deemed to be for contracts covering persons, property or risks resident or located in this State except for such premiums as are properly reported and properly allocated as being received from business done in some other nation, territory, state or states, and except for premiums from policies written in federal areas for persons in military service who pay premiums by assignment of service pay.

On the basis of the gross amount of premiums, as above defined, each company or self-insurer shall pay as to:

The amounts collected on contracts applicable to liabilities under the Workmen's Compensation Act, a tax at the rate of one and six-tenths percent (1.6%) in the case of domestic insurance companies and domestic self-insurers or self-insurers domesticated and doing business in North Carolina; and on the amounts collected on contracts applicable to liabilities under the Workmen's Compensation Act in the case of foreign and alien insurance companies, or the equivalent thereof in the case of foreign and alien self-insurers, except those which have been domesticated and are doing business in North Carolina, a tax at the rate of four percent (4%).

The amounts collected on annuities and all other contracts of insurance issued by domestic life insurance companies a tax at the rate of one and one-half percent (1½%).

The amounts collected on contracts of insurance issued by domestic insurance companies other than life insurance companies and other than corporations organized under Chapter 57 of the General Statutes, a tax of one



percent (1%) or, in lieu thereof, any such company shall pay an income tax computed as in the case of other corporations, whichever is the greater. Any domestic life insurance company collecting more than half of its annual gross premiums from lines of business other than those described in G.S. 58-72(1) and (2) may, prior to the return due date, elect to be taxed as a domestic casualty insurance company under the provisions of this paragraph.

The amounts collected on annuities and all other contracts of insurance a tax at the rate of two and one-half percent (2½%) in the case of foreign and alien companies.

The amounts collected on contracts of insurance applicable to fire and lightning coverage (marine and automobile policies not being included), a tax at the rate of one percent (1%). This tax shall be in addition to all other taxes imposed by G.S. 105-228.5.

The premium tax rates herein provided shall be applicable with respect to all premiums collected during the calendar year, 1955, and each subsequent year.

The taxes levied herein measured by premiums shall be in lieu of all other taxes upon insurance companies except: fees and licenses under this Article, or as specified in Chapter 58 of the General Statutes of North Carolina as amended; taxes imposed by Chapter 118 of the General Statutes of North Carolina; taxes imposed by Article 5 of Chapter 105 of the General Statutes of North Carolina as amended; and ad valorem taxes upon real property and personal property owned in this State.

For the tax above levied as measured by gross premiums the president, secretary, or other executive officer of each insurance company doing business in this State shall within the first 15 days of March in 1946 and in each year thereafter file with the Commissioner of Insurance a full and accurate report of the total gross premiums as above defined collected in this State during the preceding calendar year. The report shall be in such form and contain such information as the Commissioner of Insurance may specify, and the report shall be verified by the oath of the company official transmitting the same or by some principal officer at the home or head office of the company or association in this country. At the time of making such report the taxes above levied with respect to the gross premiums shall be paid to the Commissioner of Insurance. The provisions above shall likewise apply as to reports and taxes for any firm, corporation, or association exchanging reciprocal or interinsurance contracts, and said reports and taxes shall be transmitted by their attorneys in fact.

The provisions as to reports and taxes as measured by gross premiums shall not apply to farmer's mutual assessment fire insurance companies above specified or to fraternal orders or societies that do not operate for a profit and do not issue policies on any person except members.

With respect to the taxes levied in this section on the equivalent of premiums of self-insurers under the provisions of the Workmen's Compensation Act, the reports required herein shall be transmitted to and the taxes collected by the North Carolina Industrial Commission as provided in subsection (j) of G.S. 97-100 of the General Statutes of North Carolina. (1945, c. 752, s. 2; 1947, c. 501, s. 8; 1951, c. 643, s. 8; 1955, c. 1313, s. 5; 1957, c. 1340, s. 12; 1959, c. 1211; 1961, c. 783; 1963, c. 1096; 1969, c. 1221; 1973, c. 142.)

**Editor's Note.—**

The 1973 amendment added the third paragraph.

**§ 105-228.9. Powers of the Commissioner of Insurance.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.



## ARTICLE 8C.

*Schedule I-C. Excise Tax on Banks.***§ 105-228.16. Deductions from gross income.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-228.17. Returns and payment of the excise tax.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-228.18. Effective date.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, provides that whenever the words "State Board of Assessment" are used in any statute or law of this State the words "Department of Revenue" shall be substituted, subject to certain exceptions. The substitution has not been made in this section, because the sentence referring to the State Board of Assessment is *functus officio*.

**§ 105-228.19. Powers of the Secretary of Revenue.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-228.20. Competing moneyed capital.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

## ARTICLE 8D.

*Schedule I-D. Taxation of Building and Loan Associations and Savings and Loan Associations.***§ 105-228.23. Capital stock tax.**

**Stated** in *Mutual Sav. & Loan Ass'n v. Lanier*, 279 N.C. 299, 182 S.E.2d 368 (1971).

**§ 105-228.24. Excise tax.**

**Excise Tax Equivalent to a Percentage of Net Taxable Income.** — Although building and loan associations and savings and loan associations are not subject to income tax *eo nomine*, the amount of the annual excise tax imposed by this section before and after the 1967 Act, Session Laws 1967, c. 1110 (§ 105-130 et seq.), was equivalent to a percentage of the net taxable income, as defined in this section, of such corporation during the income year. *Mutual Sav. & Loan Ass'n v. Lanier*, 279 N.C. 299, 182 S.E.2d 368 (1971).

**Provisions of Internal Revenue Code Determine Taxable Income.** — Since this section provides that "the net income or net loss of such corporation shall be the same as 'taxable income' as defined in the Internal Revenue Code in effect on the effective date of this Division, subject to the adjustments

provided" in § 105-130.5, the Supreme Court looks to the provisions of the Internal Revenue Code in effect on Jan. 1, 1967 to determine taxable income. *Mutual Sav. & Loan Ass'n v. Lanier*, 279 N.C. 299, 182 S.E.2d 368 (1971).

The statutory language impels the conclusion that the General Assembly intended that "taxable income" as a base for the excise tax imposed by this section should be the same as the "taxable income" of a building and loan association (as distinguished from corporations generally) under the Internal Revenue Code, subject to adjustments, if any, under § 105-130.5. *Mutual Sav. & Loan Ass'n v. Lanier*, 279 N.C. 299, 182 S.E.2d 368 (1971).

By virtue of § 105-130.3, the excise tax prescribed by this section is imposed on the amount of "taxable income" as determined in the Internal Revenue Code subject to such



adjustments, if any, as may be required by § 105-130.5. *Mutual Sav. & Loan Ass'n v. Lanier*, 279 N.C. 299, 182 S.E.2d 368 (1971).

The base for the excise tax imposed by this section is the "taxable income" of a domestic building and loan association under the Internal Revenue Code; and in the determination of such "taxable income," the provisions of 26 U.S.C.A. § 593 apply. *Mutual Sav. & Loan Ass'n v. Lanier*, 279 N.C. 299, 182 S.E.2d 368 (1971).

Whatever rights plaintiff may have with reference to bad debts in determining plaintiff's "taxable income" under the Internal Revenue Code as a base for the excise tax imposed by this section are presently defined in the Internal Revenue Code rather than in any provision of a North Carolina statute. *Mutual Sav. & Loan Ass'n v. Lanier*, 279 N.C. 299, 182 S.E.2d 368 (1971).

### § 105-228.26. Filing of returns.

**Cited** in *Mutual Sav. & Loan Ass'n v. Lanier*, 279 N.C. 299, 182 S.E.2d 368 (1971).

### § 105-228.27. Powers of the Administrator of the Savings and Loan Division.

#### Editor's Note. —

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.

## ARTICLE 8E.

### *Excise Stamp Tax on Conveyances.*

### § 105-228.28. To whom this Article shall apply.

**Excise Stamp Tax Not Applicable in Foreclosure Sale When Purchaser Is Federal Government Instrumentality.** — See opinion

of Attorney General to Mr. Austin C. Williams, 41 N.C.A.G. 714 (1972).

### § 105-228.29. Conveyances excluded.

**The Sale of Real Property by the Trustee of a Deed of Trust to the Creditor of the Deed of Trust for the Amount Owed by the Debtor Is a Sale for Consideration and Is Subject to Tax.** — See opinion of Attorney General to Mrs. Julia E. Manning, 41 N.C.A.G. 837 (1972).

**Excise Stamp Tax Not Applicable in Foreclosure Sale When Purchaser Is Federal Government Instrumentality.** — See opinion

of Attorney General to Mr. Austin C. Williams, 41 N.C.A.G. 714 (1972).

**A Conveyance by an Individual to His Wholly-Owned Corporation for "Business Convenience" and "Without Consideration" Is Not Subject to the Excise Stamp Tax on Conveyances.** — See opinion of Attorney General to Mrs. Lois C. LeRay, 43 N.C.A.G. 79 (1973).

### § 105-228.31. Issuance of tax stamp.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-228.32. Duties of register of deeds; duty of party presenting instrument for registration.

#### Editor's Note. —

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.



**§ 105-228.36. Reproduction of tax stamps.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**ARTICLE 9.***Schedule J. General Administration; Penalties and Remedies.***§ 105-230. Charter canceled for failure to report.****Editor's Note.** —

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**Reinstatement of Charter.** — When a corporation's charter is suspended pursuant to this section, the same may be reinstated within five years upon payment of fees and taxes due the Revenue Department. *Raleigh Swimming Pool Co. v. Wake Forest Country Club*, 11 N.C. App. 715, 182 S.E.2d 273 (1971).

**Liquidation of Corporation if Charter Not Reinstated.** — If a suspended charter is not

reinstated within five years, then liquidation of corporate assets is as provided in § 105-232 rather than in § 55-114 et seq. *Raleigh Swimming Pool Co. v. Wake Forest Country Club*, 11 N.C. App. 715, 182 S.E.2d 273 (1971).

**Effect of Suspension of Charter on Corporation's Capacity to Sue.** —

A corporation whose articles of incorporation were suspended under this section for failure to pay taxes had standing under § 55-114 to maintain an action to recover the amount due on a contract. *Raleigh Swimming Pool Co. v. Wake Forest Country Club*, 11 N.C. App. 715, 182 S.E.2d 273 (1971).

**§ 105-231. Penalty for exercising corporate functions after cancellation or suspension of charter.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**Cited in** *Raleigh Swimming Pool Co. v. Wake Forest Country Club*, 11 N.C. App. 715, 182 S.E.2d 273 (1971).

**§ 105-232. Corporate rights restored; receivership and liquidation.****Editor's Note.** —

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**Liquidation of Corporation if Suspended Charter Not Reinstated.** — When a corporation's charter is suspended pursuant to § 105-230, the same may be reinstated within

five years upon payment of fees and taxes due the Revenue Department; and if the charter is not so reinstated within five years, then liquidation of corporate assets is as provided in this section rather than in § 55-114 et seq. *Raleigh Swimming Pool Co. v. Wake Forest Country Club*, 11 N.C. App. 715, 182 S.E.2d 273 (1971).

**§ 105-233. Officers, agents, and employees; failing to comply with tax law a misdemeanor.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-235. Every day's failure a separate offense.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-236. Penalties.****Editor's Note.** —

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.



**§ 105-237. Discretion of Secretary over penalties.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-237.1. Compromise of liability.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-239. Action for recovery of taxes.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-239.1. Transferee liability.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-240. Tax upon settlement of fiduciary's account.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-240.1. Agreements with respect to domicile.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-241.1. Additional taxes; assessment procedure.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue. For article on administrative evidence rules, see 49 N.C.L. Rev. 635 (1971).

**§ 105-241.2. Administrative review.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-241.3. Appeal without payment of tax from Tax Review Board decision.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-241.4. Action to recover tax paid.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-242. Warrant for the collection of taxes; certificate or judgment for taxes.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.



**§ 105-243. Taxes recoverable by action.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-244. Additional remedies.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-244.1. Cancellation of certain assessments.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-245. Failure of sheriff to execute order.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-250.1. Distributors of coin-operated machines required to make semiannual reports.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-251. Information must be furnished.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-252. Returns required.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-253. Personal liability of officers, trustees, or receivers.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-254. Blanks furnished by Secretary of Revenue.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-255. Secretary of Revenue to keep records.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-256. Preparation and publication of statistics.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-257. Report to General Assembly on tax system.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.



**§ 105-258. Powers of Secretary of Revenue; who may sign and verify pleadings, legal documents, etc.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-259. Secrecy required of officials; penalty for violation.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-260. Deputies and clerks.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-261. Secretary and deputies to administer oaths.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-262. Rules and regulations.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-263. Time for filing reports extended.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-264. Construction of the Subchapter; population.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-266. Overpayment of taxes to be refunded with interest.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**Refund for Overpayment Cannot Be Made When Application or Demand for Refund Is Not Received within Three Years from Date Set by Statute for Filing Return or within**

**Six Months of Payment of Tax Even Though Demand Is Received within Three Years from the Extension Date for Filing Return Granted by the Secretary of Revenue Pursuant to § 105-155.** — See opinion of Attorney General to Mr. B.W. Brown, Department of Revenue, 41 N.C.A.G. 509 (1971).

**§ 105-266.1. Refunds of overpayment of taxes.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.

**§ 105-267. Taxes to be paid; suits for recovery of taxes.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**Section Requires Taxpayer Disputing Assessment to Pay Tax and Sue for Recovery.** —

This section requires a taxpayer to pay the tax and demand a refund, and if the tax is not

refunded he may then bring suit to recover the amount paid. *Lewis v. Goodman*, 14 N.C. App. 582, 188 S.E.2d 709 (1972).

**Remedy Also Applies to Taxes Imposed by Municipalities.** — This remedy applies to taxes imposed by municipalities as well as those imposed by the State and also where the tax in question is imposed pursuant to Chapter 160A. *Lewis v. Goodman*, 14 N.C. App. 582, 188 S.E.2d 709 (1972).



**Applied** in *Adams-Millis Corp. v. Town of Kernersville*, 281 N.C. 147, 187 S.E.2d 704 (1972).

**Cited** in *Powell v. County of Haywood*, 15

N.C. App. 109, 189 S.E.2d 785 (1972); *Powell v. Town of Canton*, 15 N.C. App. 113, 189 S.E.2d 784 (1972); *Fisher v. Jones*, 15 N.C. App. 737, 190 S.E.2d 663 (1972).

### § 105-268.1. Agreements to coordinate the administration and collection of taxes.

**Editor's Note.** —

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.

### § 105-268.2. Expenditures and commitments authorized to effectuate agreements.

**Editor's Note.** —

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.

### § 105-269. Extraterritorial authority to enforce payment.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

#### § 105-269.1. Local authorities authorized to furnish office space.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

#### § 105-269.2. Tax Review Board.

**Editor's Note.** —

Session Laws 1973, c. 476, s. 193, amends this section by substituting "Secretary of Revenue"

for "Director of the Department of Research" and for "Commissioner of Revenue."

## SUBCHAPTER II. LISTING, APPRAISAL, AND ASSESSMENT OF PROPERTY AND COLLECTION OF TAXES ON PROPERTY.

### ARTICLE 11.

#### *Short Title, Purpose, and Definitions.*

#### § 105-271. Official title.

**Applied** in *Albemarle Elec. Membership Corp. v. Alexander*, 282 N.C. 402, 192 S.E.2d 811 (1972).

**§ 105-273. Definitions.** — When used in this Subchapter (unless the context requires a different meaning):

(3) "Assessment" means both the tax value of property and the process by which the assessment is determined.

(4) Repealed by Session Laws 1973, c. 695, s. 15, effective January 1, 1974. (1973, c. 695, ss. 14, 15.)

**Editor's Note.** — The 1973 amendment, effective Jan. 1, 1974, deleted "ascertained by applying the assessment ratio to the appraised value of property" following "tax value of property" in subdivision (3). The amendment

also repealed former subdivision (4), defining "assessment ratio."

As the other subdivisions were not changed by the amendment, they are not set out.



## ARTICLE 12.

*Property Subject to Taxation.*

**§ 105-275. Property classified and excluded from the tax base.** — The following classes of property are hereby designated special classes under authority of Article V, Sec. 2(2), of the North Carolina Constitution and shall not be listed, appraised, assessed, or taxed:

- (1) Tangible personal property stored in this State for shipment through a North Carolina seaport terminal to a foreign country—for one tax year as prescribed herein. An owner of property stored in this State who, as of the tax-listing date in any year, expects to ship that property to a foreign country through a North Carolina seaport terminal before January 1 of the following year, shall list such property as required by law. At the time of listing it, he shall describe the property on the abstract in such a way that it may be identified and distinguished from other property of the owner, and as part of the description the owner shall write or stamp the following statement on the abstract: "The owner expects to ship this property to a foreign country through a North Carolina seaport terminal before January 1 of next year." Property so listed and earmarked shall be appraised, assessed, and taxed; but if the property is shipped as expected, the governing body of the taxing unit shall release the claim for taxes and, if the taxes have been paid, refund them to the person who paid them. Before ordering such a release, however, the governing body shall require the property owner to furnish it with a copy of the bill of lading for the qualifying shipment, adequately identifying the property as that which was listed by the owner. (The purpose of this classification is to encourage the development of the ports of this State.)
- (2) Tangible personal property that has been imported from a foreign country through a North Carolina seaport terminal and which is stored at such a terminal while awaiting further shipment—for the first 12 months of such storage. (The purpose of this classification is to encourage the development of the ports of this State.)
- (3) Real and personal property owned by nonprofit water or nonprofit sewer associations or corporations.
- (4) For the year following that in which grown, farm products (including crops but excluding poultry and other livestock) that:
  - a. Are in an unmanufactured state and
  - b. Are owned by the original producer.
- (5) Vehicles that the United States government gives to veterans on account of disabilities they suffered in World War II, the Korean Conflict, or the Viet Nam Era so long as they are owned by:
  - a. A person to whom a vehicle has been given by the United States government or
  - b. Another person who is entitled to receive such a gift under Title 38, section 252, United States Code Annotated.
- (6) Special nuclear materials in any form being held for or in the process of manufacture, fabrication, or processing, and special nuclear materials in any form being held for or in the process of delivery by the manufacturer, fabricator, or processor thereof. The term "special nuclear materials" includes (i) uranium 233, uranium enriched in the isotope 233 or in the isotope 235; and (ii) any material artificially enriched by any of the foregoing, but not including source material. "Source material" means any material except special nuclear material which contains by weight one twentieth of one percent (0.05%) or more



of (i) uranium, (ii) thorium, or (iii) any combination thereof. Provided however, that to qualify for this exemption no such nuclear materials shall be discharged into any river, creek or stream in North Carolina. The classification and exclusion provided for herein shall be denied to any manufacturer, fabricator or processor who permits burial of such material in North Carolina or who permits the discharge of such nuclear materials into the air or into any river, creek or stream in North Carolina if such discharge would contravene in any way the applicable health and safety standards established and enforced by the North Carolina State Board of Health, the North Carolina Department of Natural and Economic Resources, or the Federal Atomic Energy Commission. The most stringent of these standards shall govern.

- (7) Real and personal property that is:
  - a. Owned by a nonprofit corporation formed under the provisions of Chapter 55A of the General Statutes and
  - b. Appropriated exclusively for public parks and drives.
- (8) Real and personal property that is used or, if under construction, is to be used exclusively for air cleaning or waste disposal or to abate, reduce, or prevent the pollution of air or water (including, but not limited to, waste lagoons and facilities owned by public or private utilities built and installed primarily for the purpose of providing sewer service to areas that are predominantly residential in character or areas that lie outside territory already having sewer service), if the Board of Water and Air Resources furnishes a certificate to the tax supervisor of the county in which the property is situated or to be situated stating that the Board has found that the described property:
  - a. Has been or will be constructed or installed;
  - b. Complies with or that plans therefor which have been submitted to the Board indicate that it will comply with the requirements of the Board;
  - c. Is being effectively operated or will, when completed, be required to operate in accordance with the terms and conditions of the permit, certificate of approval, or other document of approval issued by the Board; and
  - d. Has or, when completed, will have as its primary rather than incidental purpose the reduction of water pollution resulting from the discharge of sewage and waste or the reduction of air pollution resulting from the emission of air contaminants.
- (9) All cotton while subject to transit privileges under Interstate Commerce Commission tariffs.
- (10) Personal property of nonresidents of the State in its original package or fungible goods in bulk, belonging to a nonresident of the State, shipped into this State and placed in a public warehouse for the purpose of transshipment to an out-of-state or within-the-state destination, and so designated on the original bill of lading, so long as such personal property remains in its original package or, if fungible, in bulk, and in such a public warehouse. No portion of a premises owned or leased by a consignor or consignee, or subsidiary of a consignor or consignee, shall be deemed to be a public warehouse within the meaning of this subdivision despite any licensing as such.
- (11) Personal property of residents of the State in its original package and fungible goods in bulk, belonging to a resident of the State, placed in a public warehouse for the purpose of transshipment to an out-of-state destination, and so designated on the original bill of lading, so long as such personal property remains in its original package or, if fungible, in bulk, and in such a public warehouse. No portion of a premises



owned or leased by a consignor or consignee, or a subsidiary of a consignor or consignee, shall be deemed to be a public warehouse within the meaning of this subdivision despite any licensing as such.

- (12) Real property owned by a nonprofit corporation or association exclusively held and used by its owner for educational and scientific purposes as a protected natural area. (For purposes of this subdivision, the term "protected natural area" means a nature reserve or park in which all types of wild nature, flora and fauna, and biotic communities are preserved for observation and study.)
- (13) A motor chassis belonging to nonresidents, which chassis temporarily enters the State for the purpose of having a body mounted thereon.
- (14) Motor vehicle chassis belonging to nonresidents, which chassis temporarily enters the State for the purpose of having a body mounted thereon.
- (15) Upon the date on which each county's next general reappraisal of real property under the provisions of G.S. 105-286(a) becomes effective, standing timber, pulpwood, seedlings, saplings, and other forest growth. (The purpose of this classification is to encourage proper forest management practices and to develop and maintain the forest resources of the State.) (1939, c. 310, s. 303; 1961, c. 1169, s. 8; 1967, c. 1185; 1971, c. 806, s. 1; c. 1121, s. 3; 1973, cc. 290, 451, 484; c. 695, s. 1; c. 790, s. 1.)

**Editor's Note. —**

The first 1973 amendment, effective Jan. 1, 1974, added subdivision (6).

The second 1973 amendment, effective Jan. 1, 1974, inserted "or" preceding "processing" and "processor" and deleted "or reprocessing" following "processing" and "or reprocessor" following "processor" in the first sentence, deleted "plutonium," following "(i)" in the second sentence, and added the last two sentences, all in subdivision (6).

The third 1973 amendment added subdivision (14).

The fourth 1973 amendment, effective Jan. 1, 1974, rewrote the section.

The fifth 1973 amendment, effective Jan. 1, 1974, added subdivision (15).

In the section as set out above, the subdivisions added by the earlier 1973 amendments have been added to the section as rewritten by the fourth 1973 amendment.

**§ 105-277. Property classified for taxation at reduced rates; certain deductions. —** (a) Agricultural Products in Storage. — Any agricultural product held in storage in North Carolina by any manufacturer or processor for manufacturing or processing, which product is of such nature as customarily to require storage and processing for periods of more than one year in order to age or condition the product for manufacture, is hereby designated a special class of property under authority of Article V, Sec. 2(2), of the North Carolina Constitution. Agricultural products so classified shall be taxed uniformly as a class in each local taxing unit at sixty percent (60%) of the rate levied for all purposes upon real property and other tangible personal property by the taxing unit in which the products are listed for taxation.

(b) Peanuts.—Peanuts held in storage in North Carolina in the year following the year in which grown are hereby designated a special class of property under authority of Article V, Sec. 2(2), of the North Carolina Constitution. Peanuts so classified shall be taxed uniformly as a class in each local taxing unit at twenty percent (20%) of the rate levied for all purposes upon real property and other tangible personal property by the taxing unit in which the peanuts are listed for taxation.

(c) Baled Cotton.—Cotton in bales held in North Carolina for manufacturing or processing in this State is hereby designated a special class of property under authority of Article V, Sec. 2(2), of the North Carolina Constitution. Baled cotton so classified shall be taxed uniformly as a class in each local taxing unit at fifty percent (50%) of the rate levied for all purposes upon real property and other tangible personal property by the taxing unit in which the cotton is listed for taxation.



(d) All bona fide indebtedness incurred in the purchase of fertilizer and fertilizer materials owing by a taxpayer as principal debtor may be deducted from the total value of all fertilizer and fertilizer materials as are held by such taxpayer for his own use in agriculture during the current year. Provided, further, that from the total value of cotton stored in this State there may be deducted by the owner thereof all bona fide indebtedness incurred directly for the purchase of said cotton and for the payment of which the cotton so purchased is pledged as collateral.

(e) Vinous and Other Fruit Products. — Any vinous or other fruit product held in storage in North Carolina by any manufacturer or processor for manufacturing or processing, which product is of such nature as customarily to require storage and processing for periods of more than one year in order to age or condition the product for sale and consumption, is hereby designated a special class of property under authority of Article V, Sec. 2(2), of the North Carolina Constitution. Vinous and other fruit products so classified shall be taxed uniformly as a class in each local taxing unit at sixty percent (60%) of the rate levied for all purposes upon real property and other tangible personal property by the taxing unit in which the products are listed for taxation. (1947, c. 1026; 1955, c. 697, s. 1; 1961, c. 1169, ss. 6, 7, 7<sup>1</sup>/<sub>2</sub>; 1963, c. 940; 1971, c. 806, s. 1; 1973, c. 511, s. 4; c. 695, s. 2.)

**Editor's Note.** — The first 1973 amendment, effective Jan. 1, 1974, added subsection (e).

The second 1973 amendment, effective Jan. 1, 1974, rewrote subsections (a) and (b) and the first and second sentences of subsection (c) without changing the substance of these provisions, deleted, at the end of subsection (c), "This classification shall not be held to repeal any other classification or exemption granted to

cotton under any existing law of statewide application," eliminated former subsection (d), relating to individual family fallout shelters, and added present subsection (d).

In the section as set out above, the subsection added by the first 1973 amendment has been added to the section as it appears in the second 1973 amendment.

**§ 105-277.01. Certain farm products classified for taxation at reduced valuation.** — Farm products (including crops but excluding poultry and other livestock) held by or for a cooperative stabilization or marketing association or corporation to which they have been delivered, conveyed, or assigned by the original producer for the purpose of sale are hereby designated a special class of property under authority of Article V, Sec. 2(2), of the North Carolina Constitution. Before being assessed for taxation the appraised valuation of farm products so classified shall be reduced by the amount of any unpaid loan or advance made or granted thereon by the United States government, an agency of the United States government, or a cooperative stabilization or marketing association or corporation. (1973, c. 695, s. 3.)

**Editor's Note.** — Session Laws 1973, c. 695, s. 21, makes this section effective Jan. 1, 1974.

**§ 105-277.1. Property classified for taxation at reduced valuation.** — (a) Class. — The following class of property is hereby designated a special class under authority of Article V, Sec. 2(2), of the North Carolina Constitution and, after being listed, shall not be assessed or taxed: the first five thousand dollars (\$5,000) in assessed tax value of real and personal property of a North Carolina resident held and used by the owner for personal purposes, if, at any time during the year in which benefit of this classification is sought, the owner is 65 years of age or older, and the disposable income of the owner during the preceding calendar year was not more than five thousand dollars (\$5,000). Property in this class that passes to the surviving spouse at the death of a qualifying owner shall remain in the class if the surviving spouse is 60 years of age or older and if the surviving spouse meets and complies with all other requirements of this classification.



(b) Definitions. — For purposes of this section, the following definitions shall apply:

- (1) A person is an "owner" of real property when he holds legal or equitable title to a life estate, an estate for the life of another, a joint tenancy, or a tenancy in common, or when he holds individually or as a tenant by the entirety, the entire legal or equitable title, subject to easements, removable liens, and other similar encumbrances, if any. A person is an "owner" of personal property when he holds legal or equitable title thereto alone or jointly with one or more other persons, subject to removable liens and other similar encumbrances, if any. When property that qualifies for the class defined in subsection (a), above, is owned by two or more persons, each owner whose interest falls within such class shall be entitled to apply the full amount of the exclusion afforded the class against the tax valuation of his interest, but no part of an exclusion available to one co-owner shall be applied to the interests of other owners of the same property and in no event shall the exclusion allowed against the valuation of qualifying property exceed \$5,000.
- (2) "Disposable income" means adjusted gross income of the owner or of the owner and his or her spouse, if residing with the owner, as defined for North Carolina income tax purposes in G.S. 105-141.3, increased by amounts excluded from gross income pursuant to G.S. 105-141(b)(1), (2), (4), (8), (10), (12), (13), (14), (15) and (16).

(c) Application. — To bring his property within the class defined in subsection (a), above, in any year, the taxpayer, if eligible for the exclusion provided in this section, shall, not later than May 1, supply the following information: date of birth and disposable income during the calendar year preceding the year in which the benefit of this classification is sought. A request for such classification must be made each year in the manner and on the form prescribed herein.

(d) Multiple Owners. — If two or more persons share ownership of property that qualifies for any one of the classes defined in subsection (a), above, each shall make application as prescribed in subsection (c), above. (1971, c. 932, s. 1; 1973, c. 448, s. 1.)

**Editor's Note. —**

The 1973 amendment, applicable to taxable years beginning on and after Jan. 1, 1974, rewrote this section.

**Person Not Disqualified for Beneficial Treatment if Away from Residence and in Nursing Home for More Than Six Months. —**

See opinion of Attorney General to Mr. John R. Milliken, 41 N.C.A.G. 725 (1972).

**Exclusion May Not Be Claimed by Executor. —** See opinion of Attorney General to Mr. D.R. Holbrook, State Board of Assessment, 42 N.C.A.G. 198 (1973).

**§ 105-277.2. Agricultural, horticultural and forest land — definitions. —** For the purposes of G.S. 105-277.3 through 105-277.7 the following definitions shall apply:

- (1) "Agricultural land" means land, including woodland and wasteland which form a contiguous part thereof, constituting a farm unit actively engaged in the commercial production or growing of crops, plants, or animals under a sound management program.
- (2) "Forest land" means land constituting a forest unit actively engaged in the commercial growing of trees under a sound management program.
- (3) "Horticultural land" means land constituting a horticultural unit actively engaged in the commercial production or growing of fruits, vegetables, nursery or floral products under a sound management program.
- (4) "Individually owned land (agricultural, horticultural or forest)" means land, exclusive of buildings thereon, owned by a natural person or persons and not a corporation.



- (5) "Land" includes land and land improvements but not buildings or other improvements.
- (6) "Present use value" means 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, assuming that both of them have reasonable knowledge of the capability of the property to produce income in its present use and that the present use of the property is its highest and best use.
- (7) "Sound management program" means a program of production designed to obtain the greatest net return from the land consistent with its conservation and long-term improvement. (1973, c. 709, s. 1.)

**Editor's Note.** — Session Laws 1973, c. 709, s. 2, makes the act effective Jan. 1, 1974. opinion of Attorney General to Honorable B.D. Schwartz, N.C. House of Representatives, 43

**Interest Is Due on Deferred Taxes.** — See N.C.A.G. 64 (1973).

### § 105-277.3. Agricultural, horticultural and forest land—classifications.

— (a) The following classes of property are hereby designated special classes of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution and shall be appraised, assessed and taxed as hereinafter provided:

- (1) Individually owned agricultural land, consisting of 10 acres or more and having gross income from the sale of agricultural products produced thereon (together with any payments received under a governmental soil conservation or land retirement program) averaging one thousand dollars (\$1,000) per year for each of the three years immediately preceding January 1 of the year for which the benefit of this section is claimed.
  - (2) Individually owned horticultural land, consisting of 10 acres or more and having gross income from the sale of horticultural products produced thereon (together with any payments received under a governmental soil conservation or land retirement program) averaging one thousand dollars (\$1,000) per year for each of the three years immediately preceding January 1 of the year for which the benefit of this section is claimed.
  - (3) Individually owned forest land, consisting of 20 acres or more unless the property is included in a farm unit qualifying under G.S. 105-277.3(a)(1).
- (b) In order to come within a classification described in subdivision (a) (1), (2) or (3), above, the property must also be:
- (1) The owner's place of residence; or
  - (2) Owned by the present owner, by his siblings, or by one or both of his parents for the seven years immediately preceding January 1 of the year for which the benefit of this section is claimed. (1973, c. 709, s. 1.)

**Editor's Note.** — Session Laws 1973, c. 709, s. 2, makes the act effective Jan. 1, 1974.

**§ 105-277.4. Agricultural, horticultural and forest land — application for taxation at present-use value.** — (a) Property coming within one of the classes defined in G.S. 105-277.3 but having a greater value for other uses shall be eligible for taxation on the basis of the value of the property in its present use if a timely and proper application is filed with the tax supervisor of the county in which the property is located. The application shall clearly show that the property comes within one of the classes and shall also contain any other relevant information required by the tax supervisor in properly appraising the property at its present-use value. The application shall be filed annually during the regular listing period. If, in the opinion of the tax



supervisor, the property does not meet the requirements of this section, he shall deny the application. Decisions of the tax supervisor may be appealed to the county board of equalization and review or, if that board is not in session, to the board of county commissioners. Decisions of the county board may be appealed to the Property Tax Commission as provided in G.S. 105-324.

(b) Upon receipt of a properly executed application, the tax supervisor shall appraise the property at its present-use value as of January 1 of the year for which the application is filed. The property owner may appeal the present-use appraisal to the board of equalization and review or, if that board is not in session, to the board of county commissioners and from the county board to the Property Tax Commission. Except for valuation changes made necessary by changes in the number of acres qualified for classification or by changes in the nature of the operations of a qualifying owner, the present-use appraisal established in the year of the initial application shall continue in effect until a revaluation of all property in the county is conducted under the provisions of G.S. 105-286. If all or any part of a qualifying tract of land is located within the limits of an incorporated city or town, the tax supervisor shall furnish a copy of the property record showing both the present-use appraisal and the valuation upon which the property would have been taxed in the absence of this classification to the tax collector of the city or town. He shall also notify the tax collector of any changes in the appraisals or in the eligibility of the property for the benefit of this classification.

(c) Property meeting the conditions herein set forth shall be taxed on the basis of the value of the property for its present use. The difference between the taxes due on the present-use basis and the taxes which would have been payable in the absence of this classification shall be a lien on all the real property of the taxpayer as provided in G.S. 105-355(a), shall be carried forward in the records of the taxing unit or units as deferred taxes, but shall not be payable, unless and until the owner disposes of the property or the property loses its eligibility for the benefit of this classification for some other reason. The tax for the fiscal year that opens in the calendar year in which a disqualification occurs shall be computed as if the property had not been classified for that year, and taxes for the preceding five fiscal years which have been deferred as provided herein, shall immediately be payable, together with interest thereon as provided in G.S. 105-360 for unpaid taxes which shall accrue on the deferred taxes due herein as if they had been payable on the dates on which they originally became due. If only a part of a qualifying tract of land loses its eligibility, a determination shall be made of the amount of deferred taxes applicable to that part and that amount shall become payable with interest as provided above. (1973, c. 709, s. 1.)

**Editor's Note.** — Session Laws 1973, c. 709, s. 2, makes the act effective Jan. 1, 1974.

**§ 105-277.5. Agricultural, horticultural and forest land — notice of change in use.** — Not later than the close of the listing period following a change in use or disposal of property receiving the benefit of this classification, the property owner shall furnish the tax supervisor with complete information regarding such change or disposal. Any property owner who fails to notify the tax supervisor of a change in use or disposal of a tract of land receiving the benefit of this classification shall be subject to a penalty of ten percent (10%) of the total amount of the deferred taxes and interest thereon for each listing period for which the failure to report continues. (1973, c. 709, s. 1.)

**Editor's Note.** — Session Laws 1973, c. 709, s. 2, makes the act effective Jan. 1, 1974.

**§ 105-277.6. Agricultural, horticultural and forest land — appraisal; computation of deferred tax.** — (a) In determining the amount of the deferred



taxes herein provided, the tax supervisor shall use the appraised valuation established in the county's last general revaluation except for any changes made under the provisions of G.S. 105-287. Such appraised valuations shall be adjusted, however, to eliminate any economic obsolescence allowed in the appraisal of improvements on the property on account of the use to which the property was put at the time it was last appraised.

(b) In revaluation years, as provided in G.S. 105-286, all property entitled to classification under G.S. 105-277.3 shall be reappraised at its true value in money and at its present use value as of the effective date of the revaluation. The two valuations shall continue in effect and shall provide the basis for deferred taxes until a change in one or both of the appraisals is required by law.

(c) To insure uniform appraisal of the classes of property herein defined in each county, the tax supervisor shall prepare a schedule of land values, standards and rules which, when properly applied, will result in the appraisal of the property at its present use value. The schedule of values, standards and rules shall be subject to all of the conditions set forth in G.S. 105-317(c), (c)(1) and (c)(2) relating to the adoption of schedules, standards and rules in revaluation years. (1973, c. 709, s. 1.)

**Editor's Note.** — Session Laws 1973, c. 709, s. 2, makes the act effective Jan. 1, 1974.

**§ 105-277.7. Agricultural, horticultural and forest land — Property Tax Commission supervision.** — To insure reasonable uniformity among the counties of the State in making appraisals as prescribed herein, the Property Tax Commission shall prepare rules, regulations and standards for use by county taxing officials in administering the provisions of this section. (1973, c. 709, s. 1.)

**Editor's Note.** — Session Laws 1973, c. 709, s. 2, makes the act effective Jan. 1, 1974.

**§ 105-278:** Repealed by Session Laws 1973, c. 695, s. 4, effective January 1, 1974.

**Cross Reference.** — For present provisions covering the subject matter of the repealed section, see §§ 105-278.1 through 105-278.9.

**§ 105-278.1. Exemption of real and personal property owned by units of government.** — (a) Real and personal property owned by the United States and, by virtue of federal law, not subject to State and local taxes shall be exempted from taxation.

(b) Real and personal property owned by any of the following units of government shall be exempted from taxation if it is used wholly and exclusively for public purposes:

- (1) The State of North Carolina,
- (2) A county of this State,
- (3) A city or town of this State,
- (4) A special district or other unit of local government of this State, or
- (5) Two or more units of local government of this State.

(c) For purposes of this section:

- (1) A specified unit of government (federal, State, or local) includes its departments, institutions, and agencies.
- (2) By way of illustration but not by way of limitation, the following boards, commissions, authorities, and institutions are units of State government:

a. The State Marketing Authority established by G.S. 106-529.

b. The Board of Governors of the University of North Carolina incorporated under the provisions of G.S. 116-3 and known as "The University of North Carolina."



c. The North Carolina Museum of Art made an agency of the State under G.S. 140-1.

(3) By way of illustration but not by way of limitation, the following boards, commissions, authorities, and institutions are units of local government of this State:

a. An airport authority, board, or commission created as a separate and independent body corporate and politic by an act of the General Assembly.

b. An airport authority, board, or commission created as a separate and independent body corporate and politic by one or more counties or municipalities or combinations thereof under the authority of an act of the General Assembly.

c. A hospital authority created under G.S. 131-93.

d. A housing authority created under G.S. 157-4 or G.S. 157-4.1.

e. A municipal parking authority created under G.S. 160-477.

f. A veterans' recreation authority created under G.S. 165-26. (1973, c. 695, s. 4.)

**Editor's Note.** — Session Laws 1973, c. 695, s. 21, makes the act effective Jan. 1, 1974.

**§ 105-278.2. Burial property.** — Real property set apart for burial purposes shall be exempted from taxation unless it is owned and held for purposes of (a) sale or rental or (b) sale of burial rights therein. For purposes of this section, the term "real property" includes land, tombs, vaults, mausoleums, monuments, and similar structures. (1973, c. 695, s. 4.)

**Editor's Note.** — Session Laws 1973, c. 695, s. 21, makes the act effective Jan. 1, 1974.

**§ 105-278.3. Real and personal property used for religious purposes.** — (a) Buildings, the land they actually occupy, and additional adjacent land reasonably necessary for the convenient use of any such building shall be exempted from taxation if wholly owned by an agency listed in subsection (c), below, and if:

(1) Wholly and exclusively used by its owner for religious purposes as defined in subsection (d)(1), below; or

(2) Occupied gratuitously by one other than the owner and wholly and exclusively used by the occupant for religious, charitable, or nonprofit educational, literary, scientific, or cultural purposes.

(b) Personal property shall be exempted from taxation if wholly owned by an agency listed in subsection (c), below, and if:

(1) Wholly and exclusively used by its owner for religious purposes; or

(2) Gratuitously made available to one other than the owner and wholly and exclusively used by the possessor for religious, charitable, or nonprofit educational, literary, scientific, or cultural purposes.

(c) The following agencies, when the other requirements of this section are met, may obtain exemption for their properties:

(1) A congregation, parish, mission, or similar local unit of a church or religious body or

(2) A conference, association, presbytery, diocese, district, synod, or similar unit comprising local units of a church or religious body.

(d) Within the meaning of this section:

(1) A religious purpose is one that pertains to practicing, teaching, and setting forth a religion. Although worship is the most common religious purpose, the term encompasses other activities that demonstrate and further the beliefs and objectives of a given church or religious body. Within the meaning of this section, the ownership and maintenance of a general or promotional office or headquarters by an owner listed in subdivision (2) of subsection (c), above, is a



religious purpose, and the ownership and maintenance of residences for ministers assigned to or serving a congregation, parish, mission, or similar local unit is also a religious purpose. However, the ownership and maintenance of residences for other employees is not a religious purpose for either a local unit of a church or a religious body or a conference, association, presbytery, diocese, district, synod, or similar unit of a church or religious body.

- (2) A charitable purpose is one that has humane and philanthropic objectives; it is an activity that benefits humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward. The humane treatment of animals is also a charitable purpose.
- (3) An educational purpose is one that has as its objective the education or instruction of human beings; it comprehends the transmission of information and the training or development of the knowledge or skills of individual persons.
- (4) A literary purpose is one that pertains to letters or literature (including drama), especially writing, publishing, and the study of literature.
- (5) A cultural purpose is one that is conducive to the enlightenment and refinement of taste acquired through intellectual and aesthetic training, education, and discipline.
- (6) A scientific purpose is one that yields knowledge systematically through research, experimentation or other work done in one or more of the natural sciences.

(e) Notwithstanding the exclusive-use requirement of subsection (a), above, if part of a property that otherwise meets that subsection's requirements is used for a purpose that would require exemption if the entire property were so used, the valuation of the part so used shall be exempted from taxation.

(f) The fact that a building or facility is incidentally available to and patronized by the general public, so long as there is no material amount of business or patronage with the general public, shall not defeat the exemption granted by this section. (1973, c. 695, s. 4.)

**Editor's Note.** — Session Laws 1973, c. 695, s. 21, makes the act effective Jan. 1, 1974.

#### **§ 105-278.4. Real and personal property used for educational purposes.**

— (a) Buildings, the land they actually occupy, and additional land reasonably necessary for the convenient use of any such building shall be exempted from taxation if:

- (1) Owned by an educational institution (including a university, college, school, seminary, academy, industrial school, public library, museum, and similar institution);
- (2) The owner is not organized or operated for profit and no officer, shareholder, member, or employee of the owner or any other person is entitled to receive pecuniary profit from the owner's operations except reasonable compensation for services;
- (3) Of a kind commonly employed in the performance of those activities naturally and properly incident to the operation of an educational institution such as the owner; and
- (4) Wholly and exclusively used for educational purposes by the owner or occupied gratuitously by another nonprofit educational institution (as defined herein) and wholly and exclusively used by the occupant for nonprofit educational purposes.

(b) Land (exclusive of improvements); and improvements other than buildings, the land actually occupied by such improvements, and additional land reasonably necessary for the convenient use of any such improvement shall be exempted from taxation if:



- (1) Owned by an educational institution that owns real property entitled to exemption under the provisions of subsection (a), above;
- (2) Of a kind commonly employed in the performance of those activities naturally and properly incident to the operation of an educational institution such as the owner; and
- (3) Wholly and exclusively used for educational purposes by the owner or occupied gratuitously by another nonprofit educational institution (as defined herein) and wholly and exclusively used by the occupant for nonprofit educational purposes.

(c) Notwithstanding the exclusive-use requirements of subsections (a) and (b), above, if part of a property that otherwise meets the requirements of one of those subsections is used for a purpose that would require exemption if the entire property were so used, the valuation of the part so used shall be exempted from taxation.

(d) The fact that a building or facility is incidentally available to and patronized by the general public, so long as there is no material amount of business or patronage with the general public, shall not defeat the exemption granted by this section.

(e) Personal property owned by a church, a religious body, or an educational institution (including a university, college, school, seminary, academy, industrial school, public library, museum, and similar institution) shall be exempted from taxation if:

- (1) The owner is not organized or operated for profit, and no officer, shareholder, member, or employee of the owner, or any other person is entitled to receive pecuniary profit from the owner's operations except reasonable compensation for services; and
- (2) Used wholly and exclusively for educational purposes by the owner or held gratuitously by a church, religious body, or nonprofit educational institution (as defined herein) other than the owner, and wholly and exclusively used for nonprofit educational purposes by the possessor.

(f) An educational purpose within the meaning of this section is one that has as its objective the education or instruction of human beings; it comprehends the transmission of information and the training or development of the knowledge or skills of individual persons. (1973, c. 695, s. 4.)

**Editor's Note.** — Session Laws 1973, c. 695, s. 21, makes the act effective Jan. 1, 1974.

**§ 105-278.5. Real and personal property of religious educational assemblies used for religious and educational purposes.** — (a) Buildings, the land they actually occupy, and additional adjacent land reasonably necessary for the convenient use of any such building or for the religious educational programs of the owner, shall be exempted from taxation if:

- (1) Owned by a religious educational assembly, retreat, or similar organization;
- (2) No officer, shareholder, member, or employee of the owner, or any other person is entitled to receive pecuniary profit from the owner's operations except reasonable compensation for services; and
- (3) Of a kind commonly employed in those activities naturally and properly incident to the operation of a religious educational assembly such as the owner; and
- (4) Wholly and exclusively used for
  - a. Religious worship or
  - b. Purposes of instruction in religious education.

(b) Notwithstanding the exclusive-use requirement of subsection (a), above, if part of a property that otherwise meets the subsection's requirements is used for a purpose that would require exemption if the entire property were so used, the valuation of the part so used shall be exempted from taxation.



(c) The fact that a building or facility is incidentally available to and patronized by the general public, so long as there is no material amount of business or patronage with the general public, shall not defeat the exemption granted by this section.

(d) Personal property owned by a religious educational assembly, retreat, or similar organization shall be exempted from taxation if it is exclusively maintained and used in connection with real property granted exemption under the provisions of subsection (a) or (b), above. (1973, c. 695, s. 4.)

**Editor's Note.** — Session Laws 1973, c. 695, s. 21, makes the act effective Jan. 1, 1974.

**§ 105-278.6. Real and personal property used for charitable purposes. —**

(a) Real and personal property owned by:

- (1) A Young Men's Christian Association or similar organization;
- (2) A home for the aged, sick, or infirm;
- (3) An orphanage or similar home;
- (4) A Society for the Prevention of Cruelty to Animals;
- (5) A reformatory or correctional institution; or
- (6) A monastery, convent, or nunnery;
- (7) A nonprofit, life-saving, first aid, or rescue squad organization;

shall be exempted from taxation if:

- (1) As to real property, it is actually and exclusively occupied and used, and as to personal property, it is entirely and completely used, by the owner for charitable purposes; and
- (2) The owner is not organized or operated for profit.

(b) A charitable purpose within the meaning of this section is one that has humane and philanthropic objectives; it is an activity that benefits humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward. The humane treatment of animals is also a charitable purpose.

(c) The fact that a building or facility is incidentally available to and patronized by the general public, so long as there is no material amount of business or patronage with the general public, shall not defeat the exemption granted by this section.

(d) Notwithstanding the exclusive-use requirements of this section, if part of a property that otherwise meets the section's requirements is used for a purpose that would require exemption under subsection (a), above, if the entire property were so used, the valuation of the part so used shall be exempted from taxation. (1973, c. 695, s. 4.)

**Editor's Note.** — Session Laws 1973, c. 695, s. 21, makes the act effective Jan. 1, 1974.

**§ 105-278.7. Real and personal property used for educational, scientific, literary, or charitable purposes. —** (a) Buildings, the land they actually occupy, and additional adjacent land necessary for the convenient use of any such building shall be exempted from taxation if wholly owned by an agency listed in subsection (c), below, and if:

- (1) Wholly and exclusively used by its owner for nonprofit educational, scientific, literary, or charitable purposes as defined in subsection (e), below; or
- (2) Occupied gratuitously by an agency listed in subsection (c), below, other than the owner, and wholly and exclusively used by the occupant for nonprofit educational, scientific, literary, or charitable purposes.

(b) Personal property shall be exempted from taxation if wholly owned by an agency listed in subsection (c), below, and if:

- (1) Wholly and exclusively used by its owner for nonprofit educational, scientific, literary, or charitable purposes; or



- (2) Gratuitously made available to an agency listed in subsection (c), below, other than the owner, and wholly and exclusively used by the possessor for nonprofit educational, scientific, literary, or charitable purposes.

(c) The following agencies, when the other requirements of this section are met, may obtain property tax exemption under this section:

- (1) A charitable association or institution,
- (2) An historical association or institution,
- (3) A veterans' organization or association,
- (4) A scientific association or institution,
- (5) A literary association or institution,
- (6) A benevolent association or institution, or
- (7) A nonprofit community or neighborhood organization.

(d) Notwithstanding the exclusive-use requirements of subsection (a), above, if part of a property that otherwise meets the subsection's requirements is used for a purpose that would require exemption if the entire property were so used, the valuation of the part so used shall be exempted from taxation.

(e) The fact that a building or facility is incidentally available to and patronized by the general public, so long as there is no material amount of business or patronage with the general public, shall not defeat the exemption granted by this section.

(f) Within the meaning of this section:

- (1) An educational purpose is one that has as its objective the education or instruction of human beings; it comprehends the transmission of information and the training or development of the knowledge or skills of individual persons.
- (2) A scientific purpose is one that yields knowledge systematically through research, experimentation, or other work done in one or more of the natural sciences.
- (3) A literary purpose is one that pertains to letters or literature (including drama), especially writing, publishing, and the study of literature.
- (4) A charitable purpose is one that has humane and philanthropic objectives; it is an activity that benefits humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward. The humane treatment of animals is also a charitable purpose. (1973, c. 695, s. 4.)

**Editor's Note.** — Session Laws 1973, c. 695, s. 21, makes the act effective Jan. 1, 1974.

**§ 105-278.8. Real and personal property used for charitable hospital purposes.** — (a) Real and personal property held for or owned by a hospital organized and operated as a nonstock, nonprofit, charitable institution (without profit to members or their successors) shall be exempted from taxation if actually and exclusively used for charitable hospital purposes.

(b) Notwithstanding the exclusive-use requirements of subsection (a), above, if part of a property that otherwise meets that subsection's requirements is used for a purpose that would require exemption under that subsection if the entire property were so used, the valuation of the part so used shall be exempted from taxation.

(c) Within the meaning of this section, a charitable hospital purpose is a hospital purpose that has humane and philanthropic objectives; it is a hospital activity that benefits humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward. However, the fact that a qualifying hospital charges patients who are able to pay for services rendered does not defeat the exemption granted by this section. (1973, c. 695, s. 4.)

**Editor's Note.** — Session Laws 1973, c. 695, s. 21, makes the act effective Jan. 1, 1974.



**§ 105-278.9. General exemption for individually owned personal property.** — When tangible personal property is listed for taxation by an individual person whose duty it is to list it, the total appraised valuation of that property shall be reduced by the sum of three hundred dollars (\$300.00) before it is assessed and taxed. (1973, c. 695, s. 4.)

**Editor's Note.** — Session Laws 1973, c. 695, s. 21, makes the act effective Jan. 1, 1974.

**§ 105-279. Timberlands owned by the State; payments in lieu of taxes.** — (a) Any State department or agency that owns timberlands or that leases, controls, or administers state-owned timberlands, shall annually pay to each county in which the timberlands are situated payments in lieu of property taxes computed according to one of the following methods:

- (1) Fifteen percent (15%) of the proceeds of the gross sales of trees, timber, pulpwood, pine needles and other forest products from the timberlands in the county during the calendar year; or
- (2) The amount of tax that would be imposed on the timberlands, exclusive of improvements, in the county in which they are situated if the timberlands were taxable.

The State department or agency shall notify the county tax supervisor of its election with respect to each State forest on or before September 1, 1973, or within 30 days of the acquisition of additional timberlands.

When received, such payments in lieu of taxes shall be deposited in the county's general fund.

(b) The provisions of subsection (a), above, shall not apply to the proceeds of the sale of forest products directly paid to or received by the State Board of Education, any State educational institution, the Department of Human Resources, or the North Carolina Department of Agriculture from its research stations and experimental farmlands. (1957, c. 988, s. 1; 1963, c. 1120; 1967, c. 996, s. 13; 1969, c. 1185; 1971, c. 806, s. 1; 1973, c. 476, s. 133; c. 668.)

**Editor's Note.** — The first 1973 amendment, effective July 1, 1973, substituted "Department of Human Resources" for "Hospitals Board of Control [Department of Mental Health]" in former subsection (c), which was eliminated by the second 1973 amendment.

"Department of Human Resources" has been substituted for "Department of Mental Health" in subsection (b) of this section pursuant to Session Laws 1973, c. 476, s. 133.

The second 1973 amendment, effective July 1, 1973, rewrote this section.

**Section Applicable Where State Agency Exchanges Timber for Land.** — See opinion of Attorney General to Mr. Carroll L. Mann, Jr., State Property Control, Department of Administration, 41 N.C.A.G. 766 (1972).

**§ 105-280:** Repealed by Session Laws 1973, c. 695, s. 4, effective January 1, 1974.

**Cross Reference.** — For present provisions covering the subject matter of the repealed section, see §§ 105-278.1 through 105-278.9.

**§ 105-281:** Repealed by Session Laws 1973, c. 695, s. 10, effective January 1, 1974.

**§ 105-282:** Repealed by Session Laws 1973, c. 695, s. 8, effective January 1, 1974.

**§ 105-282.1. Requests for tax relief; burden of proof; records of property given relief.** — (a) An owner of property who seeks to obtain tax relief for his property (through exemption or classification) under the laws of this State has the burden of establishing that the property is entitled thereto. In 1974, and each year thereafter, during the regular listing period, the owner seeking such relief shall file a request therefor with the tax supervisor of the county in



which the property, real or personal, would be subject to taxation if taxable. If the property is situated within a city or town and the owner desires relief from municipal taxation, he shall also file a request for tax relief with the person responsible for municipal tax listing. Each such request shall be submitted on a form that has been approved by the Department of Revenue, and such forms shall be made available to owners by the tax supervisor or appropriate municipal tax official. If such a request is denied by a county, the tax supervisor shall notify the owner of this decision in time for him to appeal to the county board of equalization and review and to the property tax commission as provided in G.S. 105-322 and G.S. 105-324. If such a request is denied by a city or town, the person responsible for preparing the municipal tax lists shall notify the owner of this decision in time for him to appeal to the governing body of the city or town and to the property tax commission in accordance with the provisions of G.S. 105-326 or G.S. 105-328. Requests that are approved by a county shall be filed in the office of the county tax supervisor, and requests that are approved by a municipality shall be filed in the office designated by the unit's governing body. The United States, this State, and units of local government in this State are exempted from the requirement of this section that owners make formal request for tax relief. However, this exemption shall not be construed as relieving the State and local units of government from the duty of listing for taxation property that is not used for public purposes.

(b) Failure to Request Tax Relief; Procedures. — If in any year an owner fails to submit a request for tax relief for his property as provided in subsection (a) above, and also fails to list the property for taxation, the county tax supervisor (and, if the property is situated within a city or town, the person responsible for municipal tax listing) shall treat the property as other unlisted property and proceed as provided in G.S. 105-312. If, upon appeal to the board of equalization and review or board of county commissioners as provided in that section, it is determined that the property is entitled to tax relief, the owner shall be permitted to submit his request for tax relief at that time. The provisions of G.S. 105-312 shall govern the rights, duties, and procedures applicable to the taxpayer, responsible officials, and affected units of local government. The owner's failure to request tax immunity in any year shall not affect his right to proceed under the provisions of subsection (a) above, to obtain tax relief for a subsequent year.

(c) Roster. — The county tax supervisor shall prepare and maintain a roster of all property in the county that is granted tax relief through classification or exemption. As to affected real and personal property, the roster shall set forth:

- (1) The name of the owner of the property.
- (2) A brief description of the property.
- (3) A statement of the use to which the property is put.
- (4) A statement of the value of the property.

The person responsible for preparing the tax lists of a city or town shall prepare and maintain a similar roster of all property in the municipality that is granted tax relief through classification or exemption.

(d) Report. — The person required to prepare and maintain any roster prescribed by subsection (c), above, for the year 1974, shall, on or before November 1, 1974, send a duplicate copy thereof to the Department of Revenue and file the original in his office. In subsequent years, on or before November 1, the responsible official shall forward to the Department of Revenue a report of all changes made in the roster first submitted under this subsection. (1973, c. 695, s. 8.)

**Editor's Note.** — Session Laws 1973, c. 695, s. 21, makes this section effective Jan. 1, 1974.



## ARTICLE 13.

*Standards for Appraisal and Assessment.*

**§ 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. (1939, c. 310, s. 500; 1953, c. 970, s. 5; 1955, c. 1100, s. 2; 1959, c. 682; 1967, c. 892, s. 7; 1969, c. 945, s. 1; 1971, c. 806, s. 1; 1973, c. 695, s. 11.)

**Editor's Note.** — The 1973 amendment, effective Jan. 1, 1974, deleted the former second sentence, stating the intent of this section to have property appraised at its true and actual value, in such manner as property is usually sold but not by forced sale.

**Taxation to Be in Proportion to True Value of Property.** — The purpose of the statutory requirement that all property be appraised at its true value in money is to assure, as far as practicable, a distribution of the burden of taxation in proportion to the true values of the respective taxpayers' property holdings, whether they be rural or urban. In re King, 281 N.C. 533, 189 S.E.2d 158 (1972).

**The fundamental rule of valuation is actual market or fair cash value.** Albemarle Elec. Membership Corp. v. Alexander, 282 N.C. 402, 192 S.E.2d 811 (1972).

**There is no distinction between owners of real and personal property** as to their right to insist upon equality of valuation or as to their standing to pursue the remedies provided in the

Machinery Act for error in the valuation of properties. In re Valuation of Property Located at 411-417 West Fourth Street, 282 N.C. 71, 191 S.E.2d 692 (1972).

**Economic Blight of Downtown Area to Be Considered in Revaluation.** — The policy of equality in valuations compels the assessors and, upon an appeal, the State Board of Assessment to take economic blight of a downtown area into account when revaluing property for tax purposes. In re Valuation of Property Located at 411-417 West Fourth Street, 282 N.C. 71, 191 S.E.2d 692 (1972).

**In order to obtain relief from valuations** upon their property by the State Board of Assessment, appellant electric membership corporations must show that the methods used in determining true value were illegal and arbitrary, and that appellants were substantially injured by a resulting excessive valuation of their property. Albemarle Elec. Membership Corp. v. Alexander, 282 N.C. 402, 192 S.E.2d 811 (1972).

**§ 105-284. Uniform assessment standard.** — All property, real and personal, shall be assessed for taxation at the valuation established under G.S. 105-283, and taxes levied by all counties and municipalities shall be levied uniformly on assessments determined as provided in this section. (1939, c. 310, s. 500; 1953, c. 970, s. 5; 1955, c. 1100, s. 2; 1959, c. 682; 1967, c. 892, s. 7; 1969, c. 945, s. 1; 1971, c. 806, s. 1; 1973, c. 695, s. 12.)

**Editor's Note.** — The 1973 amendment, effective Jan. 1, 1974, rewrote this section.

## ARTICLE 14.

*Time for Listing and Appraising Property for Taxation.*

**§ 105-285. Date as of which property is to be listed and appraised.** — (a) Annual Listing Required.—All property subject to ad valorem taxation shall be listed annually.

(b) Personal Property; General Rule.—Except as provided in subsection (c) below, the value, ownership, and place of taxation of personal property, both tangible and intangible, shall be determined annually as of January 1.

(c) Business Inventories.—The value, ownership, and place of taxation of inventories held and used in connection with the mercantile manufacturing, processing, or producing business enterprise of a taxpayer having a place of business in this State, whose fiscal year closes at a date other than December



31, shall be determined annually as of the ending date of the taxpayer's latest completed fiscal year. However, if with respect to any business enterprise or any new or additional business location a taxpayer has not completed a fiscal year as of January 1, the value, ownership, and place of taxation of inventories held and used in connection with the taxpayer's new business enterprise or new or additional business location shall be determined as of January 1.

For purposes of this section, the word "inventories" means goods held for sale in the regular course of business, raw materials, and goods in process of manufacture or processing; it also means other goods and materials that are used or consumed in manufacture or processing or that accompany and are sold with the goods manufactured or processed.

(d) **Real Property.**—The value of real property shall be determined as of January 1 of the years prescribed by G.S. 105-286 and G.S. 105-287. The ownership of real property shall be determined annually as of January 1, except in the following situation: When any real property is acquired after January 1, but prior to July 1, and the property was not subject to taxation on January 1 on account of its exempt status, it shall be listed for taxation by the transferee as of the date of acquisition and shall be appraised in accordance with its true value as of January 1 preceding the date of acquisition; and the property shall be taxed for the fiscal year of the taxing unit beginning on July 1 of the year in which it is acquired. The person in whose name such property is listed shall have the right to appeal the listing, appraisal, and assessment of the property in the same manner as that provided for listings made as of January 1.

In the event real property exempt as of January 1 is, prior to July 1, acquired from a governmental unit that by contract is making payments in lieu of taxes to the taxing unit for the fiscal period beginning July 1 of the year in which the property is acquired, the tax on such property for the fiscal period beginning on July 1 immediately following acquisition shall be one half of the amount of the tax that would have been imposed if the property had been listed for taxation as of January 1. (1939, c. 310, s. 302; 1945, c. 973; 1971, c. 806, s. 1; 1973, c. 735.)

**Editor's Note.** — The 1973 amendment, effective Jan. 1, 1974, added the subsection catchlines, rewrote former subsection (b) as present subsections (b) and (c) and redesignated former subsection (c) as (d).

**Applied** in *In re King*, 281 N.C. 533, 189 S.E.2d 158 (1972).

### § 105-286. Time for general reappraisal of real property.

**Editor's Note.** —

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, amends this section by substituting "Department of Revenue" for "State Board of Assessment."

**Applied** in *In re King*, 281 N.C. 533, 189 S.E.2d 158 (1972).

### § 105-287. Real property to be appraised in years in which general reappraisal is not conducted.

(b) All real property that meets the following requirements shall be reappraised in years in which no general appraisal or reappraisal is being conducted in the county, that is, real property which:

- (1) Was not appraised at the last general appraisal or reappraisal conducted in accordance with the provisions of G.S. 105-286.
- (2) Has increased in value to the extent of more than one hundred dollars (\$100.00) by virtue of improvements or appurtenances added since the last appraisal or reappraisal of such property. (In no case, however, shall the valuation of a property be increased under the provisions of this section as the result of the owner's enterprise in adopting any one or more of the following progressive policies:
  - a. Planting and care of lawns, shade trees, shrubs, and flowers for noncommercial purposes.



- b. Repainting buildings.
  - c. Terracing or other methods of soil conservation, to the extent that they preserve values already existing.
  - d. Protection of forest against fire.
  - e. Repealed by Session Laws 1973, c. 790, s. 2.
  - f. The impoundment of water upon marshlands for the purpose of preserving or enhancing the natural habitat of wildlife indigenous to such marshlands, but only when the marshlands are used for noncommercial purposes.
  - g. Repealed by Session Laws 1973, c. 695, s. 10, effective January 1, 1973.
- (3) Has decreased in value to the extent of more than one hundred dollars (\$100.00) by virtue of damage, destruction, or removal of improvements or appurtenances (other than those listed in subdivision (b)(2), above) since the last appraisal or reappraisal of such property.
  - (4) Has been divided into lots that are located on streets laid out and open for travel and that have been sold or offered for sale as lots since the last appraisal of such property. (However, if a tract has been divided into lots and more than five acres of the tract remain unsold by the owner thereof, the unsold portion may be appraised as land acreage rather than as lots in the discretion of the tax supervisor.)
  - (5) Was last appraised at an improper figure as the result of a clerical error.
  - (6) Has increased or decreased in value to the extent of more than one hundred dollars (\$100.00) by virtue of circumstances external to the property other than increases or decreases in the general economy of the county since the last appraisal of such property. (In each such case the facts in connection with the increase or decrease in value of the specific tract, parcel, or lot shall be found by the board of equalization and review and entered upon the proceedings of the board.)
  - (7) Has increased or decreased in value by virtue of a change in the acreage or poundage allotment for any farm commodity, when any such allotment was assigned a fixed value per acre or other unit of measurement in the last appraisal of such property. (In such event the board of equalization and review shall adjust uniformly the appraised and assessed valuations of all real property affected by such a change in allotments.)
  - (8) Was last appraised at an improper figure as the result of an error in the number of acres in the tract or parcel or in the dimensions of the lot, or as the result of an error in the area or other measurement of a building or other improvement.
  - (9) Was last appraised at a figure that, when measured by the schedules of values, standards, and rules adopted under the provisions of G.S. 105-317 for the county's last preceding general reappraisal, was manifestly unjust at the time so appraised.
- (1973, c. 695, s. 10; c. 790, s. 2.)

**Editor's Note.** — The first 1973 amendment, effective Jan. 1, 1974, repealed former subdivision (2)g of subsection (b), which related to installing or constructing air cleaning devices or waste disposal or water pollution abatement plants or equipment.

The second 1973 amendment repealed former paragraph e of subdivision (b)(2), which read: "Planting of forest trees on vacant land for reforestation purposes (for 10 years after such planting)."

Section 3 of the second 1973 amendatory act provides that the amendment "shall become effective with respect to each county as of the date on which its next general reappraisal of real property under the provisions of G.S. 105-286(a) becomes effective."

As subsections (a) and (c) were not changed by the amendment, they are not set out.



ARTICLE 15.

*Duties of Department and Property Tax Commission  
as to Assessments.*

**§ 105-288. Functions of Department and Property Tax Commission; oath; expenses.** — (a) Duties of the Department of Revenue:

- (1) The Department shall exercise general and specific supervision over the valuation and taxation of property by counties and municipalities throughout the State.
- (2) The Department is responsible for appraising the property of public service companies as defined in G.S. 105-333.

(b) Duties of the Property Tax Commission:

- (1) The Commission is constituted as the State board of equalization and review for the valuation and taxation of property in the State.
- (2) The Commission shall hear appeals from the appraisal and assessment of the property of public service companies as defined in G.S. 105-333.

(c) Each member of the Commission, the Secretary of Revenue, and the employees of the Department assigned duties and responsibilities enumerated in this Chapter shall take and subscribe the oath set up below and file it with the Secretary of State:

I, ....., do solemnly swear, or affirm, that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office and that I will not allow my actions in such office to be influenced by personal or political friendships or obligations, so help me, God.

.....  
Signature

(d) All expenses of the Commission, and the Department of Revenue in performing the duties enumerated in this Article shall be paid from funds appropriated out of revenue derived from the tax on intangible personal property as provided by G.S. 105-213. (1939, c. 310, ss. 200, 201; 1941, c. 327, s. 6; 1947, c. 184; 1961, c. 547, s. 1; 1967, c. 1196, ss. 1, 2; 1971, c. 806, s. 1; 1973, c. 476, s. 193.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1973, rewrote this section.

**§ 105-289. Duties of Department of Revenue.** — (a) It shall be the duty of the Department of Revenue:

- (1) To discharge the duties prescribed by law and to take such action and to do such things as may be needful and proper to enforce the provisions of this Subchapter.
- (2) To report in reasonably durable form to the General Assembly at each regular session or at such other times as the General Assembly may direct:
  - a. The proceedings of the Property Tax Commission during the preceding biennium.
  - b. Recommendations concerning revision of this Subchapter and information concerning the public revenues that may be required by the General Assembly or that the Commission deems expedient and wise.
- (3) To report to the Governor on or before the first day of January each year:
  - a. The proceedings of the Commission during the preceding year.
  - b. Any recommendations the Commission desires to submit with respect to any matter relating to this Subchapter.



(4) To keep full and accurate records of the Commission's official proceedings.

(b), (c) Repealed by Session Laws 1973, c. 476, s. 193, effective July 1, 1973.

(d) In exercising general and specific supervision over the valuation and taxation of property, the Department shall provide for the instruction of county, city, and town tax authorities in the listing, appraisal, and assessment of property for taxation and in the levying and collection of property taxes. On and after July 1, 1973, boards of county commissioners and municipal governing bodies shall not appoint any person to the office of county or municipal tax supervisor unless and until the Department of Revenue shall have certified that he has been instructed in the duties of the office and that he is qualified to appraise the kinds of real and personal property commonly found in this State.

(e) In accordance with regulations that may be adopted by it, the Department of Revenue shall make available to county tax supervisors, boards of equalization and review, and boards of county commissioners any information contained in any report to it or any other State department, or any other information that the Department may have in its possession that may assist the county authorities in securing a complete listing of property for taxation and in appraising taxable property.

(1) Information transmitted or made available to county tax authorities under this subsection (e) shall not be divulged or published by the county tax authorities and shall be used only for the purposes of securing complete tax listings, appraising taxable property, and presenting information in administrative and judicial proceedings involving listings and appraisals.

(2) Except as provided in this subsection (e), and except to the Governor and his authorized agent, and except to a solicitor or the authorized agent of a solicitor of a district in which such information would affect the listing or appraisal of property for taxation, neither the Department nor the Commission shall divulge or make public the reports made to it or to other State departments. (The provisions of this subsection shall not interfere with the publication of appraisals, assessments, or statistics by the Department or decisions made by the Commission, nor shall the provisions of this subsection prevent presentation of such information in any administrative or judicial proceeding involving appraisals, assessments, or decisions of the Commission.)

(1973, c. 476, s. 193.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1973, substituted "Department of Revenue" for "State Board of Assessment" in the introductory language and "Department" for "Board" and "Department of Revenue" for "State Board of Assessment" in subsection (d), substituted "Property Tax Commission" for "Board" in subdivision (2)a of subsection (a) and "Commission" for "Board" in subdivisions (2)b, (3)a and (3)b of subsection (a), and substituted "The Commission's" for "its" in subdivision (4) of subsection (a). The amendment also repealed former subsections

(b) and (c), putting on the former State Board of Assessment the duty of administering Article 23 of this Chapter and § 105-290, and rewrote the first paragraph and subdivision (2) of subsection (e).

As subsections (f) through (i) were not changed by the amendment, they are not set out.

**The Department of Revenue is given general supervisory power** over the valuation and taxation of property throughout the State and authority to correct improper assessments. In re King, 281 N.C. 533, 189 S.E.2d 158 (1972).

**§ 105-290. Appeals to Property Tax Commission.** — (a) **Duty to Hear Appeals.** — In its capacity as the State board of equalization and review, the Property Tax Commission shall hear and adjudicate appeals from boards of county commissioners and from county boards of equalization and review as provided in this section.



(b) Appeals from Appraisal and Listing Decisions. — It shall be the duty of the Property Tax Commission to hear and to adjudicate appeals from decisions made by county boards of equalization and review and boards of county commissioners under the provisions of G.S. 105-286, 105-287, 105-322, 105-325, and 105-312, whether the decisions be made by such a board upon appeal from the tax supervisor or upon such a board's own motion.

- (1) In such cases, taxpayers and persons having ownership interests in the property subject to taxation may file separate appeals or joint appeals at the election of one or more of the taxpayers. It is the intent of this provision that all owners of a single item of personal property or tract or parcel of real property be allowed to join in one appeal and also that any taxpayer be allowed to include in one appeal all objections timely presented regardless of the fact that the listing or valuation of more than one item of personal property or tract or parcel of real property is the subject of the appeal.
- (2) When an appeal has been filed as provided in G.S. 105-286, 105-287, 105-324, 105-325, or 105-312, the Property Tax Commission shall elect whether to deal with the appeal under the procedure specified in subdivision (b)(2)a, below, or that specified in subdivision (b)(2)b, below.

a. Hearing by Commission Representatives. — The Commission is empowered to authorize any member or members of the Commission or employee of the Department of Revenue to hear an appeal, to make examinations and investigations, to have made from stenographic notes a full and complete record of the evidence offered at the hearing, and to make recommended findings of fact and conclusions of law. Should the Commission elect to follow this procedure, it shall fix the time and place at which its representative or representatives will hear the appeal and, at least 10 days before the hearing, give written notice thereof to the appellant and to the clerk of the board of commissioners of the county from which the appeal is taken. At the hearing the Commission's representative or representatives shall hear all evidence and affidavits offered by the appellant and appellee county and may exercise the authority granted by subsection (d), below, to obtain information pertinent to decision of the appeal. The representative or representatives conducting the hearing shall submit to the Commission and to the appellant and appellee a full record of the proceeding and his or their recommended findings of fact and conclusions of law. The Commission shall review the record, the recommended findings of fact and conclusions of law, and any written arguments that may be submitted to the Commission by the appellant or appellee within 15 days following the date on which the findings and conclusions were submitted to the parties and shall take one of the following actions:

1. Accept the recommended findings of fact and conclusions of law and issue an appropriate order as provided in subdivision (b)(3), below.
2. Make new findings of fact or conclusions of law based upon the record submitted by the Commission's representative or representatives and issue an appropriate order as provided in subdivision (b)(3), below.
3. Rehear the appeal under the procedure provided in subdivision (b)(2)b, below, with respect to any portion of the record or recommended findings of fact or conclusions of law.

b. Hearing by Full Commission. — Should the Commission elect not



to employ the procedure provided in subdivision (b)(2)a, above, it shall fix a time and place at which the Commission shall hear the appeal and, at least 10 days before the hearing, give written notice thereof to the appellant and to the clerk of the board of commissioners of the county from which the appeal is taken. At the hearing the Commission shall hear all evidence and affidavits offered by the appellant and appellee county and may exercise the authority granted by subsection (d), below, to obtain information pertinent to decision of the appeal. The Commission shall make findings of fact and conclusions of law and issue an appropriate order as provided in subdivision (b)(3), below.

- (3) On the basis of the findings of fact and conclusions of law made after any hearing provided for by this subsection (b), the Property Tax Commission shall enter an order (incorporating the findings and conclusions) reducing, increasing, or confirming the valuation or valuations appealed or listing or removing from the tax lists the property whose listing has been appealed. A certified copy of the order shall be delivered to the appellant and to the clerk of the board of commissioners of the county from which the appeal was taken, and the abstracts and tax records of the county shall be corrected to reflect the Commission's order.

(c) Appeals from Adoption of Schedules, Standards, and Rules. — It shall be the duty of the Property Tax Commission to hear and to adjudicate appeals from orders of boards of county commissioners adopting schedules of values, standards, and rules under the provisions of G.S. 105-317 as prescribed in this subsection (c), and the adoption of such schedules, standards, and rules shall not be subject to appeal under any other provision of this Subchapter.

- (1) Any property owner of the county (separately or in conjunction with other property owners of the county) asserting that schedules of values, standards, and rules adopted by order of the board of county commissioners under the provisions of G.S. 105-317 fail to meet the appraisal standard established by G.S. 105-283 may appeal to the Property Tax Commission as provided in G.S. 105-317(c).
- (2) Upon such an appeal the Property Tax Commission shall proceed to hear the appeal in accordance with the procedures provided in subdivisions (b)(1) and (b)(2), above, and in scheduling the hearing upon such an appeal, the Commission shall give it priority over appeals that may be pending before the Commission under the provisions of subsection (b), above. The decision of the Commission upon such an appeal shall be embodied in an order as provided in subdivision (c)(3), below.
- (3) On the basis of the findings of fact and conclusions of law made after any hearing provided for by this subsection (c), the Property Tax Commission shall enter an order (incorporating the findings and conclusions):
  - a. Modifying or confirming the order adopting the schedules, standards, and rules challenged, or
  - b. Requiring the board of county commissioners to revise or modify its order of adoption in accordance with the instructions of the Commission and to present the order as thus revised or modified for approval by the Commission under rules and regulations prescribed by the Commission.

(d) Witnesses and Documents. — Upon its own motion or upon the request of any party to an appeal, the Property Tax Commission, or any member of the Commission, or any employee of the Department of Revenue so authorized by the Commission shall examine witnesses under oath administered by any member of the Commission or any employee of the Department so authorized



by the Commission, and examine the documents of any person if there is ground for believing that information contained in such documents is pertinent to the decision of any appeal pending before the Commission, regardless of whether such person is a party to the proceeding before the Commission. Witnesses and documents examined under the authority of this subsection (d) shall be examined only after service of a subpoena as provided in subdivision (d)(1), below. The travel expenses of any witness subpoenaed and the cost of serving any subpoena shall be borne by the party that requested the subpoena.

- (1) The Property Tax Commission, a member of the Commission, or any employee of the Department of Revenue authorized by the Commission, is authorized and empowered to subpoena witnesses and to subpoena documents upon a subpoena to be signed by the chairman of the Commission directed to the witness or witnesses or to the person or persons having custody of the documents sought. Subpoenas issued under this subdivision may be served by any officer authorized to serve subpoenas.
- (2) Any person who shall willfully fail or refuse to appear, to produce subpoenaed documents in response to a subpoena, or to testify as provided in this subsection (d) shall be guilty of a misdemeanor and fined and/or imprisoned in the discretion of the court. (1939, c. 310, ss. 202, 1107, 1109; 1955, c. 1350, s. 10; 1967, c. 1196, s. 3; 1969, c. 7, ss. 1, 2; 1971, c. 806, s. 1; 1973, c. 476, s. 193.)

**Editor's Note.—**

The 1973 amendment, effective July 1, 1973, rewrote the first sentence of subdivision (2)a of subsection (b), the first sentence of the first paragraph of subsection (d) and subdivision (1) of subsection (d) and substituted "Property Tax Commission," "Commission," and "Commission's" for "State Board of Assessment"

and "Board" for "Board's" throughout the rest of the section.

**The Property Tax Commission is given general supervisory power** over the valuation and taxation of property throughout the State and authority to correct improper assessments. In re King, 281 N.C. 533, 189 S.E.2d 158 (1972).

**§ 105-291. Powers of Department and Commission.** — (a) General Powers. — The Department of Revenue is authorized to exercise all powers reasonably necessary to perform the duties imposed upon it by this Subchapter and other laws of this State.

(b) Rule-Making Power. — The Department may adopt such rules and regulations, not inconsistent with law, as the Department may deem necessary to perform the duties or responsibilities of this Chapter.

(c) General Investigatory Authority. — In exercising general and specific supervision over the valuation and taxation of property, the Department or any authorized deputy shall have power to examine witnesses under oath administered by any member or authorized deputy and to examine the documents of any State department, county, city, town, or taxpayer if there is ground for believing that the witnesses have or that the documents contain information pertinent to the subject of the Department's inquiry. Witnesses and documents examined under the authority of this subsection (c) may be obtained through service of subpoenas as provided in subdivision (c)(1), below.

- (1) To obtain the testimony of witnesses or to obtain access to the documents enumerated in this subsection (c), the Department or any authorized deputy is authorized and empowered to subpoena witnesses and to subpoena documents upon a subpoena to be signed by the Secretary of Revenue directed to the witness or to the person having custody of the documents sought, and to be served by any officer authorized to serve subpoenas.
- (2) Any person who shall willfully fail or refuse to appear; to produce subpoenaed documents before the Department or authorized deputy in response to a subpoena; or to testify as provided in this subsection



(c) shall be guilty of a misdemeanor and fined and/or imprisoned in the discretion of the court.

(d) **Certification of Actions.** — The Property Tax Commission shall have power to certify copies of its records, orders, and proceedings by attesting the copies with its official seal, and copies of records, orders, or proceedings so certified shall be received in evidence in all courts of this State with like effect as certified copies of other public records.

(e) **Power to Require Reports.** — In its discretion, the Department may require tax supervisors, clerks of boards of county commissioners, and county accountants to file with it, when called for, complete reports of the appraised and assessed value of all real and personal property in the counties, itemized as the Department may prescribe.

(f) **Power to Prescribe Record Forms.** — The Department may prescribe the forms, books, and records to be used in the listing, appraisal, and assessment of property and in the levying and collection of property taxes, and how the same shall be kept.

(g) **Power to Recommend Appraisal Standards.** — The Department may develop and recommend standards and rules to be used by tax supervisors and other responsible officials in the appraisal of specific kinds and categories of property for taxation. (1939, c. 310, s. 203; 1945, c. 955; 1951, c. 798; 1971, c. 806, s. 1; 1973, c. 476, s. 193.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1973, substituted "perform the duties or responsibilities of this Chapter" for "promote the purposes for which it is constituted" at the end of subsection (b), substituted "Property Tax Commission" for "Board" near the beginning of subsection (d), and substituted "Department of Revenue," "Department" and "Department's" for "State Board of Assessment," "Board" and "Board's" throughout the rest of the section. The amendment also deleted "its members" following "Department" near the beginning of the first sentence of subsection (c) and near the beginning of subdivisions (1) and (2) of subsection (c), and substituted "Secretary of Revenue" for "chairman of the Board" near the end of subdivision (1) of subsection (c).

— §§ 105-292, 105-293: Repealed by Session Laws 1973, c. 476, s. 193, effective July 1, 1973.

## ARTICLE 16.

### *County Listing, Appraisal, and Assessing Officials.*

#### § 105-294. **County tax supervisor.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, amends this section by substituting "Department of Revenue" for "State Board of Assessment."

#### § 105-296. **Powers and duties of tax supervisor.**

(h) Only after the abstract has been carefully reviewed can the tax supervisor require any person operating a business enterprise in the county to submit a detailed inventory, statement of assets and liabilities, or other similar information pertinent to the discovery or appraisal of property taxable in the county. Inventories, statements of assets and liabilities, or other information secured by the tax supervisor under the terms of this subsection, but not expressly required by this Subchapter to be shown on the abstract itself, shall not be open to public inspection but shall be made available, upon request, to representatives of the Department of Revenue. Any tax supervisor or other official or employee disclosing information so obtained, except as such disclosure may be necessary in listing or appraising property in the performance of official duties, or in the administrative or judicial proceedings



relating to listing, appraising, or other official duties, shall be guilty of a misdemeanor and punishable by fine of not exceeding fifty dollars (\$50.00).

(1973, c. 560.)

**Editor's Note.** — The 1973 amendment, effective Jan. 1, 1974, substituted, at the beginning of the first sentence of subsection (h), the language beginning "Only" and ending "submit" for "He may require any person engaged in operating a business enterprise in

the county to submit, in connection with his regular tax list." The amendment also inserted "or employee" and made minor changes in wording in the third sentence of subsection (h).

As the rest of the section was not changed by the amendment, only subsection (h) is set out.

### § 105-299. Employment of experts; registration.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, amends this section by substituting "Department of Revenue" for "State Board of Assessment."

## ARTICLE 17.

### *Administration of Listing.*

### § 105-301. Place for listing real property.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, amends this section by substituting "Department of Revenue" for "State Board of Assessment."

### § 105-302. In whose name real property is to be listed.

**The doctrine of instantaneous seizin** does not serve to override a clear statutory provision that the owner of the equity of redemption is considered the owner of the real estate for the purpose of assessing taxes. *Powell v. County of Haywood*, 15 N.C. App. 109, 189 S.E.2d 785 (1972).

**When Husband and Wife Regarded as Separate Persons.** — The wife is the "taxpayer" with reference to taxes levied on account of property owned by her alone, and

the husband is the "taxpayer" with reference to taxes levied on account of property owned by him alone. *State v. Tant*, 16 N.C. App. 113, 191 S.E.2d 387 (1972).

The husband and wife are, in contemplation of the law, a separate person from either with reference to land owned by them as tenants by the entirety. *State v. Tant*, 16 N.C. App. 113, 191 S.E.2d 387 (1972).

**Applied** in *Powell v. Town of Canton*, 15 N.C. App. 113, 189 S.E.2d 784 (1972).

**§ 105-303. Obtaining information on real property transfers; permanent listing.** — (a) To facilitate the accurate listing of real property for taxation, the board of county commissioners may require the register of deeds to comply with the provisions of subdivision (a)(1), below, or it may require him to comply with the provisions of subdivision (a)(2), below:

- (1) When any conveyance of real property (other than a deed of trust or mortgage) is recorded, the board of county commissioners may require the register of deeds to certify to the tax supervisor:
  - a. The name of the person conveying the property.
  - b. The name and address of the person to whom the property is being conveyed.
  - c. A description of the property sufficient to locate and identify it.
  - d. A statement as to whether the parcel is conveyed in whole or in part.
- (2) When any conveyance of real property (other than a deed of trust or mortgage) is submitted for recordation, the board of county commissioners may require the register of deeds to refuse to record it unless it has been presented to the tax supervisor and the tax supervisor has noted thereon that he has obtained the information he desires from the conveyance and from the person recording it.



(b) With the approval of the Department of Revenue, the board of county commissioners may install a permanent listing system. (The Department's approval shall not, however, be required for any such system installed prior to April 3, 1939.) Under such a system the provisions of subdivisions (b)(1) through (b)(4), below, shall apply.

- (1) The tax supervisor shall be responsible for listing all real property on the abstracts and tax records each year in the name of the owner of record as of the day as of which property is to be listed under G.S. 105-285.
- (2) Persons whose duty it is to list real property under the provisions of G.S. 105-302 shall be relieved of that duty, but annually, during the listing period established by G.S. 105-307, such persons shall furnish the tax supervisor (or proper list taker) with the information concerning improvements on and separate rights in real property required by G.S. 105-309 (c)(3) through (c)(5).
- (3) The penalties imposed by G.S. 105-308 and 105-312 shall not be imposed for failure to list real property for taxation, but they shall be imposed for failure to comply with the provisions of subdivision (b)(2), above, with respect to reporting the construction or acquisition of improvements on and separate rights in real property. In such a case, the penalty prescribed by G.S. 105-312 shall be computed on the basis of the tax imposed on the improvements and separate rights.
- (4) The Department of Revenue may authorize the board of county commissioners to make additional modifications of the listing requirements of this Subchapter, but no such modification shall conflict with the provisions of subdivisions (b)(1) through (b)(3), above. (1939, c. 310, s. 701; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 789.)

**Editor's Note.** — The first 1973 amendment, effective July 1, 1973, substituted "Department of Revenue" for "State Board of Assessment" and "Department's" for "Board's" in subsection (b).

The second 1973 amendment inserted "and address" and "being" in subdivision (1)b of subsection (a).

#### § 105-304. Place for listing tangible personal property.

**Editor's Note.** —

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, amends this section by substituting "Department of Revenue" for "State Board of Assessment."

**Stated** in *Powell v. County of Haywood*, 15 N.C. App. 109, 189 S.E.2d 785 (1972).

#### § 105-305. Place for listing intangible personal property.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, amends this section by substituting "Department of Revenue" for "State Board of Assessment."

**§ 105-307. Length of listing period; extension; preliminary work.** — The period during which property is to be listed for taxation each year shall begin on the first business day of the month of January and shall continue for 30 days. The board of county commissioners may, in any year, extend the period for an additional 30 days; in years of octennial appraisal of real property, the board may extend the period for an additional 60 days. Any action by the board of county commissioners extending the listing period shall be recorded in the minutes of the board, and notice thereof shall be published as required by G.S. 105-296(c). The entire period for listing, whether it be 30, 60, or 90 days, shall be considered the regular listing period for the particular year within the meaning of this Subchapter.



The board of county commissioners upon written request filed with the county tax supervisor at least seven days prior to the expiration of the regular listing period and upon the showing of good cause by any taxpayer shall grant individual extensions of time for listing real and personal property for a length of time not to extend beyond March 31.

Nothing in this section shall be construed to prevent the tax supervisor, list takers, assistants, and experts employed under G.S. 105-299 from conducting preparatory work prior to the opening of the listing period, but no final appraisal shall be made before the day as of which the value of property is to be determined under the provisions of G.S. 105-285. (1939, c. 310, s. 905; 1971, c. 806, s. 1; 1973, cc. 141, 706.)

**Editor's Note.** — The first 1973 amendment, effective Jan. 1, 1974, added the second paragraph.

The second 1973 amendment amended the

first 1973 amendatory act by substituting "31" for "3" at the end of the second paragraph of this section.

§ 105-309. What the abstract shall contain.

(d) Personal property shall be listed to indicate the township and municipality, if any, in which it is taxable and shall be itemized by the taxpayer in such detail as may be prescribed by an abstract form approved by the Department of Revenue.

- (1) Whenever the tax supervisor or list takers shall deem it necessary to obtain complete listings, they may require taxpayers to submit additional information, inventories, and itemized lists of personal property.
- (2) At the request of the tax supervisor or list taker, the taxpayer shall furnish any information he may have with respect to the true value of the personal property he is required to list.

(f) The following form shall appear on each abstract and the information supplied therein shall be subject to the affirmation annexed to the abstract:

"TAX RELIEF FOR THE PROPERTY OF ELDERLY PERSONS WITH LIMITED INCOMES.

If you are over 65 years of age, or if you will become 65 during the year for which you are listing property for taxation, and your disposable income did not exceed five thousand dollars (\$5,000) for the preceding calendar year, you are eligible for a tax exclusion of up to five thousand dollars (\$5,000) for property you hold and use for personal purposes. Disposable income is defined in G.S. 105-277.1(b)(2).

The following information must be supplied to claim this exclusion:

- 1. Date of Birth: (Month) (Day) (Year)
- 2. Disposable income for (Year)

This information is supplied under penalties prescribed by law of a fine not to exceed five hundred dollars (\$500.00) or imprisonment not to exceed six months for false affirmation according to G.S. 105-310." (1939, c. 310, s. 900; 1941, c. 221, s. 1; 1953, c. 970, s. 6; 1955, c. 34; 1971, c. 806, s. 1; 1973, c. 448, s. 2; c. 476, s. 193.)

**Editor's Note.** — The first 1973 amendment, applicable to taxable years beginning on and after Jan. 1, 1974, added subsection (f).

The second 1973 amendment, effective July 1, 1973, substituted "Department of Revenue" for "State Board of Assessment" in subsection (d).

As the rest of the section was not changed by the amendments, only subsections (d) and (f) are set out.

**Stated** in In re Valuation of Property Located at 411-417 West Fourth Street, 282 N.C. 71, 191 S.E.2d 692 (1972).



**§ 105-311. Duty to appear for purposes of listing and signing affirmation; use of agents and mail.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, amends this section by substituting "Department of Revenue" for "State Board of Assessment."

**§ 105-312. Discovered property; appraisal; penalty.—(a) Definitions.—**For purposes of this Subchapter:

- (1) The phrase "discovered property" shall include property that was not listed by the taxpayer or any other person during a regular listing period and also property that was listed but with regard to the value, quantity, or other measurement of which the taxpayer made a substantial understatement in listing.
- (2) The phrase "failure to list property" shall include both the omission to list property during a regular listing period and the taxpayer's substantial understatement of value, quantity, or other measurement with regard to property listed.
- (3) The phrase "to discover property" shall refer to the determination that property has not been listed during a regular listing period and to the identification of the omitted item. For discoveries made after July 1, 1971 and in future years, the phrase shall also refer to the determination that listed property was returned by the taxpayer with a substantial understatement of value, quantity, or other measurement.
- (4) The phrase "substantial understatement" as used in these definitions shall be interpreted to mean the omission of a material portion of the value, quantity, or other measurement of taxable property; the determination of materiality in each case shall be made by the official or agency by whom the discovery is made, subject to the taxpayer's right to appeal the determination to the county board of equalization and review and Property Tax Commission.

(d) Procedure for Listing, Appraising, and Assessing Discovered Property. — Subject to the provisions of subsection (c), above, and the presumptions established by subsection (f), below, discovered property shall be listed in the name of the person required by G.S. 105-302 or G.S. 105-306, and the discovery shall be deemed to be made at the time such property is listed as prescribed in this subsection (d). The abstract listing discovered property shall be signed by the tax supervisor, list taker, or other person designated by the tax supervisor. If sufficient information as to the true value of the discovered property can be obtained at the time it is discovered, the tax supervisor shall make a tentative appraisal of the property. Both the listing and the appraisal shall be subject to the approval of the board of equalization and review, or, if that board has adjourned, the approval of the board of county commissioners, subject to the right of appeal to the Property Tax Commission under the provisions of G.S. 105-324; provided, nothing herein shall prevent valuation of such property by agreement between the supervisor and taxpayer without action by the board of equalization and review or the board of commissioners. The tax supervisor shall then mail a notice to the person in whose name the discovered property has been listed at his last known address; if, under the provisions of G.S. 105-302 or G.S. 105-306, the property has been listed in the name of the occupant or person in possession, the notice shall be mailed to him. The required notice shall state that:

- (1) The described property has been listed in the name of the addressee.
- (2) The property has been tentatively appraised at a specified figure, or the property will be appraised at the meeting provided for in subdivision (d)(3), below.



- (3) The listing of the property and the tentative appraisal will be presented for review and approval by the board of equalization and review, or, if that board has adjourned, by the board of county commissioners. (If the property has not been given a tentative appraisal by the tax supervisor, the notice shall state that the listing of the property will be presented for approval and that the appropriate board will appraise it at the designated meeting.)
  - (4) The board of equalization and review or board of county commissioners will meet at a specified time and place to review and approve the listing and appraisal of the property, or to appraise the property.
  - (5) The addressee shall have a right to be present at the meeting referred to in subdivision (d)(4), above; to be heard; and to present any objections that he may have to the listing or appraisal of the property.
- (1973), c. 476, s. 193; c. 787.)

**Editor's Note. —**

The first 1973 amendment, effective July 1, 1973, substituted "Property Tax Commission" for "State Board of Assessment" in subdivision (a) (4) and in the first paragraph of subsection (d).

The second 1973 amendment added to the

first sentence of subsection (d) the language beginning "and the discovery shall be deemed" and added the proviso to the fourth sentence of subsection (d).

As the rest of the section was not changed by the amendments, only subsections (a) and (d) are set out.

## ARTICLE 18.

### *Reports in Aid of Listing.*

#### **§ 105-313. Report of personal property by multi-county businesses.**

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, amends this section by substituting "Department of Revenue" for "State Board of Assessment."

## ARTICLE 19.

### *Administration of Real and Personal Property Appraisal.*

**§ 105-317. Appraisal of real property; adoption of schedules, standards, and rules. —** (a) Whenever any real property is appraised it shall be the duty of the persons making appraisals:

- (1) In determining the true value of land, to consider as to each tract, parcel, or lot separately listed at least its advantages and disadvantages as to location; zoning; quality of soil; waterpower; water privileges; mineral, quarry, or other valuable deposits; fertility; adaptability for agricultural, timber-producing, commercial, industrial, or other uses; past income; probable future income; and any other factors that may affect its value except growing crops of a seasonal or annual nature.
- (2) In determining the true value of a building or other improvement, to consider at least its location; type of construction; age; replacement cost; cost; adaptability for residence, commercial, industrial, or other uses; past income; probable future income; and any other factors that may affect its value.
- (3) To appraise partially completed buildings in accordance with the degree of completion on January 1.

(c) The schedules of values, standards, and rules required by subdivision (b)(1), above, shall be reviewed and approved by the board of county commissioners before they are used. When the board of county commissioners



approves the schedules, standards, and rules, it shall issue an order adopting them and shall cause a copy of the order to be published in the form of a notice in a newspaper having general circulation in the county, stating in the notice that the schedules, standards, and rules to be used in the next scheduled reappraisal of real property have been adopted and that they are open to examination by any property owner of the county at the office of the tax supervisor for a period of 10 days from the date of publication of the notice.

- (1) Any property owner of the county (separately or in conjunction with other property owners of the county) asserting that the schedules, standards, and rules adopted by the board of county commissioners under the provisions of this section fail to meet the appraisal standard established by G.S. 105-283 may except to the order and appeal therefrom to the Property Tax Commission at any time within 30 days after the date of the publication of the adoption order by filing a written notice of the appeal with the clerk of the board of county commissioners and with the Property Tax Commission. At the time of filing the notices of appeal, the appellant or appellants shall file with the clerk of the board of county commissioners and with the Property Tax Commission a written statement of the grounds of appeal. Upon timely appeal, the Property Tax Commission shall proceed under the provisions of G.S. 105-290(c).
- (2) The appeal procedure provided herein shall be the exclusive administrative means for challenging the order of the board of county commissioners adopting schedules, standards, and rules under this section. (1939, c. 310, s. 501; 1959, c. 704, s. 4; 1967, c. 944; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 695, s. 5.)

**Editor's Note. —**

The first 1973 amendment, effective July 1, 1973, substituted "Property Tax Commission" for "State Board of Assessment" in four places in subdivision (1) of subsection (c).

The second 1973 amendment, effective Jan. 1, 1974, deleted "quantity and quality of timber" following "quality of soil," inserted "timber-producing" and added "except growing crops of a seasonal or annual nature," all in subdivision (1) of subsection (a).

As subsection (b) was not changed by the amendments, it is not set out.

**Net income produced, etc. —**

In accord with original. See *In re Valuation of Property located at 411-417 W. Fourth St., 282 N.C. 71, 191 S.E.2d 692* (1972).

**But Fact-Finding Board May Also Consider, etc. —**

In accord with 1st paragraph in original. See *In re Valuation of Property located at 411-417 W. Fourth St., 282 N.C. 71, 191 S.E.2d 692* (1972).

**Advantages and Disadvantages in Location to Be Considered. —** Consideration of advantages inherent in the location of the property necessarily requires consideration of any disadvantages inherent in such location. In *re Valuation of Property Located at 411-417 W. Fourth Street, 282 N.C. 71, 191 S.E.2d 692* (1972).

**Stated** in *In re King, 281 N.C. 533, 189 S.E.2d 158* (1972).

## ARTICLE 20.

### *Approval, Preparation, and Disposition of Records.*

#### **§ 105-318. Forms for listing, appraising, and assessing property.**

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, amends this section by substituting "Department of

Revenue" for "State Board of Assessment" and "Department" for "Board."

#### **§ 105-319. Tax records; preparation of scroll and tax book.**

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, amends this

section by substituting "Department of Revenue" for "State Board of Assessment."



### § 105-320. Tax receipts; preparation.

**Editor's Note.** — Session Laws 1973, c. 476, section by substituting "Department of s. 193, effective July 1, 1973, amends this Revenue" for "State Board of Assessment."

### § 105-321. Disposition of tax records and receipts; order of collection.

(d) No tax receipt shall be delivered to the tax collector for any assessment appealed to the Property Tax Commission until such appeal has been finally adjudicated. (1939, c. 310, s. 1103; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 615.)

**Editor's Note.** — The first 1973 amendment, effective July 1, 1973, substituted "Property Tax Commission" for "State Board of Assessment" in subsection (d).

The second 1973 amendment rewrote subsection (d).

As the rest of the section was not changed by the amendments, only subsection (d) is set out.

## ARTICLE 21.

### *Review and Appeals of Listings and Valuations.*

### § 105-322. County board of equalization and review.

**Local Modification.** — Catawba: 1973, c. 355.

**Editor's Note.** —

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, amends this section by substituting "Property Tax Commission" for "State Board of Assessment" in subdivision (g) (3)a.

**Right to Request Hearing, etc., Not Limited.** — The right to request a hearing by and relief from the county board of equalization

and review is not limited to the owner in fee simple of the property, the valuation of which is in question. In re Valuation of Property Located at 411-417 W. Fourth Street, 282 N.C. 71, 191 S.E.2d 692 (1972).

**Stated** in In re King, 281 N.C. 533, 189 S.E.2d 158 (1972).

**Cited** in Reeves Bros. v. Town of Rutherfordton, 15 N.C. App. 385, 190 S.E.2d 345 (1972).

### § 105-324. Appeals to Property Tax Commission from listing and valuation decisions of boards of equalization and review and boards of county commissioners.

**Editor's Note.** —

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, amends this section by substituting "Property Tax Commission" for "State Board of Assessment" throughout subsections (b) and (c).

**Established Fact of Common Knowledge Must Be Considered.** — The Property Tax

Commission is neither required nor permitted to shut its eyes to an established fact of common knowledge. In re Valuation of Property Located at 411-417 West Fourth Street, 282 N. C. 71, 191 S.E.2d 692 (1972).

**Applied** in In re King, 281 N.C. 533, 189 S.E.2d 158 (1972).

**§ 105-325. Powers of board of county commissioners to change abstracts and tax records after board of equalization and review has adjourned.**—(a) After the board of equalization and review has finished its work and the changes it effected or ordered have been entered on the abstracts and tax records as required by G.S. 105-323, the board of county commissioners shall not authorize any changes to be made on the abstracts and tax records except as follows:

- (1) To give effect to decisions of the Property Tax Commission on appeals taken under G.S. 105-324.
- (2) To add to the tax records any valuation certified by the Department of Revenue for property appraised in the first instance by the Department or to give effect to corrections made in such appraisals by the Department.
- (3) Subject to the provisions of subdivisions (a)(3)a and (a)(3)b, below, to correct the name of any taxpayer appearing on the abstract or tax records erroneously; to substitute the name of the person who should have listed property for the name appearing on the abstract or tax



records as having listed the property; and to correct an erroneous description of any property appearing on the abstract or tax records.

- a. Any correction or substitution made under the provisions of this subdivision (a)(3) shall have the same force and effect as if the name of the taxpayer or description of the property had been correctly listed in the first instance, but the provisions of this subdivision (a)(3) shall not be construed as a limitation on the taxation and penalization of discovered property required by G.S. 105-312.
- b. If a correction or substitution under this subdivision (a)(3) will adversely affect the interests of any taxpayer, he shall be given written notice thereof and an opportunity to be heard before the change is entered on the abstract or tax records.
- (4) To correct appraisals, assessments, and amounts of taxes appearing erroneously on the abstracts or tax records as the result of clerical or mathematical errors. (If the clerical or mathematical error was made by the taxpayer, his agent, or an officer of the taxpayer and if the correction demonstrates that the property was listed at a substantial understatement of value, quantity, or other measurement, the provisions of G.S. 105-312 shall apply.)
- (5) To add to the tax records and abstracts or to correct the tax records and abstracts to include property discovered under the provisions of G.S. 105-312.
- (6) Subject to the provisions of subdivisions (a)(6)a, (a)(6)b, (a)(6)c, and (a)(6)d, below, to appraise or reappraise property when the tax supervisor reports to the board that, since adjournment of the board of equalization and review, facts have come to his attention that render it advisable to raise or lower the appraisal of some particular property of a given taxpayer in the then current calendar year.
  - a. The power granted by this subdivision (a)(6) shall not authorize appraisal or reappraisal because of events or circumstances that have taken place or arisen since the day as of which property is to be listed.
  - b. No appraisal or reappraisal shall be made under the authority of this subdivision (a)(6) unless it could have been made by the board of equalization and review had the same facts been brought to the attention of that board.
  - c. If a reappraisal made under the provisions of this subdivision (a)(6) demonstrates that the property was listed at a substantial understatement of value, quantity, or other measurement, the provisions of G.S. 105-312 shall apply.
  - d. If an appraisal or reappraisal made under the provisions of this subdivision (a)(6) will adversely affect the interests of any taxpayer, he shall be given written notice thereof and an opportunity to be heard before the appraisal or reappraisal shall become final.
- (b) The board of county commissioners may give the tax supervisor general authority to make any changes authorized by subsection (a), above, except those permitted under subdivision (a)(6), above.
- (c) Orders of the board of county commissioners and actions of the tax supervisor upon delegation of authority to him by the board that are made under the provisions of this section may be appealed to the Property Tax Commission under the provisions of G.S. 105-324(c). (1939, c. 310, s. 1108; 1971, c. 806, s. 1; 1973, c. 476, s. 193.)

**Editor's Note.** — The 1973 amendment, Tax Commission" for "State Board of effective July 1, 1973, substituted "Property Assessment" in subdivision (a)(1) and in



subsection (c) and substituted "Department of Revenue" for "State Board of Assessment" and "Department" for "Board" in subdivision (a)(2).

**Board of County Commissioners May Not Reappraise Property When the Information**

**as to Change Comes to the Tax Supervisor's Attention While the Board of Equalization and Review Was in Session.** — See opinion of Attorney General to Mr. H.L. Riddle, Jr., 41 N.C.A.G. 514 (1971).

## ARTICLE 22.

### *Listing, Appraising, and Assessing by Cities and Towns.*

#### **§ 105-327. Appraisal and assessment of property subject to city and town taxation.**

**Editor's Note.** — Session Laws 1973, c. 476, section by substituting "Property Tax s. 193, effective July 1, 1973, amends this Commission" for "State Board of Assessment."

**§ 105-328. Listing, appraisal, and assessment of property subject to taxation by cities and towns situated in more than one county.** — (a) For purposes of municipal taxation, all property subject to taxation by a city or town situated in two or more counties may, by resolution of the governing body of the municipality, be listed, appraised, and assessed as provided in G.S. 105-326 and 105-327 if, in such a case, in the opinion of the governing body, the same appraisal and assessment standards will thereby apply uniformly throughout the municipality. However, if, in such a case, the governing body shall determine that adoption of the appraisals and assessments fixed by the counties will not result in uniform appraisals and assessments throughout the municipality, the governing body may, by horizontal adjustments, equalize the appraisal and assessment values fixed by the counties in order to obtain the required uniformity. Taxes levied by the city or town shall be levied uniformly on the assessments so determined.

(b) Should the governing body of a city or town situated in two or more counties not adopt the procedure provided in subsection (a), above, all property subject to taxation by the municipality shall be listed, appraised, and assessed as provided in subdivisions (b)(1) through (b)(6), below.

(1) The governing body of the city or town shall appoint a municipal tax supervisor on or before the first Monday in July in each odd-numbered year. The governing body may remove the municipal tax supervisor from office during his term for good cause after giving him notice in writing and an opportunity to appear and be heard at a public session of the appointing body. Whenever a vacancy occurs in the office, the governing body shall appoint a qualified person to serve as municipal tax supervisor for the period of the unexpired term. Persons holding the position of municipal tax supervisor on July 1, 1971, shall be deemed qualified to fill the position. Any other person selected thereafter shall be one whose experience in the appraisal of real and personal property is satisfactory to the governing body and whose qualifications have been certified by the Department of Revenue as provided in G.S. 105-289(d). Pursuant to Article VI, Sec. 9, of the North Carolina Constitution, the office of municipal tax supervisor is hereby declared to be an office that may be held concurrently with any other appointive office.

(2) With the approval of the governing body, the municipal tax supervisor may appoint such list takers and assistants as may be required to perform the work assigned them by law.

(3) The municipal tax supervisor, list takers, and assistants shall, with respect to property subject to city or town taxation, have the powers



and duties accorded the county tax supervisor, list takers, and assistants by this Subchapter.

- (4) The governing body shall, with respect to property subject to city or town taxation, be vested with the powers and duties vested by this Subchapter in boards of county commissioners and boards of equalization and review. Appeals may be taken from the municipal board of equalization and review or governing body to the Property Tax Commission in the manner provided in this Subchapter for appeals from county boards of equalization and review and boards of county commissioners.
- (5) All expenses incident to the listing, appraisal, and assessment of property for the purpose of city or town taxation shall be borne by the municipality for whose benefit the work is undertaken.
- (6) The intent of this subsection (b) is to provide cities and towns that are situated in two or more counties with machinery for listing, appraising, and assessing property for municipal taxation equivalent to that established by this Subchapter for counties. The powers to be exercised by, the duties imposed on, and the possible penalties against municipal governing bodies, boards of equalization and review, tax supervisors, list takers, and assistants shall be the same as those provided in this Subchapter by, on, or against county boards of commissioners, boards of equalization and review, tax supervisors, list takers, and assistants. (1939, c. 310, s. 1202; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 695, s. 13.)

**Editor's Note.** — The first 1973 amendment, effective July 1, 1973, substituted "Department of Revenue" for "State Board of Assessment" in subdivision (b)(1) and substituted "Property

Tax Commission" for "State Board of Assessment" in subdivision (b)(4).

The second 1973 amendment, effective Jan. 1, 1974, rewrote subsection (a).

## ARTICLE 23.

### *Public Service Companies.*

**§ 105-333. Definitions.** — When used in this Article unless the context requires a different meaning:

- (6) Repealed by Session Laws 1973, c. 783, s. 5, effective January 1, 1974.
- (9) "Locally assigned rolling stock" means motor vehicles (other than passenger cars and service vehicles) which are owned or leased by a motor freight carrier company and specifically assigned to a terminal or other premises and regularly used at the premises to which assigned for the pickup and delivery of local freight.
- (10) "Motor freight carrier company" means a public service company engaged in the business of transporting property by motor vehicle for hire over the public highways of this State, whether the transportation be within, into, or from this State. With respect to intrastate carriers, this definition shall apply only to those motor freight carriers which are engaged in the business of transporting property by tractor trailer to or from two or more terminals owned or leased by the carrier in this State, whether or not the carrier is regulated by the North Carolina Utilities Commission.
- (14) "Public service company" means railroad company, pipeline company, gas company, electric power company, electric membership corporation, telephone company, telegraph company, bus line company, motor freight carrier company, airline company, and any other company performing a public service that is regulated by the Interstate Commerce Commission, the Federal Power Commission, the Federal Communications Commission, the Federal Aviation



Agency, or the North Carolina Utilities Commission except a water company, a radio common carrier company as defined in G.S. 62-119 (3), a cable television company, or a radio or television broadcasting company. (For purposes of appraisal under this Article, this definition shall include a pipeline company whether or not it performs a public service and whether or not it is regulated by one of the agencies named in the preceding sentence.)

(16) "Rolling stock" means buses, trucks, tractor trucks, trailers, semitrailers, combinations thereof, and other motor vehicles (except passenger cars and service vehicles), and railroad locomotives and cars, which are propelled by mechanical or electrical power and used upon the highways or, in the case of railroads, upon tracks.

(20) Repealed by Session Laws 1973, c. 783, s. 5, effective January 1, 1974. (1939, c. 310, ss. 1600-1605; 1943, c. 634, s. 3; 1965, c. 287, s. 17; 1971, c. 806, s. 1; c. 1121, s. 4; 1973, c. 198; c. 783, ss. 1-5.)

**Editor's Note. —**

The first 1973 amendment, effective Jan. 1, 1974, deleted "cable television company" following "telegraph company" in subdivision (14) and inserted "shall not include a cable television company, but" preceding "shall" in the second sentence of subdivision (14).

The second 1973 amendment, effective Jan. 1, 1974, repealed former subdivisions (6), defining "express company," and (20), defining "water company," rewrote subdivision (9) and the second sentence of subdivision (10), deleted "express company" following "railroad company" and "cable television company" following "telegraph company" in the first sentence of subdivision (14) and added at the end of that sentence the language beginning

"except a water company." The second amendment also deleted "motor vehicles, machines," preceding "buses" and inserted "and other motor vehicles (except passenger cars and service vehicles)" and substituted "railroad locomotives and" for "locomotives or" in subdivision (16).

Subdivision (14) is set out above as it appears in the second 1973 amendatory act.

Only the introductory language and the subdivisions changed by the amendments are set out.

**Radio and Television Stations Not within Definition of "Public Service Companies". —** See opinion of Attorney General to Mr. Douglas R. Holbrook, State Board of Assessment, 41 N.C.A.G. 702 (1971).

### § 105-334. Duty to file report; penalty for failure to file.

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, amends this section by substituting "Department of Revenue" for "State Board of Assessment" and "Department" for "Board."

**Cited in** Albemarle Elec. Membership Corp. v. Alexander, 282 N.C. 402, 192 S.E.2d 811 (1972).

**§ 105-335. Appraisal of property of public service companies. —** (a) Duty to Appraise. — In accordance with the provisions of Subsection (b), below, the Department of Revenue shall appraise for taxation the true value of each public service company (other than bus line, motor freight carrier, and airline companies) as a system (both inside and outside this State). Certain specified properties of bus line, motor freight carrier, and airline companies shall be appraised by the Department in accordance with the provisions of subsection (c), below, and all other properties of such companies shall be listed, appraised, and assessed in the manner prescribed by this Subchapter for the properties of taxpayers other than public service companies.

(b) Property of Public Service Companies Other Than Those Noted in Subsection (c). —

(1) System Property. — Each year, as of January 1, the Department of Revenue shall appraise at its true value (as defined in G.S. 105-283) the system property used by each public service company both inside and outside this State. Property leased by a public service company



shall be included in appraising the value of its system property if necessary to ascertain the true value of the company's system property.

- (2) **Nonsystem Personal Property.** — Each year, as of January 1, the Department of Revenue shall appraise at its true value (as defined in G.S. 105-283) each public service company's nonsystem personal property (except that assessed under Schedule H of the Revenue Act) subject to taxation in this State.
  - (3) **Nonsystem Real Property.** — In accordance with the county in which the public service company's nonsystem real property is located and the schedules set out in G.S. 105-286 and 105-287, the Department of Revenue shall appraise at its true value (as defined in G.S. 105-283) each public service company's nonsystem real property subject to taxation in this State.
- (c) **Property of Bus Line, Motor Freight Carrier, and Airline Companies.** —
- (1) **Rolling Stock.** — Each year, as of January 1, the Department of Revenue shall appraise at its true value (as defined in G.S. 105-283) (i) the rolling stock owned or leased by or operated under the control of each bus line company, and (ii) the rolling stock (other than locally assigned rolling stock) owned or leased by or operated under the control of each motor freight carrier company, which bus line company or motor freight carrier company is domiciled in this State or which is regularly engaged in business in this State at some premises occupied by the owner or lessee of the rolling stock or its agent. In making this appraisal, the Department shall be governed by the provisions of G.S. 105-336, and in determining the portion of the total value of the company's rolling stock subject to taxation in this State, the Department shall adhere to the provisions of G.S. 105-337. Locally assigned rolling stock shall be appraised by the Department of Revenue as of January 1 each year in accordance with the provisions of G.S. 105-283.
  - (2) **Flight Equipment.** — Each year, as of January 1, the Department of Revenue shall appraise at its true value (as defined in G.S. 105-283) the flight equipment owned or leased by or operated under the control of each airline company that is domiciled in the State or that is regularly engaged in business at some airport in this State. In making this appraisal, the Department shall be governed by the provisions of G.S. 105-336, and in determining the portion of the total value of the company's flight equipment subject to taxation in this State, the Department shall adhere to the provisions of G.S. 105-337. (1939, c. 310, s. 1608; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 783, s. 6.)

**Editor's Note.** — The first 1973 amendment, effective July 1, 1973, substituted "Department of Revenue" for "State Board of Assessment" and "Department" for "Board" throughout the section.

The second 1973 amendment, effective Jan. 1, 1974, substituted "used" for "owned or leased" in the first sentence and rewrote the second sentence of subdivision (b)(1).

### **§ 105-336. Methods of appraising certain properties of public service companies.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, amends this section by substituting "Department of Revenue" for "State Board of Assessment" and "Department" for "Board."

The Department of Revenue is by statute given the power to value property. *Albemarle Elec. Membership Corp. v. Alexander*, 282 N.C. 402, 192 S.E.2d 811 (1972).

**Implicit in this power is the power to reject**



**a value** declared by the taxpayer. *Albemarle Elec. Membership Corp. v. Alexander*, 282 N.C. 402, 192 S.E.2d 811 (1972).

**Board Is Presumed to Act in Good Faith.** — The members of the Department of Revenue are public officers, and the Department's official acts are presumed to be made in good faith and in accordance with law. *Albemarle Elec. Membership Corp. v. Alexander*, 282 N.C. 402, 192 S.E.2d 811 (1972).

**And the burden is upon the party asserting otherwise to overcome such presumptions** by competent evidence to the contrary. *Albemarle Elec. Membership Corp. v. Alexander*, 282 N.C. 402, 192 S.E.2d 811 (1972).

**Value Set By Board Will Stand Where**

**Appellants Fail to Rebut.** — Where appellants have failed to offer sufficient evidence of probative value showing the true value of their property, the value set by the Department of Revenue must stand. *Albemarle Elec. Membership Corp. v. Alexander*, 282 N.C. 402, 192 S.E.2d 811 (1972).

**Courts Will Only Interfere with Board's Assessment Where Arbitrary and Capricious.**

— It is only when the actions of the Department of Revenue are found to be arbitrary and capricious that courts will interfere with tax assessments because of asserted violations of the due process clause. *Albemarle Elec. Membership Corp. v. Alexander*, 282 N.C. 402, 192 S.E.2d 811 (1972).

### § 105-337. Apportionment of taxable values to this State.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, amends this section by substituting "Department of

Revenue" for "State Board of Assessment" and "Department" for "Board."

### § 105-338. Allocation of appraised valuation of system property among local taxing units.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, amends this

section by substituting "Department of Revenue" for "State Board of Assessment."

**§ 105-339. Certification of appraised valuations of nonsystem property and locally assigned rolling stock.** — Having determined the appraised valuations of the nonsystem properties of public service companies in accordance with subdivisions (b)(2) and (b)(3) of G.S. 105-335 and the appraised valuations of locally assigned rolling stock in accordance with subdivision (c)(1) of G.S. 105-335, the Department of Revenue shall assign those appraised valuations to the taxing units in which such properties are situated by certifying the valuations to the appropriate counties and municipalities. Each local taxing unit receiving such certified valuations shall assess them at the figures certified and shall tax the assessed valuations at the rate of tax levied against other property subject to taxation therein. (1939, c. 310, s. 1610; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 695, s. 18.)

**Editor's Note.** — The first 1973 amendment, effective July 1, 1973, substituted "Department of Revenue" for "State Board of Assessment."

The second 1973 amendment, effective Jan. 1, 1974, rewrote the second sentence.

**§ 105-340. Certification of appraised valuations of railroad companies.** — (a) Having determined the appraised valuation of the "nondistributable" system property of a railroad company, the Department of Revenue shall assign the valuations for taxation to the local taxing units in which such property is situated in the same manner as is provided for nonsystem property in G.S. 105-339.

(b) Having determined the appraised valuation of the "distributable" system property of a railroad company and having allocated the valuations in accordance with G.S. 105-338(b)(1), the Department of Revenue shall then certify the amounts of those allocations to the local taxing units to which such amounts are due in accordance with the provisions of G.S. 105-341.

(c) Each local taxing unit receiving certified valuations in accordance with this section shall assess them at the figures certified and shall tax the assessed



valuations at the rate of tax levied against other property subject to taxation therein. (1939, c. 310, s. 1620; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 695, s. 19.)

**Editor's Note.** — The first 1973 amendment, effective July 1, 1973, substituted "Department of Revenue" for "State Board of Assessment."

The second 1973 amendment, effective Jan. 1, 1974, rewrote subsection (c).

**§ 105-341. Certification of public service company system appraised valuations.** — Having determined the appraised valuations of public service company system property in accordance with subdivision (b)(1) of G.S. 105-335 and having allocated the valuations in accordance with G.S. 105-338(b)(2) and (3), the Department of Revenue shall assign each local taxing unit's appraised valuations by certifying them to the appropriate counties and municipalities. Each local taxing unit receiving such certified valuations shall assess them at the figures certified and shall tax the assessed valuations at the rate of tax levied against other property subject to taxation therein. (1939, c. 310, s. 1610; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 695, s. 20.)

**Editor's Note.** — The first 1973 amendment, effective July 1, 1973, substituted "Department of Revenue" for "State Board of Assessment."

The second 1973 amendment, effective Jan. 1, 1974, rewrote the second sentence.

**§ 105-342. Notice, hearing, and appeal.** — (a) Right to Information. — Upon written request to the Department of Revenue, any public service company whose property values are subject to appraisal, apportionment, and allocation for purposes of taxation under this Article shall be entitled to be informed of the elements that the Department considered in the appraisal of the company's property, the result in dollars produced by each element (including the methods and mathematical calculations used in determining those results), the specific factors and ratios the Department used in apportioning the appraised valuation of the company's property to this State, and the factors and the specific mathematical calculations the Department used in allocating the company's valuation among the local taxing units of this State. Upon written request to the Department of Revenue, any local taxing unit in this State shall be entitled to the same information with regard to any public service company whose property values are subject to appraisal, apportionment, and allocation for purposes of taxation under this Article.

(b) Appraisal and Apportionment Review. — The appraised valuation of public service company's property and the share thereof apportioned for taxation in this State under G.S. 105-335, 105-336, and 105-337 shall be deemed tentative figures until the provisions of this subsection (b) have been complied with. As soon as practicable after the tentative figures referred to in the preceding sentence have been determined, the Department of Revenue shall give the taxpayer written notice of the proposed figures and shall state in the notice that the taxpayer shall have 20 days after the date on which the notice was mailed in which to submit a written request to the Property Tax Commission for a hearing on the tentative appraisal or apportionment or both. If a timely request for a hearing is not made, the tentative figures shall become final and conclusive at the close of the twentieth day after the notice was mailed. If a timely request is made, the Property Tax Commission shall fix a date and place for the requested hearing and give the taxpayer at least 20 days' written notice thereof. The hearing shall be conducted under the provisions of subsection (d), below.

(c) Review of Appraised Valuations to be Certified to Local Taxing Units. — Any public service company whose system property is subject to appraisal under this Article may, on or before July 1 of any year, submit to the Property Tax Commission a written request for a hearing at which the public service company may submit evidence that there exist inequitable differences between



the level of appraisal used by the Department of Revenue in determining the true value of the public service company's system property and that used by a specific county in determining the true value of locally appraised property in that county under G.S. 105-283. The public service company shall also furnish a copy of the request for a hearing to the chairman of the board of commissioners of the county whose appraisals are at issue. If a timely request is made, the Property Tax Commission shall fix a place and date for the requested hearing and shall give notice thereof to the taxpayer, to the chairman of the board of commissioners of the county whose appraisals are at issue, and to each other public service company that has system property taxable in the same county. The Department of Revenue shall delay making the certification required under G.S. 105-341 until the hearing has been held and the Commission's order has been issued. If the Property Tax Commission finds that an inequitable difference does in fact exist, the Property Tax Commission shall adjust the appraised valuation of the appealing public service company that has been allocated to that county and the municipalities therein by eliminating the inequitable difference. It shall make the same adjustment in the appraised valuations of other public service companies that have been allocated to that county and the municipalities therein. The Department of Revenue shall then certify the adjusted valuations as provided in G.S. 105-341. The hearing provided in this subsection shall be conducted under the provisions of subsection (d), below.

(d) **Hearing and Appeal.** — At any hearing under this section, the Property Tax Commission shall hear all evidence and affidavits offered by the taxpayer and may exercise the authority granted by G.S. 105-290(d) to obtain information pertinent to decision of the issue. The Commission shall make findings of fact and conclusions of law and issue an order embodying its decision. As soon as practicable thereafter, the Commission shall serve a written copy of its decision upon the taxpayer by personal service or by registered or certified mail, return receipt requested. The taxpayer shall have 30 days after the date on which the notice is served in which to seek judicial review of the Commission's decision under the provisions of G.S. 143-306, et seq. (1971, c. 806, s. 1; 1973, c. 476, s. 193.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1973, substituted "Department of Revenue" for "State Board of Assessment" and "Department" for "Board" in subsection (a), substituted "Department of Revenue" for "State Board of Assessment" in the second sentence of subsection (b) and substituted "Property Tax Commission" for "Board" near the end of the second sentence and in the fourth sentence of subsection (b), substituted "Property Tax Commission" for "State Board of Assessment" and "Department of Revenue" for "State Board" in the first sentence of

subsection (c), substituted "Department of Revenue" for "Board" in the fourth and seventh sentences of subsection (c), substituted "Property Tax Commission" for "Board" in the third, fourth and fifth sentences, and "Commission's" for "Board's" in the fourth sentence, of subsection (c), substituted "Property Tax Commission" for "State Board of Assessment" in the first sentence of subsection (d), and substituted "Commission" for "Board" in two places and "Commission's" for "Board's" in one place in subsection (d).

**§ 105-343. Penalty for failure to make required reports.** — Any public service company which fails or refuses to prepare and deliver to the Department of Revenue any report required by this Article shall forfeit and pay to the State of North Carolina one hundred dollars (\$100.00) for each day the report is delayed beyond the date on which it is required to be submitted. This penalty may be recovered in an action in the appropriate division of the General Court of Justice of Wake County in the name of the State on the relation of the Secretary of Revenue. When collected, the penalty shall be paid into the general fund of the State. The Secretary shall have the power to reduce



or waive the penalty provided in this section for good cause. (1939, c. 310, s. 1606; 1971, c. 806, s. 1; 1973, c. 476, s. 193.)

**Editor's Note.** — The 1973 amendment, "State Board of Assessment" in the second sentence, and "Secretary" for "Board" in the last sentence.

the first sentence, "Secretary of Revenue" for

### § 105-344. Failure to pay tax; remedies; penalty.

**Editor's Note.** —

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, amends this section by

substituting "Department of Revenue" for "State Board of Assessment."

**§ 105-355. Creation of tax lien; date as of which lien attaches.** — (a) Lien on Real Property. — Regardless of the time at which liability for a tax for a given fiscal year may arise or the exact amount thereof be determined, the lien for taxes levied on a parcel of real property shall attach to the parcel taxed on the date as of which property is to be listed under G.S. 105-285, and the lien for taxes levied on personal property shall attach to all real property of the taxpayer in the taxing unit on the same date. All penalties, interest, and costs allowed by law shall be added to the amount of the lien and shall be regarded as attaching at the same time as the lien for the principal amount of the taxes. For purposes of this subsection (a):

(1) Taxes levied on real property listed in the name of a life tenant under G.S. 105-302 (c)(8) shall be a lien on the fee as well as the life estate.

(2) Taxes levied on improvements on or separate rights in real property owned by one other than the owner of the land, whether or not listed separately from the land under G.S. 105-302 (c)(11), shall be a lien on both the improvements or rights and on the land.

(1973, c. 564, s. 4.)

**Editor's Note.** —

The 1973 amendment substituted "G.S. 105-285" for "G.S. 105-307" in the first sentence of subsection (a).

As subsection (b) was not changed by the amendment, it is not set out.

**Imposition of Interest by Town Governing**

**Board on Delinquent Property Taxes Is Mandatory.** — See opinion of Attorney General to Dr. A.P. Dickson, 41 N.C.A.G. 538 (1971).

**Stated** in Powell v. County of Haywood, 15 N.C. App. 109, 189 S.E.2d 785 (1972).

### § 105-356. Priority of tax liens.

**Stated** in Powell v. County of Haywood, 15 N.C. App. 109, 189 S.E.2d 785 (1972).

### § 105-357. Payment of taxes.

**Local Modification.** — City of Durham: 1973, c. 429.

### § 105-360. Due date; interest for nonpayment of taxes; discounts for prepayment.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, amends this section by substituting "Department of Revenue" for "State Board of Assessment" and "Department" for "Board."

**§ 105-361. Statement of amount of taxes due.** — (a) Duty to Furnish a Certificate.—On the request of any of the persons prescribed in subdivision (a)(1), below, and upon the condition prescribed by subdivision (a)(2), below, the tax collector shall furnish a written certificate stating the amount of any taxes and special assessments for the current year and for prior years in his



hands for collection (together with any penalties, interest, and costs accrued thereon) that are made a lien on a parcel of real property in the taxing unit.

(1) Who May Make Request.—Any of the following persons shall be entitled to request the certificate:

- a. An owner of the real property;
- b. An occupant of the real property;
- c. A person having a lien on the real property;
- d. A person having a legal interest or estate in the real property;
- e. A person or firm having a contract to purchase or lease the property or a person or firm having contracted to make a loan secured by the property;
- f. The authorized agent or attorney of any person described in subdivisions (a)(1)a through e above.

(2) Duty of Person Making Request.—With respect to taxes, the tax collector shall not be required to furnish a certificate unless the person making the request specifies in whose name the real property was listed for taxation for each year for which the information is sought. With respect to assessments, the tax collector shall not be required to furnish a certificate unless the person making the request furnishes such identification of the real estate as may be reasonably required by the tax collector.

(b) Reliance on the Certificate.—When a certificate has been issued as provided in subsection (a), above, all taxes and special assessments that have accrued against the property for the period covered by the certificate shall cease to be a lien against the property, except to the extent of taxes and special assessments stated to be due in the certificate, as to all persons, firms, and corporations obtaining such a certificate and their successors in interest who rely on the certificate:

- (1) By paying the amount of taxes and assessments stated therein to be a lien on the real property;
- (2) By purchasing or leasing the real property; or
- (3) By lending money secured by the real property.

The tax collector shall be liable on his bond for any loss to the taxing unit arising from an understatement of the tax and special assessment obligations in the preparation of a certificate furnished under this section.

(c) Penalty.—Any tax collector who fails or refuses to furnish a certificate when requested under the conditions prescribed in this section shall be liable for a penalty of fifty dollars (\$50.00) recoverable in a civil action by the person who made the request.

(d) Oral Statements.—An oral statement made by the tax collector as to the amount of taxes, special assessments, penalties, interest, and costs due on any real or personal property shall bind neither the tax collector nor the taxing unit. (1939, c. 310, s. 1711; 1971, c. 806, s. 1; 1973, c. 604.)

**Editor's Note.** — The 1973 amendment, effective Oct. 1, 1973, deleted "under G.S. 105-355(a)" preceding "are made a lien" near the end of the first paragraph of subsection (a) and added present paragraph e, redesignated former paragraph e as f and substituted "e" for "d" in present paragraph f of subdivision (1) and added the second sentence of subdivision

(2) of subsection (a). In subsection (b) the amendment rewrote the first paragraph and inserted "tax" preceding "collector" and substituted "and special assessment obligations" for "obligation" in the second paragraph. The amendment also inserted "special assessments" in subsection (d).

### § 105-364. Collection of taxes outside the taxing unit.

(c) Effect of Certificate; Duty of Receiving Tax Collector. — In the hands of the tax collector receiving them, the copy of the tax receipt and the certificate of nonpayment shall have the force and effect of an unpaid tax receipt of his own taxing unit, and it shall be the receiving tax collector's duty to proceed



immediately to collect the taxes by any means by which he could lawfully collect taxes of his own taxing unit. Within 30 days after receiving such a tax receipt and certificate, the collector receiving them shall report to the tax collector that sent them that he has collected the tax, that he has begun proceedings to collect the tax, or that he is unable to collect it. If the tax collector reports that he has begun proceedings to collect the tax, he shall, not later than 90 days after so reporting, make a final report to the tax collector who certified the tax receipt stating that he has collected the tax or that he is unable to collect it.

- (1) In acting on a tax receipt and certificate under the provisions of this section, the tax collector receiving them shall, in addition to collecting the amount of taxes certified as due, also impose a fee equal to ten percent (10%) of the amount of taxes certified as unpaid, to be paid into the general fund of his taxing unit.
- (2) Within five days after making a collection under the provisions of this section, the tax collector receiving the tax receipt and certificate shall remit the funds collected, less the fee provided for in subdivision (c)(1), above, to the tax collector of the taxing unit that levied the tax.
- (3) If the tax collector receiving the tax receipt and certificate reports that he is unable to collect the tax, he shall make his report under oath and shall state therein that he has used due diligence and is unable to collect the tax by levy, attachment and garnishment, or any other legal means.

(1973, c. 231.)

**Editor's Note.** — The 1973 amendment, effective Jan. 1, 1974, rewrote subdivision (1) of subsection (c). As the rest of the section was not changed by the amendment, only subsection (c) is set out.

### § 105-366. Remedies against personal property.

(d) Remedies against Sellers and Purchasers of Stocks of Goods or Fixtures of Wholesale or Retail Merchants. —

- (1) Any wholesale or retail merchant (as defined in Schedule E of the Revenue Act) who sells or transfers the major part of his stock of goods, materials, supplies, or fixtures, other than in the ordinary course of business or who goes out of business, shall:
  - a. At least 48 hours prior to the date of the pending sale, transfer, or termination of business, give notice thereof to the tax supervisors and tax collectors of the taxing units in which his business is located; and
  - b. Within 30 days of the sale, transfer, or termination of business, pay all taxes due or to become due on the transferred property on the first day of September of the current calendar year.
- (2) Any person to whom the major part of the stock of goods, materials, supplies, or fixtures of a wholesale or retail merchant (as defined in Schedule E of the Revenue Act) is sold or transferred, other than in the ordinary course of business, or who becomes the successor in business of a wholesale or retail merchant shall withhold from the purchase money paid to the merchant an amount sufficient to pay the taxes due or to become due on the transferred property on the first day of September of the current calendar year until the former owner or seller produces either a receipt from the tax collector showing that the taxes have been paid or a certificate that no taxes are due. If the purchaser or successor in business fails to withhold a sufficient amount of the purchase money to pay the taxes as required by this subsection (d) and the taxes remain unpaid after the 30-day period



allowed, he shall be personally liable for the amount of the taxes unpaid, and his liability may be enforced by means of a civil action brought in the name of the taxing unit against him in an appropriate trial division of the General Court of Justice in the county in which the taxing unit is located.

- (3) Whenever any wholesale or retail merchant (as defined in Schedule E of the Revenue Act) sells or transfers the major part of his stock of goods, materials, supplies, or fixtures, other than in the ordinary course of business, or goes out of business, and the taxes due or to become due on the transferred property on the first day of September of the current calendar year are unpaid, the tax collector, to enforce collection of the unpaid taxes, may:
  - a. Levy on or attach any personal property of the seller; or
  - b. If the taxes remain unpaid 30 days after the date of the transfer or termination of business, levy on or attach any of the property transferred in the hands of the transferee or successor in business, or any other personal property of the transferee or successor in business, but in either case the levy or attachment must be made within six months of the transfer or termination of business.
- (4) In using the remedies provided in this subsection (d), the amount of taxes not yet determined shall be computed in accordance with G.S. 105-359, and any applicable discount shall be allowed. (1939, c. 310, s. 1713; 1951, c. 1141, s. 1; 1955, cc. 1263, 1264; 1957, c. 1414, ss. 2-4; 1969, c. 305; c. 1029, s. 1; 1971, c. 806, s. 1; 1973, c. 564, s. 1.)

**Editor's Note.** — The 1973 amendment deleted "30 days after the date of the transfer or termination of business" following "unpaid" near the end of the introductory paragraph of subdivision (d)(3) and added "If the taxes

remain unpaid 30 days after the date of the transfer or termination of business" at the beginning of paragraph b of subdivision (d)(3).

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

### § 105-368. Procedure for attachment and garnishment.

**Municipal Police Officer May Serve Notice of Attachment and Garnishment within the Corporate Limits.** — See opinion of Attorney

General to Mr. J. Troy Smith, Jr., 42 N.C.A.G. 296 (1973).

### § 105-369. Sale of tax liens on real property for failure to pay taxes.

**Local Modification.** — Cumberland: 1973, c. 557; Forsyth: 1973, c. 557; Mecklenburg: 1973, c. 557.

### § 105-374. Foreclosure of tax lien by action in nature of action to foreclose a mortgage.

(k) Judgment of Sale. — Any judgment in favor of the plaintiff or any defendant taxing unit in an action brought under this section shall order the sale of the real property or so much thereof as may be necessary for the satisfaction of:

- (1) Taxes adjudged to be liens in favor of the plaintiff (other than taxes the amount of which has not been definitely determined) together with penalties, interest, and costs thereon; and
- (2) Taxes adjudged to be liens in favor of other taxing units (other than taxes the amount of which has not yet been definitely determined) if those taxes have been alleged in answers filed by the other taxing units, together with penalties, interest, and costs thereon.

The judgment shall appoint a commissioner to conduct the sale and shall order that the property be sold in fee simple, free and clear of all interests, rights,



claims, and liens whatever except that the sale shall be subject to taxes the amount of which cannot be definitely determined at the time of the judgment, taxes and special assessments of taxing units which are not parties to the action, and, in the discretion of the court, taxes alleged in other tax foreclosure actions or proceedings pending against the same real property.

In all cases in which no answer is filed within the time allowed by law, and in cases in which answers filed do not seek to prevent sale of said property, the clerk of the superior court may render the judgment, subject to appeal in the same manner as appeals are taken from other judgments of the clerk.

(1973, c. 788, s. 1.)

**Editor's Note.—**

The 1973 amendment inserted, in the last paragraph of subsection (k), "and in cases in which answers filed do not seek to prevent sale of said property." Session Laws 1973, c. 788, s. 3, provides: "This act shall be in full force and

effect from and after its ratification, and shall apply to pending litigation as of the effective date of ratification." The act was ratified May 23, 1973.

As the rest of the section was not changed by the amendment, only subsection (k) is set out.

**§ 105-375. In rem method of foreclosure.** — (a) Intent of Section.—It is hereby declared to be the intention of this section that proceedings brought under it shall be strictly in rem. It is further declared to be the intention of this section to provide, as an alternative to G.S. 105-374, a simple and inexpensive method of enforcing payment of taxes necessarily levied, to the knowledge of all persons, for the requirements of local governments in this State; and to recognize, in authorizing this proceeding, that all persons owning interests in real property know or should know that the tax lien on their real property may be foreclosed and the property sold for failure to pay taxes.

(b) Docketing Certificate of Taxes as Judgment. — In lieu of following the procedure set forth in G.S. 105-374, the governing body of any taxing unit may direct the tax collector to file, no earlier than six months following the sale of tax liens, with the clerk of superior court a certificate showing the following: the name of the taxpayer listing real property on which the taxes are a lien, together with the amount of taxes, penalties, interest, and costs that are a lien thereon; the year or years for which the taxes are due; and a description of the property sufficient to permit its identification by parol testimony. The fees for docketing and indexing the certificate shall be payable to the clerk of superior court at the time the taxes are collected or the property is sold.

(c) Notice Listing Taxpayer and Others. — The tax collector filing the certificate provided for in subsection (b), above, shall, at least 30 days prior to docketing the judgment, send a registered or certified letter, return receipt requested, to the listing taxpayer at his last known address, and to all lienholders of record who have filed with the office of the tax collector of the taxing unit or units in which the real property subject to his lien is located a request that he be notified of the docketing of a judgment under the procedure set forth in this section, stating that the judgment will be docketed and that execution will be issued thereon in the manner provided by law. The request from the lienholder shall be made on a form supplied by the tax collector and shall describe the real property, indicate whose name it is listed in for taxation, and state the name and mailing address of the lienholder. If within 10 days following the mailing of said letters of notice, a return receipt has not been received by the tax collector indicating receipt of the letter, then the tax collector shall have a notice published in a newspaper of general circulation in said county once a week for two consecutive weeks directed to, and naming, all unnotified lienholders and the listing taxpayer that a judgment will be docketed against the listing taxpayer. The notice shall contain the proposed date of such docketing, that execution will issue thereon as provided by law, a brief description of the real property affected, and notice that the lien may be



paid off prior to judgment being entered. All costs of mailing and publication shall be added to those set forth in subsection (b).

(1973, c. 108, s. 52; c. 681, ss. 1, 2.)

**Editor's Note.** — The first 1973 amendment deleted the former second sentence of subsection (b), relating to special books for filing tax certificates.

The second 1973 amendment, effective July 1, 1973, deleted "without special notice thereof" following "should know" near the end of subsection (a) and, in subsection (c), substituted "30 days" for "two weeks," inserted "return receipt requested," inserted the provisions as to notice to lienholders and substituted "be issued" for "issue" in the first sentence, eliminated the former second sentence, which provided that receipt of the letter or of actual notice should not be required for validity or

priority of the judgment or title acquired by the purchaser at the execution sale, and added the present second, third, fourth and fifth sentences.

Session Laws 1973, c. 681, s. 3, provides:

"The provisions of this act shall have no effect upon litigation pending at its effective date nor shall it have any effect upon proceedings under G.S. 105-375 for which certificates have already been docketed at its effective date."

As the rest of the section was not changed by the amendments, only subsections (a), (b) and (c) are set out.

### **§ 105-376. Taxing unit as purchaser at foreclosure sale; payment of purchase price; resale of property acquired by taxing unit.**

**Local Modification.** — Avery: 1973, c. 313.

## **ARTICLE 27.**

### *Refunds and Remedies.*

### **§ 105-379. Restriction on use of injunction and claim and delivery.**

**Quoted** in *Reeves Bros. v. Town of Rutherfordton*, 282 N.C. 559, 194 S.E.2d 129 (1973).

**§ 105-380. No taxes to be released, refunded, or compromised.** — (a) The governing body of a taxing unit is prohibited from releasing, refunding, or compromising all or any portion of the taxes levied against any property within its jurisdiction except as expressly provided in this Subchapter.

(b) Taxes that have been released, refunded, or compromised in violation of this section shall be deemed to be unpaid and shall be collectible by any means provided by this Subchapter, and the existence and priority of any tax lien on property shall not be affected by the unauthorized release, refund, or compromise of the tax liability.

(c) Any tax that has been released, refunded, or compromised in violation of this section may be recovered from any member or members of the governing body who voted for the release, refund, or compromise by civil action instituted by any resident of the taxing unit, and when collected, the recovered tax shall be paid to the treasurer of the taxing unit. The costs of bringing the action, including reasonable attorneys' fees, shall be allowed the plaintiff in the event the tax is recovered.

(d) The provisions of this section are not intended to restrict or abrogate the powers of a board of equalization and review or any agency exercising the powers of such a board. (1901, c. 558, s. 31; Rev., s. 2854; C. S., s. 7976; 1971, c. 806, s. 1; 1973, c. 564, s. 2.)

**Editor's Note.** — The 1973 amendment divided this section into subsections, substituted "refund" for "discharging, remitting, commuting" in subsection (a) and substituted "refunded" for "discharged,

remitted, commuted," and "refund" for "discharge, remission, commutation," in subsections (b) and (c) and added the second sentence of subsection (c).



**§ 105-381. Taxpayer's remedies.** — (a) Statement of Defense. — Any taxpayer asserting a defense to the payment or enforcement of a tax upon his property shall proceed as follows:

- (1) If a tax has not been paid, the taxpayer may make a demand for the release of the tax claim by submitting to the governing body of the taxing unit a written statement of his defense to payment or enforcement of the tax and a request for release of the tax claim.
- (2) If a tax has been paid, the taxpayer, at any time within 30 days after payment, may make a demand for refund of the tax paid by submitting to the governing body of the taxing unit a written statement of his defense to payment or enforcement of the tax and a request for a refund thereof.

(b) Action of Governing Body. — Upon receiving a taxpayer's written statement of defense and request for release or refund, the governing body of the taxing unit shall determine whether the tax, or any part of it, was illegal or levied for an illegal purpose and take one of the following actions:

- (1) If the tax has not been paid, the governing body shall release the amount determined to be illegal or levied for an illegal purpose, or it shall disallow the taxpayer's request for release.
- (2) If the tax has been paid, the governing body shall refund the amount determined to be illegal or levied for an illegal purpose, or it shall disallow the taxpayer's request for refund.

The governing body shall take action on each request for release or refund within 90 days after the date on which it is received. The action taken on each such request shall be entered in the minutes of the governing body, and notice of the action shall be mailed to the person who made the request. If a release is granted or refund made, the tax collector shall be credited with the amount released or refunded in his annual settlement.

(c) Suit for Recovery of Property Taxes.

- (1) Request for Release before Payment. — If within 90 days after receiving a taxpayer's request for release of an unpaid tax claim under subsection (a)(1), above, the governing body of the taxing unit has failed to grant the release, has notified the taxpayer that no release will be granted, or has taken no action on the request, the taxpayer shall pay the tax when due. He may then follow the procedure provided in subsection (a)(2), above, or without making demand for refund, he may bring a civil action against the taxing unit for the portion of the amount paid which he asserts to be illegal or levied for an illegal purpose.
- (2) Request for Refund. — If within 90 days after receiving a taxpayer's request for refund under subsection (a), above, the governing body has failed to refund the full amount requested by the taxpayer, has notified the taxpayer that no refund will be made, or has taken no action on the request, the taxpayer may bring a civil action against the taxing unit for the amount requested.
- (3) Civil Actions. — Civil actions brought pursuant to this subsection (c) shall be brought in the appropriate division of the General Court of Justice of the county in which the taxing unit is located. If, upon the trial, it is determined that the tax or any part of it was illegal or levied for an illegal purpose, judgment shall be rendered therefor, with interest thereon at six percent (6%) per annum, plus costs, and the judgment shall be collected as in other civil actions. (1901, c. 558, s. 30; Rev., s. 2855; C. S., s. 7979; 1971, c. 806, s. 1; 1973, c. 564, s. 3.)

**Editor's Note.** —

The 1973 amendment rewrote this section.

**An illegal or invalid tax results when the**

**taxing body seeks to impose a tax without authority, etc.** —

In accord with original. See *Reeves Bros. v.*



Town of Rutherfordton, 15 N.C. App. 385, 190 S.E.2d 345 (1972), aff'd, 282 N.C. 559, 194 S.E.2d 129 (1973).

A tax or assessment is invalid or illegal only when the taxing body lacks the authority to impose the tax, as where the rate is unconstitutional or the subject is exempt from taxation. *Reeves Bros. v. Town of Rutherfordton*, 15 N.C. App. 385, 190 S.E.2d 345 (1972), aff'd, 282 N.C. 559, 194 S.E.2d 129 (1973).

**When Injunction Will Lie. —**

In accord with 1st paragraph in original. See

*Reeves Bros. v. Town of Rutherfordton*, 15 N.C. App. 385, 190 S.E.2d 345 (1972), aff'd, 282 N.C. 559, 194 S.E.2d 129 (1973).

The equitable remedy of injunction is proper where it is contended that the taxing body is without authority to impose the tax because of a constitutional exemption. *Reeves Bros. v. Town of Rutherfordton*, 15 N.C. App. 385, 190 S.E.2d 345 (1972), aff'd, 282 N.C. 559, 194 S.E.2d 129 (1973).

**Applied** in *Adams-Millis Corp. v. Town of Kernersville*, 281 N.C. 147, 187 S.E.2d 704 (1972).

**§ 105-382. Refunds of overpayment of taxes. —** (a) Any taxpayer may apply to the governing body of a taxing unit for a refund of tax which should not have been imposed but which was imposed through clerical error or which was illegal or levied for an illegal purpose. Such application must be made in writing and delivered to said governing body within three years after said tax first became due or within six months from the date of payment of such tax, whichever is the later date.

(b) Upon receiving the aforesaid application, the governing body of the taxing unit shall determine whether the tax, or any part of it, was imposed through clerical error, or was illegal or levied for an illegal purpose and shall either refund that portion of the amount paid that was in excess of the correct tax liability or notify the taxpayer, in writing and mailed to the address of the taxpayer last known to the governing body, that no refund will be made. The action of the governing body on each such claim for refund shall be recorded in its minutes.

(c) If, within 90 days after the taxpayer's application was submitted under subsection (a) above, the governing body of the taxing unit has failed to refund the full amount claimed by the taxpayer, has notified the taxpayer that no refund will be made, or has taken no action on his application, the taxpayer may bring a civil action against the taxing unit for the amount claimed but not refunded. Such a suit shall be brought in the appropriate division of the General Court of Justice of the county in which the taxing unit is located. If upon the trial, it is determined that the tax or any part of it was imposed through clerical error or was illegal or levied for an illegal purpose, judgment shall be rendered therefor, with interest thereon from date of judgment at six percent (6%) per annum, plus costs, and the judgment shall be collected as in other civil actions. (1943, c. 709; 1967, c. 1138; 1971, c. 806, s. 1; 1973, c. 156.)

**Editor's Note. —** The 1973 amendment rewrote this section.

## ARTICLE 30.

### *General Provisions.*

#### **§ 105-395. Application and effective date of Subchapter.**

**Provisions for Selection of Tax Collectors Do Not Repeal or Affect Collection of Tax Collector in a County That Has a Local Law on the Subject. —** See opinion of Attorney

General to Mr. Warren H. Pritchard, 41 N.C.A.G. 589 (1971).

**Applied** in *In re McLean Trucking Co.*, 281 N.C. 375, 189 S.E.2d 194 (1972).



## SUBCHAPTER III. COLLECTION OF TAXES.

## ARTICLE 34.

*Tax Sales.*

## Part 2. Refund of Tax Sales Certificates.

§ 105-422: Repealed by Session Laws 1971, c. 806, s. 3, effective July 1, 1972.

## SUBCHAPTER V. GASOLINE TAX.

## ARTICLE 36.

*Gasoline Tax.***§ 105-433. Application for license as distributor.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-434. Gallon tax.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

See opinion of Attorney General to Mr. Fred W. London, Gasoline Tax Division, N.C. Department of Revenue, 43 N.C.A.G. 134 (1973).

**Cited** in Hodgson v. Hyatt Realty & Inv. Co., 353 F. Supp. 1363 (M.D.N.C. 1973).

**Tax Accrues upon Delivery of Gasoline to Service Station Operator on Consignment.** —

**§ 105-435. Tax on fuels not within definition; manner of collection; from whom collected.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.

**§ 105-436. Payment of tax.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

**§ 105-438. Record of transactions.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

**§ 105-439. Rebates for fuels sold to United States government or for use in aircraft.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.

**§ 105-441. Enumeration of acts constituting misdemeanor; cancellation of license and bond.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

**§ 105-442. Actions for tax; double liability.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.



**§ 105-444. License constitutes distributor trust officer of State for collection of tax.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-445. Application of proceeds of gasoline tax.** — Except as provided in G.S. 105-446.2 and 136.41.1, the fund derived from the tax herein levied shall be for the exclusive uses of the purposes set out in this Article, and disbursed on vouchers drawn by the Board of Transportation in accordance with the acts of the General Assembly dealing with the subject matter herein referred to. (1931, c. 145, s. 24; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1967, c. 1161, s. 2; 1973, c. 507, s. 5.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for "State Highway Commission."

**Cited in** Hodgson v. Hyatt Realty & Inv. Co., 353 F. Supp. 1363 (M.D.N.C. 1973).

**§ 105-446. Tax rebate on fuels not used in motor vehicles on highways.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.

**§ 105-446.1. Refunds of taxes paid by counties and municipalities.** — The Board of Transportation, counties, municipal corporations and volunteer or county fire departments shall be entitled to be reimbursed at the rate of eight cents (8¢) per gallon of the tax levied by G.S. 105-434 of the General Statutes upon the filing of a statement with the Secretary of Revenue, sworn to by the Director of Highways or the mayor, city manager or other municipal officer designated by the governing body of the municipality, or the chairman of the board of county commissioners, or other county officer designated by the board of county commissioners or the president or other duly designated officer or agent of the volunteer or county fire departments, showing the number of gallons of fuel purchased and used by the Board of Transportation, the municipality, the county or the volunteer or county fire departments on which the tax levied by G.S. 105-434 of the General Statutes has been paid. All claims for refunds for tax or taxes for motor fuels under the provisions of this section shall be filed with the Secretary of Revenue on forms to be prescribed by him, on or before the last day of January, April, July and October of each year, and shall cover only the motor fuels so used during the quarterly period immediately preceding the month in which such application is filed. Refunds made pursuant to claims filed after the dates above specified shall be subject to the following late filing penalties: claims filed within 30 days after said dates, twenty-five percent (25%); claims filed after 30 days but within six months after said dates, fifty percent (50%); but refunds claimed after six months following said dates shall be barred. (1957, c. 1226; 1969, c. 600, s. 20; c. 1298, s. 4; 1971, c. 1160; 1973, c. 476, s. 193; c. 507, s. 5.)

**Editor's Note.** — The first 1973 amendment, effective July 1, 1973, substituted "Secretary of Revenue" for "Commissioner of Revenue."

The second 1973 amendment, effective July 1, 1973, substituted "Board of Transportation" for "State Highway Commission" and for "Highway Commission."

**Where City Purchases Gasoline and Sells It to Redevelopment Commission, the Commission and Not the City Is Entitled to Gas Tax Refund.** — See opinion of Attorney General to Mr. Luther J. Britt, Jr., 41 N.C.A.G. 585 (1971).



**§ 105-446.3. Refund of taxes paid on motor fuels used in operation of motor buses transporting fare-paying passengers in a city transit system.**

**Editor's Note. —**

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**"Contiguous" Municipalities Are Those Actually Bordering on One Another. —** See opinion of Attorney General to Mr. Fred W. London, Gasoline Tax Division, Department of Revenue, 41 N.C.A.G. 720 (1972).

**§ 105-446.4. Department of Natural and Economic Resources entitled to partial net proceeds of gasoline taxes. —** (a) The North Carolina Department of Natural and Economic Resources shall receive one eighth of one percent (1/8 of 1%) of the net proceeds of the taxes on motor fuels levied under G.S. 105-434 and the same shall be paid in accordance with the accounting periods as set forth under G.S. 105-446(1). As used in this section "net proceeds" shall mean the entire tax collected less one cent (1¢) per gallon nonrebataable tax required to be segregated by Chapter 1250 of the Session Laws of 1949, as amended by Chapter 46 of the Session Laws of 1965.

(b) Payments made to the North Carolina Department of Natural and Economic Resources under the provisions of this section shall be earmarked for the Division of Commercial and Sports Fisheries for the exclusive purpose of establishing and maintaining artificial reefs, and for the marking of said structures. (1973, c. 140, s. 1.)

**Editor's Note. —** Session Laws 1973, c. 140, s. 2, provides: "The provisions of this act shall become effective on July 1, 1973, and shall expire on June 30, 1979."

**§ 105-447. Reports of carriers.**

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-448. Forwarding of information to other states.**

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-449. Exemption of gasoline used in public school transportation; false returns, etc.**

**Editor's Note. —**

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.

**§ 105-449.01. July 1, 1969, inventory.**

**Editor's Note. —**

Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the

Commissioner of Revenue to Secretary of Revenue.

**ARTICLE 36A.**

*Special Fuels Tax.*

**§ 105-449.2. Definitions.**

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-449.3. Requirements of licenses.**

**Editor's Note. —** Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.



**§ 105-449.4. Application for license.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-449.5. Supplier to file bond.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-449.6. When application may be denied.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-449.7. Issue of supplier's license.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-449.8. License not assignable.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-449.9. License required of user or user-seller; application; termination.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-449.10. Records and reports required of user-seller or user.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-449.12. Record of licenses.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-449.13. Secretary to furnish licensed supplier with list of licensed user-sellers.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-449.14. Power of Secretary to cancel licenses.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-449.15. Discontinuance as a licensed supplier.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-449.17. Certain exempt sales.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-449.19. Tax reports; computation and payment of tax.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.



### § 105-449.20. When Secretary may estimate fuel sold, delivered or used.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-449.21. Report of purchases and payment of tax by user-seller.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-449.23. Penalty for failure to file report on time.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-449.25. Use of metered pumps by user-sellers.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-449.28. Retention of records by licensees.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-449.29. Inspection of records, etc.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-449.30. Refund for nonhighway use.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-449.31. Refund where taxpaid fuels transported to another state for sale or use.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-449.32. Rules and regulations; forms.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-449.34. Acts and omissions declared to be misdemeanors; penalties.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-449.35. Exchange of information among the states.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

### § 105-449.36. July 1, 1969, inventory.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.



## ARTICLE 36B.

*Tax on Carriers Using Fuel Purchased outside State.***§ 105-449.37. Definitions.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-449.39. Credit for payment of motor fuel tax.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-449.40. Refunds to motor carriers who give bond.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-449.42. Payment of tax.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-449.45. Reports of carriers.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-449.46. Inspection of books and records.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-449.47. Registration cards and vehicle identifications.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-449.48. Fees.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-449.49. Temporary emergency operation.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-449.50. Application blanks.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-449.51. Violations declared to be misdemeanors.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

**§ 105-449.52. Violators to pay penalty and furnish bond.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.



## SUBCHAPTER VI. TAX RESEARCH.

## ARTICLE 37.

*Tax Research.*

§§ 105-450 to 105-452: Repealed by Session Laws 1973, c. 476, s. 193, effective July 1, 1973.

§ 105-453. **Study of taxation; data for Governor and General Assembly; reports from officials, boards and agencies; examination of persons, papers, etc.** — It shall be the duty of the Secretary to make a statistical analysis by groups and by counties of receipts under each Article of the Revenue Act, and to make a thorough study of the subject of taxation as it relates to taxation within and by the State of North Carolina, including cities, counties, and subdivisions, their exercise and power of taxation; and to make a study of the taxation in other states, including the subjects of listing property for taxation, the classification of property for taxation, exemption, and tax collections and tax collecting, and he shall have the power and authority to make a comparative study of the subject of taxation in all its phases, including the relation between State taxation and federal taxation, and said Secretary shall assemble, classify and digest for practical use all available data on the subject of taxation, to the end that the same may be submitted to the Governor and General Assembly and may also be available for all citizens and officials of the State who are interested therein.

To the end that the Secretary of Revenue may properly discharge the duties placed upon him by law, he is hereby accorded the following powers:

- (1) He shall have authority to require from the Secretary of Revenue, the Tax Review Board, other State officials, boards, and agencies, and from county tax supervisors, municipal clerks, and other county and municipal officers, on forms prepared and prescribed by the said Secretary, such annual and other reports as shall enable the Secretary to ascertain such information as he may require, to the end that he may have full, complete, and accurate statistical information as to the practical operation of the tax and revenue laws of the State.
- (2) He shall have the same authority as is given the Department of Revenue in G.S. 105-276 to examine persons, papers, and records. (1941, c. 327, s. 4; 1955, c. 1350, s. 12; 1973, c. 476, s. 193.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1973, substituted "Secretary" for "Director" in two places in the first paragraph and in two places near the middle of subdivision (1) of the second paragraph, substituted "Secretary of Revenue" for "Director of the Department of Tax Research" in the introductory language in the second

paragraph and for "Commissioner of Revenue" near the beginning of subdivision (1) and substituted "Department of Revenue" for "State Board of Assessment" in subdivision (2) of the second paragraph. The language of subdivision (1) in the section as set out above is the result of a literal compliance with the direction of the 1973 act.

§ 105-454: Repealed by Session Laws 1973, c. 476, s. 193, effective July 1, 1973.

§ 105-455. **Submission of proposed amendments and information to Advisory Budget Commission; continuing study of economic conditions.** — The Secretary of Revenue shall prepare and submit to the Advisory Budget Commission such amendments to the Revenue and Machinery Acts as the survey made by the Secretary indicates should be made, for their consideration in repairing amendatory Revenue and Machinery Acts for the General Assembly.

The Advisory Budget Commission is hereby authorized, empowered and directed to call upon the Secretary for such amendments and such



recommendations as the Secretary shall make with respect to any needed changes in the Revenue and Machinery Acts. The Advisory Budget Commission is authorized, empowered and directed to consider such a report and shall make to the next session of the General Assembly a report on its findings with respect to such recommendations as it shall see fit to make and shall also report to the General Assembly the content of the report filed with it by the Department of Revenue.

It shall be the duty of the Secretary of Revenue to make a continuing study of economic conditions, and to evaluate the effect of these conditions on the tax bases and prospective collections therefrom. The Secretary shall submit estimates of revenue to the Advisory Budget Commission for its information. (1941, c. 327, s. 7; 1953, c. 1125, s. 2; 1973, c. 476, s. 193.)

**Editor's Note.** — The 1973 amendment, effective July 1, 1973, substituted "Secretary of Revenue" for "Director of the Department of Tax Research" in the first and third paragraphs, substituted "Secretary" for

"Director" in the first, second and third paragraphs and substituted "Department of Revenue" for "Department of Tax Research" at the end of the second paragraph.

### § 105-456. Biennial report.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, amends this section by substituting "Secretary of Revenue"

for "Director of the Department of Tax Research."

§ 105-457: Repealed by Session Laws 1973, c. 476, s. 193, effective July 1, 1973.

## SUBCHAPTER VII. PAYMENTS RECEIVED FROM TENNESSEE VALLEY AUTHORITY IN LIEU OF TAXES.

### ARTICLE 38.

#### *Equitable Distribution between Local Governments.*

§ 105-459. **Determination of amount of taxes lost by virtue of T.V.A. operation of property; proration of funds.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, amends this section by substituting "Department of Revenue" for "State Board of Assessment."

§ 105-461. **Duty of county accountant, etc.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, amends this section by substituting "Department of Revenue" for "State Board of Assessment."

§ 105-462. **Local units entitled to benefits; prerequisite for payments.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, amends this section by substituting "Department of Revenue" for "State Board of Assessment."

## SUBCHAPTER VIII. LOCAL GOVERNMENT SALES AND USE TAX.

### ARTICLE 39.

#### *Local Government Sales and Use Tax.*

§ 105-466. **Levy of tax.**

(b) In addition, the board of county commissioners may, in the event no election has been held under the provisions of G.S. 105-465 in which the tax has been defeated, after not less than 10 days' public notice and after a public



hearing held pursuant thereto, by resolution, impose and levy the local sales and use tax to the same extent and with the same effect as if the levy of the tax had been approved in an election held pursuant to G.S. 105-465.

(d) The board of county commissioners, upon adoption of said resolution, shall cause a certified copy of the resolution to be delivered immediately to the Secretary of Revenue, accompanied by a certified statement from the county board of elections, if applicable, setting forth the results of any special election approving the tax in the county. Thereupon, the Secretary of Revenue shall proceed as authorized in this Article to administer the tax in such county, unless said county board of commissioners shall notify the Secretary of Revenue in writing that, pursuant to a resolution duly adopted by said board, the tax will be collected and administered by the taxing county. (1971, c. 77, s. 2; 1973, c. 302; c. 476, s. 193.)

**Editor's Note.** — The first 1973 amendment, effective July 1, 1973, deleted, at the end of subsection (b), "except that in such case, the revenue produced thereby shall be expended for necessary expenses only."

The second 1973 amendment, effective July 1,

1973, changed the title of the Commissioner of Revenue to Secretary of Revenue.

As the rest of the section was not changed by the amendments, only subsections (b) and (d) are set out.

### **§ 105-468. Use tax imposed; limited to items upon which the State now imposes a three percent (3%) use tax.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### **§ 105-469. Collection and administration of local sales and use tax; authorization to promulgate rules and regulations.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### **§ 105-470. Retail bracket system; application to local sales and use tax.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### **§ 105-471. Retailer to collect sales tax.**

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

**§ 105-472. Disposition and distribution of taxes collected.** — With respect to the counties in which he shall collect and administer the tax, the Secretary of Revenue shall, on a quarterly basis, distribute to each taxing county and to the municipalities therein the net proceeds of the tax collected in that county under this Article which amount shall be determined by deducting taxes refunded, the cost to the State of collecting and administering the tax in the taxing county and such other deductions as may be properly charged to the taxing county, from the gross amount of the tax remitted to the Secretary of Revenue from the taxing county. The Secretary shall determine the cost of collection and administration, and that amount shall be retained by the State before distribution of the net proceeds of the tax. For the purposes of this Article, "municipalities" shall mean "incorporated cities and towns."

The board of county commissioners shall, in the resolution levying the tax, determine that the net proceeds of the tax shall be distributed in one of the following methods and thereafter said proceeds shall be distributed in accordance therewith:

- (1) The amount distributable to a taxing county and to the municipalities therein from the net proceeds of the tax collected therein shall be



determined upon the following basis: The net proceeds of the tax collected in a taxing county shall be distributed to that taxing county and to the municipalities therein upon a per capita basis according to the total population of the taxing county, plus the total population of the municipalities therein; provided, however, that "total population" of a municipality lying within more than one county shall be only that part of its population which lives within the taxing county. For this purpose, the Secretary of Revenue shall determine a per capita figure by dividing the net proceeds of the tax collected under this Article for the preceding quarter within a taxing county by the total population of that taxing county plus the total population of all municipalities therein according to the most recent annual estimates of population as certified to the Secretary of Revenue by the Director of the North Carolina Department of Administration. The per capita figure thus derived shall be multiplied by the population of the taxing county and each respective municipality therein according to the most recent annual estimates of population as certified to the Secretary of Revenue by the Director of the Department of Administration, and each respective product shall be the amount to be distributed to each taxing county and to each municipality therein. The Director of the Department of Administration shall annually cause to be prepared and shall certify to the Secretary of Revenue such reasonably accurate population estimates of all counties and municipalities in the State as may be practicably developed; or

- (2) The net proceeds of the tax collected in a taxing county shall be divided between the county and the municipalities therein in proportion to the total amount of ad valorem taxes levied by each on property having a tax situs in the taxing county during the fiscal year next preceding such distribution. For purposes of this section, the amount of the ad valorem taxes levied by such county or municipality shall include any ad valorem taxes levied by such county or municipality in behalf of a taxing district or districts and collected by the county or municipality. In computing the amount of tax proceeds to be distributed to any county or municipality, the amount of any ad valorem taxes levied but not substantially collected shall be ignored. Each county and municipality receiving a distributable share of the sales and use tax levied under this Article shall in turn immediately share the proceeds with any district or districts in behalf of which the county or municipality levied ad valorem taxes in the proportion that the district levy bears to the total levy of the county or municipality.

Where local use taxes, levied pursuant to this Article, or to any other local sales tax act, which cannot be identified as being attributable to any particular taxing county are collected and remitted to the Secretary, he shall apportion said taxes to the taxing counties in the same proportion that the local sales and use taxes collected each month in a taxing county bears to the total local sales and use taxes collected in all taxing counties each month during the quarter for which a distribution is to be made, and the total net proceeds shall then be distributed as above provided.

The board of county commissioners in each taxing county shall, by resolution adopted during the month of April of each year, determine which of the two foregoing methods of distribution shall be in effect in the county during the next succeeding fiscal year. In order for such resolution to be effective, a certified copy thereof must be delivered to the Secretary of Revenue at his office in Raleigh within 15 calendar days after its adoption. If the board fails to adopt any resolution or if it fails to adopt a method of distribution not then in effect in the county, or if a certified copy of the resolution is not timely



delivered to the Secretary, the method of distribution then in effect in the county shall continue in effect for the following fiscal year. The method of distribution in effect on the first of July of each fiscal year shall apply to every distribution made during that fiscal year. (1971, c. 77, s. 2; 1973, c. 476, s. 193; c. 752.)

**Local Modification.** — Roanoke Rapids: 1973, c. 3.

Commissioner of Revenue to Secretary of Revenue.

**Editor's Note.** — The first 1973 amendment, effective July 1, 1973, changed the title of the

The second 1973 amendment added the last paragraph.

### § 105-473. Repeal of levy.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

### § 105-474. Definitions; construction of Article; remedies and penalties.

**Editor's Note.** — Session Laws 1973, c. 476, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

## STATE OF NORTH CAROLINA

### DEPARTMENT OF JUSTICE

Raleigh, North Carolina

*November 1, 1973*

I, Robert Morgan, Attorney General of North Carolina, do hereby certify that the foregoing 1973 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

ROBERT MORGAN

*Attorney General of North Carolina*



















