

THE GENERAL STATUTES OF NORTH CAROLINA

1974 CUMULATIVE 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

This Cumulative Supplement to Replacement Volume 2D contains the general laws of a permanent nature enacted at the First and Second 1973 Sessions of the General Assembly which are within the scope of such volume, and brings to date the annotations included therein. At the First 1973 Session, the General Assembly enacted Session Laws 1973, Chapters 1 to 826. At the Second 1973 Session, which was held in 1974, the General Assembly enacted Session Laws 1973, Chapters 827 to 1482.

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 all sections except catchlines carried for the purpose of notes only. An index to all statutes codified herein appears in Replacement Volumes 4B, 4C and 4D and the 1974 Cumulative 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

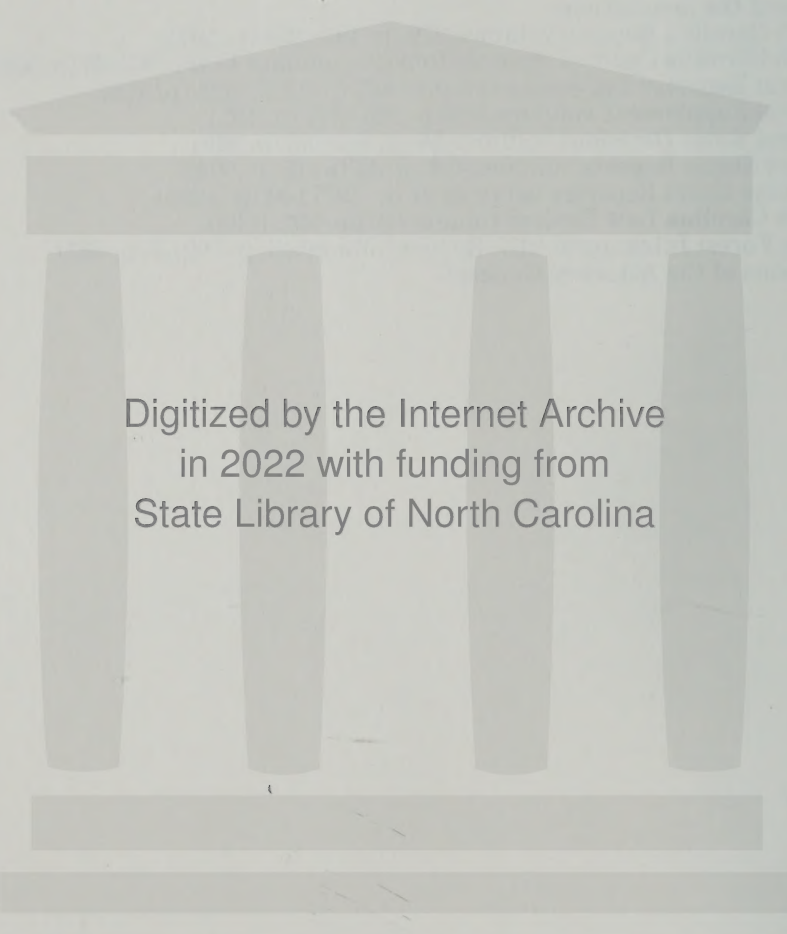
Statutes:

Permanent portions of the general laws enacted at the First and Second 1973 Sessions 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)-285 (p. 597).
North Carolina Court of Appeals Reports volumes 11 (p. 597)-22 (p. 508).
Federal Reporter 2nd Series volumes 443 (p. 1217)-498 (p. 912).
Federal Supplement volumes 328 (p. 225)-377 (p. 192).
Federal Rules Decisions volumes 56 (p. 663)-63 (p. 229).
United States Reports volumes 403 (p. 443)-415 (p. 604).
Supreme Court Reporter volumes 91 (p. 1977)-94 (p. 3234).
North Carolina Law Review volume 49 (pp. 592-1006).
Wake Forest Intramural Law Review volumes 6 (p. 569)-7 (p. 697).
Opinions of the Attorney General.



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The General Statutes of North Carolina

1974 Cumulative Supplement

VOLUME 2D

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Workmen's Compensation Act.

Article 1.

Workmen's Compensation Act.

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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).

§ 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

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); *Byrd v. Fieldcrest Mills, Inc.*, 496 F.2d 1323 (4th Cir. 1974).

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 shall be considered as an employee of such corporation under this Article.

Any such executive officer of a corporation may, notwithstanding any other provision of this Article, be exempt from the coverage of the corporation's insurance contract by such corporation specifically excluding such executive officer in such contract of insurance and the exclusion to remove such executive officer from the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus exempted from the coverage of the insurance contract shall not 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; c. 1291, s. 14.)

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.

The third 1973 amendment, effective Jan. 1, 1975, deleted "other than a charitable, religious, educational or other nonprofit corporation" following "corporation" and inserted "considered as" preceding "an employee" in the second paragraph of subdivision (2), and rewrote the third paragraph of that subdivision.

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, rev'd on other grounds, 284 N.C. 230, 200 S.E.2d 193 (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.

1. In General.

Laborers Held Farm Laborers. — The large-scale commercial production and marketing of chicken eggs and the cleaning, packaging and delivering of the eggs is employment in agriculture and those who labor therein are farm laborers for the purposes of this section. *Hinson v. Creech*, 21 N.C. App. 727, 205 S.E.2d 606 (1974).

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).

3. Employees and Independent Contractors.

Lent Employee Test. — Because of the statutory requirement that the employment be under an "appointment or contract of hire," the first question which must be answered in determining whether a lent employee has entered into an employment relationship with a special employer for Workmen's Compensation Act purposes is: Did he make a contract of hire with the special employer? If this question cannot be answered "yes," the investigation is closed, and this must necessarily be so, since the employee loses certain rights along with those he gains when he strikes up a new employment relation. Collins v. James Paul Edwards, Inc., 21 N.C. App. 455, 204 S.E.2d 873 (1974).

Truck Driver Did Not Impliedly Consent to New Employment Relationship. — Where there was no evidence nor was there any contention that a truck driver employed by a

firm, and a special contractor using those trucks ever expressly consented to enter into any employment relationship with each other, and certainly there was no express "appointment or contract of hire" entered into between them, the facts did not show such acceptance by the driver of control and direction by the contractor's employees over his activities as a truck driver for the original employer as to warrant the conclusion that he impliedly consented to enter into a new and special employment relationship with the contractor. Collins v. James Paul Edwards, Inc., 21 N.C. App. 455, 204 S.E.2d 873 (1974).

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, rev'd on other grounds, 284 N.C. 230, 200 S.E.2d 193 (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 in 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); *Dunton v. Daniel Constr. Co.*, 19 N.C. App. 51, 198 S.E.2d 8 (1973).

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).

Rupture of Intervertebral Disc.

In accord with 1st paragraph in original. See *Dunton v. Daniel Constr. Co.*, 19 N.C. App. 51, 198 S.E.2d 8 (1973).

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

1. In General.

Common-Law Rules Inapplicable. —

In accord with original. See *Lee v. F.M. Henderson & Associates*, 284 N.C. 126, 200 S.E.2d 32 (1973).

"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, aff'd, 284 N.C. 126, 200 S.E.2d 32 (1973); *Bartlett v. Duke Univ.*, 17 N.C. App. 598, 195 S.E.2d 371, rev'd on other grounds, 284 N.C. 230, 200 S.E.2d 193 (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).

But They Are Not Applied Entirely Independently. — In practice, the "course of employment" and "arising out of employment" tests are not, and should not be, applied entirely independently; they are both parts of a single test of work-connection, and therefore deficiencies in the strength of one factor are sometimes allowed to be made up by strength

in the other. *Lee v. F.M. Henderson & Associates*, 284 N.C. 126, 200 S.E.2d 32 (1973).

"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 2nd paragraph in original. See *Lee v. F.M. Henderson & Associates*, 284 N.C. 126, 200 S.E.2d 32 (1973).

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.*, 284 N.C. 230, 200 S.E.2d 193 (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, aff'd, 284 N.C. 126, 200 S.E.2d 32 (1973).

To have its origin in the employment, an injury must come from a risk which might have been contemplated by a reasonable person familiar with the whole situation as incidental to the service when he entered employment. *Bartlett v. Duke Univ.*, 284 N.C. 230, 200 S.E.2d 193 (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, aff'd, 284 N.C. 126, 200 S.E.2d 32 (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).

An injury is excluded which cannot fairly be traced to the employment as a contributing proximate cause and which comes from a hazard to which the workmen would have been equally exposed apart from the employment. *Bartlett v. Duke Univ.*, 284 N.C. 230, 200 S.E.2d 193 (1973).

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, rev'd on other grounds, 284 N.C. 230, 200 S.E.2d 193 (1973).

2. Origin and Cause of Accident.

a. Risks Incident to the Employment Generally.

No Recovery for Injury Not Arising Out of Risk Incident 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); *Bartlett v. Duke Univ.*, 284 N.C. 230, 200 S.E.2d 193 (1973).

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.*, 284 N.C. 230, 200 S.E.2d 193 (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, aff'd, 284 N.C. 126, 200 S.E.2d 32 (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.

No Causal Relationship between Employment and Choking on Food. — There was no causal relationship between decedent's employment and his choking on a piece of meat where his day's work was over and, business engagements scheduled for the morrow, he was having a leisurely evening meal at a public restaurant with an old friend whom the trip

had enabled him to visit. *Bartlett v. Duke Univ.*, 284 N.C. 230, 200 S.E.2d 193 (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).

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).

IX. HERNIA.

Failure to Prove Any Element of Subdivision (18) Nullifies Claim. — Failure to prove the existence of any one of the five elements of subdivision (18) nullifies plaintiff's claim. *Lutes v. Export Leaf Tobacco Co.*, 19 N.C. App. 380, 198 S.E.2d 746 (1973).

Findings of Commission Binding on Appeal. — Where the Commission found and concluded that there was no causal connection between the "accident" and the hernia, the findings of the Commission when supported by any competent evidence are binding on appeal. *Lutes v. Export Leaf Tobacco Co.*, 19 N.C. App. 380, 198 S.E.2d 746 (1973).

§ 97-3. Presumption that all employers and employees have come under provisions of Article. — From and after January 1, 1975, every employer and employee, as hereinbefore defined and except as herein stated, shall be presumed to have accepted the provisions of this Article respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of his employment and shall be bound thereby. (1929, c. 120, s. 4; 1973, c. 1291, s. 1.)

Editor's Note. — The 1973 amendment, effective Jan. 1, 1975, substituted "January 1, 1975" for "July 1, 1929" and inserted "as hereinbefore defined and" near the beginning of the section, substituted "his" for "the"

preceding "employment" near the end of the section and deleted, at the end of the section, "unless he shall have given, prior to any accident resulting in injury or death, notice to the contrary in the manner herein provided."

§ 97-4: Repealed by Session Laws 1973, c. 1291, s. 2, effective January 1, 1975.

§ 97-5. Presumption as to contract of service. — Every contract of service between any employer and employee covered by this Article, written or implied, now in operation or made or implied prior to July 1, 1929, shall, after that date, be presumed to continue, subject to the provisions of this Article; and every such contract made subsequent to that date shall be presumed to have been made subject to the provisions of this Article. (1929, c. 120, s. 6; 1973, c. 1291, s. 3.)

Editor's Note. — The 1973 amendment, effective Jan. 1, 1975, eliminated provisions authorizing either party to the contract to give notice that the provisions of this Article other

than §§ 97-14, 97-15, 97-16 and 97-92 were not intended to apply, and eliminated the former second paragraph, relating to the presumption in the case of minors.

§ 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. 97-100(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 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. 153A-149 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; c. 1291, s. 4.)

Editor's Note. — The first 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.

The second 1973 amendment, effective Jan. 1, 1975, deleted "97-4, 97-5, 97-14, 97-15, 97-16, and" preceding "97-100(j)" near the middle of the first sentence.

§ 97-9. Employer to secure payment of compensation. — Every employer subject to the compensation provisions of this Article shall secure the payment of compensation to his employees in the manner hereinafter provided; and while such security remains in force, he or those conducting his business shall only be liable to any employee for personal injury or death by accident to the extent and in the manner herein specified. (1929, c. 120, s. 10; 1973, c. 1291, s. 5.)

Editor's Note. — The 1973 amendment, effective Jan. 1, 1975, substituted "subject to" for "who accepts" near the beginning of the

section and deleted "who elects to come under this Article" following "employee" near the end of the section.

§ 97-10.1. Other rights and remedies against employer excluded. — If the employee and the employer are subject to and have complied with the provisions of this Article, then the rights and remedies herein granted to the employee, his dependents, next of kin, or personal representative shall exclude all other rights and remedies of the employee, his dependents, next of kin, or representative as against the employer at common law or otherwise on account of such injury or death. (1929, c. 120, s. 11; 1933, c. 449, s. 1; 1943, c. 622; 1959, c. 1324; 1973, c. 1291, s. 6.)

Editor's Note. —

The 1973 amendment, effective Jan. 1, 1975, deleted "accepted and" preceding "complied" near the beginning of the section.

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 occurred 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.

§ 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).

§ 97-13. Exceptions from provisions of Article.

III. FARM LABORERS.

Laborers in Large-Scale Commercial Production, etc., of Chicken Eggs. — The large-scale commercial production and marketing of chicken eggs and the cleaning,

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).

Authority to Order Employer to Pay Attorney's Fees. — This section does not confer any authority upon the district court to order an employer to pay attorney's fees. This action is within the exclusive province of the Industrial Commission. Westmoreland v. Safe Bus, Inc., 20 N.C. App. 632, 202 S.E.2d 605 (1974).

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).

packaging and delivering of the eggs is employment in agriculture and those who labor therein are farm laborers for the purposes of this section. Hinson v. Creech, 21 N.C. App. 727, 205 S.E.2d 606 (1974).

§§ 97-14 to 97-16: Repealed by Session Laws 1973, c. 1291, ss. 7-9, effective January 1, 1975.

§ 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).

§ 97-19. Liability of principal contractors; certificate that subcontractor has complied with law; right to recover compensation of those who would have been liable; order of liability. — Any principal contractor, intermediate contractor, or subcontractor who shall sublet any contract for the performance of any work without requiring from such subcontractor or obtaining from the Industrial Commission a certificate, issued by the Industrial Commission, stating that such subcontractor has complied with G.S. 97-93 hereof, shall be liable, irrespective of whether such subcontractor has regularly in service less than five employees in the same business within this State, to the same extent as such subcontractor would be if he were subject to the provisions of this Article for the payment of compensation and other benefits under this Article on account of the injury or death of any employee of such subcontractor due to an accident arising out of and in the course of the performance of the work covered by such subcontract. If the principal contractor, intermediate contractor or subcontractor shall obtain such certificate at the time of subletting such contract to subcontractor, he shall not thereafter be held liable to any employee of such subcontractor for compensation or other benefits under this Article. The Industrial Commission, upon demand shall furnish such certificate, and may charge therefor the cost thereof, not to exceed twenty-five cents (25¢).

Any principal contractor, intermediate contractor, or subcontractor paying compensation or other benefits under this Article, under the foregoing provisions of this section, may recover the amount so paid from any person, persons, or corporation who independently of such provision, would have been liable for the payment thereof.

Every claim filed with the Industrial Commission under this section shall be instituted against all parties liable for payment, and said Commission, in its award, shall fix the order in which said parties shall be exhausted, beginning with the immediate employer.

The principal or owner may insure any or all of his contractors and their employees in a blanket policy, and when so insured such contractor's employees will be entitled to compensation benefits regardless of whether the relationship of employer and employee exists between the principal and the contractor. (1929, c. 120, s. 19; 1941, c. 358, s. 1; 1945, c. 766; 1973, c. 1291, s. 10.)

Editor's Note. —

The 1973 amendment, effective Jan. 1, 1975,

substituted "were subject to" for "had accepted" near the middle of the first sentence.

§ 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).

Finding That Employer Not Prejudiced by Lack of Notice. — In accord with original. See *Cross v. Fieldcrest Mills, Inc.*, 19 N.C. App. 29, 198 S.E.2d 110 (1973).

§ 97-24. Right to compensation barred after two years; destruction of records. — (a) The right to compensation under this Article shall be forever barred unless a claim be filed with the Industrial Commission within two years after the accident.

(b) If any claim for compensation is hereafter made upon the theory that such claim or the injury upon which said claim is based is within the jurisdiction

of the Industrial Commission under the provisions of this Article, and if the Commission, or the Supreme Court on appeal, shall adjudge that such claim is not within the Article, the claimant, or if he dies, his personal representative, shall have one year after the rendition of a final judgment in the case within which to commence an action at law.

(c) When all claims and reports required by this Article have been filed, and the cases and records of which they are a part have been closed by proper reports, receipts, awards or orders, these records, may after five years in the discretion of the Commission, with and by the authorization and approval of the Department of Cultural Resources, be destroyed by burning or otherwise. (1929, c. 120, s. 24; 1933, c. 449, s. 2; 1945, c. 766; 1955, c. 1026, s. 12; 1973, c. 476, s. 48; c. 1060, s. 1).

Editor's Note. —

The first 1973 amendment, effective July 1, 1973, substituted "Department of Cultural Resources" for "North Carolina Department of Archives and History" in subsection (c).

The second 1973 amendment, effective July 1, 1974, deleted "and if death results from the accident, unless a claim be filed with the Commission within one year thereafter" at the end of subsection (a). The second 1973 amendatory act provides that it shall apply only to cases arising on and after July 1, 1974.

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).

Letter Constituted Sufficient Filing of Claim. — A letter which was written to the Commission within two years of the alleged accident and injury to plaintiff and which specifically requested a hearing upon the alleged injury constituted sufficient filing of claim and compliance with this section to vest jurisdiction of the accident in the Commission. *Cross v. Fieldcrest Mills, Inc.*, 19 N.C. App. 29, 198 S.E.2d 110 (1973).

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."

Session Laws 1973, c. 1291, s. 11, effective Jan. 1, 1975, provided that this section should be amended by substituting "subject to" for "who may have accepted" in the language of the third sentence deleted by Session Laws 1973, c. 520, s. 2.

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.

Amendment Effective July 1, 1975. — Session Laws 1973, c. 1308, ss. 1, 2, effective July 1, 1975, will rewrite the first and second paragraphs to read as follows:

"§ 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.

"In cases of total and permanent disability, compensation, including reasonable and

necessary nursing services, medicines, sick travel, medical, hospital, and other treatment or care or rehabilitative services shall be paid for by the employer during the lifetime of the injured employee. If death results from the injury then the employer shall pay compensation in accordance with the provisions of G.S. 97-38."

Session Laws 1973, c. 1308, s. 8, provides that the act shall only apply to cases arising on or after July 1, 1975.

Amendment Effective Oct. 1, 1975. — Session Laws 1973, c. 1103, s. 1, effective Oct. 1, 1975, will add a fifth paragraph. The section, as amended by Session Laws 1973, cc. 1103 and 1308, will read as follows:

"§ 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.

"In cases of total and permanent disability, compensation, including reasonable and necessary nursing services, medicines, sick travel, medical, hospital, and other treatment or care or rehabilitative services shall be paid for by the employer during the lifetime of the injured employee. If death results from the injury then the employer shall pay compensation in accordance with the provisions of G.S. 97-38.

"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.

"Notwithstanding any other provision of this Article, beginning August 1, 1975, and on August 1 of each year thereafter, a maximum weekly benefit amount shall be computed. The amount of this maximum weekly benefit shall be derived by obtaining the average weekly insured wage in accordance with G.S. 96-8(22) and by rounding such figure to its nearest multiple of two dollars (\$2.00), and this said maximum weekly benefit shall be applicable to all injuries and claims arising on and after November 1 following such computation. Such maximum weekly benefit shall apply to all provisions of this Chapter effective August 1, 1975, and shall be adjusted August 1 and effective October 1 of each year thereafter as herein provided."

Session Laws 1973, c. 1103, s. 2, provides that the act shall apply only to cases arising on or after Oct. 1, 1975.

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. 784, 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).

§ 97-36. Accidents taking place outside State; employees receiving compensation from another state. — Where an accident happens while the employee is employed elsewhere than in this State and the accident is one which would entitle him or his dependents or next of kin to compensation if it had happened in this State, then the employee or his dependents or next of kin shall be entitled to compensation (i) if the contract of employment was made in this State, or (ii) if the employer's principal place of business is in this State; provided, however, that if an employee or his dependents or next of kin shall receive compensation or damages under the laws of any other state nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this Article. (1929, c. 120, s. 36; 1963, c. 450, s. 2; 1967, c. 1229, s. 3; 1973, c. 1059.)

Editor's Note. —

Session Laws 1973, c. 1059, effective July 1, 1974, repealed former § 97-36, and enacted the above section, which was designated § 97-36.1

in the act, in its place. The 1973 act provides that it shall apply only to cases arising on and after July 1, 1974.

§ 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 400 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 400 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; c. 1357, ss. 1, 2.)

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.

The third 1973 amendment substituted "400 weeks" for "350 weeks" near the end of the

introductory paragraph and near the end of the second unnumbered paragraph.

Amendment Effective July 1, 1975. — Session Laws 1973, c. 1308, ss. 3, 4, effective July 1, 1975, will amend this section to read as follows:

"§ 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, 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. Compensation payments due on account of death shall be paid for a period of 400 weeks from the date of the death of the employee; provided, however, after said 400-week period

in case of a widow or widower who is unable to support herself or himself because of physical or mental disability as of the date of death of the employee, compensation payments shall continue during her or his lifetime or until remarriage and compensation payments due a dependent child shall be continued until such child reaches the age of 18.

"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."

Session Laws 1973, c. 1308, s. 8, provides that the act shall apply only to cases arising on or after July 1, 1975.

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).

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).

§ 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 of the amendatory act provides that it shall apply only to cases originating on and after July 1, 1973.

Repeal of Section. — This section is repealed

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).

by Session Laws 1973, c. 1308, s. 5, effective July 1, 1975.

Session Laws 1973, c. 1308, s. 8, provides that the act shall apply only to cases arising on or after July 1, 1975.

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

§ 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. — Upon its own motion or upon the application of any party in interest on the grounds of a change in condition, the Industrial Commission may review any award, and on such review may make an award ending, diminishing, or increasing the compensation previously awarded, subject to the maximum or minimum provided in this Article, and shall immediately send to the parties a copy of the award. No such review shall affect such award as regards any moneys paid but no such review shall be made after two years from the date of the last payment of compensation pursuant to an award under this Article, except that in cases in which only medical or other treatment bills are paid, no such review shall be made after 12 months from the date of the last payment of bills for medical or other treatment, paid pursuant to this Article. (1929, c. 120, s. 46; 1931, c. 274, s. 6; 1947, c. 823; 1973, c. 1060, s. 2.)

Editor's Note. —

The 1973 amendment, effective July 1, 1974, substituted "two years" for "12 months" near the beginning of the second sentence. The 1973 amendatory act provides that it shall apply only to cases arising on and after July 1, 1974.

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 was not made until more than 12 months after delivery and acceptance of a check in final payment, review of the award was barred, but the employer and his insurance carrier, by their conduct, might have been estopped to plead the lapse of time. *Willis v. J.M. Davis Indus., Inc.*, 280 N.C. 709, 186 S.E.2d 913 (1972), decided prior to the 1973 amendment to this section.

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 time 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), decided prior to the 1973 amendment to this section.

§ 97-51. Joint employment; liabilities.

Test for Determining if Lent Employee Entered Employment Relationship with Special Employer. — Because of the statutory requirement that the employment be under an "appointment or contract of hire," the first question which must be answered in determining whether a lent employee has entered into an employment relationship with a special employer for Workmen's Compensation Act purposes is: Did he make a contract of hire with the special employer? If this question

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), decided prior to the 1973 amendment to this section.

The time 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), decided prior to the 1973 amendment to this section.

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).

cannot be answered "yes," the investigation is closed, and this must necessarily be so, since the employee loses certain rights along with those he gains when he strikes up a new employment relation. *Collins v. James Paul Edwards, Inc.*, 21 N.C. App. 455, 204 S.E.2d 873 (1974).

Lent Employee Must Consent to New Relationship. — See *Collins v. James Paul Edwards, Inc.*, 21 N.C. App. 455, 204 S.E.2d 873 (1974).

Consent may be implied from the lent employee's acceptance of the special employer's control and direction. But what seems on the surface to be such acceptance may actually be only a continued obedience of the general employer's commands. *Collins v. James Paul Edwards, Inc.*, 21 N.C. App. 455, 204 S.E.2d 873 (1974).

Basis for Consent Requirement in Lent-Employee Cases. — The necessity for the lent employee's consent to a new employment relation stems from the statutory requirement of "contract of hire." *Collins v. James Paul Edwards, Inc.*, 21 N.C. App. 455, 204 S.E.2d 873 (1974).

The only presumption in lent-employee cases is the continuance of the general employment, which is taken for granted as the beginning point of any lent-employee problem. *Collins v. James Paul Edwards, Inc.*, 21 N.C. App. 455, 204 S.E.2d 873 (1974).

To overcome this presumption, it is not unreasonable to insist upon a clear

demonstration that a new temporary employer has been substituted for the old, which demonstration should include a showing that a contract was made between the special employer and the employee, proof that the work being done was essentially that of the special employer, and proof that the special employer assumed the right to control the details of the work; failing this, the general employer should remain liable. *Collins v. James Paul Edwards, Inc.*, 21 N.C. App. 455, 204 S.E.2d 873 (1974).

Conflict of Interest Is between Two Employers. — What gives the lent-employee cases their special character is the fact that they begin, not with an unknown relation, but with an existing employment relation. The conflict of interest becomes one not between employer and employee (who is assured of recovering from someone) but between two employers and their insurance carriers. *Collins v. James Paul Edwards, Inc.*, 21 N.C. App. 455, 204 S.E.2d 873 (1974).

§ 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.

"Occupational Disease" Defined. —

A disease, contracted in the usual and ordinary course of events, which from the common experience of humanity is known to be incidental to a particular employment, is an occupational disease. *Morrow v. Memorial Mission Hosp.*, 21 N.C. App. 299, 204 S.E.2d 543 (1974).

An "occupational disease" suffered by a servant or employee, if it means anything as

distinguished from a disease caused or super-induced by an actionable wrong or injury, is neither more nor less than a disease which is the usual incident or result of the particular employment in which the workman is engaged, as distinguished from one which is caused or brought about by the employer's failure in his duty to furnish him a safe place to work. *Morrow v. Memorial Mission Hosp.*, 21 N.C. App. 299, 204 S.E.2d 543 (1974).

Infectious hepatitis is not listed in this section. *Smith v. Memorial Mission Hosp.*, 21 N.C. App. 380, 204 S.E.2d 546 (1974).

Evidence presented was insufficient to show that infectious hepatitis is a disease which is characteristic of and peculiar to the occupation of a master mechanic acting, sometimes as a plumber, in the course of his employment for a hospital. *Morrow v. Memorial Mission Hosp.*, 21 N.C. App. 299, 204 S.E.2d 543 (1974); *Smith v. Memorial Mission Hosp.*, 21 N.C. App. 380, 204 S.E.2d 546 (1974).

§ 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).

§ 97-58. Claims for certain diseases restricted; time limit for filing claims.

(c) The right to compensation for occupational disease shall be barred unless a claim be filed with the Industrial Commission within two years after death, disability, or disablement as the case may be. Provided, however, that the right to compensation for radiation injury, disability or death shall be barred unless a claim is filed within two years after the date upon which the employee first suffered incapacity from the exposure to radiation and either knew or in the exercise of reasonable diligence should have known that the occupational disease was caused by his present or prior employment. (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 6; 1963, c. 553, s. 2; 1973, c. 1060, s. 3.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "two years" for "one year" in two places in subsection (c). The 1973 amendatory act provides it shall apply

only to cases arising on and after July 1, 1974.

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

§ 97-59. Employer to provide treatment. — In the event of disability from an occupational disease, the employer shall provide reasonable medical and/or other treatment for such time as in the judgment of the Industrial Commission

will tend to lessen the period of disability or provide needed relief; provided, however, all such treatment shall be first authorized by the Industrial Commission after consulting with the advisory medical committee. (1935, c. 123; 1945, c. 762; 1973, c. 1061.)

Editor's Note. — The 1973 amendment deleted a proviso to the effect that medical silicosis should not exceed a period of three years nor cost in excess of \$1,000 in any one and/or other treatment for asbestosis and/or year.

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

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

Amendment Effective July 1, 1975. — Session Laws 1973, c. 1308, ss. 6, 7, effective July 1, 1975, will rewrite this section to read as follows:

"§ 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 in accordance with G.S. 97-29.

"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 compensation in accordance with G.S. 97-38.

"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."

Session Laws 1973, c. 1308, s. 8, provides that the act shall apply only to cases arising on or after July 1, 1975.

"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. —

In accord with original. See *Lee v. F.M. Henderson & Associates*, 284 N.C. 126, 200 S.E.2d 32 (1973).

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).

Applied in *Lewis v. Kentucky Cent. Life Ins. Co.*, 20 N.C. App. 247, 201 S.E.2d 228 (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, effective July 1, 1973, deleted, at the end of the second sentence, "not exceeding ten dollars

(\$10.00) for each examination and report, but the Commission may allow additional 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.

The clear intent of this section and judicial opinions is to assure that medical and related expenses incurred by an injured employee for

which the employer or his insurance carrier is to be liable shall be kept within reasonable and appropriate limits, and the responsibility for the enforcement of these limits rests upon the Industrial Commission. *Morse v. Curtis*, 20 N.C. App. 96, 200 S.E.2d 832 (1973).

It would be a misdemeanor for any person to receive fees which were not approved by the Commission. *Morse v. Curtis*, 20 N.C. App. 96, 200 S.E.2d 832 (1973).

§ 97-93. Employers required to carry insurance or prove financial ability to pay for benefits. — Every employer subject to the provisions of this Article relative to the payment of compensation shall insure and keep insured his liability thereunder in any authorized corporation, association, organization, or in any mutual insurance association formed by a group of employers so authorized, or shall furnish to the Industrial Commission satisfactory proof of his financial ability to pay direct the compensation in the amount and manner and when due, as provided for in this Article. In the latter case the Commission may require the deposit of an acceptable security, indemnity or bond to secure the payment of the compensation liabilities as they are incurred. (1929, c. 120, s. 67; 1943, c. 543; 1973, c. 1291, s. 12.)

Editor's Note. —

The 1973 amendment, effective Jan. 1, 1975,

substituted "subject to" for "who accepts" near the beginning of the first sentence.

§ 97-94. Employers required to give proof within 30 days that they have complied with preceding section; fine for not keeping liability insured; review; liability for compensation; failure to secure payment of compensation a misdemeanor. — (a) Every employer subject to the compensation provisions of this Article shall, within 30 days, after this Article takes effect, file with the Commission, in form prescribed by it, and thereafter, annually or as often as may be necessary, evidence of his compliance with the provisions of G.S. 97-93 and all others relating thereto.

(1973, c. 1291, s. 13.)

Editor's Note. — The 1973 amendment, effective Jan. 1, 1975, substituted "subject to" for "accepting" near the beginning of subsection (a).

As subsections (b) and (c) were not changed by the amendment, they are not set out.

§ 97-100. Rates for insurance; carrier to make reports for determination of solvency; tax upon premium; returned or canceled premiums; reports of premiums collected; wrongful or fraudulent representation of carrier punishable as misdemeanor; notices to carrier; employer who carries own risk shall make report on payroll.

Cited in *State ex rel. Commissioner of Ins. v. State ex rel. Attorney Gen.*, 19 N.C. App. 263, 198 S.E.2d 575 (1973).

§ 97-102. Compensation Rating and Inspection Bureau created; objects, functions, etc., hearings where rates changed.

Applied in *State ex rel. Commissioner of Ins. v. State ex rel. Attorney Gen.*, 19 N.C. App. 263, 198 S.E.2d 575 (1973).

§ 97-104. Governing committee; production of books and records for compilation of appropriate statistics; rates subject to approval of Insurance Commissioner.

Section Construed Not to Require Use of North Carolina Expense Data. — See State ex rel. Commissioner of Ins. v. State ex rel. Attorney Gen., 19 N.C. App. 263, 198 S.E.2d 575 (1973).

Commissioner May Determine Expense Loading by Taking Proportional Part of Countrywide Total. — This section authorizes but does not compel the Commissioner to require the production of expense data in North Carolina, and if he decides, in his discretion, that a quick, inexpensive and reasonably

accurate method of determining the expense loading of workmen's compensation insurance in North Carolina is to take a proportional part of the countrywide total, he is free to do so. Such an interpretation does no violence to the language of this section and would appear practical and realistic when applied to the workmen's compensation insurance business. State ex rel. Commissioner of Ins. v. State ex rel. Attorney Gen., 19 N.C. App. 263, 198 S.E.2d 575 (1973).

§ 97-104.1. Commissioner can order adjustment of rates and modification of procedure.

Section Only Requires Rates Charged Not Be Excessive or Unreasonable. — Like the physical damage insurance statute, this section requires only that the rates charged not be excessive or unreasonable. State ex rel. Commissioner of Ins. v. State ex rel. Attorney Gen., 19 N.C. App. 263, 198 S.E.2d 575 (1973).

No mention is made in this section of investment income. State ex rel. Commissioner of Ins. v. State ex rel. Attorney Gen., 19 N.C. App. 263, 198 S.E.2d 575 (1973).

ARTICLE 3.

Security Funds.

§ 97-120. Right of Commissioner to defend claims against insolvent carriers; arrangement with other carriers to pay claims. — The Commissioner or his duly authorized representative may investigate and may defend before the North Carolina Industrial Commission or any court any or all claims for compensation against an employer insured by an insolvent carrier or against such insolvent carrier and may prosecute any pending appeal or may appeal from or make application for modification or rescission or review of an agreement, award or decision against such employer or insolvent carrier. Until all such claims for compensation are closed and all such awards thereon are paid, the Commissioner, the administrator of the funds, shall be a party in interest in respect to all such claims, agreements and awards. For the purposes of this Article the Commissioner shall have exclusive power to select and employ such counsel, clerks and assistants as may be deemed necessary and to fix and determine their powers and duties, and he may also, in his discretion, arrange with any carrier or carriers to investigate and defend any or all such claims and to liquidate and pay such as are valid and the Commissioner may from time to time reimburse, from the appropriate fund, such carrier or carriers for compensation payments so made, together with reasonable allowance for the services so rendered. (1935, c. 228, s. 16.)

Editor's Note. — This section is set out to correct a typographical error in the replacement volume.

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

Sec.	Sec.
98-3. Establishing boundaries and interest, where conveyance and copy lost.	98-14. Rules for petitions and motions.
98-6. Establishing contents of will, where original and copy destroyed.	

§ 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" following "filed" in the first sentence of subdivision (4) and following "superior court" in subdivision (6).

Only the introductory paragraph and the subdivisions changed by the amendment are set out.

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

Sec.

100-6. Disqualification to vote on work of art, etc.; vacancy.

100-7. Construction.

Sec.

100-1. [Repealed.]

100-2. Approval of memorials before acceptance by State; regulation of existing memorials, etc.; "work of art" defined; highway markers.

100-3. Approval of design, etc., of certain bridges and other structures.

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

100-5. Duties as to buildings erected or remodeled by State.

Article 3.**Mount Mitchell Park.**

100-11. Duties.

100-12. Roads, trails, and fences authorized; protection of property.

100-13. Fees for use of improvements; fees for other privileges; leases; rules and regulations.

100-14. Use of fees and other collections.

100-15. Annual reports.

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 Natural and Economic Resources 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; c. 1262, s. 86.)

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.

The third 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development" 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, effective July 1, 1973, substituted "the Art Commission as appropriate" for "said 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, effective July 1, 1973, substituted "the Art Commission as appropriate" for "said 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, effective July 1, 1973, substituted "the Art Commission as appropriate" for "said 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, effective July 1, 1973, substituted "the Art Commission as appropriate" for "said 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." Commission or the North Carolina Historical

ARTICLE 3.

Mount Mitchell Park.

§ 100-11. Duties. — The Department of Natural and Economic Resources shall have complete control, care, protection and charge of that part of Mitchell's Park acquired by the State. (1915, c. 76; 1919, c. 316, s. 3; C. S., s. 6940; 1921, c. 222, s. 1; 1925, c. 122, s. 23; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment, of Natural and Economic Resources" for effective July 1, 1974, substituted "Department "Board of Conservation and Development."

§ 100-12. Roads, trails, and fences authorized; protection of property. — The Department of Natural and Economic Resources is authorized and empowered to enter upon the land hereinbefore referred to, and to build a fence or fences around the same, also roads, paths, and trails and protect the property against trespass and fire and injury of any and all kinds whatsoever; cut wood and timber upon the same, but only for the purpose of protecting the other timber thereon and improving the property generally. (1919, c. 316, s. 5; C. S., s. 6942; 1921, c. 222, s. 1; 1925, c. 122, s. 23; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment, of Natural and Economic Resources" for effective July 1, 1974, substituted "Department "Board of Conservation and Development."

§ 100-13. Fees for use of improvements; fees for other privileges; leases; rules and regulations. — The Department of Natural and Economic Resources is further authorized and empowered to charge and collect fees for the use of such improvements as have already been constructed, or may hereafter be constructed, on the park, and for other privileges connected with the full use of the park by the public; to lease sites for camps, houses, hotels, and places of amusement and business; and to make and enforce such necessary rules and regulations as may best tend to protect, preserve and increase the value and attractiveness of the park. (1921, c. 222, s. 2; C. S., s. 6942(a); 1925, c. 122, s. 23; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment, of Natural and Economic Resources" for effective July 1, 1974, substituted "Department "Board of Conservation and Development."

§ 100-14. Use of fees and other collections. — All fees and other money collected and received by the Department of Natural and Economic Resources in connection with its proper administration of Mount Mitchell State Park shall be used by said Department of Natural and Economic Resources for the administration, protection, improvement, and maintenance of said park. (1921, c. 222, s. 3; C. S., s. 6942(b); 1925, c. 122, s. 23; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment, "Board of Conservation and Development" and effective July 1, 1974, substituted "Department for "Board." of Natural and Economic Resources" for

§ 100-15. Annual reports. — The Department of Natural and Economic Resources shall make an annual report to the Governor of all money received and expended by it in the administration of Mount Mitchell State Park, and of such other items as may be called for by him or by the General Assembly. (1921, c. 222, s. 4; C. S., s. 6942(c); 1925, c. 122, s. 23; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment, of Natural and Economic Resources" for effective July 1, 1974, substituted "Department "Board of Conservation and Development."

Chapter 101.

Names of Persons.

§ 101-2. Procedure for changing name; petition; notice.

Consent Required for Change of Name of Minor Child. — The name of a minor child may not be changed without the consent of both parents, if both be living, unless one of the parents has abandoned the minor child. In re Dunston, 18 N.C. App. 647, 197 S.E.2d 560 (1973).

Determination of Abandonment by Clerk of Superior Court. — In the event that a court of competent jurisdiction has not previously declared the child to be an abandoned child, the clerk of the superior court is authorized to determine whether an abandonment has taken place. In re Dunstan, 18 N.C. App. 647, 197 S.E.2d 560 (1973).

This section contemplates only the situation where one natural or adoptive parent petitions for the change of name of a

child, and the other parent stands to lose his name with respect to that child. In re Dunston, 18 N.C. App. 647, 197 S.E.2d 560 (1973).

It has no application to a stepfather. In re Dunston, 18 N.C. App. 647, 197 S.E.2d 560 (1973).

Neither the consent of a child's stepfather, nor a finding that the stepfather has abandoned that child is necessary in a petition by the natural mother of that child to have the child's name changed. In re Dunston, 18 N.C. App. 647, 197 S.E.2d 560 (1973).

Nor to Natural Father of Child Born Out of Wedlock. — This section was not designed to require the consent of the natural father to a name change where the child was born out of wedlock. In re Dunston, 18 N.C. App. 647, 197 S.E.2d 560 (1973).

Chapter 102.**Official Survey Base.**

Sec.

102-8. Administrative agency.

102-10. Prior work.

Sec.

102-14. [Repealed.]

§ 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).

§ 102-8. Administrative agency. — The administrative agency of the North Carolina Coordinate System shall be the Department of Natural and Economic Resources, through its appropriate division hereinafter called the "agency." (1939, c. 163, s. 8; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "North Carolina Department of Conservation and Development."

§ 102-10. Prior work. — The system of stations, monuments, traverses, computations, and other work which has been done or is under way in North Carolina by the so-called North Carolina Geodetic Survey, under the supervision of the United States Coast and Geodetic Survey, is, where consistent with the provisions of this Chapter, hereby made a part of the North Carolina Coordinate System. The surveys, notes, computations, monuments, stations, and all other work relating to the coordinate system, which has been done by said North Carolina Geodetic Survey, under the supervision of and in cooperation with the United States Coast and Geodetic Survey and federal relief agencies, hereby are placed under the direction of, and shall become the property of, the administrative agency. All persons or agencies having in their possession any surveys, notes, computations, or other data pertaining to the aforementioned coordinate system, shall turn over to the Department of Natural and Economic Resources such data upon request. (1939, c. 163, s. 10; 1959, c. 1315, s. 1; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development" in the last sentence.

§ 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."

§ 102-14: Repealed by Session Laws 1973, c. 1262, s. 86, effective July 1, 1974.

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

Sec.

103-3. Execution of process on Sunday.

Sec.

103-4. Dates of public holidays.

§ 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.—

Veterans Day from the fourth Monday in

The 1973 amendment changed the date of October to November 11.

Chapter 104.**United States Lands.****Article 2.****Sec.****Inland Waterways.**

104-23. Maintenance and operation of bridges
over waterway.

Sec.

104-17. Construction, maintenance, etc., of
bridges over waterway.

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 Com-
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 Com-
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-4. Damaging or removing without permit; establishment of shore protection line.

104B-6. Appointment or designation of shoreline protection officers; compensation; joint shoreline protection department.

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

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

Sec.

104B-10. Appeal from decision of shoreline protection officer; review of decision of county commissioners.

104B-11. Establishing of project protection line; prohibited acts on ocean side of line; permit for construction of structure.

104B-14. Map or description of shore protection line or project protection line.

104B-15. Powers of Environmental Management Commission.

104B-16. Regulation and enforcement powers of Environmental Management Commission.

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 Natural and Economic Resources and others. (1957, c. 995, s. 1; 1965, c. 237; 1973, c. 803, s. 6; c. 1262, s. 23.)

Editor's Note. — The first 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).

The second 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Department of

Water Resources" near the end of subsection (b).

As subsection (a) was not changed by the amendments, 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. 153A-149 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-11. Establishment of project protection line; prohibited acts on ocean side of line; permit for construction of structure. — (a) The Department of Natural and Economic Resources shall establish a project protection line prior to the start of construction of each beach restoration or hurricane protection project. Said project protection line will identify the line along which said beach restoration and hurricane protection works will be constructed along the ocean front. The construction of said beach restoration and hurricane protection works will be located on the ocean side of said project protection line.

(b) Subsequent to the establishment of such a project protection line, it shall be unlawful for any person, firm or corporation to construct any building or part thereof, open any new road or street or remove sand, seashells and similar materials on the ocean side of said project protection line. It shall also be unlawful for any person, firm or corporation to alter in any manner the sand dune or beach or in any manner to injure, destroy, interfere with, or reduce the operation of any then-existing groins, jetties or any other erosion control works on the ocean side of the project protection line. Groins, jetties, piers or any other such structure will not be constructed on the ocean side of the project protection line without first obtaining a permit from the Department of Natural and Economic Resources. It shall be further unlawful to drive or operate vehicles of any type or nature on or along the sand dunes or beaches on the ocean side of said project protection line except at such places as may be designated. (1965, c. 237; c. 623, s. 1; 1973, c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, of Natural and Economic Resources" for effective July 1, 1974, substituted "Department "Department of Water Resources."

§ 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).

§ 104B-14. Map or description of shore protection line or project protection line. — (a) The board of county commissioners in establishing a shore protection line pursuant to G.S. 104B-4, and the Environmental Management Commission in establishing a project protection line pursuant to G.S. 104B-11, may define said line by showing it on a map or drawing, by a written description, or any combination thereof, to be designated appropriately and filed permanently with the clerk of superior court and with the register of deeds in the county where the land lies (in the case of a shore protection line) or the Secretary of Natural and Economic Resources (in the case of a project protection line). Alterations in these lines shall be indicated by appropriate entries upon or additions to such map or description. Such entries or additions shall be made by or under the direction of the clerk of superior court or Secretary of Natural and Economic Resources, as the case may be. Photographic, typed or other copies of such map or description, certified by the clerk of superior court (in the case of a shore protection line) or the Secretary of Natural and Economic Resources (in the case of a project protection line), shall be admitted in evidence in all courts and shall have the same force and effect as would the original map or description. The board of county commissioners or Department of Natural and Economic Resources, as the case may be, may provide for the redrawing of any such map. A redrawn map shall supersede for all purposes the earlier map or maps which it is designated to replace upon the filing thereof at those places designated above.

(b) The Department of Natural and Economic Resources shall file with the Secretary of State and with the clerk of superior court and the register of deeds of every county in which a beach erosion or hurricane protection project or any part thereof is located:

- (1) A certified copy of the map, drawing, description or combination thereof showing the project protection line for said project; and
- (2) A certified copy of any redrawn or altered map or drawing, and of any amendments or additions to written descriptions, showing alterations to said project protection line.

The filings required by this subsection shall constitute compliance with the requirements of Article 18 of Chapter 143 of the General Statutes. (1965, c. 237; c. 623, s. 2; 1973, c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board of Water Resources," substituted "Secretary of Natural and Economic

Resources" for "Director of Water Resources" and substituted "Department of Natural and Economic Resources" for "Department of Water Resources."

§ 104B-15. Powers of Environmental Management Commission. — In addition to its other powers under this Article, the Environmental Management Commission shall be empowered to render advice and assistance to any shoreline protection officer or officers, board of county commissioners, or other office, agency, or board having responsibilities under this Article. In exercising this function it shall specifically be authorized to furnish manuals, suggested standards, plans, and other technical data; to conduct training programs; and to give advice and assistance with respect to handling of particular applications; but it shall not be limited to such activities. (1965, c. 237; 1973, c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board of Water Resources."

§ 104B-16. Regulation and enforcement powers of Environmental Management Commission. — The power and authority vested by this Article in the boards of county commissioners of any county to adopt regulations, establish a shore protection line, appoint or designate a shoreline protection officer, fix inspection fees and charges, institute proceedings, and take other actions for the protection of sand dunes along the outer banks of North Carolina may also be exercised by the North Carolina Environmental Management Commission in any county that has not adopted regulations and appointed a shoreline protection officer under the authority of this Article by December 31, 1971. In exercising the powers and authority of this Article the Environmental Management Commission shall have all the powers (except the power to levy a special tax), and shall be subject to all the requirements and limitations, imposed on boards of county commissioners by this Article. If the Environmental Management Commission elects to designate a county or municipal employee or official as a shoreline protection officer, it may do so only with the approval of such county or municipal governing body. Appeals to the Environmental Management Commission from actions of a shoreline protection officer may be heard by the Environmental Management Commission, or by its designated members, employees, or a committee in Wake County or in any county containing land affected by the denied permit.

If the Environmental Management Commission decides to exercise the powers and authority of this Article in any county as authorized by this section, it shall do so by first adopting a resolution stating its intent. From and after the adoption of the resolution of intent, the Environmental Management Commission shall have exclusive jurisdiction in any county named in the resolution in the exercise of the powers and authority of this Article. The board of county commissioners of any county named in the resolution of intent shall not be authorized to exercise any of the powers and authority of this Article thereafter unless and until the said commissioners request that the Environmental Management Commission rescind its resolution of intent. The

Environmental Management Commission shall rescind its resolution and vacate its jurisdiction within 60 days after receipt of the resolution from the board of county commissioners; provided the resolution from the said commissioners includes a plan for carrying out the duties, responsibilities, and provisions of this Article. In the event that the county fails to carry out the duties, responsibilities, and provisions of this Article, the Environmental Management Commission may reassume the powers and responsibilities of this Article. (1971, c. 1159, s. 4; 1973, c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, "Board of Water and Air Resources" and for effective July 1, 1974, substituted "Board."
"Environmental Management Commission" for

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.

SUBCHAPTER I. LEVY OF TAXES.

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SUBCHAPTER I. LEVY OF TAXES.**ARTICLE 1.***Schedule A. Inheritance Tax.*

§ 105-2. General provisions. — A tax shall be and is hereby imposed upon the transfer of any property, real or personal, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations, in the following cases:

- (1) When the transfer is by will or by the intestate laws of this State from any person dying seized or possessed of the property while a resident of the State, or when the transfer is made pursuant to a final judgment entered in a proceeding to caveat a will executed by any person dying seized of the property while a resident of this State.

(1973, c. 1287, s. 2.)

Editor's Note. —

The 1973 amendment, effective July 1, 1974, added at the end of subdivision (1) the language beginning "or when the transfer is made."

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (1) are set out.

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.** — (a) Where the person or persons entitled to any beneficial interest in such property shall be the lineal issue, or lineal ancestor, or husband or wife of the person who died possessed of such property aforesaid, or stepchild of the person who died possessed of such property aforesaid, or child adopted by the decedent in conformity with the laws of this State or of any of the United States, or of any foreign kingdom or nation, or a son-in-law or a daughter-in-law whose spouse is not entitled to any beneficial interest in such property of the person who died possessed of such property aforesaid, at the following rates of tax (for each one hundred dollars (\$100.00) or fraction thereof) of the value of such interest:

First \$ 10,000 above exemption	1 percent
Over \$ 10,000 and to \$ 25,000	2 percent
Over \$ 25,000 and to \$ 50,000	3 percent
Over \$ 50,000 and to \$ 100,000	4 percent
Over \$ 100,000 and to \$ 200,000	5 percent
Over \$ 200,000 and to \$ 500,000	6 percent
Over \$ 500,000 and to \$1,000,000	7 percent
Over \$1,000,000 and to \$1,500,000	8 percent
Over \$1,500,000 and to \$2,000,000	9 percent
Over \$2,000,000 and to \$2,500,000	10 percent
Over \$2,500,000 and to \$3,000,000	11 percent
Over \$3,000,000	12 percent

(b) The persons mentioned in this class shall be entitled to the following exemptions: surviving spouse, ten thousand dollars (\$10,000); each child under 18 years of age and each child 18 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 18 years of age, and each child 18 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; c. 1142, s. 1; c. 1287, s. 2.)

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

The second 1973 amendment inserted the language beginning "or a son-in-law" and ending "aforesaid" in subsection (a).

The third 1973 amendment, effective July 1, 1974, substituted "18 years" for "21 years" in four places in subsection (b) and substituted "surviving spouse" for "Surviving spouses" near the beginning of subsection (b).

Session Laws 1973, c. 49, s. 2, provides:

"This act should become effective July 1, 1973, and shall apply to estates of all persons dying on or after that date."

Session Laws 1973, c. 1142, s. 2, provides: "This act shall become effective July 1, 1974, and apply to the 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. 6¹/₂; 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 and 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. — (a) Property taxable within the meaning of this Article shall include bonds or shares of stock in any corporation incorporated or domesticated in this State, regardless of whether or not such corporation shall have any or all of its capital stock invested in property outside of this State, and doing business outside of this State, and the tax on the transfer of any bonds and/or shares of stock in any such corporation owning property and doing business outside of the State shall be paid before waivers are issued for the transfer of such shares of stock. No corporation of this State shall transfer any

bonds or stock of said corporation standing in the name of or belonging to a decedent or in the joint names of a decedent and one or more persons, or in trust for a decedent, unless notice of the time of such transfer is served upon the Secretary of Revenue at least 10 days prior to such transfer, nor until said Secretary of Revenue shall consent thereto in writing. Any corporation making such a transfer without first obtaining consent of the Secretary of Revenue as aforesaid shall be liable for the amount of any tax which may thereafter be assessed on account of the transfer of such bonds and/or stock, together with the interest thereon, and in addition thereto a penalty of one thousand dollars (\$1,000), which liability for such tax, interest, and penalty, may be enforced by an action brought by the State in the name of the Secretary of Revenue. The word "transfer" as used in this Article shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by distribution, or by statute, descent, devise, bequest, grant, deed, bargain, sale, gift, or otherwise. A waiver signed by the Secretary of Revenue of North Carolina shall be full protection for any such company in the transfer of any such stock.

(b) Any incorporated company not incorporated in this State and owning property in this State which shall transfer on its books the shares of stock of any resident decedent holder of bonds and/or shares of stock in such company exceeding in value two hundred dollars (\$200.00) before the inheritance tax, if any, had been paid, shall become liable for the payment of said tax; and any property held by such company in this State shall be subject to execution to satisfy same. A receipt or waiver signed by the Secretary of Revenue of North Carolina shall be full protection for any such company in the transfer of any such stock. (1939, c. 158, s. 9; 1973, c. 476, s. 193; c. 1287, 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, effective July

1, 1974, substituted "corporation" for "incorporated company" in three places in the first sentence of subsection (a) and inserted "or domesticated" near the beginning of that sentence.

§ 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. — 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. 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. (1939, c. 158, s. 20; 1943, c. 400, s. 1; 1953, c. 1302, s. 1; 1973, c. 108, s. 49; c. 476, s. 193; c. 287, s. 2.)

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.

The third 1973 amendment, effective July 1, 1974, deleted, at the end of the first sentence of the section, a provision requiring the

Secretary of Revenue to furnish to the clerks blanks upon which to make the report required by that sentence. The third amendment also deleted former subsection (b), relating to the duty of clerks to keep as a public record a condensed copy of the settlement of inheritance taxes on each estate, together with a copy of the receipt showing payment or a certificate of no tax due.

§ 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 savings and loan stock has heretofore been issued or is hereafter issued, in the names of two or more persons and payable to either or the survivor or survivors of them, such bank or savings and loan association may, upon the death of either of such persons, allow the person or persons entitled thereto under the provisions of G.S. 41-2.1 to withdraw as much as fifty percent (50%) of such deposit or stock, and the balance thereof shall be retained by the bank or savings 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 savings and loan association his written consent for the payment of the retained percentage to the person or persons entitled thereto by law; and the Secretary of Revenue may furnish such written consent to the bank or savings and loan association upon the qualification of a personal representative 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. 21½; 1943, c. 400, s. 1; 1959, c. 1192; 1973, c. 108, s. 50; c. 476, s. 193; c. 1287, s. 2.)

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.

The third 1973 amendment, effective July 1, 1974, rewrote the first and second sentences of

the second paragraph, making the paragraph applicable to deposits or stock in the names of any two or more persons, rather than only in the names of a husband and wife, eliminating a requirement of notice to the Secretary of Revenue in the first sentence, reducing the withdrawal permitted by the first sentence from 80% to 50% of the deposit or stock, and

substituting "savings and loan" for "building and loan" throughout. The amendment also deleted the former third sentence of the second paragraph, which absolved a bank or building and loan association from liability for failure to withhold the specified percentage of the deposit or stock, if payment was made before actual notice of death.

§ 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. — (a) Every person, firm, or corporation engaged in the business of a carnival company or a show of like kind, moving picture and vaudeville shows, museums and menageries, merry-go-rounds, Ferris wheels, riding devices, and other like amusements, and enterprises, conducted for profit, under the same general management, or an aggregate of shows, amusements, eating places, riding devices, or any of them operating together on the same lot or contiguous lots or streets, traveling from place to place, whether owned and actually operated by separate persons, firms, or corporations or not, filling week-stand engagements, or giving week-stand exhibitions, under canvas or not, shall apply for and obtain from the Secretary of Revenue a State license for the privilege of engaging in such business or amusement, and shall pay for such license for each week, or part of a week, a tax based according to the population of the city or town in which such carnival is showing as follows:

In cities or towns of less than 2,500 population	\$100.00
In cities or towns of 2,500 population and less than 10,000	200.00
In cities or towns of more than 10,000 population	300.00

Provided that any carnival operating within a radius of five miles of any city shall pay the same tax as if they were actually showing within the city limits of said town. Provided further that if such a carnival operates over five miles from any city or town such a carnival shall be liable for a tax of one hundred dollars (\$100.00) per week or part of a week.

Provided, that when a person, firm or corporation exhibits only riding devices which are not a part of, nor used in connection with any carnival company, the tax shall be five dollars (\$5.00) per week for each such riding device. In lieu of the five dollar per week tax levied herein, a person, firm or corporation may apply for an annual statewide license, and the same may be issued by the Secretary of Revenue for the sum of two hundred dollars (\$200.00) per riding device, paid in advance, prior to the first exhibition in the State, shall be valid in any county, and shall be in full payment of all State license taxes imposed

in this section. Counties, cities and towns may levy and collect a license tax upon such riding devices not in excess of five dollars (\$5.00) for each such device.

Provided, further, that it shall be unlawful under this section for the owners and/or operators of riding devices to operate, or cause to be operated, any show, game, stand or other attraction whatsoever.

(b) This section shall not repeal any local act prohibiting any of the shows, exhibitions, or performances mentioned in this section, or limit the authority of the board of county commissioners of any county, or the board of aldermen or other governing body of any city or town, in prohibiting such shows, exhibitions, or performances. If the Secretary of Revenue shall issue a State license for any such show, exhibition, or performance in any county or municipality having a local statute prohibiting the same, then the said State license shall not authorize such show, exhibition, or performance to be held in such county or municipality, but the Secretary of Revenue shall refund, upon proper application, the tax paid for such State license.

(c) No person, firm, or corporation, nor any aggregation of same, giving such shows, exhibitions, or performances, shall be relieved from the payment of the tax levied in this section, regardless of whether or not the State derives a benefit from same. Nor shall any carnival operating or giving performances or exhibitions, in connection with any fair in North Carolina, be relieved from the payment of tax levied in this section. It is the intent and purpose of this section that every person, firm, or corporation, or aggregation of same which is engaged in the giving of such shows, exhibitions, performances, or amusements, whether the whole or a part of the proceeds are for charitable, benevolent, educational, or other purposes whatsoever, shall pay the State license taxes provided for in this section.

It is not the purpose of this Article to discourage agricultural fairs in the State, and to further this cause, no carnival company will be allowed to play a "still date" in any county where there is a regularly advertised agricultural fair, 30 days prior to the dates of said fair. An agricultural fair shall be construed as meaning one that has operated at least one year prior to March 24, 1939.

Upon all performances taxable under this section there is levied, in addition to the license tax levied in this section, a tax upon the gross receipts of such business at the rate of tax levied in Schedule E, G.S. 105-164 to 105-187, upon retail sales of merchandise. The license tax herein levied shall be treated as an advance payment of the tax upon the gross receipts herein levied, and the license tax shall be applied as a credit upon or advance payment of the gross receipts tax. The Secretary of Revenue may adopt such regulations as may be necessary to effectuate the provisions of this section and shall prescribe the form and character of reports to be made, and shall have such authority or supervision as may be necessary to effectuate the purposes of this Subchapter.

Nothing herein contained shall prevent veterans' organizations and posts chartered by Congress or organized and operated on a statewide or nationwide basis from holding fairs or tobacco festivals on any dates which they may select, provided said fairs or festivals have heretofore been held as annual events.

(d) Counties, cities and towns may levy a license tax on the business taxed hereunder not in excess of one half of that levied by the State. (1939, c. 158, s. 107; 1941, c. 50, s. 3; 1947, c. 501, s. 2; 1951, c. 643, s. 2; 1973, c. 476, s. 193; c. 1227.)

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, 1974, rewrote the third paragraph of subsection (a). The amendment divided the former provisions of the paragraph, which

consisted of a single sentence, into the present first and third sentences of the paragraph, substituted "five dollars (\$5.00)" for "ten dollars (\$10.00)" in the present first sentence, added the second sentence, and deleted "provided that" at the beginning of the present third sentence.

§ 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 Revoke 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).

A “professional” art is one requiring knowledge of advanced type in a given field of science or learning gained by a prolonged course of specialized instruction and study. *Smith v. Keator*, 21 N.C. App. 102, 203 S.E.2d 411 (1974).

A “professional” act or service is one arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor, or skill, and the labor or skill involved is predominantly mental or intellectual, rather than physical or manual. *Smith v. Keator*, 21 N.C. App. 102, 203 S.E.2d 411 (1974).

The word “healing” in this section is ordinarily understood to mean the curing of

diseases or injuries. *Smith v. Keator*, 21 N.C. App. 102, 203 S.E.2d 411 (1974).

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).

But Masseurs Are Not. — Masseurs are not persons “practicing any professional art of healing” within the meaning of subsection (a). *Smith v. Keator*, 21 N.C. App. 102, 203 S.E.2d 411 (1974).

Masseurs are not required to obtain a privilege license from the State, and they are subject to regulation by local governments. *Smith v. Keator*, 21 N.C. App. 102, 203 S.E.2d 411 (1974).

Rulings by Secretary of Revenue Not Binding on Courts. — Rulings made by the Secretary of Revenue setting forth his interpretations of this section are not binding upon the courts. *Smith v. Keator*, 21 N.C. App. 102, 203 S.E.2d 411 (1974).

§ 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: Repealed by Session Laws 1973, c. 1195, s. 8.

§ 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. — (a) Every person, firm, or corporation engaged in the business of purchasing for the purpose of resale, either at wholesale or retail, horses and/or mules shall apply for and procure from the Secretary of Revenue a State license for the privilege of engaging in such business in this State and shall pay for such license an annual tax for each location where such business is carried on as follows:

Where not more than one carload of horses and/or mules is purchased for the purpose of resale	\$ 25.00
Where more than one carload and not more than two carloads of horses and/or mules are purchased for the purpose of resale ..	50.00
Where more than two carloads of horses and/or mules are purchased for the purpose of resale	100.00

For the purpose of calculating the amount of tax due under the above schedule, a carload of horses and/or mules shall be 25 and purchases for the preceding license tax year shall be used as a medium for arriving at the amount of tax due for the ensuing year: Provided, however, that if during the current license year horses and/or mules are purchased for the purpose of resale in such quantities that would establish liability for a greater tax than that previously paid, it shall be immediately remitted to the Secretary of Revenue with the license which has already been issued in order that it may be cancelled and a corrected license issued.

(b) Repealed by Session Laws 1973, c. 1195, s. 8.

(c) In addition to the above license, every transient vendor of horses and/or mules who has no permanent or established place of business in this State shall apply for and procure from the Secretary of Revenue a State license for each county in which horses and/or mules are sold and shall pay for such license an annual tax of three hundred dollars (\$300.00).

(d) Every person, firm, or corporation engaged in the business of purchasing for the purpose of resale, either at wholesale or retail, horses and/or mules shall keep a full, true and accurate record of all purchases and sales, including purchase invoices and freight bills covering such purchases and sales of all horses and/or mules until such purchases and sales, including purchase invoices and freight bills, have been checked by a duly authorized agent of the Secretary of Revenue.

(e) Any person, firm, or corporation, required to procure from the Secretary of Revenue a license under this section, who shall purchase and sell or offer for sale by principal or agent any horses and/or mules without first having obtained such license, shall in addition to the other penalties imposed by this Article, be deemed guilty of a misdemeanor and upon conviction shall be fined not to exceed one hundred dollars (\$100.00) and/or imprisoned not less than 30 days within the discretion of the court.

(f) Counties, cities and towns may levy an annual license tax on the business taxed under this section not in excess of twelve dollars and fifty cents (\$12.50). (1939, c. 158, s. 115; 1941, c. 50, s. 3; 1963, c. 1057; 1973, c. 476, s. 193; c. 1195, s. 8.)

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 deleted former subsection (b), which imposed a license tax on dealers selling or reselling horses or mules at public auction.

§ 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. — Every person, firm or corporation engaged in operating a day-care facility as defined by G.S. 110-86 or a child-care arrangement which provides day care for more than five children who are less than 13 years of age by persons other than their parents, grandparents, guardians or full-time custodians, away from their own homes, on a regular basis, for more than four hours per day, and

which receives a payment or fee for any of the children receiving care, wherever operated, and whether or not operated for profit, shall pay an annual license tax for the privilege of operating a day-care facility. This privilege license tax shall be two dollars (\$2.00) for each child for which the day-care facility is licensed by the Child Day-Care Licensing Board under Article 7 of Chapter 110 of the North Carolina General Statutes; provided any day-care operation having a tax-exempt status under the provisions of G.S. 105-125 and G.S. 105-130.11 is also exempt from paying the privilege license tax fees. (1971, c. 803, s. 2; 1973, c. 912.)

Editor's Note. —

The 1973 amendment, effective July 1, 1974, added the proviso at the end of the section.

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. — (a) Every person, firm, or corporation engaged in the business of operating, maintaining, or placing on location anywhere within the State of North Carolina merchandising dispensers in which are kept any article or merchandise to be purchased, or weighing machines, shall be deemed a distributor or operator and shall apply for and procure from the Secretary of Revenue a statewide license to be known as an annual distributor's or operator's license, and shall pay for such license the following tax:

Distributors or operators of five or more drink dispensers other than open cup drink dispensers	\$100.00
Distributors or operators of five or more open cup drink dispensers	50.00
Distributors or operators of five or more cigarette dispensers or dispensers of other tobacco products	50.00
Distributors or operators of five or more food or other merchan-	

dising dispensers selling products for five cents (5¢) or more	\$ 50.00
Distributors or operators of five or more food or other merchandising dispensers selling products for less than five cents (5¢) ..	25.00
Distributors or operators of five or more weighing machines	50.00

A person, firm, or corporation operating and maintaining soft drink dispensers or any other dispensers as set forth above in places of business operated by him or it, and not elsewhere, shall not be considered a distributor or operator of such dispensers for the purpose of this subsection.

Any person, firm, or corporation operating, maintaining, or placing on location fewer than five such machines or dispensers shall not be considered a distributor or operator for the purpose of this subsection. Any person, firm, or corporation operating, maintaining, or placing on location five or more soft drink dispensers shall not be considered a distributor or operator for the purpose of this subsection when all of said dispensers operated, maintained, or placed on location by such person, firm, or corporation are operated, maintained, or placed in a single building, all parts of which are accessible through the same outside entrance, and which building is occupied by a single commercial, manufacturing, or industrial business. Every machine or dispenser placed on location by a licensed operator or distributor as herein defined shall have affixed thereto identification showing the name and address of the owner, operator, or distributor. The operator of any machine or dispenser not so identified shall be liable for additional license tax as levied by subsection (b)(3).

(b) (1) In addition to the above annual distributor's or operator's license, every distributor or operator distributing or operating dispensers or machines designed or used for the dispensing or selling of soft drinks, other than open cup drinks, shall apply for and obtain from the Secretary of Revenue a statewide license for such dispensers or machines so operated, and shall pay therefor an annual soft drink dispenser tax according to the following schedule:

For more than five and not over 50 soft drink dispensers, seven dollars (\$7.00) per machine.	
For 51 and not over 100 soft drink dispensers	\$ 535.00
For 101 and not over 150 soft drink dispensers	892.50
For 151 and not over 200 soft drink dispensers	1,250.00
For each 50 or fraction thereof additional soft drink dispensers over 200	357.50

Where a distributor or operator procures a license under one of the lower tax brackets under the above schedule and adds additional soft drink dispensers during the tax year whereby license becomes due in a higher tax bracket, such licensee shall apply for additional license based upon the difference between the amount paid and the amount due in the higher bracket. Such additional license shall be applied for at the end of the month in which the additional license became due.

(2) In addition to the above annual distributor's or operator's license, every distributor or operator distributing, maintaining, or operating five or more cigarette dispensers, or five or more dispensers of other tobacco products, or five or more open-cup drink dispensers, or five or more food or other merchandising dispensers, or five or more weighing machines shall pay a tax upon the gross receipts obtained from such machines and dispensers at the rate of six tenths of one percent (6/10 of 1%) of gross receipts from cigarette sales, and one tenth of one percent (1/10 of 1%) of gross receipts from all other sales; but the tax paid for the operator's license shall be treated as an advance payment

of the gross receipts tax and shall be applied as a credit upon the gross receipts tax, but only for the same year for which the tax was paid. All persons, firms, or corporations liable for the gross receipts tax levied hereunder shall file quarterly reports with the Secretary of Revenue no later than the fifteenth day of each of the months of January, April, July and October of each year for the three months' period ended on the last day of the month immediately preceding the month in which the report is due. All taxes due for said period shall be paid to the Secretary of Revenue at the time the report is required to be filed.

- (3) Every person, firm, or corporation, operating, maintaining, or placing on location any dispenser or machine described in subsection (a) and not required to procure a distributor's or operator's license under the terms of subsection (a) shall apply for and obtain from the Secretary of Revenue a statewide license for each such dispenser or machine, and shall pay therefor an annual tax as follows:

Cigarette dispensers or dispensers of other tobacco products	\$ 5.00
Drink dispensers having a capacity in excess of 48 bottles or other dispensing units, including those bottles or other dispensing units stored in such machine or dispenser as well as those in the dispensing rack	15.00
Drink dispensers having a capacity not in excess of 48 bottles or other dispensing units, including those bottles or other dispensing units stored in such machine or dispenser as well as those in the dispensing rack	5.00
Food or other merchandising dispensers selling products for five cents (5¢) or more per unit	1.00
Food or other merchandising dispensers selling products for less than five cents (5¢) per unit50
Weighing machines	2.50

Provided that the tax on food or merchandising dispensers imposed by this subdivision (3) shall not apply to dispensers dispensing peanuts only or to dispensers dispensing no commodity other than candy containing fifty percent (50%) or more peanuts, or to penny self-service dispensers or machines twenty percent (20%) of the gross revenue from which inures to the benefit of the visually handicapped.

- (4) The applicant for license under subdivision (3) above shall, in making application for license, specify the serial number of the dispenser, or dispensers and of the weighing machine, or machines, proposed to be distributed or operated, together with a description of the merchandise or service offered for sale thereby, and the amount of deposit required by or in connection with the operation of such dispenser, or dispensers, and such machine or machines. The license shall carry the serial number to correspond with that on the application; provided, that such licenses shall not be transferable to any other dispensers except under the following conditions: If at any time during the license tax year an applicant or license holder shall elect to replace a licensed machine by a new or unlicensed machine, he may notify the Secretary by letter, enclosing the vending license of such machine to be replaced, and giving the serial number of the replacement machine and the serial number of the machine being replaced and certifying that the machine being replaced has been withdrawn from his operation by sale or otherwise, and advising the Secretary of the disposition of the machine being replaced. A new license will thereupon be issued for the replacement machine without the payment of further license tax for the balance of the license tax year in which the replacement occurs. It shall be the duty of the person in whose place of business

the dispenser or machine is operated or located to see that the proper State license is attached in a conspicuous place on the dispenser or machine before its operation shall commence.

(c) If any person, firm, or corporation shall fail, neglect, or refuse to comply with the terms and provisions of this section or shall fail to attach the proper State license to any dispenser or machine as herein provided, the Secretary of Revenue, or his agent or deputies, shall forthwith seize and remove such dispenser or machine, and shall hold the same until the provisions of this section have been complied with. In addition to the above provision the applicant shall be further liable for the additional tax imposed under G.S. 105-112.

(1973, c. 476, s. 193; c. 1200, 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, effective July

1, 1974, rewrote the schedule in subdivision (b)(1).

As the rest of the section was not changed by the amendments, only subsections (a) to (c) are set out.

§ 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.

Tax Levied by Certain Cities on Operation of Pinball Machines. — A city of 10,000 population or over may not levy a license tax

upon the operation of pinball machines at the rate of \$25 upon each pinball machine operated within the city, but may levy a tax not in excess of that levied by the State for each location at which such machines are operated. Opinion of Attorney General to Mr. Henry W. Underhill, 43 N.C.A.G. 413 (1974).

§ 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: Repealed by Session Laws 1973 c. 1200, s. 1, effective July 1, 1974.

§ 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.

§ 105-102.3. Banks. — There is hereby imposed upon every bank or banking association, including each national banking association, that is organized and operating in this State as a commercial bank, an industrial bank, a savings bank, a trust company, or any combination of such facilities or services, and whether such bank or banking association, hereinafter to be referred to as a bank or banks, be organized, under the laws of the United States or the laws of North Carolina, in the corporate form or in some other form of business organization, an annual privilege tax in the amount of thirty dollars (\$30.00) for each one million dollars (\$1,000,000) or fractional part thereof of total assets held as hereinafter provided. The assets upon which the tax is levied shall be determined by averaging the total assets shown in the four quarterly call reports of condition (consolidating domestic subsidiaries) for the preceding calendar year as required by bank regulatory authorities; provided, however, where a new bank commences operations within the State there shall be levied and paid an annual privilege tax of one hundred dollars (\$100.00) until such bank shall have made four quarterly call reports of condition (consolidating domestic subsidiaries) for a single calendar year. The tax imposed hereunder shall be for the privilege of carrying on the businesses herein defined on a statewide basis regardless of the number of places or locations of business within the State. Counties, cities and towns shall not levy a license or privilege tax on the businesses taxed under this section. (1973, c. 1053, s. 7.)

Editor's Note. — Session Laws 1973, c. 1053, ss. 8, 9 and 10, provide:

"Sec. 8. This act shall become effective with respect to taxable years beginning on and after January 1, 1974.

"Sec. 9. Nothing in this act shall be construed to relieve banks from excise tax in 1974 based on their net income earned during the year 1973, nor shall it affect any rights or liabilities of any bank arising prior to the effective date of this act.

"Sec. 10. Banks, or banking associations, trust companies or any combination of such facilities or services that become subject to taxes levied upon tangible personal property by local taxing jurisdictions as a result of this act, shall have 90 days after the effective date of this act to list such tangible personal property with the local taxing jurisdictions at the fair market value of such property."

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).

The second 1973 amendment, effective July 1,

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.

§ 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.

Applied in *Biggers Bros. v. Jones*, 284 N.C. 600, 201 S.E.2d 880 (1974).

Stated in *Richmond Food Stores, Inc. v. Jones*, 22 N.C. App. 272, 206 S.E.2d 346 (1974).

§ 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.

expensive and burdensome than the method allowed residents. *Richmond Food Stores, Inc. v. Jones*, 22 N.C. App. 272, 206 S.E.2d 346 (1974).

The rate differential between residential and nonresidential distributors is clearly arbitrary and discriminatory. *Richmond Food Stores, Inc. v. Jones*, 22 N.C. App. 272, 206 S.E.2d 346 (1974).

No distinction in the relative status, position or class of nonresident distributors from resident distributors can justify the difference in the method of paying the tax. *Richmond Food Stores, Inc. v. Jones*, 22 N.C. App. 272, 206 S.E.2d 346 (1974).

The method of payment required of nonresident distributors is considerably more

Applied in *Biggers Bros. v. Jones*, 284 N.C. 600, 201 S.E.2d 880 (1974).

§ 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.

Implicit Exclusion of Nonresident Distributors from Section. — The express provision in this section that this section applies to any "resident" distributor or wholesale dealer and to any distributor or wholesale dealer "having a commercial domicile in this State" constitutes an implicit provision that it shall not apply to any "nonresident" distributor or wholesale dealer or to any distributor or wholesale dealer "not having a commercial domicile in this State." *Richmond Food Stores, Inc. v. Jones*, 22 N.C. App. 272, 206 S.E.2d 346 (1974).

Such Exclusion Is Unconstitutional. — The implied exclusion of nonresident distributors from this section has the same effect as if it were boldly stated in express terms and is equally noxious to the Constitution of the United States. It is void. *Richmond Food Stores, Inc. v. Jones*, 22 N.C. App. 272, 206 S.E.2d 346 (1974).

This section as written and applied to nonresident soft drink distributors, violates Article I, § 8 of the Constitution of the United States. *Richmond Food Stores, Inc. v. Jones*, 22 N.C. App. 272, 206 S.E.2d 346 (1974).

The rate differential between residential and nonresidential distributors is clearly arbitrary and discriminatory. *Richmond Food Stores, Inc. v. Jones*, 22 N.C. App. 272, 206 S.E.2d 346 (1974).

The method of payment required of nonresident distributors is considerably more expensive and burdensome than the method allowed residents. *Richmond Food Stores, Inc. v. Jones*, 22 N.C. App. 272, 206 S.E.2d 346 (1974).

No distinction in the relative status, position or class of nonresident distributors from resident distributors can justify the difference in the method of paying the tax. *Richmond Food Stores, Inc. v. Jones*, 22 N.C. App. 272, 206 S.E.2d 346 (1974).

Differentiation between Bottled Drinks, etc., and Syrups Is Justified. — Placing bottled drinks and powders in one category and syrups in another for tax purposes is proper and justified. *Biggers Bros. v. Jones*, 284 N.C. 600, 201 S.E.2d 880 (1974).

The alternate method of tax payment provided by this section on bottled drinks and powders dispenses with the printing, purchase, and attachment of 100 stamps for each dollar of tax revenue. In the case of syrups, the purchase and attachment of one stamp will produce \$1.00 in tax revenue. *Biggers Bros. v. Jones*, 284 N.C. 600, 201 S.E.2d 880 (1974).

§ 105-113.56B. Optional method of payment of tax. — Notwithstanding any other provision of this Article, the excise tax levied upon powders, syrups, base products and all other items subject to the Soft Drink Tax Act other than bottled soft drinks, may be paid by distributors and wholesale dealers (both resident and nonresident) in the following manner:

Beginning with sales made on and after 1 July 1975, sales reports shall be made to the Secretary on or before the fifteenth day of each succeeding month, accompanied by payment of the tax due. All persons paying the tax in this optional manner shall be subject to such rules and regulations as the Secretary may prescribe, including the requirement that such persons furnish such bond as the Secretary may deem advisable in such amount and upon such conditions as in the opinion of the Secretary will adequately protect the State in the collection of the tax levied by this Article. (1973, c. 476, s. 193; c. 1383, s. 1.)

Editor's Note. — Session Laws 1973, c. 1383, s. 2, makes the act effective July 1, 1975.

Pursuant to Session Laws 1973, c. 476, s. 193,

effective July 1, 1973, "Secretary" has been substituted for "Commissioner" in the section as enacted by Session Laws 1973, c. 1383, s. 1.

§ 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.

discrimination in regulations where the tax burden falls equally upon all members of the class. *Biggers Bros. v. Jones*, 284 N.C. 600, 201 S.E.2d 880 (1974).

Discrimination in Regulations Not Shown.

— Plaintiff taxpayer cannot make out a case of

§ 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.*Schedule B-C. 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 ($1\frac{1}{2}\text{¢}$) 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 ($1\frac{1}{2}\text{¢}$) 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 ($1\frac{1}{2}$ 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 (47½%) 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.

§ 105-113.93. Tax on spirituous liquors. — (a) In lieu of taxes levied in Schedule E of the Revenue Laws on the sale of spirituous liquors, there is hereby levied a tax of ten percent (10%) on the retail price of spirituous distilled liquors of every kind that is sold in this State, including liquors sold in county or municipal A.B.C. stores. The taxes levied in this section shall be payable monthly, at the same time and in the same manner as taxes levied in Schedule E of the Revenue Laws, and the liability for such tax shall be subject to all the rules, regulations, and penalties provided in Schedule E and in other sections of the Revenue Laws for the payment or collection of taxes.

(b) In addition to the tax provided for in subsection (a) of this section, there is hereby levied an additional tax or surtax of two percent (2%) on the retail price of spirituous distilled liquors of every kind that is sold in this State, including liquors sold in county or municipal A.B.C. stores. (1939, c. 158, s. 519½; 1941, c. 339, s. 4; 1951, c. 1162, s. 2; 1955, c. 1313, s. 6; 1961, c. 826, s. 1; 1971, c. 872, s. 2, 1973, c. 1288, s. 2.)

Editor's Note. — The 1973 amendment, effective Aug. 1, 1974, deleted, in subsection (a),

a proviso to the effect that the amount paid under this section by county or municipal

A.B.C. stores should not exceed one half of their net profits. The amendment also deleted the former second sentence of subsection (b), which

provided: "The proviso contained in subsection (a) of this section shall not apply to the taxes levied under this subsection."

§ 105-113.94. Additional tax on spirituous liquors. — In addition to the taxes provided for in subsection (a) and (b) of G.S. 105-113.93, there is hereby levied an additional tax or surtax upon the retail sale of spirituous distilled liquors of every kind that are sold in this State, including liquors sold in county or municipal A.B.C. stores, at the rate of five cents (5¢) for each five ounces or fractional part thereof until July 1, 1970, and on and after July 1, 1970, at the rate of five cents (5¢) for each three and one-third ounces or fractional part thereof.

The aforesaid additional tax or surtax shall be in addition to the "total prices" of alcoholic beverages established by the State Board of Alcoholic Control pursuant to G.S. 18A-15. The entire proceeds of the additional tax levied in this section shall be payable monthly at the same time, in the same manner and subject to the same rules, regulations, and penalties as apply to the taxes imposed under G.S. 105-113.93. (1969, c. 1075, s. 1; 1971, c. 872, s. 2; 1973, c. 1288, s. 2.)

Editor's Note. — The 1973 amendment, effective Aug. 1, 1974, deleted the former second sentence of the first paragraph, which

provided: "The proviso contained in subsection (a) of G.S. 105-113.93 shall not apply to the taxes levied under this section."

§ 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.

§ 105-114. Nature of taxes; definitions. — The taxes levied in this Article upon persons and partnerships are for the privilege of engaging in business or doing the act named. The taxes levied in this Article upon corporations are privilege or excise taxes levied upon:

- (1) Corporations organized under the laws of this State for the existence of the corporate rights and privileges granted by their charters, and the enjoyment, under the protection of the laws of this State, of the powers, rights, privileges and immunities derived from the State by the form of such existence; and
- (2) Corporations not organized under the laws of this State for doing business in this State and for the benefit and protection which such corporations receive from the government and laws of this State in doing business in this State.

The term "corporation" as used in this Article shall, unless the context clearly requires another interpretation, mean and include not only corporations but also associations or joint-stock companies and every other form of organization for pecuniary gain, having capital stock represented by shares, whether with or without par value, and having privileges not possessed by individuals or partnerships; and whether organized under, or without, statutory authority. The term "corporation" as used in this Article shall also mean and include any electric membership corporation organized under Chapter 117, and any electric membership corporation, whether or not organized under the laws of this State, doing business within the State.

When the term "doing business" is used in this Article, it shall mean and include each and every act, power or privilege exercised or enjoyed in this State, as an incident to, or by virtue of the powers and privileges acquired by the nature of such organizations whether the form of existence be corporate, associate, joint-stock company or common-law trust.

If the corporation is organized under the laws of this State, the payment of the taxes levied by this Article shall be a condition precedent to the right to continue in such form of organization; and if the corporation is not organized under the laws of this State, payment of said taxes shall be a condition precedent to the right to continue to engage in doing business in this State. The taxes levied in this Article or schedule shall be for the fiscal year of the State in which said taxes become due; except, that the taxes levied in G.S. 105-122 and 105-123 shall be for the income year of the corporation in which such taxes become due. For purposes of this Article, the words "income year" shall mean an income year as defined in G.S. 105-130.2(5). (1939, c. 158, s. 201; 1943, c. 400, s. 3; 1945, c. 708, s. 3; 1965, c. 287, s. 16; 1967, c. 286; 1969, c. 541, s. 6; 1973, c. 1287, s. 3.)

Editor's Note. —

The 1973 amendment, effective for taxable years beginning on and after Jan. 1, 1974, substituted "G.S. 105-130.2(5)" for "G.S. 105-135(9)" at the end of the section.

§ 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).

As the rest of the section was not changed by the amendments, only the introductory language and subdivisions (1) through (4) are set out.

§ 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 or nonprofit corporation. From the total gross receipts within this State of an electric membership or nonprofit 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) Repealed by Session Laws 1973, c. 1287, s. 3.

(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 immediately 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; c. 1287, s. 3; c. 1349.)

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).

The third 1973 amendment, effective for taxable years beginning on and after Jan. 1, 1974, repealed subsection (d), which provided

for an additional tax and interest to be paid by any person failing to file the report and pay the tax imposed by this section.

The fourth 1973 amendment inserted "or nonprofit" preceding "corporation" near the end of the first sentence and near the middle of the second sentence of subsection (b).

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. — (a) Every person, firm or corporation, domestic or foreign, engaged in operating the apparatus necessary for communication by telegraph between points within this State, shall annually, on or before the first day of August, make and deliver to the Secretary of Revenue, upon such forms and in such manner 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 from business within and without this State for the entire calendar year next preceding due date on such return.
- (2) The total gross receipts for the same period from business within this State.

(b) On every such person, firm or corporation there is hereby levied an annual franchise or privilege tax of six percent (6%) of the total gross receipts derived from business within this State. Such gross receipts shall include all charges for services, all rentals, fees, and all other similar charges from business which both originates and terminates in the State of North Carolina, whether such business in the course of transmission goes outside this State or not. The tax herein levied 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.

(d) Repealed by Session Laws 1973, c. 1287, s. 3.

(1973, c. 476, s. 193; c. 1287, 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 for taxable years beginning on and after Jan. 1,

1974, repealed subsection (d), providing for an additional tax and interest to be paid by any person failing to file the report and pay the tax imposed by this section.

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

§ 105-120. Franchise or privilege tax on telephone companies. — (a) Every person, firm, or corporation, domestic or foreign, owning and/or operating a telephone business for the transmission of messages and/or conversations to, from, through, in or across this State, 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 a quarterly return, verified by the affirmation of the officer or authorized agent making such return, showing the total amount of gross receipts of such telephone company for the three months ending the last day of the month immediately preceding such return, and pay, at the time of making such return, the franchise, license or privilege tax herein imposed.

(b) An annual franchise or privilege tax of six percent (6%), payable quarterly, on the gross receipts of such telephone company, is herein imposed for the privilege of engaging in such business within this State. Such gross receipts shall include all rentals, other similar charges, and all tolls received from business which both originates and terminates in the State of North Carolina, whether such business in the course of transmission goes outside of this State or not: Provided, where any city or town in the State has heretofore sold at public auction to the highest bidder the right, license and/or privilege of engaging in such business in such city or town, based upon a percentage of gross revenue of such telephone company, and is now collecting and receiving therefor a revenue tax not exceeding one percent of such revenues, the amount so paid by such operating company, upon being certified by the treasurer of such municipality to the Secretary of Revenue, shall be from time to time credited by the Secretary of Revenue to such telephone company upon the tax imposed by the State under this section of this Chapter.

(c) Repealed by Session Laws 1973, c. 1287, s. 3.

(d) The Secretary of Revenue shall ascertain the total gross receipts derived from local business conducted within each municipality in this State by persons, firms or corporations taxed under this section, and out of the tax levied by this section, an amount equal to a tax of three percent (3%) of the gross receipts from local business conducted within any municipality shall be distributed to such municipality. When a person, firm or corporation taxed under this section properly receives a credit on said taxes under the proviso in subsection (b) because of payments made to a municipality, such municipality's distributive share of the taxes levied by this section shall be reduced by the amount of the

credit properly received by said person, firm or corporation. If the credit received under the proviso is greater than the municipality's distributive share of the taxes levied under this section, no distribution to such municipality shall be made.

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.

In determining what constitutes local business conducted within a municipality for the purposes of this subsection, all business originating within a municipality, except long-distance calls, shall be construed as local business.

The Department of Revenue is hereby authorized and empowered to require any and all persons, firms or corporations taxed under this section to file additional reports disclosing the gross receipts derived from local business as herein defined and the gross receipts from long-distance business.

If the records of the corporation taxed under this section do not readily disclose allocation to municipalities of revenues from local business as above defined, the Secretary of Revenue shall prescribe some practicable method of allocating such local revenues.

(e) Nothing in this section shall be construed to authorize the imposition of any tax upon interstate commerce.

(f) Counties, cities and towns shall not levy any franchise, license, or privilege tax on the business taxed under this section. (1939, c. 158, s. 207; 1949, c. 392, s. 2; 1959, c. 1259, s. 3; 1967, c. 1272, ss. 2, 4; 1971, c. 298, s. 2; 1973, c. 476, s. 193; c. 1287, 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 for taxable years beginning on and after Jan. 1,

1974, repealed subsection (c), providing for an additional tax and interest to be paid by any person failing to make the return or pay the tax imposed by this section.

§ 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, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary 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 Department of Natural and Economic Resources certifying that said Environmental Management Commission 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 Environmental Management Commission with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission 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 Department of Natural and Economic Resources certifying that said Department 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 Environmental Management Commission with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission 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.

(e) Any corporation which changes its income year, and files a "short period" income tax return pursuant to G.S. 105-130.15 shall file a franchise tax return in accordance with the provisions of this section in the manner and as of the date specified in subsection (a) of this section. Such corporation shall be entitled to deduct from the total franchise tax computed (on an annual basis) on such return the amount of franchise tax previously paid which is applicable to the period subsequent to the beginning of the new income year.

(1973, c. 476, s. 193; c. 695, s. 17; c. 1262, s. 23; c. 1287, 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 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).

The third 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Board of Water and Air Resources" and "Environmental Management Commission" for "Board" near the middle of the second sentence of the first

paragraph of subsection (b) and substituted "Environmental Management Commission" for "Board of Water and Air Resources" near the end of the second sentence of the first paragraph of subsection (b). The amendment also substituted, in subsection (d), "Department of Natural and Economic Resources" and "Department" for "Board of Water and Air Resources" and "Board" near the middle of the next-to-last sentence and "Environmental Management Commission" for

"Board" and for "Board of Water and Air Resources" near the end of the next-to-last sentence.

The fourth 1973 amendment, effective for taxable years beginning on and after July 1, 1974, substituted "G.S. 105-130.15" for "G.S. 105-142" in the first sentence of subsection (e).

As subsections (f) 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, § 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

§ 105-125. Corporations not mentioned. — None of the taxes levied in this Article shall apply to charitable, religious, fraternal, benevolent, scientific or educational corporations, not operating for a profit; nor to insurance companies; nor to mutual ditch or irrigation associations, mutual or cooperative telephone associations or companies, mutual canning associations, cooperative breeding associations, or like organizations or associations of a purely local character deriving receipts solely from assessments, dues, or fees collected from members for the sole purpose of meeting expenses; nor to cooperative marketing associations operating solely for the purpose of marketing the products of members or other farmers, which operations may include activities which are directly related to such marketing activities, and turning back to them the proceeds of sales, less the necessary operating expenses of the association, including interest and dividends on capital stock on the basis of the quantity of product furnished by them; nor to production credit associations organized under the act of Congress known as the Farm Credit Act of 1933; nor to business leagues, boards of trade, clubs organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, civic leagues operated exclusively for the promotion of social welfare, or chambers of commerce and merchants' associations not organized for profit, and no part of the net earnings of which inures to the benefit of any private stockholder, individual or other corporations:

Provided, that each such corporation must, upon request by the Secretary of Revenue, establish in writing its claim for exemption from said provisions. The provisions of G.S. 105-122 and G.S. 105-123 shall apply to electric light, power, gas, water, Pullman, sleeping and dining car, express, telegraph, telephone, motor bus, and truck corporations to the extent and only to the extent that the franchise taxes levied in G.S. 105-122 and G.S. 105-123 exceed the franchise taxes levied in other sections of this Article or schedule; except that the provisions of G.S. 105-122 and G.S. 105-123 shall not apply to businesses taxed under G.S. 105-120.1. The exemptions in this section shall apply only to those corporations specially mentioned, and no other.

Provided, that any corporation doing business in North Carolina which in the opinion of the Secretary of Revenue of North Carolina, qualifies as a "regulated investment company" under the provisions of United States Code Annotated Title 26, section 851, or as a "real estate investment trust" under the provisions of United States Code Annotated Title 26, section 856, and which files with the North Carolina Department of Revenue its election to be treated as a "regulated investment company" or as a "real estate investment trust," shall in determining its basis for franchise tax be allowed to deduct the aggregate market value of its investments in the stocks, bonds, debentures, or other securities or evidences

of debt of other corporations, partnerships, individuals, municipalities, governmental agencies or governments. (1939, c. 158, s. 213; 1951, c. 937, s. 3; 1955, c. 1313, s. 1; 1957, c. 1340, s. 3; 1963, c. 601, s. 3; c. 1169, s. 1; 1967, c. 1110, s. 2; 1971, c. 820, s. 3; c. 833, s. 1; 1973, c. 476, s. 193; c. 1053, s. 2; c. 1287, 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 for taxable years beginning on and after Jan. 1, 1974, deleted "banking and" preceding "insurance companies" near the beginning of the first paragraph.

The third 1973 amendment, effective for taxable years beginning on and after Jan. 1, 1974, inserted "partnerships, individuals," near the end of the last paragraph.

Session Laws 1973, c. 1053, ss. 9 and 10, provide:

"Sec. 9. Nothing in this act shall be construed to relieve banks from excise tax in 1974 based on their net income earned during the year 1973, nor shall it affect any rights or liabilities of any bank arising prior to the effective date of this act.

"Sec. 10. Banks, or banking associations, trust companies or any combination of such facilities or services that become subject to taxes levied upon tangible personal property by local taxing jurisdictions as a result of this act, shall have 90 days after the effective date of this act to list such tangible personal property with the local taxing jurisdictions at the fair market value of such property."

§ 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. — Every corporation doing business in this State shall pay annually an income tax equivalent to six percent (6%) of its net income or the portion thereof allocated and apportioned to this State. 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 January 1, 1974, subject to the adjustments provided in G.S. 105-130.5.

If the entire business of the corporation is done within this State or if the corporation is not taxable in another state within the meaning of subsection (b) of G.S. 105-130.4, the tax shall be measured by the entire net income of the corporation for the income year.

If the business of the corporation is taxable both within and without this State, its entire net income or net loss shall be allocated and apportioned in accordance with the provisions of G.S. 105-130.4. (1939, c. 158, s. 311; 1941, c. 50, s. 5; 1943, c. 400, s. 4; 1945, c. 752, s. 3; 1953, c. 1302, s. 4; 1955, c. 1350, s. 18; 1957, c. 1340, s. 4; 1959, c. 1259, s. 4; 1963, c. 1169, s. 2; c. 1186; 1967, c. 1110, s. 3; 1973, c. 1287, s. 4.)

Editor's Note. — The 1973 amendment, effective for taxable years beginning on and after Jan. 1, 1974, substituted "January 1, 1974," for "on the effective date of this Division" near the end of the first paragraph.

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.

— (a) As used in this section, unless the context otherwise requires:

- (1) "Business income" means income arising from transactions and activity in the regular course of the corporation's trade or business and includes income from tangible and intangible property if the acquisition, management, and/or disposition of the property constitute integral parts of the corporation's regular trade or business operations.
- (2) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.
- (3) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

- (4) "Excluded corporation" means any corporation engaged in business as a building or construction contractor, a securities dealer, a loan company or a corporation which receives more than fifty percent (50%) of its ordinary gross income from investments in and/or dealing in intangible property.
- (5) "Nonbusiness income" means all income other than business income.
- (6) "Public utility" means any corporation which is subject to control of North Carolina Utilities Commission and/or Federal Communications Commission, Interstate Commerce Commission, Federal Power Commission and Federal Aviation Agency and which owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam, oil, oil products, or gas.
- (7) "Sales" means all gross receipts of the corporation except receipts from any casual sale of property and except receipts allocated under subsections (c) through (h) of this section.
- (8) "Casual sale of property" means the sale of any property which was not purchased, produced or acquired primarily for sale in the corporation's regular trade or business.
- (9) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.
- (j) (1) The property factor is a fraction, the numerator of which is the average value of the corporation's real and tangible personal property owned or rented and used in this State during the income year and the denominator of which is the average value of all the corporation's real and tangible personal property owned or rented and used during the income year.
- (2) Property owned by the corporation is valued at its original cost. Property rented by the corporation is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the corporation less any annual rental rate received by the corporation from subrentals except that subrentals shall not be deducted when they constitute business income. Any property under construction and any property the income from which constitutes nonbusiness income shall be excluded in the computation of the property factor.
- (3) The average value of property shall be determined by averaging the values at the beginning and end of the income year, but in all cases the Secretary of Revenue may require the averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property. A corporation which ceases its operations in this State before the end of its income year because of its intention to dissolve or to relinquish its certificate of authority, or because of a merger or consolidation, or for any other reason whatsoever shall use the real estate and tangible personal property values as of the first day of the income year and the last day of its operations in this State in determining the average value of property, but the Secretary may require averaging of monthly or other

periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property.

(m) All business income of a railroad company shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the "railway operating revenue" from business done within this State and the denominator of which is the "total railway operating revenue" from all business done by the company as shown by its records kept in accordance with the standard classification of accounts prescribed by the Interstate Commerce Commission.

"Railway operating revenue" from business done within this State shall mean "railway operating revenue" from business wholly within this State, plus the equal mileage proportion within this State of each item of "railway operating revenue" received from the interstate business of the company. "Equal mileage proportion" shall mean the proportion which the distance of movement of property and passengers over lines in this State bears to the total distance of movement of property and passengers over lines of the company receiving such revenue. "Interstate business" shall mean "railway operating revenue" from the interstate transportation of persons or property into, out of, or through this State. If the Secretary of Revenue shall find, with respect to any particular company, that its accounting records are not kept so as to reflect with exact accuracy such division of revenue by State lines as to each transaction involving interstate revenue, the Secretary of Revenue may adopt such regulations, based upon averages, as will approximate with reasonable accuracy the proportion of interstate revenue actually earned upon lines in this State. Provided, that where a railroad is being operated by a partnership which is treated as a corporation for income tax purposes and pays a net income tax to this State, or if located in another state would be so treated and so pay as if located in this State, each partner's share of the net profits shall be considered as dividends paid by a corporation for purposes of this Division and shall be so treated for inclusion in gross income, deductibility, and separate allocation of dividend income.

(s) (1) If any corporation believes that the method of allocation or apportionment 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 income than is reasonably attributable to business or earnings 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 decisions thereon shall be made by a majority vote of the augmented Board.

(2) 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 prescribed by this section the income

- 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 income and earnings attributable to this State.
- (3) If the corporation shall show that any other method of allocation than the applicable allocation formula prescribed by this section reflects more clearly the income 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 corporation believes will more nearly reflect its income from business within this State. If the Board shall conclude that the allocation formula prescribed by this section allocates to this State a greater portion of the net income of the corporation than is reasonably attributable to business or earnings within this State, it shall determine the allocable net income by such other method as it shall find best calculated to assign to this State for taxation the portion of the corporation's net income reasonably attributable to its business or earnings within this State.
- (4) There shall be a presumption that the appropriate allocation formula reasonably attributes to this State the portion of the corporation's income earned 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 corporation is entitled thereto. No corporation shall use any alternative formula or method other than the applicable allocation formula provided by statute in making a report or return of its income 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 permission of the Board shall not be a lawful return.

When the Board determines, pursuant to the provisions of this subsection, that an alternative formula or other method more accurately reflects the income allocable to North Carolina and renders its decision with regard thereto, the corporation shall allocate its net income 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.

- (5) 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 future income to North Carolina than will be reasonably attributable to its proposed business or contemplated earnings within the State. Upon a proper showing in accordance with the procedure described above for determinations by the Board, the Board may authorize such corporation to allocate income from its future business to North Carolina on the basis prescribed by the Board under the provisions of this section for such future years if 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 operation presented by the corporation to the Board.

- (6) When the Secretary of Revenue asserts liability under the formula adjustment decision of the Tax Review Board, an aggrieved corporation may pay the tax and bring a civil action for recovery under the provisions of Article 9. (1939, c. 158, s. 311; 1941, c. 50, s. 5; 1943, c. 400, s. 4; 1945, c. 752, s. 3; 1953, c. 1302, s. 4; 1955, c. 1350, s. 18; 1957, c. 1340, s. 4; 1959, c. 1259, s. 4; 1963, c. 1169, s. 2; c. 1186; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 1287, s. 4.)

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 Jan. 1, 1974, substituted "engaged in a business as a building or construction contractor, a securities dealer, a loan company or a corporation" for "engaged in the business of dealing in securities, any loan company, or any other corporation," in subdivision (a)(4). In subsection (j), the amendment added "except

that subrentals shall not be deducted when they constitute business income" at the end of the third sentence of subdivision (2) and deleted "or any property which had not been actually used or operated in the corporation's business during the income year" following "construction" in the last sentence of subdivision (2).

As the rest of the section was not changed by the amendments, only subsections (a), (j), (m) and (s) are set out.

Cited in *In re Dickinson*, 281 N.C. 552, 189 S.E.2d 141 (1972).

§ 105-130.5. Adjustments to federal taxable income in determining State net income. — (a) The following additions to federal taxable income shall be made in determining State net income:

- (1) Taxes based on or measured by net income by whatever name called and excess profits taxes;
- (2) Interest paid in connection with income exempt from taxation under this Division;
- (3) The contributions deduction allowed by the Internal Revenue Code;
- (4) Interest income earned on bonds and other obligations of other states or their political subdivisions, less allowable amortization on any bond acquired on or after January 1, 1963;
- (5) The amount by which gains have been offset by the capital loss carry-over allowed under the Internal Revenue Code. All gains recognized on the sale or other disposition of assets must be included in determining State net income or loss in the year of disposition;
- (6) The net operating loss deduction allowed by the Internal Revenue Code; and
- (7) Special deductions allowable under sections 241 to 247, inclusive, of the Internal Revenue Code.
- (8) Depreciation or amortization claimed for federal income tax purposes in connection with facilities for the handicapped as such facilities are defined in subdivision (10) of subsection (b) of this section, provided the cost of such facilities has been previously deducted for State income tax purposes.
- (9) Payments to or charges by a parent, subsidiary or affiliated corporation in excess of fair compensation in all intercompany transactions of any kind whatsoever pursuant to the Revenue Laws of this State.

(b) The following deductions from federal taxable income shall be made in determining State net income:

- (1) Interest upon the obligations of the United States or its possessions, to the extent included in federal taxable income: Provided, interest upon the obligations of the United States shall not be an allowable deduction

unless interest upon obligations of the State of North Carolina or any of its political subdivisions is exempt from income taxes imposed by the United States;

- (2) Payments received from a parent, subsidiary or affiliated corporation in excess of fair compensation in intercompany transactions which in the determination of the net income or net loss of such corporation were not allowed as a deduction under the Revenue Laws of this State;
- (3) The deductible portion of dividends from stock issued by any corporation as provided under G.S. 105-130.7;
- (4) Losses in the nature of net economic losses sustained by the corporation in any or all of the five preceding years pursuant to the provisions of G.S. 105-130.8. Provided, a corporation required to allocate and apportion its net income under the provisions of G.S. 105-130.4 shall deduct its allocable net economic loss only from total income allocable to this State pursuant to the provisions of G.S. 105-130.8;
- (5) Contributions or gifts made by any corporation within the income year to the extent provided under G.S. 105-130.9;
- (6) Amortization in excess of depreciation allowed for federal income tax purposes on the cost of any sewage or waste treatment plant as provided in G.S. 105-130.10;
- (7) Depreciation of emergency facilities acquired prior to January 1, 1955. Any corporation shall be permitted to depreciate any emergency facility, as such is defined in section 168 of the Internal Revenue Code, over its useful life, provided such facility was acquired prior to January 1, 1955, and no amortization has been claimed on such facility for State income tax purposes; and
- (8) The amount of losses realized on the sale or other disposition of assets not allowed under section 1211 (a) of the Internal Revenue Code. All losses recognized on the sale or other disposition of assets must be included in determining State net income or loss in the year of disposition.
- (9) With respect to a shareholder of a regulated investment company, the portion of undistributed capital gains of such regulated investment company included in such shareholder's federal taxable income and on which the federal tax paid by the regulated investment company is allowed as a credit or refund to the shareholder under section 852 of the Internal Revenue Code.
- (10) The entire amount of the cost of renovation to an existing building or facility owned by a taxpayer in order to permit physically handicapped persons to enter and leave such building or facility or to have effective use of the accommodations and facilities therein. The deduction shall be taken in the year the renovation is completed, and shall be made in lieu of any depreciation or amortization of the cost of such renovation. "Building or facility" shall mean only a building or facility, or such part thereof as is intended to be used, and is actually used, by the general public. If such building or facility is owned by more than one owner, the cost of renovation shall be apportioned among or between the owners as their interests may appear. The minimum renovation required in order to entitle a taxpayer to claim the deduction herein provided shall include one or more of the following: the provision of ground level or ramped entrances, free movement between public use areas, and washroom and toilet facilities accessible to and usable by physically handicapped persons.

(e) Notwithstanding any other provision of this section, any recapture of depreciation required under the Internal Revenue Code must be in-

cluded in a corporation's State net income to the extent required for federal income tax purposes. (1967, c. 1110, s. 3; 1969, cc. 1113, 1124; 1971, c. 820, s. 1; c. 1206, s. 1; 1973, c. 1287, s. 4.)

Editor's Note. —

The 1973 amendment, effective for taxable years beginning on and after Jan. 1, 1974, deleted "Interest deemed excessive under G. S. 105-130.6 and" at the beginning of subdivision

(2) of subsection (a), added subdivision (9) of subsection (a), rewrote subdivision (2) of subsection (b) and added subsection (e).

As subsections (c) and (d) were not changed by the amendment, they are not set out.

§ 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. — Dividends from stock issued by any corporation shall be deducted to the extent herein provided.

- (1) As soon as may be practicable after the close of each calendar year, the Secretary of Revenue shall determine from each corporate income tax return filed with him during such year, and due from the filing corporation during such year, the proportion of the entire net income or loss of the corporation allocable to this State under the provisions of G.S. 105-130.4, except as provided herein; if a corporation has a net income in North Carolina and a net loss from all sources wherever located, or if a corporation has a net loss in North Carolina and a net income from all sources wherever located, the Secretary shall require the use of the allocation fraction determined under the provisions of G.S. 105-130.4. A corporation which is a stockholder in any such corporation shall be allowed to deduct the same proportion of the dividends received by it from such corporation during its income year ending at or after the end of such calendar year. No deduction shall be allowed for any part of any dividend received by such corporation from any corporation which filed no income tax return with the Secretary of Revenue during such calendar year.
- (3) Repealed by Session Laws 1973, c. 1053, s. 3.
- (6) Notwithstanding any other provisions of this Division, a corporation which is a shareholder in a holding company having its commercial domicile in North Carolina shall be allowed as a deduction an amount equal to those dividends received by it from such holding company, multiplied by a fraction, the numerator of which shall be the dividends received by such holding company attributable to North Carolina, and the denominator of which shall be the gross dividends received by such holding company. For purposes of this section, "dividends attributable to North Carolina" shall be the amount of dividend income received by the holding company on stock owned in other corporations equal to the total of the proportion of each of such corporation's dividends as shall be determined deductible by the Secretary under subdivisions (1) through (4) of this section; provided that a holding company having its commercial domicile in North Carolina which owns more than fifty percent (50%) of the outstanding voting stock of one or more holding companies as defined in this subdivision shall be permitted a deduction for all dividends received from such holding companies and all other corporations in which it owns more than fifty percent (50%) of the outstanding voting stock. A shareholder of such a holding company

shall determine the deductible portion of its dividends received from such holding company as hereinabove provided except that the amounts received from a subsidiary holding company as "dividends attributable to North Carolina" shall be determined as though the subsidiary corporation of the subsidiary holding company had paid the dividends directly to the parent holding company.

For the purposes of this section and unless the context clearly requires a different meaning, "holding company" shall mean any corporation having its commercial domicile in North Carolina whose ordinary gross income consists of fifty percent (50%) or more of dividend income received from corporations in which it owns more than fifty percent (50%) of the outstanding voting stock, and "subsidiary" shall mean any corporation, more than fifty percent (50%) of whose outstanding voting stock is owned by another corporation. (1939, c. 158, s. 322; 1941, c. 50, s. 5; 1943, c. 400, s. 4; c. 668; 1945, c. 708, s. 4; c. 752, s. 3; 1947, c. 501, s. 4; c. 894; 1949, c. 392, s. 3; 1951, c. 643, s. 4; c. 937, s. 4; 1953, c. 1031, s. 1; c. 1302, s. 4; 1955, c. 1100, s. 1; c. 1331, s. 1; cc. 1332, 1342; c. 1343, s. 1; 1957, c. 1340, ss. 4, 8; 1959, c. 1259, s. 4; 1961, c. 201, s. 1; c. 1148; 1963, c. 1169, s. 2; 1965, c. 1048; 1967, c. 1110, s. 3; 1969, c. 1124; 1973, c. 476, s. 193; c. 1053, 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 for taxable years beginning on and after Jan. 1, 1974, repealed subdivision (3), providing for deduction of dividends received by a corporation from stock in a bank or trust company taxed under Article 8C of this Chapter.

Session Laws 1973, c. 1053, ss. 9 and 10, provide:

"Sec. 9. Nothing in this act shall be construed to relieve banks from excise tax in 1974 based

on their net income earned during the year 1973, nor shall it affect any rights or liabilities of any bank arising prior to the effective date of this act.

"Sec. 10. Banks, or banking associations, trust companies or any combination of such facilities or services that become subject to taxes levied upon tangible personal property by local taxing jurisdictions as a result of this act, shall have 90 days after the effective date of this act to list such tangible personal property with the local taxing jurisdictions at the fair market value of such property."

As the other subdivisions were not changed by the amendments, they are not set out.

§ 105-130.9. Contributions. — Contributions shall be allowed as a deduction to the extent and in the manner provided as follows:

- (1) Charitable contributions as defined in section 170(c) of the Internal Revenue Code, exclusive of contributions allowed in subdivision (2) of this section, shall be allowed as a deduction to the extent provided herein. The amount allowed as a deduction hereunder shall be limited to an amount not in excess of five percent (5%) of the corporation's net income as computed without the benefit of this subdivision or subdivision (2) of this section. Provided, that a carry-over of contributions shall not be allowed and that contributions made to North Carolina donees by corporations allocating a part of their total net income outside this State shall not be allowed under this subdivision, but shall be allowed under subdivision (3) of this section.

(1973, c. 1287, s. 4.)

Editor's Note. —

The 1973 amendment, effective for taxable years beginning on and after Jan. 1, 1974, rewrote subdivision (1).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (1) are set out.

§ 105-130.10. Amortization of air-cleaning devices and waste treatment facilities. — In lieu of any depreciation allowance, at the option of the corporation, a deduction shall be allowed for the amortization of the cost of any air-cleaning device, 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, industrial waste, or other polluting materials or substances into the outdoor atmosphere or streams, lakes, rivers, or coastal waters, based on a period of 60 months. The deduction provided herein shall apply also to the facilities or equipment of private or public utilities built and installed primarily for the purpose of providing sewer service to residential and outlying areas. The deduction provided for in this section shall be allowed by the Secretary of Revenue only upon the condition that the corporation claiming such allowance shall furnish to the Secretary a certificate from the Department of Natural and Economic Resources certifying that the Environmental Management Commission has found as a fact that the air-cleaning device, waste treatment plant, or other pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such construction, plant or equipment complies with the requirements of said Environmental Management Commission with respect to such devices, construction, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission, 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 deduction herein provided for shall also be allowed as to plants or equipment constructed or installed after January 1, 1955, but only with respect to the undepreciated value of such plants or equipment. (1939, c. 158, s. 322; 1941, c. 50, s. 5; 1943, c. 400, s. 4; c. 668; 1945, c. 708, s. 4; c. 752, s. 3; 1947, c. 501, s. 4; c. 894; 1949, c. 392, s. 3; 1951, c. 643, s. 4; c. 937, s. 4; 1953, c. 1031, s. 1; c. 1302, s. 4; 1955, c. 1100, s. 1; c. 1331, s. 1; cc. 1332, 1342; c. 1343, s. 1; 1957, c. 1340, ss. 4, 8; 1959, c. 1259, s. 4; 1961, c. 201, s. 1; c. 1148; 1963, c. 1169, s. 2; 1965, c. 1048; 1967, c. 1110, s. 3; 1969, c. 817; 1973, c. 476, s. 193; c. 1262, s. 23.)

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, 1974, substituted "Department of Natural and Economic Resources" for "Board of Water and Air Resources" near the beginning of the

third sentence, substituted "the Environmental Management Commission" for "said Board" near the beginning of the third sentence, and substituted "Environmental Management Commission" for "Board" near the middle of the third sentence and for "Board of Water and Air Resources" near the end of the third sentence.

§ 105-130.11. Conditional and other exemptions. — (a) The following organizations shall be exempt from taxation under this Division except as provided in subsection (b) of this section:

- (1) Fraternal beneficiary societies, orders or associations
 - a. Operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and
 - b. Providing for the payment of life, sick, accident, or other benefits to the members of such society, order or association, or their dependents;
- (2) Every and building and loan associations, and savings and loan associations subject to capital stock tax and/or excise tax under Article 8D of this Chapter; and any cooperative banks without capital stock

organized and operated for mutual purposes and without profit, and electric and telephone membership corporations organized under Chapter 117 of the General Statutes;

- (3) Cemetery corporations and corporations organized for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual;
- (4) Business leagues, chambers of commerce, merchants' associations, or boards of trade not organized for profit, and no part of the net earnings of which inures to the benefit of any private stockholder or individual;
- (5) Civic leagues or organizations not organized for profit, but operated exclusively for the promotion of social welfare;
- (6) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or member;
- (7) Farmers' or other mutual hail, cyclone, or fire insurance companies, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations of a purely local character the income of which consists solely of assessments, dues and fees collected from members for the sole purpose of meeting expenses;
- (8) Farmers', fruit growers', or like organizations organized and operated as sales agents for the purpose of marketing the products of members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of product furnished by them;
- (9) Mutual associations formed under G.S. 54-111 through 54-128 to conduct agricultural business on the mutual plan and marketing associations organized under G.S. 54-129 through 54-158.

Nothing in this subdivision shall be construed to exempt any cooperative, mutual association or other organization from an income tax on net income which has not been refunded to patrons on a patronage basis and distributed either in cash, stock, certificates, or in some other manner that discloses to each patron the amount of his patronage refund. Provided, in arriving at net income for purposes of this subdivision, no deduction shall be allowed for dividends paid on capital stock. Patronage refunds made after the close of the taxable year and on or before the fifteenth day of the ninth month following the close of such year shall be considered as made on the last day of such taxable year to the extent the allocations are attributable to income derived before the close of such year; provided, that no stabilization or marketing organization, which handles agricultural products for sale for producers on a pool basis, shall be deemed to have realized any net income or profit in the disposition of a pool or any part of a pool until all of the products in that pool shall have been sold and the pool shall have been closed; provided, further, that a pool shall not be deemed closed until the expiration of at least 90 days after the sale of the last remaining product in that pool. Such cooperatives and other organizations shall file an annual information return with the Secretary of Revenue on forms to be furnished by the Secretary and shall include therein the names and addresses of all persons, patrons and/or shareholders, whose patronage refunds amount to ten dollars (\$10.00) or more; and

- (10) Insurance companies paying the tax on gross premiums as specified in G.S. 105-228.5.

(1973, c. 476, s. 193; c. 1053, s. 4.)

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 or after Jan. 1, 1974, deleted, following "Every" at the beginning of subdivision (a)(2), "bank or banking association, trust company or any combination of such facilities or services subject to taxation under Article 8C of this Chapter". The language "Every and building and loan associations," at the beginning of subdivision (a)(2) as set out above, results from a literal compliance with the direction of the 1973 amendatory act.

Session Laws 1973, c. 1053, ss. 9 and 10, provide:

"Sec. 9. Nothing in this act shall be construed to relieve banks from excise tax in 1974 based on their net income earned during the year 1973, nor shall it affect any rights or liabilities of any bank arising prior to the effective date of this act.

"Sec. 10. Banks, or banking associations, trust companies or any combination of such facilities or services that become subject to taxes levied upon tangible personal property by local taxing jurisdictions as a result of this act, shall have 90 days after the effective date of this act to list such tangible personal property with the local taxing jurisdictions at the fair market value of such property."

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

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. — (a) Returns shall be in such form as the Secretary of Revenue may from time to time prescribe, and shall be filed with the Secretary at his office, or at any branch office which he may establish. The Secretary shall cause to be prepared blank forms for the said returns, and shall cause them to be distributed throughout the State, and shall furnish them upon request; but failure to receive or secure the form shall not relieve any corporation from the obligation of making any return herein required.

(b) Except as otherwise provided in this section, the return of a corporation shall be filed on or before the fifteenth day of the third month following the close of its income year. An income year ending on any day other than the last day of the month shall be deemed to end on the last day of the calendar month ending nearest to the last day of a taxpayer's actual income year.

(d) In case of sickness, absence, or other disability or whenever in his

judgment good cause exists, the Secretary may allow further time for filing returns.

(1973, c. 476, s. 193; c. 1287, s. 4.)

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 Jan. 1, 1974, rewrote subsection (b).

Only the subsections changed by the amendments are set out.

§ 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.

§ 105-130.22. Tax credit for construction of dwelling units for handicapped persons. — There shall be allowed to corporate owners of multifamily rental units located in North Carolina as a credit against the tax imposed by this Division, an amount equal to five hundred fifty dollars (\$550.00) for each dwelling unit constructed by such corporate owner which conforms to the requirements of section (IIX) of the North Carolina Building Code for the taxable year within which the construction of such dwelling unit is completed; provided, that credit will be allowed under this section only for the number of such dwelling units completed during the taxable year which does not exceed five percent (5%) of the total of such units completed during the taxable year; provided further, that if the credit allowed by this section exceeds the tax imposed by this Division reduced by all other credits allowed by the provisions of this Division, such excess shall be allowed against the tax imposed by this Division for the next succeeding year; and provided further, that in order to secure the credit allowed by this section the corporation shall file with its income tax return for the taxable year with respect to which such credit is to be claimed, a copy of the occupancy permit on the face of which there shall be recorded by the building inspector the number of units completed during the taxable year which conform to section (IIX) of the North Carolina Building Code. (1973, c. 910, s. 1.)

Editor's Note. — Session Laws 1973, c. 910, s. 3, makes the act effective for income years beginning on and after Jan. 1, 1974.

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 except as provided in G.S. 105-142.1 (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 as compensation for personal injuries or sickness (i) through accident or health insurance, (ii) through health or accident plans financed by profit-sharing trusts or pension trusts, (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), and (iv) for damages (whether by suit or agreement); and any amounts received through self-funded reimbursement plans adopted by an employer for the benefit of his employees, reimbursing them for expenses incurred for their medical care or for the medical care of their spouses or their dependents; provided, that any amounts received from sources mentioned in this subdivision as reimbursement for medical care expenses incurred and claimed as a deduction in a prior year or in prior years shall be excluded only to the extent that such amounts exceed the deduction claimed under subsection (11) of G.S. 105-147, except that nothing in this subdivision 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 section 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 requirements 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.
- (19) Amounts earned during the income year by a pension, profit-sharing, stock bonus, or annuity plan established by an employer for the benefit of his employees or for himself and his employees, provided that such plan shall have been determined by the Internal Revenue Service to be a qualified plan for federal income tax purposes under the provisions of section 401(a) of the Internal Revenue Code of 1954 as amended.
- (20) The amount of any reduction after December 31, 1973, in the retired or retainer pay of a member or former member of the uniformed services of the United States who has made an election under Chapter 73 of Title 10 of the United States Code to receive a reduced amount of retired or retainer pay.

In the case of any individual referred to in the preceding paragraph, all amounts received after December 31, 1973, as retired or retainer pay shall be excluded from gross income until there has been so ex-

cluded an amount equal to the consideration for the contract. The preceding sentence shall apply only to the extent that the amounts received would, but for such sentence, be includible in gross income.

For the purpose of this subdivision and subsection (i) of G.S. 105-141.1, the term "consideration for the contract" means, in respect of any individual, the sum of: (i) the total amount of the reductions before January 1, 1974, in his retired or retainer pay by reason of an election under Chapter 73 of Title 10 of the United States Code, and, (ii) any amounts deposited at any time by him pursuant to section 1438 of such Title 10. (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; c. 1287, s. 5.)

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.

The third 1973 amendment, effective for taxable years beginning on and after Jan. 1, 1974, inserted "except as provided in G.S. 105-142.1" in subdivision (3), rewrote subdivision (5), and added subdivisions (19) and (20), in subsection (b).

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

§ 105-141.1. Gross income—annuities.

(b) Definitions:

- (1) Investment in the Contract. — For the purposes of subsection (a), the investment in the contract as of the annuity starting date is
 - a. The aggregate amount of premiums or other consideration paid for the contract, minus
 - b. The aggregate amount received under the contract before such date, to the extent that such amount was excludable from gross income under this section or prior income tax laws.
- (2) Adjustment in Investment Where There Is Refund Feature. — If,
 - a. The expected return under the contract depends in whole or part on the life expectancy of one or more individuals;
 - b. The contract provides for payments to be made to a beneficiary (or to the estate of an annuitant) on or after the death of the annuitant or annuitants; and
 - c. Such payments are in the nature of a refund of the consideration paid,

then the value (computed without discount for interest) of such payments on the annuity starting date shall be subtracted from the amount determined under subdivision (1). Such value shall be computed in accordance with actuarial tables prescribed by the Secretary. For the purposes of this paragraph and subsection (d)(2)a, the term "refund of the consideration paid" includes amounts payable after the death of an annuitant by reasons of a provision in the contract for a life annuity with a minimum period of payment certain, but (if part of the consideration was contributed by an employer) does not include that part of any payment to a beneficiary (or to the estate of the annuitant) which is not attributable to the consideration paid by the employee for the contract as determined under subdivision (1)a.

- (3) **Expected Return.** — For the purposes of subsection (a), the expected return under the contract shall be determined as follows:
- a. **Life Expectancy.** — If the expected return under the contract, for the period on and after the annuity starting date, depends in whole or in part on the life expectancy of one or more individuals, the expected return shall be computed in accordance with annuity tables in force and used by the Federal Internal Revenue Service in computing annuities at the time as of which such computation is made.
 - b. **Installment Payments.** — If subparagraph a does not apply, the expected return is the aggregate of the amounts receivable under the contract as an annuity.
- (4) **Annuity Starting Date.** — For purposes of this section, the annuity starting date in the case of any contract is the first day of the first period for which an amount is received as an annuity under the contract; except that if such date was before January 1, 1957, then the annuity starting date is January 1, 1957.

(i) **Annuities under Retired Serviceman's Family Protection Plan.** — Neither subsection (c) nor that portion of subsection (a) which provides an exclusion from income for a portion of an annuity shall apply in the case of amounts received after December 31, 1973, as an annuity under Chapter 73 of Title 10 of the United States Code, but all such amounts shall be excluded from gross income until there has been so excluded (under G.S. 105-141(b)(20) or this section, including amounts excluded on or after January 1, 1974) an amount equal to the consideration for the contract (as defined by G.S. 105-141(b)(20)), plus any amount under G.S. 105-141(b)(11) treated as additional consideration paid by the employee. Thereafter all amounts so received shall be included in gross income. (1957, c. 1340, s. 4; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 1287, 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 for

taxable years beginning on and after Jan. 1, 1974, added subsection (i).

As the rest of the section was not changed by the amendments, only subsections (b) and (i) are set out.

§ 105-141.3. Adjusted gross income defined. — The words "adjusted gross income" for the purposes of this Division shall mean gross income taxable under this Division less all expenses allowed as deductions by this Division which were incurred in deriving such income and less losses from dealings in business property and property held for the production of income. (1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 1287, s. 5.)

Editor's Note. — The 1973 amendment, effective for taxable years beginning on and after Jan. 1, 1974, added at the end of the

section the language beginning "and less losses."

§ 105-142. Basis of return of net income. — (a) The net income of a taxpayer shall be computed in accordance with the method of accounting regularly employed in keeping the books of such taxpayer, but such method of accounting must be consistent with respect to both income and deductions, but if in any case such method does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Secretary does clearly reflect the income, but shall follow as nearly as practicable the federal practice, unless contrary to the context and intent of this Division.

(b) **Change of Income Year.**

- (1) A taxpayer may change the income year upon which he reports for income tax purposes without prior approval by the Secretary of Revenue if such change in income year has been approved by or is acceptable to the Federal Commissioner of Internal Revenue and is

used for filing income tax returns under the provisions of the Internal Revenue Code of 1954.

If a taxpayer desires to make a change in his income year other than as provided above he may make such change in his income year with the approval of the Secretary of Revenue, provided such approval is requested at least 30 days prior to the end of his new income year.

A taxpayer who has changed his income year without requesting the approval of the Secretary of Revenue as provided in the first paragraph of this subdivision shall submit to the Secretary of Revenue notification of any change in the income year after the change has been approved by the Federal Commissioner of Internal Revenue or his agent where application for permission to change is required by the Federal Commissioner of Internal Revenue with such notification stating that such approval has been received. Where application for change of the income year is not required by the Federal Commissioner of Internal Revenue, notification of the intention to change the income year shall be submitted to the Secretary of Revenue prior to the time for filing the short period return.

- (2) A return for a period of less than 12 months (referred to in this subsection as "short period") shall be made when the taxpayer changes his income year. In such a case, the return shall be made for the short period beginning on the day after the close of the former taxable year and ending at the close of the day before the day designated as the first day of the new taxable year, except that taxpayers changing to, or from, a taxable year varying from 52 to 53 weeks as provided in subdivision (5) of G.S. 105-135 shall not be required to file a short-period return if such change results in a short period of 359 days or more or of less than seven days. Short-period income tax returns shall be filed within the same period following the end of such short period as is required for full year returns under the provisions of G.S. 105-155.
- (3) In the case of a taxpayer who is an individual, if a return is made for a short period under the provisions of subdivision (2) of this subsection the exemptions allowed as a deduction under G.S. 105-149 shall be reduced to amounts which bear the same ratio to the full exemptions as the number of months in the short period bears to 12 and the net taxable income for the short period shall be placed on an annual basis by multiplying such income by 12 and by dividing the result by the number of months in the short period. The tax shall be the same part of the tax computed on the annual basis as the number of months in the short period is of 12 months.

(c) An individual carrying on the business in partnership shall be liable for income tax only in his individual capacity, and shall include in his gross income, whether distributed or not, his distributive share of the net income of the partnership and his share of dividends received by the partnership for each income year. If an established business in this State is owned by a nonresident individual or by a partnership having one or more nonresident members, the manager of the business in this State shall report the earnings of such business in this State, and the distributive share of the income of each nonresident owner or partner and pay the tax as levied on individuals in this Division for each such nonresident owner or partner. The individual or partnership business carried on in this State may deduct the payment required to be made for such nonresident individual or partner or partners from their distributive share of the profits of such business in this State: Provided, that if an established unincorporated business owned by a nonresident individual or a partnership having one or more nonresident members is operating in one or more other states the net income

of the business attributable to North Carolina shall be determined by multiplying the total net income of the business by the ratio ascertained under the provisions of G.S. 105-130.4, and shall be entitled to the rights and privileges accorded corporations therein. Total net income shall be the entire gross income of the business less all expenses, taxes, interest and other deductions allowable under this Division which were incurred in the operation of the business. In any case where it is necessary to determine the gross income of a partner for purposes of this Division, such amount shall include his distributive share of the gross income of the partnership.

(d) The amount actually distributed or made available to any employee or the beneficiary of an employee by an employees' trust, which qualifies under subsection (f)(1)a of G.S. 105-161 as an exempt organization, or qualified plan which meets the requirements of section 401(a) of the Internal Revenue Code of 1954 as amended shall be taxable to the employee or his beneficiary in the year in which distributed or made available; provided, that if such employee has made contributions to such trust or such qualified plan, and the benefits are received as periodic payments, the amounts annually received shall be taxed as an annuity as provided in G.S. 105-141.1. The amount actually received or made available to the employee or his beneficiary which consists of corporate shares or other securities shall be taken into account in determining the amount distributed or made available at their fair market value, except that the net unrealized appreciation in the corporate shares or other securities of the employer corporation shall not be included in determining such amount distributed or made available for purposes of this subsection.

In the case of a pension, profit-sharing, or stock bonus plan or trust established by an employer for the benefit of his employees which does not meet the requirements of G.S. 105-161(f)(1)a or section 401(a) of the Internal Revenue Code of 1954 as amended, any contributions to such plan or trust made by an employer during a taxable year shall be reportable as income in such taxable year by employees in whose names such contributions are credited only to the extent that such employees shall have acquired a nonforfeitable right to such contributions in such taxable year.

(e) An individual, who patronizes or owns stock or has membership in a farmers' marketing or purchasing cooperative or mutual, organized under Subchapter 4 or Subchapter 5 of Chapter 54 of the General Statutes of North Carolina, shall include in his gross income for the year in which the allocation is made his distributive share of any savings, whether distributed in cash or credit, allocated by the cooperative or mutual association for each income year.

- (f) (1) A taxpayer who regularly sells or otherwise disposes of personal property on the installment plan may return as income therefrom in any taxable year that proportion of the installment payments actually received in that year which the gross profit, realized or to be realized when payment is completed, bears to the total contract price.
- (2) Income from a sale or other disposition of real property, or a casual sale or other casual disposition of personal property (other than property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year) for a price exceeding one thousand dollars (\$1,000), may be returned on the basis and in the manner prescribed in subdivision (1), provided, however, that such income may be so returned only if in the taxable year of the sale or other disposition there are no payments or the payments (exclusive of evidence of indebtedness of the purchaser which are not readily marketable) do not exceed thirty percent (30%) of the selling price; and, provided further, that if a timely election is made to report a gain from an installment sale on the basis prescribed in this subsection such election shall be binding on the taxpayer and he may not after the date

prescribed by law for filing his return change to another method of reporting such gains, and in like manner if a timely election is made to report a gain on other than the installment basis such election shall likewise be binding on the taxpayer.

(3) Sale or Other Disposition.

a. If an installment obligation is satisfied at other than its face value or is distributed, transmitted, sold or otherwise disposed of, gain or loss shall result to the extent of the difference between the basis of the obligation and

1. The amount realized, in the case of satisfaction at other than face value or a sale or exchange, or

2. The fair market value of the obligation at the time of the distribution, transmission or disposition in the case of the distribution, transmission, or disposition otherwise than by sale or exchange.

Any gain or loss so resulting shall be considered as resulting from the sale or exchange of the property in respect of which the installment obligation was received.

b. The basis of an installment obligation shall be the excess of the face value of the obligation over an amount equal to the income which would be returnable were the obligation satisfied in full.

c. Except as provided elsewhere in this Division this subdivision (3) shall not apply to the transmission of installment obligations at death.

(4) An election under subdivision (1) to report taxable income on the installment basis may be revoked by filing a notice of revocation, in such manner as the Secretary of Revenue prescribes, at any time before the expiration of three years following the date of the filing of the tax return for the year of change. If such notice of revocation is timely filed:

a. The provisions of subdivision (1) shall not apply to the year of change or for any subsequent year;

b. The statutory period for the assessment of any deficiency for any taxable year ending before the filing of such notice, which is attributable to the revocation of the election to use the installment basis, shall not expire before the expiration of two years from the date of the filing of such notice, and such deficiency may be assessed before the expiration of such two-year period notwithstanding the provisions of any law or rule of law which would otherwise prevent such assessment; and

c. If refund or credit of any overpayment, resulting from the revocation of the election to use the installment basis, for any taxable year ending before the date of the filing of the notice of revocation is prevented on the date of such filing, or within one year from such date, by the operation of any law or rule of law, refund or credit of such overpayment may nevertheless be made or allowed if claim therefor is filed within one year from such date. No interest shall be allowed on the refund or credit of such overpayment for any period prior to the date of the filing of the notice of revocation.

(5) If a taxpayer revokes under subdivision (4) of this subsection an election under subdivision (1) of this subsection to report taxable income on the installment basis, no election under subdivision (1) of this subsection may be made, except with the consent of the Secretary of Revenue, for any subsequent taxable year before the fifth taxable year following the year with respect to which such revocation is made. (1939, c. 158, s. 318; 1943, c. 400, s. 4; 1945, c. 708, s. 4; 1949, c. 392, s. 3; 1955, c. 1313, s.

1; 1957, c. 1340, s. 4; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 843; c. 1287, 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 with respect to taxable years beginning on and after Jan. 1, 1974, added subdivisions (4) and (5) to subsection (f).

The third 1973 amendment, effective for taxable years beginning on and after Jan. 1, 1974, substituted "his share of dividends received by the partnership" for "dividends from foreign corporations" in the first sentence of subsection (c), added the last sentence of subsection (c), inserted "or qualified plan which meets the requirements of section 401(a) of the Internal Revenue Code of 1954 as amended" and "or such qualified plan" in the first sentence of subsection (d), added the second paragraph of subsection (d), and added "which are not readily marketable" in the parenthesis near the middle of subdivision (2) of subsection (f).

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).

§ 105-142.1. Income in respect of decedents.

(b) If a right to receive an amount of income in respect of a decedent is transferred by the estate of the decedent or by a person who received such right by reason of the death of the decedent or by bequest, devise or inheritance from the decedent, there shall be included in the gross income of the estate or such person, as the case may be, for the taxable period in which the transfer occurs, the fair market value of such right at the time of transfer plus the amount by which any consideration for the transfer exceeds such fair market value. For purposes of this paragraph, the term "transfer" includes a sale, exchange, or other disposition or the satisfaction of an installment obligation at other than face value, but does not include transmission at death to the estate of the decedent or a transfer to a person pursuant to the right of such person to receive such amount by reason of the death of the decedent or by bequest, devise or inheritance from the decedent.

(e) The amount of any deduction allowable under this Division in respect of a decedent which is not properly allowable to the decedent for the taxable period in which falls the date of his death or for a prior taxable period shall be allowed to the estate of the decedent except that, if the estate of the decedent is not liable to discharge the obligation to which the deduction relates, such deduction shall be allowed to the person, who by reason of the death of the decedent or by bequest, devise or inheritance acquires, subject to the obligation, from the decedent an interest in property of the decedent; provided, that expense for medical care of the decedent allowable under the provisions of G.S. 105-147(11) which are paid out of the estate of such decedent during the one-year period beginning with the day after the date of his death shall be treated as paid by the taxpayer at the time incurred. (1957, c. 1340, s. 4; 1967, c. 1110, s. 3; 1973, c. 1287, s. 5.)

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).

Editor's Note. — The 1973 amendment, effective for taxable years beginning on and after Jan. 1, 1974, substituted "or" for "of" between "the estate" and "such person" near the middle of the first sentence of subsection (b)

and added the proviso at the end of subsection (e).

As the rest of the section was not changed by the amendment, only subsections (b) and (e) are set out.

§ 105-144. Determination of gain or loss. — (a) Except as provided in subsection (c) of this section, in ascertaining the gain or loss from the sale or other disposition of property:

- (1) For property acquired after January 1, 1921 and before July 1, 1963, the basis shall be the cost thereof; provided, however, that in the case of property which was included in the last preceding annual inventory used in determining net income in a return under this Division, such inventory value shall be the basis in lieu of cost.
- (2) For property acquired before January 1, 1921, the basis for the purpose of ascertaining gain, shall be the fair market value of the property at January 1, 1921, or the cost of the property, whichever is greater; and the basis for determining loss, shall be the cost of the property in all cases, if such cost is known or determinable.
- (3) For property acquired on or after July 1, 1963, the basis shall be as follows:
 - a. For property acquired by purchase, the cost thereof, provided that in the case of property which was included in the last preceding annual inventory used in determining net income in a return under this Division, such inventory value shall be used in lieu of cost.
 - b. For property acquired by gift, the same basis as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift, except that if the basis (as adjusted) is greater than the fair market value of the property at the time of the gift, then for the purpose of determining loss the basis shall be such fair market value; provided that if a gift tax is paid to this State with respect to such property the basis shall be increased by the amount of the gift tax paid with respect to such gift, but such increase shall not exceed an amount equal to the amount by which the fair market value at the time of the gift exceeded the basis of the property in the hands of the donor at the time of the gift; provided further, that the basis for determining gain or loss from the sale or exchange of a life interest in property which was acquired by gift shall be zero, except that this provision shall not apply in the case of a sale or exchange of both the life and remainder interests in the property simultaneously.
 - c. For property acquired by bequest, devise, or descent, either the fair market value at the date of death of the former owner, or in the case of an election under G.S. 105-9.1 the fair market value at the alternate valuation date at which time a value is established for inheritance tax purposes; provided, that the basis for determining gain or loss from the sale or exchange of a life interest in property which was acquired by bequest, devise, or descent shall be zero, except that this provision shall not apply in the case of a sale or exchange of both the life and remainder interest in such property simultaneously.

The basis of property so determined under this subsection (a) shall be adjusted for capital additions or losses applicable to the property and for depreciation, amortization, and depletion, allowed or allowable.

(1973, c. 1287, s. 5.)

Editor's Note. —

The 1973 amendment, effective for taxable years beginning on and after Jan. 1, 1974, added the provisos to subdivisions (3)b and (3)c of subsection (a).

As the other subsections were not changed by the amendment, only subsection (a) is set out.

§ 105-144.1. Involuntary conversions; recognition of gain. — (a) General Rule. — If property (as a result of its destruction in whole or in part, theft, seizure, or requisition or condemnation or threat or imminence thereof) is compulsory or involuntarily converted —

- (1) Into property similar or related in service or use to the property so converted, no gain shall be recognized.
- (2) Into money or into property not similar or related in service or use to the converted property, and the disposition of the converted property occurred after December 31, 1958, the gain (if any) shall be recognized except to the extent hereinafter provided in this paragraph:

a. If the taxpayer during the period specified in subparagraph b for the purpose of replacing the property so converted, purchases other property similar or related in service or use to the property so converted, or purchases stock in the acquisition of control of a corporation owning such other property, at the election of the taxpayer the gain shall be recognized only to the extent that the amount realized upon such conversion (regardless of whether such amount is received in one or more taxable years) exceeds the cost of such other property or such stock. For purposes of this paragraph —

1. No property or stock acquired before the disposition of the converted property shall be considered to have been acquired for the purpose of replacing such converted property unless held by the taxpayer on the date of such disposition; and
2. The taxpayer shall be considered to have purchased property or stock only if, but for the provisions of subsection (b) of this section, the unadjusted basis of such property or stock would be its cost within the meaning of this Division.

b. The period referred to in subparagraph a shall be the period beginning with the date of the disposition of the converted property, or the earliest date of the threat or imminence or requisition or condemnation of the converted property, whichever is the earlier, and end —

1. Two years after the close of the first taxable year in which any part of the gain upon the conversion is realized, or
2. Subject to such terms and conditions as may be specified by the Secretary of Revenue, at the close of such later date as the Secretary of Revenue may designate on application by the taxpayer. Such application shall be made at such time and in such manner as the Secretary of Revenue may prescribe.

c. If a taxpayer has made the election provided in subparagraph a then —

1. The statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain on such conversion is realized, attributable to such gain shall not expire prior to the expiration of three years from the date the Secretary of Revenue is notified by the taxpayer of the replacement of the converted property or of an intention not to replace, and
2. Such deficiency may be assessed before the expiration of such

three-year period notwithstanding the provisions of law which would otherwise prevent such assessment.

- d. If the election provided in subparagraph a is made by the taxpayer and such other property or such stock was purchased before the beginning of the last taxable year in which any part of the gain upon such conversion is realized, any deficiency, to the extent resulting from such election, for any taxable year ending before such last taxable year may be assessed (notwithstanding the provisions of law which would otherwise prevent such assessment) at any time before the expiration of the period within which a deficiency for such last taxable year may be assessed.

(g) In the administration of this section, the Secretary may, in his discretion, apply the federal rules and regulations, rulings, and federal court decisions pertinent to the administration and construction of section 1033 of the Federal Internal Revenue Code of 1954, but the Secretary shall not be bound by such rules and regulations, rulings and decisions. (1949, c. 1171; 1959, c. 1259, s. 4; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 1287, 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 for taxable years beginning on and after Jan. 1,

1974, substituted "Two years" for "One year" at the beginning of subdivision (2)b1 of subsection (a).

As the other subsections were not changed by the amendments, only subsections (a) and (g) are set out.

§ 105-144.2. Sale of principal residence of taxpayer — nonrecognition of gain.

(h) Members of the Armed Forces. — The running of any period of time specified in subsection (a) or (c) (other than the one year referred to in subsection (c)(4)) shall be suspended during any time that the taxpayer (or his spouse if the old residence and the new residence are each used by the taxpayer and his spouse as their principal residence) serves on extended active duty with the armed forces of the United States after the date of sale of the old residence and during an induction period (as defined in G.S. 105-141(b)(12)) except that any such period of time as so suspended shall not extend beyond the date four years after the date of sale of the old residence. For purposes of this subsection, the term "extended active duty" means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period. (1957, c. 1340, s. 4; 1973, c. 1287, s. 5.)

Editor's Note. — The 1973 amendment, effective for taxable years beginning on and after Jan. 1, 1974, added subsection (h).

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

§ 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. — In computing net income there shall be allowed as deductions the following items:

- (1) All the ordinary and necessary expenses paid during the income year in carrying on any trade or business, including:
 - a. As to individuals, reasonable wages of employees for services rendered in producing such income.
 - b. As to partnership, reasonable wages of employees and a reasonable

- allowance for copartners or members of a firm, for services actually rendered in producing such income, the amount of such salary allowance to be included in the personal return of the copartner receiving same.
- c. As to taxpayers engaged in the business of farming, reasonable expenses paid during the income year for the purpose of soil and water conservation or prevention of erosion of land to the extent allowable for federal income tax purposes under the provisions of section 175 of the Internal Revenue Code of 1954 as amended.
 - d. Repealed by Session Laws 1967, c. 1110, s. 3.
 - e. As to taxpayers engaged in the business of farming, reasonable expenses paid during the income year for the purpose of clearing land to make such land suitable for the purpose of farming to the extent allowable under section 182 of the Internal Revenue Code of 1954 as amended.
- (6) a. Taxes owed by the taxpayer and paid or accrued during income year except those taxes with respect to which a deduction is denied under paragraph b of this subdivision.
- b. No deduction shall be allowed for the following taxes:
- 1. Taxes on, with respect to, or measured by income by whatever name called and excess profits taxes.
 - 2. Gift, inheritance, and estate taxes.
 - 3. Federal tax on undistributed earnings.
 - 4. Sales taxes, gasoline taxes, automobile license, and registration fees, unless incurred in the operation of a trade or business.
 - 5. Social security and unemployment taxes paid by an employee or self-employed person.
 - 6. That part of social security and unemployment taxes required to be deducted by the employer from the earnings of an employee.
 - 7. Taxes or assessments assessed for local benefit of a kind tending to increase the value of property assessed.
 - 8. Taxes paid or accrued in connection with the ownership of real or tangible personal property from which income is derived but is not taxable under this Division.
- (7) Dividends from stock issued by any corporation to the extent herein provided. As soon as may be practicable after the close of each calendar year, the Secretary of Revenue shall determine from each corporate income tax return filed with him during such year, and due from the filing corporation during such year, the proportion of the entire net income or loss of the corporation allocable to this State under the provisions of G.S. 105-130.4, except as provided herein; if a corporation has a net taxable income in North Carolina and a net loss from all sources wherever located, or, if a corporation has a net loss in North Carolina and a net income from all sources wherever located, the Secretary shall require the use of the allocation fraction determined under the provisions of G.S. 105-130.4. A taxpayer who is a stockholder in any such corporation shall be allowed to deduct from his gross income the same proportion of the dividends received by him from such corporation during his income year ending at or after the end of such calendar year. Provided that notwithstanding any other provision of this subdivision, a taxpayer who is a stockholder in a holding company as defined in G.S. 105-130.7(6) shall determine the deductible portion of dividend received from such holding company as provided therein. No deduction shall be allowed for any part of any dividend received by such taxpayer from any corporation which filed no income tax return with the Secretary of Revenue during such calendar year. Dividends

received by a taxpayer from stock in any insurance company of this State taxed under the provisions of G.S. 105-228.5 shall be deductible from the gross income of such taxpayer, and a proportionate part of any dividends received from stock in any foreign insurance corporation shall be deductible, such part to be determined on the basis of the ratio of premiums reported for taxation in this State to total premiums collected both in and out of the State. A taxpayer shall be allowed to deduct such proportionate part of dividends received by him from a regulated investment company and real estate investment trust as defined in G.S. 105-130.12 as represents and corresponds to income received by such regulated investment company and real estate investment trust which would not be taxed by this State if received directly by the North Carolina resident.

- (8) In the case of an individual moving into this State, or an individual moving from one location to another within this State, moving expenses paid or incurred during the taxable year in connection with the commencement of work in this State by such individual as an employee at a new principal place of work, in this State to the extent allowed or allowable for federal income tax purposes under the provisions of section 217 of the Internal Revenue Code of 1954 as amended. In the case of an individual moving out of this State, moving expenses paid or incurred during the taxable year in connection with the commencement of work outside this State, provided that such individual remains a resident of this State and reports to this State for taxation all income required to be so reported by a resident individual under this Division for the period of time required under section 217 of the Internal Revenue Code of 1954 as amended for qualifying for the moving-expense deduction for federal income tax purposes and only to the extent allowed or allowable under that section for federal income tax purposes. Where joint federal returns are filed by husband and wife for federal income tax purposes, the deduction otherwise allowable under this subsection shall be limited to such amount as would have been allowable if separate federal income tax returns had been filed.
- (9) Losses of such nature as designated below:
- a. Losses of capital or property used in trade or business actually sustained during the income year except that: No deduction shall be allowed for losses arising from personal loans, endorsements or other transactions of a personal nature not entered into for profit; and losses of such character as specified in paragraph c below shall be deductible only to the extent therein provided.
 - b. Losses of property not connected with a trade or business sustained in the income year if arising from fire, storm, shipwreck or other casualties or theft to the extent such losses are not compensated for by insurance or otherwise; provided, that for the purpose of this subdivision, any loss arising from theft shall be treated as sustained during the taxable year in which the taxpayer discovers such loss.
 - c. Losses incurred in the income year from the sale of corporate shares or bonds of corporations or governments, or from transactions in commodity futures contracts. Provided, that in the case of any loss claimed to have been sustained from any sale or other disposition of shares of stock or securities, other than transactions in commodity futures contracts, where it appears that, within a period beginning 30 days before the date of such sale or disposition and ending 30 days after such date, the taxpayer has acquired (by purchase or by an exchange on which the entire amount of gain or loss was recognized by law) or has entered into a contract or

option so to acquire substantially identical stock or securities then no deduction for the loss shall be allowed unless the taxpayer is a dealer in stocks or securities and the loss is sustained in a transaction made in the ordinary course of its business; if the property consists of stock or securities the acquisition of which (on the contract or option to acquire which) resulted in the non-deductibility under this section of the loss from the sale or other disposition of substantially identical stock or securities, then the basis shall be the basis of the stock or securities sold or disposed of, increased or decreased, as the case may be, by the difference, if any, between the price at which the stock was acquired and the price at which such substantially identical stock or securities were sold or otherwise disposed of; if the amount of stock or securities acquired (or covered by the contract or option to acquire) is greater than the amount of stock or securities sold or otherwise disposed of, then the provisions herein with respect to the adjustment of the basis of the stock or securities acquired (or covered by the contract or option to acquire) shall not apply to that portion of the amount of stock or securities acquired (or covered by the contract or option to acquire) which shall be in excess of the amount of the stock or securities sold; if the amount of the stock or securities acquired (or covered by the contract or option to acquire) is less than the amount of stock or securities sold or otherwise disposed of, then the provisions hereof with respect to disallowance of loss claimed to have been sustained from the sale or other disposition of stock or securities shall not apply to the portion of the amount thereof in excess of the amount of the stock or securities acquired (or covered by the contract or option to acquire).

- d. Losses in the nature of net economic losses sustained in any or all of the five preceding income years arising from business transactions or to capital or property as specified in a and c above subject to the following limitations:
1. The purpose in allowing the deduction of net economic loss of a prior year or years is that of granting some measure of relief to taxpayers who have incurred economic misfortune or who are otherwise materially affected by strict adherence to the annual accounting rule in the determination of taxable income, and the deduction herein specified does not authorize the carrying forward of any particular items or category of loss except to the extent that such loss or losses shall result in the impairment of the net economic situation of the taxpayer such as to result in a net economic loss as hereinafter defined.
 2. The net economic loss for any year shall mean the amount by which allowable deductions for the year other than personal exemptions, nonbusiness deductions and prior year losses shall exceed income from all sources in the year including any income not taxable under this Division.
 3. Any net economic loss of a prior year or years brought forward and claimed as a deduction in any income year may be deducted from taxable income of the year only to the extent that such carry-over loss from the prior year or years shall exceed any income not taxable under this Division received in the same year in which the deduction is claimed, except that in the case of taxpayers required to apportion to North Carolina their net apportionable income, as defined in this Division, only such proportionate part of the net economic loss of a prior year shall

- be deductible from the income taxable in this State as would be determined by the use of the apportionment ratio computed under the provisions of G.S. 105-130.4 or of subsection (c) of G.S. 105-142, as the case may be, for the year of such loss.
4. A net economic loss carried forward from any year shall first be applied to, or offset by, any income taxable or nontaxable of the next succeeding year before any portion of such loss may be carried forward to a succeeding year.
 5. No loss shall either directly or indirectly be carried forward more than five years.
- e. Disaster losses. — Notwithstanding the provisions of paragraphs a and b of this subsection, any loss attributable to a disaster occurring in an area subsequently determined by the President of the United States to warrant assistance by the federal government under the Disaster Relief Act of 1970 may, at the election of the taxpayer, be deducted for the taxable year immediately preceding the taxable year in which the disaster occurred. Such deduction shall not be in excess of so much of the loss as would have been deductible in the taxable year in which the casualty occurred, based on the facts existing at the date the taxpayer claims the loss. If an election is made under this paragraph, the casualty resulting in the loss will be deemed to have occurred in the taxable year for which the deduction is claimed.
- (10) Debts ascertained to be worthless and actually charged off within the income year, if connected with business and, if the amount has previously been included in gross income in a return under this Division; or, in the discretion of the Secretary, a reasonable addition to a reserve for bad debts.
 - (11) a. Amounts expended by an individual during the year for medical care for himself, herself, his or her qualifying spouse and his or her dependents, to the extent that the total of such expenses actually paid in the income year and not compensated for by insurance or otherwise shall exceed five percent (5%) of his or her adjusted gross income.
 - b. For the purpose of this subdivision:
 1. The term "medical care" means amounts paid for the diagnosis, care, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body; for transportation primarily for and essential to medical care; and for insurance against illness or accident other than insurance against loss of earnings.
 2. The term "qualifying spouse" means a spouse who has not claimed a two-thousand-dollar (\$2,000) personal exemption.
 3. The term "dependents" means those individuals qualifying as dependents under the provisions of subdivision (5) of subsection (a) of G.S. 105-149, or those individuals for whom a dependency exemption is allowed under that subdivision.
 - (13) In lieu of any depreciation allowance pursuant to this section, at the option of the taxpayer, an allowance with respect to the amortization of the cost of any air-cleaning device, 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 discharge of sewage and industrial wastes or other polluting materials or substances into streams, lakes, or rivers, or the emission of air contaminants into the outdoor atmosphere, based on a period of 60 months. The deduction provided herein shall apply to the facilities or equipment of private or public utilities built and installed primarily for the purpose of providing sewer service to

residential and outlying areas. The deduction provided for in this subdivision shall be allowed by the Secretary only upon condition that the person or firm claiming such allowance shall furnish to the Secretary a certificate from the Department of Natural and Economic Resources certifying that the Environmental Management Commission has found as a fact that the waste treatment plant, air-cleaning device, or air or water 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 Environmental Management Commission with respect to such plants or equipment, that such plant, device, or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission, 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 deduction herein provided for shall also be allowed as to plants or equipment constructed or installed before January 1, 1955, but only with respect to the undepreciated value of such plants or equipment.

(14) Repealed by Session Laws 1973, c. 1287, s. 5.

- (18) a. In the case of a nonresident individual, firm or partnership, the deductions allowed in this section (with the exception of deductions allowed by subdivisions (15) and (16) of this section) shall be allowed only if and to the extent that they are connected with income arising from sources within the State; and the proper apportionment and allocation of the deductions with respect to sources of income within and without the State shall be determined under rules and regulations prescribed by the Secretary of Revenue.
- b. In the case of a nonresident individual, firm or partnership, deductions as provided for and as limited by subdivisions (15) and (16) of this section shall be allowed only if the donees shall have an office in this State and be actively engaged in this State in performing the functions for which the said donees were organized.
- (20) Reasonable amounts paid by employers within the income year to trusts which qualify for exemption under subsection (f)(1)a of G.S. 105-161 and to plans established by employers for the benefit of their employees which meet the requirements of section 401(a) of the Internal Revenue Code of 1954 as amended; reasonable amounts paid by a self-employed individual or owner-employee to a retirement program pursuant to a plan adopted by such individual and approved by the Internal Revenue Service; and reasonable amounts paid by employers to nonqualified plans or trusts established by employers for the benefit of their employees, but only to the extent that such amounts contributed by such employers shall be required under the provisions of this Division to be included in the gross income of such employees; provided, that amounts which are deductible for federal income tax purposes shall be prima facie allowable as deductions hereunder; provided further, that in the case of taxpayers on the accrual basis, they shall be deemed to have made payments on the last day of the year of accrual if actual payments are made within the time fixed by statute for filing the taxpayer's return.
- (22) Individual income taxpayers whose income is reportable to the State for income tax purposes, may, at their option, under such rules and

regulations as the Secretary of Revenue may prescribe, elect to claim a standard deduction equal to ten percent (10%) of their adjusted gross income or five hundred dollars (\$500.00), whichever is the lesser, in lieu of all deductions other than those incurred in the deriving of the income and other than personal exemptions and dependency deductions provided that where both spouses have income taxable in this State and one spouse elects to take credit for the standard deduction provided herein, the other spouse must also take such standard deduction. For the purpose of this subdivision, the phrase "adjusted gross income" shall mean adjusted gross income as defined in G.S. 105-141.3 of this Division.

Provided, further, that the provisions of this subdivision shall not apply to taxpayers who are not residents of this State.

- (25) The purchase price of a seeing-eye dog actually purchased and used by a person who is blind, and/or all of the cost of maintenance and upkeep of a seeing-eye dog, including veterinary expenses. The amount claimed under this subdivision shall not be allowed as a deduction under G.S. 105-147(11). (1939, c. 158, s. 322; 1941, c. 50, s. 5; 1943, c. 400, s. 4; c. 668; 1945, c. 708, s. 4; c. 752, s. 3; 1947, c. 501, s. 4; c. 894; 1949, c. 392, s. 3; 1951, c. 643, s. 4; c. 937, s. 4; 1953, c. 1031, s. 1; c. 1302, s. 4; 1955, c. 1100, s. 1; c. 1331, s. 1; cc. 1332, 1342; c. 1343, s. 1; 1957, c. 1340, ss. 4, 8; 1959, c. 1259, s. 4; 1961, c. 201, s. 1; c. 1148; 1963, c. 1169, s. 2; 1965, c. 1048; 1967, cc. 259, 550; c. 892, s. 6; c. 1110, s. 3; c. 1252, s. 2; 1969, cc. 725, 1082, 1123; c. 1175, s. 2; 1971, c. 1087, s. 2; c. 1206, s. 2; 1973, c. 476, s. 193; c. 1053, s. 5; c. 1262, s. 23; c. 1282; c. 1287, s. 5; c. 1338.)

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 Jan. 1, 1974, deleted the former next-to-last sentence of subdivision (7), providing for deduction of dividends from stock in a bank or trust company taxed under the provisions of Article 8C of this Chapter.

The third 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Board of Water and Air Resources" and "the Environmental Management Commission" for "said Board" near the beginning of the third sentence and "Environmental Management Commission" for "Board" near the middle of the third sentence and for "Board of Water and Air Resources" near the end of the third sentence of subdivision (13).

The fourth 1973 amendment, effective Jan. 1, 1974, added subdivision (25).

The fifth 1973 amendment, effective for taxable years beginning on and after Jan. 1, 1974, inserted "or prevention of erosion of land" near the middle of paragraph (1)c, substituted "on, with respect to, or measured by income" for "on net income" near the beginning of paragraph (6)b1, deleted "North Carolina" preceding "regulated investment company" where that phrase first appears in the last sentence of subdivision (7) and inserted "and real estate investment trust" in two

places in that sentence, rewrote the first sentence and added the second and third sentences of subdivision (8), added paragraph (9)e, repealed subdivision (14), relating to amortization of the cost of certain emergency facilities and grain storage facilities, and rewrote subdivision (20).

The sixth 1973 amendment, effective with respect to taxable years beginning on and after Jan. 1, 1974, deleted, at the end of subdivision (11)a, "provided, that the total allowable deduction in any taxable year shall not exceed five thousand dollars (\$5,000)."

Session Laws 1973, c. 1053, ss. 9 and 10, provide:

"Sec. 9. Nothing in this act shall be construed to relieve banks from excise tax in 1974 based on their net income earned during the year 1973, nor shall it affect any rights or liabilities of any bank arising prior to the effective date of this act.

"Sec. 10. Banks, or banking associations, trust companies or any combination of such facilities or services that become subject to taxes levied upon tangible personal property by local taxing jurisdictions as a result of this act, shall have 90 days after the effective date of this act to list such tangible personal property with the local taxing jurisdictions at the fair market value of such property."

Only the introductory language and the subdivisions added or changed by the amendments are set out.

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.

(b) In the case of an individual having only a portion of his income during the income year taxable to this State, the exemptions otherwise allowable under this section shall be allowed only in the proportion that his adjusted gross income taxable to this State bears to his total adjusted gross income; provided that any taxpayer who shall report for taxation by this State all of his income during the income year shall be entitled to the full personal exemption allowable under this section.

(1973, c. 468, ss. 1, 2; c. 476, ss. 143, 193; c. 1287, s. 5.)

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).

The third 1973 amendment, effective for taxable years beginning on and after Jan. 1, 1974, rewrote subsection (b).

As subsection (c) was not changed by the amendments, it is not 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).

§ 105-150: Repealed by Session Laws 1973, c. 1287, s. 5.

Editor's Note. — Session Laws 1973, c. 1287, s. 15, makes the repeal effective for taxable years beginning on and after Jan. 1, 1974.

§ 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).

§ 105-151.1. Tax credit for construction of dwelling units for handicapped persons. — There shall be allowed to resident owners of multifamily rental units located in North Carolina as a credit against the tax imposed by this Division, an amount equal to five hundred fifty dollars (\$550.00) for each dwelling unit constructed by such resident owner which conforms to the recommendations of section (IIX) of the North Carolina Building Code for the taxable year within which the construction of such dwelling unit is completed; provided, that credit will be allowed under this section only for the number of such dwelling units completed during the taxable year which does not exceed five percent (5%) of the total of such units completed during the taxable year; provided further, that if the credit allowed by this section exceeds the tax imposed by this Division reduced by all other credits allowed by the provisions of this Division, such excess shall be allowed against the tax imposed by this Division for the next succeeding year; and provided further, that in order to secure the credit allowed by this section the taxpayer shall file with his income tax return for the taxable year with respect to which such credit is to be claimed, a copy of the occupancy permit on the face of which there shall be recorded by the building inspector the number of units completed during the taxable year which conform to section (IIX) of the North Carolina Building Code. (1973, c. 910, s. 2.)

Editor's Note. — Session Laws 1973, c. 910, s. 3, makes the act effective for income years beginning on and after Jan. 1, 1974.

§ 105-152. Returns. — (a) The following persons shall file with the Secretary of Revenue an income tax return under affirmation, showing therein specifically the items of gross income and the deductions allowed by this Division, and such other facts as the Secretary may require for the purpose of making any computation required by this Division:

- (1) Every resident or nonresident who has a gross income during the income year which is in excess of the personal exemption to which he or she is entitled under the provisions of G.S. 105-149(a), without the inclusion of the exemptions for dependents provided under subdivision (5) of said subsection, any part of which is subject to taxation in this State.
- (2) Every resident or nonresident required under the provisions of G.S. 105-149(b) to prorate his exemption and who has a gross income during the income year from sources both within and without this State in excess of the prorated exemption, any part of which is subject to taxation in this State.
- (3) Every partnership having a place of business in the State as provided in G.S. 105-154.
- (4) Any person whom the Secretary believes to be liable for a tax under this Division, when so notified by the Secretary of Revenue and requested to file a return.

(b) If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

(c) The return of an individual, who, while living, received income in excess of the exemption during the income year, and who has died before making the return, shall be made in his name and behalf by the administrator, or executor of the estate, and the tax shall be levied upon and collected from his estate.

(d) When the Secretary of Revenue has reason to believe that any taxpayer so conducts the trade or business as either directly or indirectly to distort his true net income and the net income properly attributable to the State, whether by the arbitrary shifting of income, through price fixing, charges for service, or otherwise, whereby the

net income is arbitrarily assigned to one or another unit in a group of taxpayers carrying on business under a substantially common control, he may require such facts as he deems necessary for the proper computation of the entire net income and the net income properly attributable to the State, and in determining same the Secretary of Revenue shall have regard to the fair profit which would normally arise from the conduct of the trade or business.

(e) A joint return may not be filed by a husband and wife; however, a husband and wife may, at their election, file their separate income tax returns on a single form, and a husband and wife so filing shall be deemed to have expressly agreed that:

- (1) If the sum of the payments by either spouse, including withheld and estimated taxes, exceeds the amount of the tax for which such spouse is separately liable, the excess may be applied by the Department of Revenue to the credit of the other spouse if the sum of the payments by such other spouse, including withholding and estimated taxes, is less than the amount of the tax for which such other spouse is separately liable.
- (2) If the sum of the payments made by both spouses with respect to the taxes for which they are separately liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses or if either is deceased, to the survivor. (1939, c. 158, s. 326; 1941, c. 50, s. 5; 1943, c. 400, s. 4; 1945, c. 708, s. 4; 1951, c. 643, s. 4; 1957, c. 1340, s. 4; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 903, s. 1.)

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 Jan. 1, 1974, added subsection (e).

The third 1973 amendment, effective for taxable years beginning on and after Jan. 1, 1974, inserted "and the additional exemptions provided under subdivisions (8) and (9)" in subdivision (a)(1) and substituted "doing business" for "having a place of business" in subdivision (a)(3).

§ 105-154. Information at the source. — (a) Every individual, partnership, corporation, joint-stock company or association, or insurance company, being a resident or having a place of business or having one or more employees, agents or other representatives in this State, in whatever capacity acting, including lessors or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the State or of any political subdivision of the State and all officers and employees of the United States of America or of any political subdivision or agency thereof having the control, receipt, custody, disposal, or payment of interest (other than interest coupons payable to bearer), rent, salaries, wages, dividends, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable annual or periodical gains, profits, and incomes paid or payable during any year to any taxpayer, shall make complete return thereof to the Secretary of Revenue under such regulations and in such form and manner and to such extent as may be prescribed by him. The filing of any report in compliance with the provisions of this section by a foreign corporation shall not constitute an act in evidence of and shall not be deemed to be evidence that such corporation is doing business in this State.

(b) Every partnership doing business in the State shall make a return, stating specifically the items of its gross income and the deductions allowed by this Division, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributable, and the amount of the distributive share of each individual, together with the distributive shares of corporation dividends. The return shall be signed by one of the partners under affirmation in the form prescribed in G.S. 105-155 of this Division, and the same penalties prescribed in G.S. 105-236 shall apply in the event of a willful misstatement. (1939, c. 158, s. 328; 1945, c. 708, s. 4; 1957, c. 1340, s. 4; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 1287, 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 for taxable years beginning on and after Jan. 1,

1974, inserted "dividends" near the middle of the first sentence of subsection (a) and substituted "doing business" for "having a place of business" near the beginning of the first sentence of subsection (b).

§ 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. — (a) Except as otherwise provided in this section and in Article 4A of this Chapter, the full amount of the tax payable as shown on the face of the return shall be paid to the Secretary of Revenue at the office where the return is filed at the time fixed by law for filing the return; provided, that when a husband and wife have elected under G.S. 105-152(e) to file their separate income tax returns on a single form and the amount for which one spouse is separately liable has been reduced by credit for overpayment of tax by the other spouse as provided in that subsection, only the amount in excess of such credit shall be payable; provided, that if the amount shown to be due after all credits is less than one dollar (\$1.00), no payment need be made.

(b) The tax may be paid with uncertified check during such time and under such regulations as the Secretary of Revenue shall prescribe; but if a check so received is not paid by the bank on which it is drawn, the taxpayer by whom such check is tendered shall remain liable for the payment of the tax and for all legal penalties the same as if such check had not been tendered. (1939, c. 158, s. 332; 1943, c. 400, s. 4; 1947, c. 501, s. 4; 1951, c. 643, s. 4; 1955, c. 17, s. 2; 1959, c. 1259, s. 2; 1963, c. 1169, s. 2; 1967, c. 702, s. 1; c. 1110, s. 3; 1973, c. 476, s. 193; c. 903, s. 2; c. 1287, 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 for

taxable years beginning on and after Jan. 1, 1974, added the first proviso to subsection (a).

The third 1973 amendment, effective for taxable years beginning on and after Jan. 1, 1974, added the second proviso to subsection (a).

§ 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.

- (d) Deductions. — (1) Allowable Deductions: Except as otherwise provided in this section, the same deductions allowed individuals under G.S. 105-147 shall be allowed in computing the net income of an estate or trust.
- (2) Deductions for Depreciation and Depletion: In case of property held in trust, the deduction for depreciation and depletion shall be apportioned between the income beneficiaries and the trustee in accordance with the instrument creating the trust, or in the absence of such provisions, on the basis of the trust income allocable to each. In the case of an

estate, the allowable depreciation deduction shall be apportioned between the estate and the heirs, legatees, and devisees on the basis of the portion of the income of the estate allocable to each.

- (3) **Double Deduction Not Allowed:** The amounts allowable under G.S. 105-9 as a deduction in computing the taxable estate of a decedent for inheritance tax purposes, to the extent that they consist of those items which would be allowable as a deduction under G.S. 105-147 for income tax purposes, shall not be allowed as a deduction in computing the taxable income of the estate or of any other person unless there is filed, within the time and in the manner and form prescribed by the Secretary of Revenue, a statement that such amounts have not been allowed as deductions under G.S. 105-9 and a waiver of the right to have such amounts allowed as deductions under G.S. 105-9. This subdivision shall not apply with respect to deductions allowed under G.S. 105-142.1 (e) (relating to income in respect of decedents).
- (4) **Amounts Paid or Permanently Set Aside for Charity:**

- a. **Deduction:** In determining the net income of an estate or trust for purposes of this section (other than a trust described in subsection (d)(5) of this section), there shall be allowed as a deduction in computing the taxable income of the estate or trust (in lieu of the deductions allowed by G.S. 105-147(15) and (16)) any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, paid for a religious, charitable, scientific, literary, or educational purpose or for the prevention of cruelty to children or animals, or for a distributee specified in G.S. 105-147(15) or G.S. 105-147(16).

In the case of an estate there shall be allowed as a deduction in computing its taxable income any amount of gross income, without limitation, which pursuant to the terms of its governing instrument is during the taxable year, permanently set aside for religious, charitable, scientific, literary, or educational purposes, or for a distributee specified in G.S. 105-147(15) or G.S. 105-147(16).

- b. **Limitation on Deduction:**

1. **Trade or Business Income:** In computing the deduction allowable under paragraph a of this subdivision to a trust, no amount otherwise allowable under paragraph a shall be allowable as a deduction with respect to income of the taxable year which is allocable to its unrelated business income for such year. For purposes of the preceding sentence, the term "unrelated business income" means an amount equal to the amount which, if such trust were exempt from tax under subsection (f)(1) of this section, would be computed as its unrelated business taxable income under subsection (f)(2) of this section, (relating to income derived from certain business activities).
2. **Prohibited Transactions:** The amount otherwise allowable under paragraph a of this subdivision as a deduction shall not be allowable if the trust has engaged in a prohibited transaction. For purposes of this subdivision, the term "prohibited transaction" means any transaction after January 1, 1967, in which any trust while holding income or corpus which has been permanently set aside or is to be used exclusively for charitable or other purposes described in paragraph a of this subdivision:
 - I. Lends any part of such income or corpus, without receipt of adequate security and a reasonable rate of interest, to;
 - II. Pays any compensation from such income or corpus, in

- excess of a reasonable allowance for salaries or other compensation for personal services actually rendered, to;
- III. Makes any part of its services available on a preferential basis to;
 - IV. Uses such income or corpus to make any substantial purchase of securities or any other property, for more than an adequate consideration in money or money's worth from:
 - V. Sells any substantial part of the securities or other property comprising such income or corpus, for less than an adequate consideration in money or money's worth, to; or
 - VI. Engages in any other transaction which results in a substantial diversion of such income or corpus to;
- the creator of such trust; any person who has made a substantial contribution to such trust; a member of a family (including for these purposes brothers and sisters, whether by whole or half blood, spouse, ancestors, and lineal descendants) of an individual who is the creator of the trust or who has made a substantial contribution to the trust; or a corporation controlled by any such creator or person through the ownership, directly or indirectly, of fifty percent (50%) or more of the total combined voting power of all classes of stock of the corporation.

The amount otherwise allowable under paragraph a of this subdivision as a deduction shall be denied by reason of having engaged in a prohibited transaction only for taxable years after the taxable year during which the trust is notified by the Secretary of Revenue that it has engaged in such transaction, unless such trust entered into such prohibited transaction with the purpose of diverting such corpus or income from the purposes described in paragraph a of this subdivision, and such transaction involved a substantial part of such corpus or income. Provided, that if the deduction of any trust under paragraph a has been denied as herein provided, such trust, with respect to any taxable year following the taxable year in which notice is received of denial of the deduction under paragraph a, may, in such manner as prescribed by the Secretary of Revenue, file claim for the allowance of the unlimited deduction under paragraph a, and if the Secretary of Revenue is satisfied that such trust will not knowingly again engage in a prohibited transaction the denial of the deduction provided herein shall not apply with respect to the taxable years after the year in which such claim is filed.

- 3. Accumulated Income: If the amounts permanently set aside, or to be used exclusively for the charitable and other purposes described in paragraph a of this subdivision during the taxable year or any prior taxable year and not actually paid out by the end of the taxable year:
 - I. Are unreasonable in amount or duration in order to carry out such purposes of the trust;

- II. Are used to a substantial degree for purposes other than those prescribed in paragraph a of this subdivision; or
- III. Are invested in such manner as to jeopardize the interests of the religious, charitable, scientific, etc., beneficiaries, the amount otherwise allowable under paragraph a of this subdivision shall be limited to the amount actually paid out during the taxable year.

(5) Deduction for Trusts Distributing Current Income Only:

- a. Deduction: In the case of any trust the terms of which provide that all of its income is required to be distributed currently, and do not provide that any amounts are to be paid, permanently set aside, or used for the purposes specified in subsection (d)(4) of this section (relating to deduction for charitable, etc., purposes), there shall be allowed as a deduction in computing the taxable income of the trust the amount of the income for the taxable year which is required to be distributed currently. This subdivision shall not apply in any taxable year in which the trust makes distributions other than amounts of income required to be distributed currently.
- b. Limitation of the Deduction: If the amount of income required to be distributed currently exceeds the distributable net income of the trust for the taxable year, the deduction shall be limited to the amount of the distributable net income. For this purpose, the computation of distributable net income shall not include items of income which are not included in the gross income of the trust and the deductions allocable thereto.

(6) Deductions for Estates and Trusts Accumulating Income or Distributing Corpus:

- a. Deduction: In any taxable year there shall be allowed as a deduction in computing the taxable income of an estate or trust (other than a trust to which subsection (d)(5) applies), the sum of:
 - 1. Any amount of income for such taxable year required to be distributed currently (including any amount required to be distributed which may be paid out of income or corpus to the extent such amount is paid out of income for such taxable year); and
 - 2. Any other amounts properly paid, credited, or required to be distributed for such taxable year. In no case shall this deduction exceed the distributable net income of the estate or trust.
- b. Character of Amounts Distributed: The amount determined under paragraph a shall be treated as consisting of the same proportion of each class of items entering into the computation of distributable net income of the estate or trust as the total of each class bears to the total distributable net income of the estate or trust in the absence of the allocation of different classes of income under the specific terms of the governing instrument. In the application of the preceding sentence, the items of deduction entering into the computation of distributable net income (including the deduction allowed under subsection (d)(4)) shall be allocated among the items of distributable net income in such manner as may be prescribed by the Secretary of Revenue.
- c. Limitation on the Deduction: No deduction shall be allowed under paragraph a in respect of any portion of the amount allowed as a deduction under that paragraph (without regard to this paragraph) which is treated under paragraph b as consisting of any items of

distributable net income which are not included in the gross income for the estate or trust.

- d. Exclusion: There shall not be included as amounts falling within subsection (d)(6) of this section:
1. Any amount which, under the terms of the governing instrument, is properly paid or credited as a gift or bequest of a specific sum of money or of specific property and which is paid or credited all at once or in not more than three installments. For this purpose, an amount which can be paid or credited only from the income of the estate or trust shall not be considered as a gift or bequest of a specific sum of money.
 2. Any amount paid or permanently set aside or otherwise qualifying for the deduction provided in subsection (d)(4) of this section.
 3. Any amount paid, credited, or distributed in the taxable year, if subsection (d)(5) or (d)(6) applied to such for a preceding taxable year of an estate or trust because credited or required to be distributed in such preceding taxable year.
- e. Separate Shares Treated as Separate Trusts: For the sole purpose of determining the amount of distributable net income in the application of subsection (d)(6) of this section and subsection (b) of G.S. 105-162, in the case [of] a single trust having more than one beneficiary substantially separate and independent shares of different beneficiaries in the trust shall be treated as separate trusts. The existence of such substantially separate and independent shares and the manner of treatment as separate trusts shall be determined as prescribed by the Secretary of Revenue.
- (7) Deduction for Personal Exemption: The following personal exemption deductions shall be allowed under this section:
- a. An estate shall be allowed a deduction of one thousand dollars (\$1,000).
 - b. A trust which, under its governing instrument, is required to distribute all of its income currently shall be allowed a deduction of five hundred dollars (\$500.00).
 - c. All other trusts shall be allowed a deduction of two hundred dollars (\$200.00).
- (8) Deductible Dividends: Where dividend income is received by a fiduciary of an estate or trust and is distributed or distributable to a beneficiary during the taxable year so that it is includible in the gross income of the beneficiary for that taxable year, the dividends or the portion of such dividends which would be deductible to an individual under the provisions of subdivision (7) of G.S. 105-147 shall be deductible by such beneficiary during that taxable year. If the portion of the dividend income distributable to the beneficiary cannot be determined under the governing instrument, the amount of the deduction by the beneficiary shall be that amount which bears the same ratio to the total of the deductible portion of all dividends received by the estate or trust as the amount of income received by the beneficiary bears to the distributable net income of the estate or trust, except that in no case may the deduction claimed by the beneficiary under this subsection exceed the income distributed or required to be distributed to him from the estate or trust during the taxable year.
- (9) Apportionment of Deductions: Deductions allowable under this section shall be apportioned between the beneficiaries and the trust or estate

in such manner as prescribed by the Secretary of Revenue unless otherwise provided in this section.

- (10) The Standard Deduction: The standard deduction allowed individuals under subdivision (22) of G.S. 105-147 shall not be allowed an estate or trust.
- (e) Returns. — (1) Returns with respect to income taxes, showing therein specifically the items of gross income, the deductions allowed by this section, and such other facts as the Secretary of Revenue may require, shall be made for the following:
- a. Every estate subject to the tax imposed by this section the gross income of which for the taxable year is in excess of one thousand dollars (\$1,000). The return of an estate shall be made by the fiduciary thereof.
 - b. Every trust having for the taxable year any taxable income subject to the tax imposed by this section, or having gross income of one thousand dollars (\$1,000) or over, regardless of the amount of taxable income. The return for a trust shall be made by the fiduciary thereof.
 - c. Every estate or trust of which any beneficiary is a nonresident when such estate or trust has income subject to tax under this section.
- (2) Every trust claiming a charitable, etc., deduction under subsection (d)(4) of this section for the taxable year shall furnish such information with respect to such taxable year as the Secretary of Revenue may by forms, or some other manner prescribe, setting forth:
- a. The amount of the charitable, etc., deductions taken under subsection (d)(4) of this section within such year (showing separately the amount of such deduction which was paid out and the amount which was permanently set aside for charitable, etc., purposes during such year),
 - b. The amount paid out within such year which represents amounts for which charitable, etc., deductions under subsection (d)(4) of this section have been taken in prior years,
 - c. The amount for which charitable, etc., deductions have been taken in prior years but which has not been paid out at the beginning of such year,
 - d. The amount paid out of principal in the current and prior years for charitable, etc., purposes,
 - e. The total income of the trust within such year and the expenses attributable thereto, and
 - f. A balance sheet showing the assets, liabilities, and net worth of the trust as of the beginning of such year.
- (f) Exempt Trusts. —
- (1) The following trusts shall be exempt from taxation under this Division:
- a. Pension, profit-sharing, stock bonus and annuity trusts, or combinations thereof, established by employers for the purpose of distributing both the principal and income thereof exclusively to eligible employees, or the beneficiaries of such employees, and so constituted that no part of the corpus or income may be used for, or diverted to, any purpose other than for the exclusive benefit of the employees or their beneficiaries; provided, there is no discrimination, as to eligibility requirements, contributions or benefits, in favor of officers, shareholders, supervisors, or highly paid employees; provided further, that the interest of individual employees participating therein shall be irrevocable and nonforfeitable to the extent of any contributions made thereto by

such employees; and provided further, the Secretary of Revenue shall be empowered to promulgate rules and regulations regarding the qualification of such trusts for exemption under this subdivision. The exemption of any trust under the provisions of the federal income tax law shall be a prima facie basis for exemption of said trust under this paragraph.

- b. Any trust created for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any individual.

- (2) Trusts described in subdivision (1) of this subsection shall be subject to the tax provided for in this section to the following extent: Gross income derived by any of these trusts from any trade or business the conduct of which is not substantially related to the exercise or performance of those functions constituting the basis for its exemption in subdivision (1) of this subsection, less all deductions allowed by this section directly connected with carrying on such trade or business, provided, this paragraph shall not apply to interest, royalties, dividends, or rent; provided further, this paragraph shall not apply to any trade or business:

- a. In which substantially all of the work in carrying on such trade or business is performed for the trust without compensation; or
- b. Which is the selling of merchandise, substantially all of which is given to it.

(g) Tax Credits for Income Taxes Paid to Other States. —

- (1) If a fiduciary is required to pay income tax to this State for an estate or a trust for which he acts, he shall be allowed a credit against the taxes imposed by this section for income taxes imposed by and paid to another state or country on income derived from sources within such other state or country in accordance with the formula contained in subdivision (2) of this subsection and the requirements of subdivision (3) of this subsection.
- (2) The fraction of the gross income for North Carolina income tax purposes which is derived from sources within and subject to income tax in another state or country shall be ascertained and the North Carolina net income tax before credit under this subsection shall be multiplied by such fraction. The credit allowed shall be either the product thus calculated or the income tax actually paid the other state or country, whichever is smaller.
- (3) Receipts showing the payment of income taxes to another state or country and a true copy of a return or returns upon the basis of which such taxes are assessed must be filed with the Secretary of Revenue at, or prior to, the time credit is claimed. If credit is claimed on account of a deficiency assessment, a true copy of the notice assessing or proposing to assess the deficiency, as well as a receipt showing the payment of the deficiency, must be filed.
- (4) If any taxes paid to another state or country for which a fiduciary has been allowed a credit under this section are at any time credited or refunded to the fiduciary, a tax equal to that portion of the credit allowed for such taxes so credited or refunded shall be due and payable from the fiduciary within 30 days from the date of the receipt of the refund or the notice of the credit. If the amount of such tax is not paid within 30 days of receipt or notice the fiduciary shall be subject to the penalties and interest on delinquent payments provided in G.S. 105-236 and G.S. 105-241.1.

- (h) Time and Place of Filing Returns. — Returns required under the

provisions of subsection (e) of this section shall be in such form as the Secretary of Revenue may prescribe, and shall be filed with the Secretary at his main office, or at any branch office which he may establish. The return of every fiduciary reporting on a calendar-year basis shall be filed on or before the fifteenth day of April in each year, and the return of every fiduciary reporting on a fiscal year basis shall be filed on or before the fifteenth day of the fourth month following the close of the fiscal year. In the case of sickness, absence, or other disability or whenever in his judgment good cause exists, the Secretary may allow further time for filing these returns.

(i) Time and Place of Payment of Tax. —

- (1) The full amount of the tax payable as shown on the face of the return shall be paid to the Secretary of Revenue at the office where the return is filed at the time fixed by law for filing the return; provided, that if the amount shown to be due after all credits is less than one dollar (\$1.00), no payment need be made.
- (2) The tax may be paid with uncertified check, but if a check so received is not paid by the bank on which it is drawn, the fiduciary by whom such check is tendered shall remain liable for the payment of the tax and for all penalties lawfully imposed.

(1973, c. 476, s. 193; c. 1287, s. 6.)

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 Jan. 1, 1974, inserted "to the extent that they consist of those items which would be allowable as a deduction under G.S. 105-147 for income tax purposes" and "or of any other person" and

substituted "such" for "the" preceding "amounts" in the first sentence of subdivision (3) of subsection (d), deleted "or permanently set aside" following "paid" near the end of subdivision (4)a of subsection (d), added the second paragraph of subdivision (4)a of subsection (d), and added the proviso at the end of subdivision (1) of subsection (i).

Only the subsections changed by the amendments are set out.

§ 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.

§ 105-163. Grantor trusts.

(b) Reversionary Interests. —

- (1) The grantor shall be treated as the owner of any portion of a trust in which he has a reversionary interest in either the corpus or the income therefrom if, as of the inception of that portion of the trust, the interest will or may reasonably be expected to take effect in possession or enjoyment within 10 years commencing with the date of the transfer of that portion of the trust.
- (2) Repealed by Session Laws 1973, c. 1287, s. 6.
- (3) The grantor shall not be treated under subdivision (1) as the owner of any portion of a trust where his reversionary interest in such portion is not to take effect in possession or enjoyment until the death of the individual or individuals to whom the income therefrom is payable.
- (4) Any postponement of the date specified for the reacquisition of possession or enjoyment of the reversionary interest shall be treated as a new transfer in trust commencing with the date on which the postponement is effected and terminating with the date prescribed by the postponement. However, income for any period shall not be included in the income of the grantor by reason of the preceding sentence if such income would not be so includible in the absence of such postponement.

(1973, c. 1287, s. 6.)

Editor's Note. — The 1973 amendment, effective for taxable years beginning on and after Jan. 1, 1974, repealed subdivision (2) of subsection (b), which provided that subdivision (1) should not apply to certain trusts of which the income was irrevocably payable to

beneficiaries qualifying as recipients of gifts or contributions under G.S. 105-147(15) or G.S. 105-147(16).

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

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. — (a) Every employer required to deduct and withhold from an employee's wages under G.S. 105-163.2 shall, for the quarterly period beginning January 1, 1960, and for each quarterly period thereafter, on or before the last day of the month following the close of each quarterly period, make return and pay over to the Secretary the amounts required to be withheld under G.S. 105-163.2. Such returns shall be in such form and contain such information as the Secretary may prescribe.

(b) Notwithstanding any of the other provisions of this section, all transient employers shall make return and pay over to the Secretary on a monthly basis the amounts required to be withheld under G.S. 105-163.2. Such returns and payments to the Secretary by transient employers shall be made on or before the last day of the month following the month for which such amounts were deducted and withheld from the wages of his employees.

(c) Notwithstanding any of the other provisions of this section, all employers engaged in any business which is seasonal shall make return and pay over to the Secretary on a monthly basis the amounts required to be withheld under G.S. 105-163.2. Such returns and payments to the Secretary by employers engaged in such seasonal business shall be made on or before the last day of the month following the month for which such amounts were deducted and withheld from the wages of his employees.

(d) If the Secretary, in any case, has reason to believe that the collection of moneys, required by this Article to be withheld by the employer, is in jeopardy, he may require the employer to make such return and pay to the Secretary such amounts required to be withheld at any time said Secretary may designate therefor subsequent to the time when such amounts should have been deducted from wages and withheld.

(e) Every employer who fails to withhold or pay to the Secretary any sums required by this Article to be withheld and paid shall be personally and individually liable therefor to the Secretary; and any sum or sums withheld in accordance with the provisions of G.S. 105-163.2 shall be deemed to be held in trust for the Secretary.

(f) Any person required to collect, truthfully account for, and pay over any amounts required to be deducted and withheld under G.S. 105-163.2, who fails to collect and pay over such amount shall, in addition to other penalties provided by law, be personally liable to a penalty equal to the total amount not collected or not accounted for and paid over. No penalty shall be imposed under G.S. 105-163.17 for any offense to which this section is applicable. (1959, c. 1259, s. 1; 1973, c. 476, s. 193; c. 1287, 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, effective for taxable years beginning on and after Jan. 1, 1974, added subsection (f).

§ 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. — (a) Every individual shall, for all taxable years beginning on and after January 1, 1960, and at the times prescribed in subsection (c) of this section, make a declaration of his estimated income and his estimated income tax for the taxable year:

- (1) If no part of his income consists of wages, and his net taxable income can reasonably be expected to equal or exceed one thousand dollars (\$1,000) for the taxable year, or
- (2) If his income consists of wages and other income, and his net taxable income can reasonably be expected to equal or exceed one thousand dollars (\$1,000) for the taxable year; provided, that no individual shall be required to file a declaration pursuant to this paragraph unless all of his income from whatever source, other than wages from which tax has been withheld under the provisions of this Article, which may be subject to an income tax under Article 4 of this Chapter can be reasonably expected to exceed, by one thousand dollars (\$1,000) or more, the sum of:
 - a. All business-connected deductions allowable under the provisions of Article 4 to which the taxpayer can be reasonably expected to be entitled during the taxable year in the production of all income, other than wages earned by the taxpayer, and
 - b. The amount of all deductible dividends from stocks which can be

reasonably expected to be earned by the taxpayer during the taxable year.

- (3) Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, no declaration is required to be filed if the estimated tax (as determined under this section) reduced by the amount which the individual estimates as the amount of income tax to be withheld under the provisions of G.S. 105-163.2 and by any estimated tax credit under the provisions of G.S. 105-151 for income tax imposed by and paid to another state or country, can be reasonably expected to be less than forty dollars (\$40.00).

(b) In the declaration required under subsection (a) above, the individual shall state:

- (1) The amount which he estimates as the amount of tax for which he will be liable under G.S. 105-136 for the taxable year, less any credits to which he can reasonably be expected to be entitled under G.S. 105-151;
- (2) The amount which he estimates will be withheld, if any, from wages of the taxpayer for the taxable year under the provisions of G.S. 105-163.2;
- (3) The excess of the amount estimated under subdivision (1) of this subsection over the amount estimated under subdivision (2) of this subsection, which excess for the purposes of this Article shall be considered the estimated tax for the taxable year to be paid to the Secretary directly by the individual; and
- (4) Such other information as may be required by the Secretary.

(c) The declaration required under subsection (a) of this section shall be filed with the Secretary on or before April 15 of the taxable year, except that if the requirements of subsection (a) of this section are first met:

- (1) After April 1 and before June 2 of the taxable year, the declaration shall be filed on or before June 15 of the taxable year; or
- (2) After June 1 and before September 2 of the taxable year, the declaration shall be filed on or before September 15 of the taxable year; or
- (3) After September 1 of the taxable year, the declaration shall be filed on or before January 15 of the succeeding taxable year.

(d) An individual may make amendments of a declaration filed during the taxable year under regulations prescribed by the Secretary.

(e) If on or before January 31 (or March 1, in the case of an individual referred to in subsection (f) below, relating to income from farming and commercial fishing) of the succeeding taxable year the taxpayer files a return, for the taxable year for which the declaration is required, and pays in full the amount computed on the return as payable, then —

- (1) If the declaration is not required to be filed during the taxable year, but is required to be filed on or before January 15, such return shall be considered as such declaration; and
- (2) If the tax shown on the return (reduced by the sum of all credits against tax to which the taxpayer may be entitled under the provisions of Article 4 and Article 4A of this Chapter) is greater than the estimated tax shown in a declaration previously made, or in the last amendment thereof, such return shall be considered as the amendment of the declaration permitted by subsection (d) to be filed on or before January 15.

In the application of this subsection in the case of a taxable year beginning on any date other than January 1, there shall be substituted, for the fifteenth or last day of the months specified in this subsection, the fifteenth or last day of the months which correspond thereto.

(f) Declaration of estimated tax required to be filed by this section from individuals whose estimated gross income from farming and commercial fishing (including oyster farming) for the taxable year is at least two thirds of the total

estimated gross income from all sources for the taxable year may, in lieu of the time prescribed in subsection (c), be filed at any time on or before January 15 of the succeeding taxable year.

(g) The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary.

(h) In the application of this section to the case of a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto. (1959, c. 1259, s. 1; 1963, c. 785, ss. 1, 2; 1967, c. 1110, s. 4; 1973, c. 476, s. 193; c. 1287, 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, effective for taxable years beginning on and after Jan. 1, 1974, substituted "one thousand dollars (\$1,-

000)" for "two hundred dollars (\$200.00)" in subdivisions (a)(1) and in two places in the introductory paragraph of subdivision (a)(2), added subdivision (a)(3) and substituted "March 1" for "February 15" in the parenthesis near the beginning of subsection (e).

§ 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.

(b) For the purposes of subsection (a), the amount of the underpayment shall be the excess of:

- (1) The amount of the installment which would be required to be paid if the estimated tax were equal to eighty percent (80%) (sixty-six and two-thirds percent ($66\frac{2}{3}\%$) in the case of individuals referred to in G.S. 105-163.11(f), relating to income from farming and commercial fishing) of the tax shown on the return for the taxable year or, if no return was filed, eighty percent (80%) (sixty-six and two-thirds percent ($66\frac{2}{3}\%$) in the case of individuals referred to in G.S. 105-163.11(f), relating to income from farming) of the tax for such year, over
- (2) The amount, if any, of the installment paid on or before the last date prescribed for such payment.

(f) The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary.

(1973, c. 476, s. 193; c. 1287, 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, effective for taxable years beginning on and after Jan. 1,

1974, substituted "eighty percent (80%)" for "seventy percent (70%)" in two places in subdivision (b)(1).

As the rest of the section was not changed by the amendments, only subsections (b) and (f) are set out.

§ 105-163.16. Overpayment refunded. — (a) Where the amount of wages withheld at the source under G.S. 105-163.2 exceeds the taxes imposed by Article 4 of this Chapter against which the tax so withheld may be credited under G.S. 105-163.10, the amount of such excess shall be considered an overpayment by the employee, and, notwithstanding the provisions of G.S. 105-266 and G.S. 105-266.1, overpayment by the employee shall be refunded by the Secretary under the provisions of this section.

(b) Where the amount of estimated tax paid under the provisions of G.S. 105-163.14 exceeds the taxes imposed by Article 4 of this Chapter against which the estimated

tax so paid may be credited under the provisions of this Article, the amount of such excess shall be considered an overpayment by the taxpayer, and, notwithstanding the provisions of G.S. 105-266 and G.S. 105-266.1, such overpayment by the taxpayer shall be refunded by the Secretary under the provisions of this section.

(c) Where there has been an overpayment (as specified in subsections (a) and (b) of this section) of any tax imposed under Article 4 of this Chapter, as disclosed by the taxpayer's annual return required to be filed by Article 4, the amount of such overpayment shall be refunded to the taxpayer; except that overpayments of less than one dollar (\$1.00) shall be refunded only upon receipt by the Secretary of a written demand for such refund from the taxpayer. Every refund authorized by this section shall be made as expeditiously as possible, and within six months from the date on which the annual return is filed or due to be filed, whichever is later, insofar as the same is practicable; except that no refunds for overpayment of estimated tax shall be made by the Secretary prior to the date on which the final return is filed by the taxpayer. No interest shall be paid with respect to any such refund if the refund is made within the six months' period above referred to. Interest computed at the rate of four percent (4%) per annum shall be paid on refunds made after the expiration of said six months' period, such interest to be computed from the time of the expiration of said six months' period until paid. It shall not be necessary for the Attorney General or any member of his staff to approve such refund. The making of such refund does not absolve any taxpayer of any income tax liability which may in fact exist and the Secretary may make any assessment for any deficiency in the manner provided in Article 4 of this Chapter. No overpayment of tax by the taxpayer shall be refunded irrespective of whether upon discovery or receipt of written demand if such discovery is not made or such demand is not received within three years from the date set by the statute for the filing of the annual return by the taxpayer or within six months of the payment of the tax alleged to be an overpayment, whichever date is the later.

(d) When a husband and wife have elected under G.S. 105-152(e) to file their separate income tax returns on a single form and a refund for overpayment of tax is made payable to both spouses as provided in that subsection, the provisions of this section shall apply to such refund. (1959, c. 1259, s. 1; 1967, c. 702, s. 2; 1973, c. 476, s. 193; c. 903, 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 for taxable years beginning on and after Jan. 1, 1974, added subsection (d).

§ 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, the Commissioner of Revenue to Secretary of
s. 193, effective July 1, 1973, changes the title of Revenue.

§ 105-163.26. Declarations of estimated income tax by corporations.

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.

§ 105-163.27. Time for filing declarations of estimated income tax by corporations.

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.

§ 105-163.28. Installment payments of estimated income tax by corporations.

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.

§ 105-163.30. Failure by corporation to pay estimated income 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.

§ 105-163.32. Affirmation; penalties for false declaration.

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.

§ 105-163.33. Overpayment refunded.

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.

§ 105-163.37. Rules and 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.

ARTICLE 5.

Schedule E. Sales and Use Tax.

DIVISION 1. TITLE, PURPOSE AND DEFINITIONS.

§ 105-164.3. Definitions. — The words, terms and phrases when used in this Article shall have the meanings ascribed to them in this section except when the context clearly indicates a different meaning:

(2) "Secretary" shall mean the Secretary of Revenue of the State of North Carolina.

(10) "Nonresident retail or wholesale merchant" shall mean every person whose business establishment is located outside North Carolina and who engages in the business of buying or acquiring by consignment or otherwise any tangible personal property and selling the same at retail or wholesale outside this State and who has applied for and obtained from the Secretary a certificate of registration in accordance with such rules and regulations as may be prescribed for the issuance thereof.

- (14) "Retailer" means and includes every person engaged in the business of making sales of tangible personal property at retail, either within or without this State, or peddling the same or soliciting or taking orders for sales, whether for immediate or future delivery, for storage, use or consumption in this State and every manufacturer, producer or contractor engaged in business in this State and selling, delivering, erecting, installing or applying tangible personal property for use in this State notwithstanding that said property may be permanently affixed to a building or realty or other tangible personal property. Provided, however, that when in the opinion of the Secretary it is necessary for the efficient administration of this Article to regard any salesmen, solicitors, representatives, consignees, peddlers, truckers or canvassers as agents of the dealers, distributors, consignors, supervisors, employers or persons under whom they operate or from whom they obtain the tangible personal property sold by them regardless of whether they are making sales on their own behalf or on behalf of such dealers, distributors, consignors, supervisors, employers or persons, the Secretary may so regard them and may regard the dealers, distributors, consignors, supervisors, employers or persons as "retailers" for the purpose of this Article.
- (17) "Storage" means and includes any keeping or retention in this State for any purpose by the purchaser thereof, except sale in the regular course of business, of tangible personal property purchased from a retailer.
- (19) "Storage" and "Use"; Exclusion. — "Storage" and "use" do not include the keeping, retaining or exercising any right or power over tangible personal property by the purchaser thereof for the original purpose of subsequently transporting it outside the State for use thereafter solely outside the State and which purpose is consummated, or for the purpose of being processed, fabricated, or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the State and thereafter used solely outside the State.
- (1973, c. 476, s. 193; c. 1287, s. 8.)

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, 1974, inserted "by the purchaser thereof"

near the middle of subdivision (17) and near the beginning of subdivision (19).

Only the introductory paragraph and the subdivisions changed by the amendments are set out.

DIVISION II. TAXES LEVIED.

Part 1. Retail Sales Tax.

§ 105-164.4. Imposition of tax; retailer. — There is hereby levied and imposed, in addition to all other taxes of every kind now imposed by law, a privilege or license tax upon every person who engages in the business of selling tangible personal property at retail, renting or furnishing tangible personal property or the renting and furnishing of rooms, lodgings and accommodations to transients, in this State, the same to be collected and the amount to be determined by the application of the following rates against gross sales and rentals, to wit:

- (1) At the rate of three percent (3%) of the sales price of each item or article of tangible personal property when sold at retail in this State, the tax to be computed on total net taxable sales as defined herein but for the purpose of computing the amount due the State each and every taxable retail sale, or retail sales upon which the tax has been collected, or the amount of tax actually collected, whichever be greater and whether or

not erroneously collected, shall be included in the computation of tax due the State. Provided, however, that in the case of the sale of any airplane, railway locomotive, railway car or the sale of any motor vehicle or boat, the tax shall be only at the rate of two percent (2%) of the sales price, but at no time shall the maximum tax with respect to any one such airplane, railway locomotive, railway car or motor vehicle or boat, including all accessories attached thereto at the time of delivery thereof to the purchaser, be in excess of one hundred twenty dollars (\$120.00).

For the purposes of this section, the words "motor vehicle" mean any vehicle which is self-propelled and designed primarily for use upon the highways, any vehicle which is propelled by electric power obtained from trolley wires but not operated upon rails, and any vehicle designed to run upon the highways which is pulled by a self-propelled vehicle, but shall not include any implement of husbandry, farm tractor, road construction or maintenance machinery, or equipment, special mobile equipment as defined in G.S. 20-38, nor any vehicle designed primarily for use in work off the highway. For the purposes of this subdivision, the sale separately of a new motor vehicle chassis and a new motor vehicle body to be installed thereon, whether by the same retailer or different retailers, shall be subject only to the tax herein prescribed with respect to a single motor vehicle.

Provided further, in addition to all other taxes, there is hereby levied and imposed upon every person for the privilege of using the streets and highways of this State, a tax at the rate of two percent (2%) of the sales or purchase price of any motor vehicle, new chassis and/or new body as defined, described and limited in this section, including all accessories attached thereto at the time of delivery thereof to the purchaser, purchased or acquired for use on the streets and highways of this State, but at no time shall said tax exceed one hundred twenty dollars (\$120.00) with respect to any one motor vehicle, and the same shall be paid to the Secretary of Revenue at the time of applying for certificates of title or registration of such motor vehicle. No certificate of title or registration plate shall be issued for same unless and until said tax has been paid: Provided, however, if such person so applying for certificate of title or registration and license plate for such motor vehicle shall furnish to the Secretary of Revenue a certificate from a motor vehicle dealer licensed to do business in this State, upon a form furnished by the Secretary, certifying that such person has paid the tax thereon levied in this Article, the tax herein levied shall be remitted to such person to avoid in effect double taxation on said motor vehicle under this Article. It is not the intention of this section to impose any tax upon a body mounted upon the chassis of a motor vehicle which temporarily enters the State for the purpose of having such body mounted thereon by the manufacturer thereof.

The tax levied under this subdivision shall not apply to the owner of a motor vehicle who purchases or acquires said motor vehicle from some person, firm or corporation who or which is not a dealer in new and/or used motor vehicles if the tax levied under this Article has been paid with respect to said motor vehicle.

Provided further, the tax shall be only at the rate of one percent (1%) of the sales price on the following items:

- a. Horses or mules by whomsoever sold.
- b. Semen to be used in the artificial insemination of animals.
- c. Sales of fuels to farmers to be used by them for any farm purposes other than preparing food, heating dwellings and other household purposes. The quantity of fuel purchased or used at any one time

shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the one percent (1%) rate of tax imposed herein.

- d. Sales of fuel to manufacturing industries and manufacturing plants for use in connection with the operation of such industries and plants other than sales of fuels to be used for residential heating purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the one percent (1%) rate of tax imposed herein.
- e. Sales of fuel to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.
- f. Sales to freezer locker plants of wrapping paper, cartons and supplies consumed directly in the operation of such plant.

Provided further, the tax shall be only at the rate of one percent (1%) of the sales price, subject to a maximum tax of eighty dollars (\$80.00) per article, on the following items:

- g. Sales of machines and machinery, whether animal or motor drawn or operated, and parts and accessories for such machines and machinery to farmers for use by them in the planting, cultivating, harvesting or curing of farm crops, and sales of machines and machinery and parts and accessories for such machines and machinery to dairy operators, poultry farmers, egg producers, and livestock farmers for use by them in the production of dairy products, poultry, eggs or livestock.

The term "machines and machinery" as used in this subdivision is defined as follows:

The term shall include all vehicular implements, designed and sold for any use defined in this subdivision, which are operated, drawn or propelled by motor or animal power, but shall not include vehicular implements which are operated wholly by hand, and shall not include any motor vehicles required to be registered under Chapter 20 of the General Statutes.

The term shall include all nonvehicular implements and mechanical devices designed and sold for any use defined in this subdivision, which have moving parts, or which require the use of any motor or animal power, fuel, or electricity in their operation but shall not include nonvehicular implements which have no moving parts and are operated wholly by hand.

The term shall also include metal flues sold for use in curing tobacco, whether such flues are attached to handfired furnaces or used in connection with mechanical burners.

- h. Sales of mill machinery or mill machinery parts and accessories to manufacturing industries and plants.
- i. Sales of central office equipment and switchboard and private branch exchange equipment to telephone and telegraph companies regularly engaged in providing telephone and telegraph service to subscribers on a commercial basis.
- j. Sales to commercial laundries or to pressing and dry cleaning establishments of machinery used in the direct performance of the laundering or the pressing and cleaning service and of parts and accessories thereto.
- k. Sales to freezer locker plants of machinery used in the direct operation of said freezer locker plant and of parts and accessories thereto.

- l. Sales of broadcasting equipment and parts and accessories thereto and towers to commercial radio and television companies which are under the regulation and supervision of the Federal Communications Commission.
 - m. Sales to farmers of bulk tobacco barns and racks and all parts and accessories thereto and similar apparatus used for the curing and drying of any farm produce.
- (4) Every person, firm or corporation engaged in the business of operating a pressing club, cleaning plant, hat-blocking establishment, dry-cleaning plant, laundry (including wet or damp wash laundries and businesses known as launderettes and launderalls), or any similar-type business, or engaged in the business of renting clean linen or towels or wearing apparel, or any similar-type business, or engaged in the business of soliciting cleaning, pressing, hat blocking, laundering or rental business for any of the aforementioned businesses, shall be considered "retailers" for the purposes of this Article. There is hereby levied upon every such person, firm or corporation a tax of three percent (3%) of the gross receipts derived from services rendered in engaging in any of the occupations or businesses named in this subdivision, and every person, firm or corporation subject to the provisions of this subdivision shall register and secure a license in the manner hereinafter provided in this section, and, insofar as practicable, all other provisions of this Article shall be applicable with respect to the tax herein provided for. The taxes levied in this subdivision are additional privilege or license taxes for the privilege of engaging in the occupations or businesses named herein. Any person, firm or corporation engaged in cleaning, pressing, hat blocking, laundering for, or supplying clean linen or towels or wearing apparel to, another person, firm or corporation engaged in soliciting shall not be required to pay the three percent (3%) tax on its gross receipts derived through such solicitor, if the soliciting person, firm or corporation has registered with the Department, secured the license hereinafter required and has paid the tax at the rate of three percent (3%) of the total gross receipts derived from business solicited.
- (7) Any person who shall engage or continue in any business for which a privilege tax is imposed by this Article shall immediately after July 1, 1957, apply for and obtain from the Secretary upon payment of the sum of one dollar (\$1.00) a license to engage in and conduct such business upon the condition that such person shall pay the tax accruing to the State of North Carolina under the provisions of this Article and he shall thereby be duly licensed and registered to engage in and conduct such business. The license tax levied in this section shall be a continuing license until revoked for failure to comply with the provisions of this Article. Provided, however, that any person who has heretofore applied for and obtained such license and the same is in force and effect as of July 1, 1957, shall not be required to apply for and obtain a new license. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5; 1961, c. 826, s. 2; 1963, c. 1169, ss. 3, 11; 1967, c. 1110, s. 6; c. 1116; 1969, c. 1075, s. 5; 1971, c. 887, s. 1; 1973, c. 476, s. 193; c. 1287, s. 8.)

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, 1974, inserted "of" preceding "tax due" near the end of the first sentence of the first paragraph of subdivision (1) and deleted the former last sentence of subdivision (4), which

exempted persons, etc., required to be licensed under this Article and to pay taxes under subdivision (4) of this section from the one percent gross receipts tax levied under §§ 105-74 and 105-85.

Only the introductory paragraph and the subdivisions changed by the amendments are set out.

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).

Term "Manufacturing" Not Definable with Complete Precision. — In a tax statute the general terms used by the legislature, such as "manufacturing," frequently cannot be defined with complete precision. *Master Hatcheries, Inc. v. Coble*, 21 N.C. App. 256, 204 S.E.2d 395 (1974).

It is impossible to make a clear-cut distinction between industrial processes which make use of living organisms and those which do not. *Master Hatcheries, Inc. v. Coble*, 21 N.C. App. 256, 204 S.E.2d 395 (1974).

Commercial Chicken Hatchery Is Manufacturing Industry. — While the word "manufacturing" does not ordinarily refer to the production of living organisms, in the contest of the tax statutes of this State as they have been applied by the Revenue Department, a commercial chicken hatchery is a "manufacturing industry or plant" within the meaning of subdivision (1)(h). *Master*

Hatcheries, Inc. v. Coble, 21 N.C. App. 256, 204 S.E.2d 395 (1974).

There is not a proper basis for classifying the processing of chickens as "manufacturing" for the purpose of granting tax exemption under subdivision (1)(h) and denying that interpretation of the subdivision to the operation of hatching chickens. *Master Hatcheries, Inc. v. Coble*, 21 N.C. App. 256, 204 S.E.2d 395 (1974).

Considerations in Determining Whether Operation of Chicken Hatchery Is Manufacturing. — See *Master Hatcheries, Inc. v. Coble*, 21 N.C. App. 256, 204 S.E.2d 395 (1974).

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 "launderiall" 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 and 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 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).

Failure to Charge or Collect Tax, etc. —

In accord with 2nd paragraph in original. See

§ 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, s. 193, effective July 1, 1973, changes the title of

the Commissioner of Revenue to Secretary of Revenue.

§ 105-164.11. Excessive and erroneous collections.

Editor's 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. 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.

Transactions Group.

- (15) Accounts of purchasers, representing taxable sales, on which the tax imposed by this Article has been paid, that are found to be worthless and actually charged off for income tax purposes may, at corresponding periods, be deducted from gross sales, provided, however, they must be added to gross sales if afterwards collected.

Unclassified Group.

- (18) Funeral expenses, including coffins and caskets, not to exceed one hundred and fifty dollars (\$150.00). All other funeral expenses, including gross receipts for services rendered, shall be taxable at the rate of three percent (3%). However, "services rendered" shall not include those services which have been taxed pursuant to G.S.

105-164.4(4), or to those services performed by any beautician, cosmetologist, hairdresser or barber employed by or at the specific direction of the family or personal representative of a deceased. Where coffins, caskets or vaults are purchased direct and a separate charge is paid for services, the provisions of this subsection shall apply to the total for both.

(20) Sales by blind merchants operating under supervision of the Department of Human Resources.

(23) Sales of wrapping paper, labels, wrapping twine, paper, cloth, plastic bags, cartons, packages and containers, cores, cones or spools, wooden boxes, baskets, coops and barrels; including paper cups, napkins and drinking straws and like articles sold to manufacturers, producers and retailers, when such materials are used for packaging, shipment or delivery of tangible personal property which is sold either at wholesale or retail and when such articles constitute a part of the sale of such tangible personal property and are delivered with it to the customer.

(28) Sales of newspapers by resident newspaper street vendors and by newsboys making house-to-house deliveries and sales of magazines by resident magazine vendors making house-to-house sales.

(1973, c. 476, s. 143; c. 708, s. 1; cc. 1064, 1076; c. 1287, s. 8.)

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).

The third 1973 amendment, effective July 1, 1974, inserted "resident" and added the language beginning "and sales of magazines" in subdivision (28).

The fourth 1973 amendment, effective July 1, 1974, added the third sentence in subdivision (18).

The fifth 1973 amendment, effective July 1,

1974, substituted "purchasers" for "purchases" near the beginning of subdivision (15) and "and" for "or" between "retail" and "when" near the end of subdivision (23).

Only the introductory paragraph and the subdivisions changed by the amendments 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, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

§ 105-164.16. Taxes due monthly; reports 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.

§ 105-164.17. Reports and payment of 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.

§ 105-164.18. Remittances; how made.

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

§ 105-164.19. Extension of time for making returns and 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.

§ 105-164.20. Cash or accrual basis of reporting.

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

§ 105-164.21. Discount for payment of taxes when due.

Editor's 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 V. RECORDS REQUIRED TO BE KEPT.**§ 105-164.22. Retailer must 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.

§ 105-164.23. Consumer must 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.

§ 105-164.24. Separate accounting 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.

§ 105-164.25. Wholesale merchant must 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.

§ 105-164.26. 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, s. 193, effective July 1, 1973, changes the title of the Commissioner of Revenue to Secretary of Revenue.

§ 105-164.29. Application for licenses by wholesale merchants and 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.

DIVISION VI. EXAMINATION OF RECORDS.**§ 105-164.30. Secretary or agent may examine books, 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.

§ 105-164.31. Complete records must be kept for three years.

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

§ 105-164.32. Incorrect returns; estimate.

Editor's 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 VII. FAILURE TO MAKE RETURNS; OVERPAYMENT.**§ 105-164.35. Excessive payments; recomputing 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.

§ 105-164.37. Bankruptcy, receivership, 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.

§ 105-164.38. Tax shall be a lien.

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

§ 105-164.39. Attachment.

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

§ 105-164.40. Jeopardy 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.

§ 105-164.41. Excess payments; refunds.

Editor's 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 VIII. ADMINISTRATION AND ENFORCEMENT.**§ 105-164.43. Secretary to make 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.

§ 105-164.44. Penalty and remedies of Article 9 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.

ARTICLE 6.*Schedule G. Gift Taxes.***§ 105-188. Gift taxes; classification of beneficiaries; exemptions; rates of tax.**

(e) The tax shall be based on the aggregate sum of the net gifts made by the donor to the same donee, and shall be computed as follows:

(1) Determine the aggregate sum of the net gifts to the donee for the

calendar year and the net gifts to the same donee for each of the preceding calendar years since January 1, 1948.

(2) Compute the tax upon said aggregate sum by applying the rates hereinafter set out.

(3) From the tax thus computed, deduct the total gift tax, if any, computed with respect to gifts to the same donee in any prior year or years since January 1, 1948. The sum thus ascertained shall be the gift tax due.

The term "net gifts" shall mean the sum of the gifts made by a donor to the same donee during any stated period of time in excess of the annual exclusion and the applicable specific exemption.

(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; c. 1287, s. 9.)

Editor's Note. —

The first 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).

The second 1973 amendment, effective for

taxable years beginning on and after Jan. 1, 1974, substituted "computed" for "paid" near the beginning of subdivision (e) (3).

As the rest of the section was not changed by the amendments, only subsections (e) and (g) are 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.

§ 105-197. Returns; time of filing; extension of time for filing. — Any person who within the calendar year 1939, after March 24, 1939, or any calendar year thereafter, makes any gift or gifts taxed by this Article shall report, under oath or affirmation, to the Department of Revenue, on forms provided for that purpose, showing therein an itemized schedule of all such gifts, the name and residence of each donee and the actual value of the gift to each, the relationship of each of such persons to the donor, and any other information which the Department of Revenue may require. Such returns shall be filed on or before the fifteenth day of April following the close of the calendar year. The Department of Revenue may grant a reasonable extension of time for filing a

report whenever in its judgment good cause exists. (1939, c. 158, s. 609; 1955, c. 22, s. 1; 1973, c. 1287, s. 9.)

Editor's Note. — The 1973 amendment, "report" and inserted "or affirmation" near the middle of the first sentence.

§ 105-197.1. Corrections and changes. — If the amount of the net gifts of any taxpayer for any year, subject to the provisions of this Article and as reported or as reportable to the United States Treasury Department, is changed, corrected, or otherwise determined by the Commissioner of Internal Revenue or other officer of the United States having authority to do so, such taxpayer, within 30 days after receipt of any Internal Revenue agent's report or supplemental report reflecting the corrected or determined net gifts shall make return under oath or affirmation to the Secretary of Revenue of such corrected, changed or determined net gifts. In making any assessment or refund under this section, the Secretary shall consider all facts or evidence brought to his attention, whether or not the same were considered or taken into account in the federal assessment or correction. If the taxpayer fails to notify the Secretary of Revenue of assessment of additional tax by the Commissioner of Internal Revenue, the statute of limitations shall not apply. The Secretary of Revenue shall thereupon proceed to determine, from such evidence as he may have brought to his attention or shall otherwise acquire, the correct net gifts of such taxpayer for the calendar year, and if there shall be any additional tax due from such taxpayer the same shall be assessed and collected; and if there shall have been an overpayment of the tax the said Secretary shall, within 30 days after the final determination of the net gifts of such taxpayer, refund the amount of such excess: Provided, that any taxpayer who fails to comply with this section as to making report of such change as made by the federal government within the time specified shall be subject to all penalties as provided in G.S. 105-236, in case of additional tax due, and shall forfeit his rights to any refund due by reason of such change.

When the taxpayer makes the return reflecting the corrected net gifts as required by this section, the Secretary of Revenue shall make assessments or refunds based thereon within three years from the date the return required by this section is filed, and not thereafter. When the taxpayer does not make the return reflecting the corrected net gifts as required by this section but the Department of Revenue receives from the United States government or one of its agents a report reflecting such corrected net gifts, the Secretary of Revenue shall make assessments for taxes due based on such corrected net gifts within five years from the date the report from the United States government or its agent is actually received, and not thereafter.

Nothing in this section shall be construed as preventing the Secretary of Revenue from making an assessment immediately following the receipt from any source of information concerning the correcting, change in, or determination of net gifts of a taxpayer by the United States government. The assessment of tax or additional tax under this section shall not be subject to any statute of limitations except as provided in this section. (1973, c. 1287, s. 10.)

Editor's Note. — Session Laws 1973, c. 1287, s. 15, makes this section effective for taxable years beginning on and after Jan. 1, 1974.

ARTICLE 7.

Schedule H. Intangible Personal Property.

§ 105-198. Intangible personal property. — The intangible personal properties enumerated and defined in this Article or schedule are hereby classified under authority of Sec. 2(2), Article V of the Constitution, and the taxes levied thereon are for the benefit of the State and the political subdivisions

of the State as hereinafter provided and said taxes so levied for the benefit of the political subdivisions of the State are levied for and on behalf of said political subdivisions of the State to the same extent and manner as if said levies were made by the governing authorities of the said subdivisions for distribution therein as hereinafter provided. Banks or banking associations, trust companies or any combination of such facilities or services shall be subject to the provisions of this Article for taxable years beginning on and after January 1, 1974. (1939, c. 158, s. 700; 1973, c. 1053, s. 6; c. 1446, s. 20.)

Editor's Note. —

The first 1973 amendment, effective for taxable years beginning on and after Jan. 1, 1974, added the second sentence.

The second 1973 amendment substituted "Sec. 2(2), Article V" for "Sec. 3, Article V" near the beginning of the first sentence.

Session Laws 1973, c. 1053, ss. 9 and 10, provide:

"Sec. 9. Nothing in this act shall be construed to relieve banks from excise tax in 1974 based on their net income earned during the year

1973, nor shall it affect any rights or liabilities of any bank arising prior to the effective date of this act.

"Sec. 10. Banks, or banking associations, trust companies or any combination of such facilities or services that become subject to taxes levied upon tangible personal property by local taxing jurisdictions as a result of this act, shall have 90 days after the effective date of this act to list such tangible personal property with the local taxing jurisdictions at the fair market value of such 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.

§ 105-200. Money on hand. — All money on hand (including money in safe deposit boxes, safes, cash registers, etc.) on December 31 of each year, having a business, commercial or taxable situs in this State, shall be subject to an annual tax, which is hereby levied, of twenty-five cents (25¢) on every one hundred dollars (\$100.00) of the total amount of such money on hand without deduction for any indebtedness or liabilities of the taxpayer; except that taxpayers reporting on a fiscal year basis for income tax purposes under the provisions of Article 4, shall report all money on hand on the last day of such fiscal year ending during the year prior to that December 31 as of which such property would otherwise be reported. For the purpose of this section, money on hand shall include legal tender of the United States and other countries, bills of exchange, checks, drafts and other similar instruments. (1939, c. 158, s. 702; 1957, c. 1340, s. 7; 1973, c. 1287, s. 11.)

Editor's Note. — The 1973 amendment, effective for taxable years beginning on and after Jan. 1, 1974, added the second sentence.

§ 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. — All bonds, notes, demands, claims, deposits or investments in out-of-state building and loan and savings and loan associations and other evidences of debt however evidenced whether secured by mortgage, deed of trust, judgment or otherwise, or not so secured, having a business, commercial or taxable situs in this State on December 31 of each year shall be subject to annual tax, which is hereby levied, of twenty-five cents (25¢) on every one hundred dollars (\$100.00) of the actual value thereof, except that taxpayers reporting on a fiscal year basis for income tax purposes under the provisions of Article 4 shall report evidences of debt on

the last day of such fiscal year ending during the year prior to the December 31 as of which such property would otherwise be reported: Provided, that from the actual value of such bonds, notes, demands, claims and other evidences of debt there may be deducted like evidences of debt owed by the taxpayer as of the valuation date of the receivable evidences of debt. The term "like evidences of debt" deductible under this section shall not include:

- (1) Accounts payable; provided, however, that accounts payable to security brokers incurred directly for the purchase of bonds, debentures and similar investments taxable under this section shall be deductible;
- (2) Taxes of any kind owing by the taxpayer;
- (3) Reserves, secondary liabilities or contingent liabilities except upon satisfactory showing that the taxpayer will actually be compelled to pay the debt or liability;
- (4) Evidences of debt owed to a corporation of which the taxpayer is parent or subsidiary or with which the taxpayer is closely affiliated by stock ownership or with which the taxpayer is subsidiary of same parent corporation, unless the credits created by such evidences of debt are listed, if so required by law for ad valorem or property taxation, for taxation at the situs of such credits; or
- (5) Debts incurred to purchase assets which are not subject to taxation at the situs of such assets.

From the total actual value of bonds, notes, demands, claims and other evidences of debt returned to this State for taxation by or in behalf of any taxpayer who or which also owns other such evidences of debt as have situs outside of this State, like evidences of debt owed by the taxpayer may be deducted only in the proportion which the total actual value of evidences of debt taxable under this section bears to the total actual value of all like evidences of debt owned by the taxpayer.

The tax levied in this section shall not apply to bonds, notes and other evidences of debt of the United States, State of North Carolina, political subdivisions of this State or agencies of such governmental units, or of nonprofit educational institutions organized or chartered under the laws of the State of North Carolina, but the tax shall apply to all bonds and other evidences of debt of political subdivisions and governmental units other than those specifically excluded herein.

In every action or suit in any court for the collection on any bonds, notes, demands, claims or other evidences of debt, the plaintiff shall be required to allege in his pleadings or to prove at any time before final judgment is entered

- (1) That such bonds, notes or other evidences of debt have been assessed for taxation for each and every tax year, under the provisions of this Article, during which the plaintiff was owner of same, not exceeding five years prior to that in which the suit or action is brought; or
- (2) That such bonds, notes or other evidences of debt sued upon are not taxable hereunder in the hands of the plaintiff; or
- (3) That the suitor has not paid, or is unable to pay such taxes, penalties and interest as might be due, but is willing for the same to be paid out of the first recovery on the evidence of debt sued upon.

When in any action at law or suit in equity it is ascertained that there are unpaid taxes, penalties and interest due on the evidence of debt sought to be enforced, and the suitor makes it appear to the court that he has not paid or is unable to pay said taxes, penalties and interest, but is willing for the same to be paid out of the first recovery on the evidence of debt, the court shall have authority to enter as a part of any judgment or decretal order in said proceedings that the amount of taxes, penalties and interest due and owing shall be paid to the proper officer out of the first collection on said judgment or decree. The title to real estate heretofore or hereafter sold under a deed of trust shall not be

drawn in question upon the ground that the holder of the notes secured by such deed of trust did not list and return the same for taxation as required by this Article. (1939, c. 158, s. 704; 1947, c. 501, s. 7; 1957, c. 1340, s. 7; 1959, c. 1259, s. 6; 1963, c. 1169, s. 4; 1965, c. 834; 1973, c. 1287, s. 11.)

Editor's Note. — The 1973 amendment, effective for taxable years beginning on and after Jan. 1, 1974, added the proviso to subdivision (1) of the first paragraph.

Applicable to Annuity Contracts. — See opinion of Attorney General to Mr. A.R. Waters, Revenue Department, 42 N.C.A.G. 199 (1973).

§ 105-203. Shares of stock. — All shares of stock owned by residents of this State or having a business, commercial or taxable situs in this State on December 31 of each year, with the exception herein provided, shall be subject to an annual tax, which is hereby levied, of twenty-five cents (25¢) on every one hundred dollars (\$100.00) of the total fair market value of such stock on December 31 of each year less such proportion of such value as is equal to the proportion of the dividends upon such stock deductible by such taxpayer in computing his income tax liability under the provisions of G.S. 105-130.7 and 105-147(7).

The tax herein levied shall not apply to shares of stock in building and loan associations or savings and loan associations which pay a tax as levied under Article 8D of Chapter 105 of the General Statutes, nor to shares of stock owned by any corporation which has its commercial domicile in North Carolina, where such corporation owns more than fifty percent (50%) of the outstanding voting stock.

Indebtedness incurred directly for the purchase of shares of stock may be deducted from the total value of such shares; provided, the specific shares of stock so purchased are pledged as collateral to secure said indebtedness; provided further, that only so much of said indebtedness may be deducted as is in the same proportion as the taxable value of said shares of stock is to the total value of said shares of stock. (1939, c. 158, s. 705; 1941, c. 50, s. 8; 1945, c. 708, s. 8; c. 752, s. 4; 1947, c. 501, s. 7; 1951, c. 937, s. 5; 1955, c. 1343, s. 2; 1957, c. 1340, s. 9; 1969, c. 1122; 1973, c. 1287, s. 11.)

Editor's Note. —

The 1973 amendment, effective for taxable years beginning on and after Jan. 1, 1974,

inserted "or savings and loan associations" near the beginning of the second paragraph.

§ 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. — All taxes levied in this Article or schedule shall become due and payable on the fifteenth day of April of each year, and the lien of such taxes shall attach annually to all real estate of the taxpayer within this State as of December 31 next preceding the date that such taxes become due and payable, regardless of the time at which liability for the tax may arise or the exact amount thereof be determined; and said lien shall continue until such taxes, with any interest, penalty and costs which shall accrue thereon, shall have been paid.

Every person, firm, association, corporation, clerk of court, guardian, trustee, executor, administrator, receiver, assignee for creditors, trustee in bankruptcy or other fiduciary owning or holding any intangible personal properties defined and classified and/or liable for or required to pay any tax levied, in this Article or schedule, either as principal or agent, shall make and deliver to the Secretary of Revenue in such form as he may prescribe a full, accurate and complete return of such tax liability; such return, together with the total amount of tax due, shall be filed on or before the fifteenth day of April in each year. In case of sickness, absence or other disability or whenever in his judgment good cause exists, the Secretary of Revenue may allow further time for filing returns.

For the purpose of protecting the revenue of this State and to avoid discrimination and prevent evasion of the tax imposed by this Article, every resident or nonresident person, firm, association, trustee or corporation, foreign or domestic, engaged in this State, either as principal or as agent or representative of or on behalf of another, in buying, selling, collecting, discounting, negotiating or otherwise dealing in or handling any of the intangible property defined in this Article, shall be deemed to be doing business in this State for the purposes of this Article, and the principal, superior or person on whose behalf such business is carried on in this State shall likewise be deemed to be doing business in this State, for the purpose of this Article, and where such business is carried on in this State by a corporation, foreign or domestic, it and its parent corporation or the corporation which substantially owns or controls it, by stock ownership or otherwise, shall be deemed to be doing business in this State, for the purpose of this Article, and in all such cases the said intangible property acquired in the conduct of such business in this State, and outstanding on December 31 of each year or on any other taxable date, shall be deemed to have a situs in this State and subject to the tax imposed by this Article, notwithstanding any transfer between any of such parties and notwithstanding that the same may be kept or may then be outside of this State, and any of the intangible property defined in this Article and acquired in the conduct of any business carried on in this State, and/or having a business, commercial or taxable situs in this State, shall be subject to said tax and returned for taxation by the owner thereof or by the agent, person, or corporation in this State employed by such owner to handle or collect the same.

The Secretary of Revenue shall cause to be prepared blank forms for said returns and shall cause them to be distributed throughout the State, and to be furnished upon application; but failure to receive or secure forms shall not relieve any taxpayer from the obligation of making full and complete return of intangible personal properties as provided in this Article or schedule. (1939, c. 158, s. 708; 1941, c. 50, s. 8; 1953, c. 1302, s. 6; 1955, c. 19, s. 1; 1973, c. 476, s. 193; c. 1287, s. 11.)

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 Jan. 1,

1974, added the second sentence of the second paragraph, inserted "or on any other taxable date" near the middle of the third paragraph and deleted the former last paragraph, providing for the due date of filing the return and for extension of the time for filing.

§ 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.

§ 105-211. Conversion of intangible personal property to evade taxation not to defeat assessment and collection of proper taxes; taxpayer's protection. — Any taxpayer who shall, for the purpose of evading taxation under the provisions of this Article or schedule, within 30 days prior to December 31 of any year, or within 30 days prior to any other taxable date, either directly or indirectly convert any intangible personal property taxable under the provisions of this Article or schedule into another class of property nontaxable in this State, or who, with like intent, shall either directly or indirectly convert such intangible personal property into a class of property which is

taxable in this State at a lower rate than the intangible personal property so converted, shall be taxable on such intangible personal property as if such conversion had not taken place; the fact that such taxpayer within 30 days after December 31 of any year, or within 30 days after any other taxable date, either directly or indirectly converts such property nontaxable in this State or taxable at the lower rate in this State into intangible personal property taxable at the higher rate shall be prima facie evidence of intent to evade taxation by this State, and the burden of proof shall be upon such taxpayer to show that the first conversion was for a bona fide purpose of investment and not for the purpose of evading taxation by this State. Furthermore, no indebtedness will be allowed as a deduction from the value of any intangible personal property taxed under this Article if such indebtedness was incurred for the primary purpose of reducing or offsetting the tax due; and the burden of proof shall be upon the taxpayer to show that any indebtedness claimed was for a purpose other than that of reducing or offsetting the tax due.

Taxpayers making a complete return on or before April 15 of each year of all their holdings of intangible personal property as provided by this Article or schedule (or by similar provisions of prior Revenue Act) shall not thereafter be held liable for failure to list such intangible personal property with the local taxing units of this State in previous years; the taxes levied in this Article or schedule shall be in lieu of all other property taxes in this State on such intangible personal property. (1939, c. 158, s. 713; 1945, c. 708, s. 8; 1955, c. 19, s. 1; 1973, c. 1287, s. 11.)

Editor's Note. — The 1973 amendment, effective for taxable years beginning on and after Jan. 1, 1974, substituted "within 30 days prior to any other taxable date" for "other taxable dates, namely February 15, May 15, August 15, and November 15" near the

beginning, and inserted "or within 30 days after any other taxable date" near the middle, of the first sentence of the first paragraph, and added the second sentence of the first paragraph.

§ 105-212. Institutions exempted; conditional and other exemptions.

— None of the taxes levied in this Article or schedule shall apply to religious, educational, charitable or benevolent organizations not conducted for profit, nor to trusts established for religious, educational, charitable or benevolent purposes where none of the property or the income from the property owned by such trust may inure to the benefit of any individual or any organization conducted for profit, nor to any funds held irrevocably in trust exclusively for the maintenance and care of places of burial; nor to any funds, evidences of debt, or securities held irrevocably in pension, profit-sharing, stock bonus, or annuity trusts, or combinations thereof, established by employers for the purpose of distributing both the principal and income thereof exclusively to eligible employees, or the beneficiaries of such employees, if such trusts qualify for exemption from income tax under the provisions of G.S. 105-161(f)(1)a; nor to any funds, evidences of debt or securities held irrevocably in a pension, profit-sharing, stock bonus or annuity plan established by an employer for the benefit of his employees or for himself and his employees if such plan qualifies for exemption from income tax under the provisions of G.S. 105-141(b)(19); insurance companies reporting premiums to the Commissioner of Insurance of this State and paying a tax thereon under the provisions of Article 8B, Schedule I-B shall not be subject to the provisions of G.S. 105-201, 105-202 and 105-203; building and loan associations and savings and loan associations paying a tax under the provisions of Article 8D of Chapter 105 of the General Statutes shall not be subject to the provisions of G.S. 105-201, 105-202 and 105-203; State credit unions organized pursuant to the provisions of Subchapter III, Chapter 54, paying the supervisory fees required by law, shall not be subject to any of the taxes levied in this Article or schedule; banks, banking associations and trust companies shall not be subject to the tax levied in this Article or schedule on evidences of debt held by them when said evidences of debt represent investment of funds on

deposit with such banks, banking associations and trust companies: Provided, that each such institution must, upon request by the Secretary of Revenue, establish in writing its claim for exemption as herein provided. The exemption in this section shall apply only to those institutions, and only to the extent, specifically mentioned, and no other.

Any corporation or trust doing business in North Carolina which in the opinion of the Secretary of Revenue of North Carolina qualifies as a "regulated investment company" under the provisions of United States Code Annotated Title 26, section 851, or as a "real estate investment trust" under the provisions of United States Code Annotated Title 26, section 856, and which files with the North Carolina Department of Revenue its election to be treated as a "regulated investment company" or "real estate investment trust," shall not be subject to any of the taxes levied in this Article or schedule.

If any intangible personal property held or controlled by a fiduciary domiciled in this State is so held or controlled for the benefit of a nonresident or nonresidents, or for the benefit of any organization exempt under this section from the tax imposed by this Article, such intangible personal property shall be partially or wholly exempt from taxation and under the provisions of this Article in the ratio which the net income distributed or distributable to such nonresident, nonresidents or organization, derived from such intangible personal property during the calendar year for which the taxes levied by this Article are imposed, bears to the entire net income derived from such intangible personal property during such calendar year. "Net income" shall be deemed to have the same meaning that it has in the income tax Article. Where the intangible personal property for which this exemption is claimed is held or controlled with other property as a unit, allocation of appropriate deductions from gross income shall be made to that part of the entire gross income which is derived from the intangible personal property by direct method to the extent practicable; and otherwise by such other method as the Secretary of Revenue shall find to be reasonable: Provided, that each fiduciary claiming the exemption provided in this paragraph shall, upon the request of the Secretary of Revenue, establish in writing its claim to such exemption. No provision of law shall be construed as exempting trust funds or trust property from the taxes levied by this Article except in the specific cases covered by this section.

A clerk of any court of this State may, upon written application therefor, obtain from the Secretary of Revenue a certificate relieving the depository bank of such clerk from the duty of collecting the tax levied in this Article or schedule from deposits of said clerk: Provided, that such clerk of court shall be liable under his official bond for the full and proper remittance to the Secretary of Revenue under the provisions of this Article or schedule of taxes due on any deposits so handled. (1939, c. 158, s. 714; 1943, c. 400, s. 8; 1945, c. 708, s. 8; 1947, c. 501, s. 7; 1951, c. 937, s. 2; 1957, c. 1340, ss. 7, 9; 1967, c. 1110, s. 13; 1971, c. 827; 1973, c. 476, s. 193; c. 1287, s. 11.)

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 Jan. 1, 1974, deleted "on or after January 1, 1942" in the provision in the first paragraph exempting funds, etc., of trusts qualifying for exemption

from income tax under § 105-161(f)(1)a, inserted in the first paragraph the provision exempting funds, etc., of plans qualifying for exemption from income tax under § 105-141(b)(19), and inserted "and savings and loan associations" in the provision in the first paragraph exempting associations paying a tax under Article 8D of this Chapter.

§ 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 Ad Valorem Tax Division of the Department of Revenue and of the Property Tax Commission 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; c. 1287, s. 11.)

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).

The fourth 1973 amendment, effective for taxable years beginning on and after Jan. 1, 1974, inserted in subdivision (3) of the second paragraph "of the Ad Valorem Tax Division" and "and of the Property Tax Commission."

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, the Commissioner of Revenue to Secretary of s. 193, effective July 1, 1973, changes the title 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 excluding those described in G.S. 58-72(1) and (2) and further excluding any premiums derived from credit life, credit health, or credit accident insurance 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, cc. 142, 1019.)

Editor's Note.—

The first 1973 amendment added the third paragraph.

The second 1973 amendment substituted "excluding" for "other than" preceding "those

described" in the second sentence of the ninth paragraph and inserted in that paragraph "and further excluding any premiums derived from credit life, credit health, or credit accident insurance."

§ 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.

§§ 105-228.11 to 105-228.20: Repealed by Session Laws 1973, c. 1053, s. 1.

Editor's Note.— Session Laws 1973, c. 1053, ss. 8, 9 and 10, provide:

"Sec. 8. This act shall become effective with respect to taxable years beginning on and after January 1, 1974.

"Sec. 9. Nothing in this act shall be construed to relieve banks from excise tax in 1974 based on their net income earned during the year 1973, nor shall it affect any rights or liabilities of any bank arising prior to the effective date of this act.

"Sec. 10. Banks, or banking associations,

trust companies or any combination of such facilities or services that become subject to taxes levied upon tangible personal property by local taxing jurisdictions as a result of this act, shall have 90 days after the effective date of this act to list such tangible personal property with the local taxing jurisdictions at the fair market value of such property."

Repealed §§ 105-228.12, 105-228.15 and 105-228.16 were amended by Session Laws 1973, c. 1287, s. 12, effective for taxable years beginning on and after Jan. 1, 1974.

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).

Savings and Loan Association May Deduct "Reserve for Losses on Loans". — For the purpose of determining its North Carolina savings and loan excise tax, a savings and loan association may deduct from its gross income a "reserve for losses on loans." *Mutual Sav. & Loan Ass'n v. Lanier*, 279 N.C. 299, 182 S.E.2d 368 (1971).

Deductions for Worthless Debts Not Restricted to Former § 105-147(10). — The 1967 Act, Session Laws 1967, c. 1110 (§ 105-130 et seq.), applicable to corporation income taxes does not contain a provision that the only deductions allowable for worthless debts are those formerly allowed under § 105-147(10) to all taxpayers prior to the 1967 Act or any provision of similar import. *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).

Conveyance of Interest in Lease for Term of Years Is Not Subject to Real Estate Excise Stamp Tax on Conveyances. — See opinion of Attorney General to Mr. Lucius M. Cheshire, County Attorney, Orange County, 43 N.C.A.G. 364 (1974).

§ 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).

This section was not intended, etc.

In accord with original. See *Parker v. Life Homes, Inc.*, 22 N.C. App. 297, 206 S.E.2d 344 (1974).

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).

A corporation whose charter has been suspended is not required to remain completely dormant for five years. Such a corporation may bring an action in court or defend an action brought against it. *Parker v. Life Homes, Inc.*, 22 N.C. App. 297, 206 S.E.2d 344 (1974).

And on Ability to Take Property under Will. — A corporation whose charter has been suspended may take property under a will. *Parker v. Life Homes, Inc.*, 22 N.C. App. 297, 206 S.E.2d 344 (1974).

And on Power to Assign Bid Made at Foreclosure Sale. — When the rights of third parties are involved, a corporation whose charter has been suspended has the power to assign a bid made at a foreclosure sale, regardless of whether the exercise of that power subjects the corporation to a penalty

under § 105-231. *Parker v. Life Homes, Inc.*, 22 N.C. App. 297, 206 S.E.2d 344 (1974).

And on Power to Purchase Property at Foreclosure Sale. — A corporation whose charter has been suspended has the power to

purchase property at a foreclosure sale and to convey it validly to an innocent third party. *Parker v. Life Homes, Inc.*, 22 N.C. App. 297, 206 S.E.2d 344 (1974).

§ 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.

This section was not intended, etc. —

In accord with original. See *Parker v. Life Homes, Inc.*, 22 N.C. App. 297, 206 S.E.2d 344 (1974).

Effect of Suspension of Charter on Corporation's Capacity to Sue. — A corporation whose charter has been suspended is not required to remain completely dormant for five years. Such a corporation may bring an action in court or defend an action brought against it. *Parker v. Life Homes, Inc.*, 22 N.C. App. 297, 206 S.E.2d 344 (1974).

And on Ability to Take Property under Will. — A corporation whose charter has been suspended may take property under a will. *Parker v. Life Homes, Inc.*, 22 N.C. App. 297, 206 S.E.2d 344 (1974).

And on Power to Assign Bid made at Foreclosure Sale. — When the rights of third parties are involved, a corporation whose charter has been suspended has the power to assign a bid made at a foreclosure sale, regardless of whether the exercise of that power subjects the corporation to a penalty under this section. *Parker v. Life Homes, Inc.*, 22 N.C. App. 297, 206 S.E.2d 344 (1974).

And on Power to Purchase Property at Foreclosure Sale. — A corporation whose charter has been suspended has the power to purchase property at a foreclosure sale and to convey it validly to an innocent third party. *Parker v. Life Homes, Inc.*, 22 N.C. App. 297, 206 S.E.2d 344 (1974).

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. — Any corporation whose articles of incorporation or certificate of authority to do business in this State has been suspended by the Secretary of State, as provided in G.S. 105-230, or similar provisions of prior Revenue Acts, upon the filing, within five years after such suspension or cancellation under previous acts, with the Secretary of State, of a certificate from the Secretary of Revenue that it has complied with all the requirements of this Subchapter and paid all State taxes, fees, or penalties due from it (which total amount due may be computed, for years prior and subsequent to said suspension or cancellation, in the same manner as if such suspension or cancellation had not taken place), and upon payment to the Secretary of Revenue of a fee of twenty-five dollars (\$25.00) to cover the cost of reinstatement, shall be entitled to exercise again its rights, privileges, and franchises in this State; and the Secretary of State shall cancel the entry made by him under the provisions of G.S. 105-230 or similar provisions of prior Revenue Acts, and shall issue his certificate entitling such corporation to exercise again its rights, privileges, and franchises, and certify such reinstatement to the register of deeds in the county in which the principal office or place of business of such corporation is located with instructions to said register of deeds, and it shall be his duty to cancel from his records the entry showing suspension of corporate privileges.

When the certificate or articles of incorporation in this State have been suspended by the Secretary of State, as provided in G.S. 105-230, or similar provisions of prior or subsequent Revenue Acts, and there remains property held in the name of the corporation, or undisposed of at the time of such suspension, or there remain possibilities of reverters, reversionary interests, rights of reentry or other future interests that may accrue to the corporation or its successors or stockholders, and the time within which the corporate rights might be restored as provided by this section has expired, any stockholder or any bona fide creditor or other interested party may apply to the superior court for the appointment of a receiver. Application for such receiver may be made in a civil

action to which all stockholders or their representatives or next of kin shall be made parties. Stockholders whose whereabouts are unknown and unknown stockholders and unknown heirs and next of kin of deceased stockholders may be served by publication, as well as creditors, dealers and other interested persons, and a guardian ad litem may be appointed for any stockholders or their representatives who may be an infant or incompetent. The receiver shall enter into such bond with such sureties as may be set by the court and shall give such notice to creditors by publication or otherwise as the court may prescribe. Any creditor who shall fail to file his claim with the receiver within the time set shall be barred of the right to participate in the distribution of the assets. Such receiver shall have authority to sell such property or possibilities of reverts, reversionary interests, rights of reentry, or other future interests, upon such terms and in such manner as shall be ordered by the court, apply the proceeds to the payment of any debts of such corporation, and distribute the remainder among the stockholders or their representatives in proportion to their interests therein. Shares due to any stockholder who is unknown or whose whereabouts are unknown shall be paid into the office of the clerk of the superior court, by him to be disbursed according to law. In the event the stock books of the corporation shall be lost or shall not reflect the latest stock transfers, the court shall determine the respective interests of the stockholders from the best evidence available, and the receiver shall be protected in acting in accordance with such finding. Such proceeding is authorized for the sole purpose of providing a procedure for disposing of the corporate assets by the payment of corporate debts, including franchise taxes which had accrued prior to the suspension of the corporate charter and any other taxes the assessment or collection of which is not barred by a statute of limitations, and by the transfer to the stockholders or their representatives their proportionate shares of the assets owned by the corporation. (1939, c. 158, s. 903; c. 370, s. 1; 1943, c. 400, s. 9; 1947, c. 501, s. 9; 1951, c. 29; 1969, c. 541, s. 10; 1973, c. 476, s. 193; c. 1065.)

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, 1974, inserted "and upon payment to the Secretary of Revenue of a fee of twenty-five dollars (\$25.00) to cover the cost of reinstatement" near the middle of the first paragraph.

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. — Except as otherwise provided in this Subchapter, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:

- (1) **Penalty for Bad Checks. —** When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department, shall refuse payment upon such

check on account of insufficient funds of the drawer in such bank, and such check shall be returned to the Department of Revenue, a additional tax shall be imposed, which additional tax shall be equal to ten percent (10%) of the obligation for the payment of which such check was tendered: Provided, however, that in no case shall the additional tax so imposed be less than one dollar (\$1.00) nor more than two hundred dollars (\$200.00). Provided, further, no additional tax shall be imposed if the Secretary of Revenue shall find that the drawer of such check, at the time it was presented to the drawee, had funds deposited to his credit in any bank of this State sufficient to pay such check, and, by inadvertence, failed to draw the check upon the bank in which he had such funds on deposit. The additional tax hereby imposed shall not be waived or diminished by the Secretary of Revenue. This section shall apply to all taxes levied or assessed by the State.

(10) Failure to File Informational Returns. —

a. For failure to file a partnership or a fiduciary informational return when such returns are due to be filed, there shall be assessed as a tax against the delinquent five dollars (\$5.00) per month or fraction thereof of such delinquency, such tax, however, in the aggregate not to exceed the sum of twenty-five dollars (\$25.00). When assessed against a fiduciary, the tax herein provided shall be paid by the fiduciary and shall not be passed on to the trust or estate.

b. For failure to file timely statements of payments to another person or persons with respect to wages, dividends, rents or interest paid to such other person or persons, there shall be assessed as a tax a penalty of one dollar (\$1.00) for each statement not filed on time, the aggregate of such penalties for each tax year not to exceed one hundred dollars (\$100.00), and in addition thereto, if the Secretary shall request the payor to file such statements and shall set a date on or before which such statements shall be filed, and the payor shall fail to file such statements within such time, the amounts claimed on payor's income tax return as deductions for salaries and wages, or rents or interest shall be disallowed to the extent that the payor failed to comply with the Secretary's request with respect to such statements.

(11) Any violation of the provisions of this Subchapter, Subchapter V of Chapter 105 or Chapter 18 of the General Statutes shall be deemed an act committed in part at the office of the Secretary of Revenue in Raleigh. The certificate of the Secretary of Revenue to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this Subchapter, or by Subchapter V of Chapter 105 or Chapter 18 of the General Statutes, shall be prima facie evidence that such tax has not been paid, that such return has not been filed or that such information has not been supplied.

The term "person" as used in this section includes an officer or employee of a corporation, or a member or employee of a partnership who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs. (1939, c. 158, s. 907; 1953, c. 1302, s. 7; 1959, c. 1259, s. 8; 1963, c. 1169, s. 6; 1967, c. 1110, s. 9; 1973, c. 476, s. 193; c. 1287, s. 13.)

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, 1974, inserted "or" between "trust" and "estate" at the end of subdivision (10)a and added the second paragraph of subdivision (11).

As the rest of the section was not changed by the amendments, only the introductory language and subdivisions (1), (10) and (11) are set out.

Designating Failure to Pay Tax Misdemeanor Is within Police Power. — In the enactment of this section, the General Assembly has determined that any person

required by the State Revenue Act to pay any tax who willfully fails to pay such tax shall be guilty of a misdemeanor. The legislature had full authority to make this decision. It is a valid exercise of legislative power. *State v. Locklear*, 21 N.C. App. 48, 203 S.E.2d 63 (1974).

Taxes Are Not Debt within Meaning of Constitution. — Taxes which are imposed are not contractual obligations of the taxpayer to the State, and do not constitute a debt within the meaning of the Constitution. *State v. Locklear*, 21 N.C. App. 48, 203 S.E.2d 63 (1974).

§ 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. — (a) If the Secretary of Revenue discovers from the examination of any return or otherwise that any tax or additional tax is due from any taxpayer, he shall give notice to the taxpayer in writing of the kind and amount of tax which is due and of his intent to assess the same, which notice shall contain advice to the effect that unless application for a hearing is made within the time specified in subsection (c), the proposed assessment will become conclusive and final.

If the Secretary is unable to obtain from the taxpayer adequate and reliable information upon which to base such assessment, the assessment may be made upon the basis of the best information available and, subject to the provisions hereinafter made, such assessment shall be deemed correct.

(b) The notice required to be given in subsection (a) may be delivered to the taxpayer by an agent of the Secretary or may be sent by mail to the last known address of the taxpayer and such notice will be deemed to have been received in due course of the mail unless the taxpayer shall make an affidavit to the contrary within 90 days after such notice is mailed, in which event the taxpayer shall be heard by the Secretary in all respects as if he had made timely application.

(c) Any taxpayer who objects to a proposed assessment of tax or additional tax shall be entitled to a hearing before the Secretary of Revenue provided application therefor is made in writing within 30 days after the mailing or delivery of the notice required by subsection (a). If application for a hearing is made in due time, the Secretary of Revenue shall set a time and place for the hearing and after considering the taxpayer's objections shall give written notice of his decision to the taxpayer. The amount of tax or additional tax due from the taxpayer as finally determined by the Secretary shall thereupon be assessed and upon assessment shall become immediately due and collectible.

Provided, the taxpayer may request the Secretary at any time within 30 days of notice of such proposed assessment for a written statement, or transcript, of the information and the evidence upon which the proposed assessment is based, and the Secretary of Revenue shall furnish such statement, or transcript, to the taxpayer. Provided, further, after request by the taxpayer for such written statement, or transcript, the taxpayer shall have 30 days after the receipt of the same from the Secretary of Revenue to apply in writing for such hearing, explaining in detail his objections to such proposed assessment. If no request for such hearing is so made, such proposed assessment shall be final and conclusive.

(e) Where a proper application for a license or a return has been filed and in the absence of fraud, the Secretary of Revenue shall assess any tax or additional tax due from a taxpayer within three years after the date upon which such application or return is filed or within three years after the date upon which such application or return was required by law to be filed, whichever is the later. Any tax or additional tax due from the taxpayer may be assessed at any time if (i) no proper application for a license or no return has been filed, (ii) a false or fraudulent application or return has been filed, or (iii) there has been an attempt in any manner to fraudulently defeat or evade tax.

Provided, the taxpayer may make a written waiver of any of the limitations of time set out in this section, for either a definite or indefinite time, and if such waiver is accepted by the Secretary he may institute assessment procedures at any time within the time extended by such waiver. This proviso shall apply to assessments made or undertaken under any provision of all schedules of the Revenue Act, and to assessments under Subchapter V of Chapter 105 and Chapter 18 of the General Statutes.

(f) Except as hereinafter provided in subsection (g), the Secretary of Revenue shall have no authority to assess any tax or additional tax under this section until the notice required by subsection (a) shall have been given and the period within which an application for a hearing may be filed has expired, or if a timely application for a hearing is filed, until written notice of the Secretary's decision has been given to the taxpayer, provided, however, that if the notice required by subsection (a) shall be mailed or delivered within the limitation prescribed in subsection (e), such limitation shall be deemed to have been complied with and the proceeding may be carried forward to its conclusion.

(g) Notwithstanding any other provision of this section, the Secretary of Revenue shall have authority at any time within the applicable period of limitations to proceed at once to assess any tax or additional tax which he finds is due from a taxpayer if, in his opinion, the collection of such tax is in jeopardy and immediate assessment is necessary in order to protect the interest of the State, provided, however, that if an assessment is made pursuant to the authority set forth in this subsection before the notice required by subsection (a) is given, such assessment shall not be valid unless the notice required by subsection (a) shall be given within 30 days after the date of such assessment.

(h) The provisions of Article 33A of Chapter 143 of the General Statutes shall not apply to hearings before the Secretary of Revenue held pursuant to this section, but the provisions of G.S. 105-241.2, 105-241.3 and 105-241.4 with respect

to review and appeal shall apply to any tax or additional tax assessed pursuant to this section.

(1973, c. 476, s. 193; c. 1287, s. 13.)

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, 1974, rewrote the former second and third sentences of the first paragraph of subsection (e) as the present second sentence of the paragraph, eliminating a five-year limitation upon assessment of the tax or additional tax due if no proper application for a license or no return had been filed, in the absence of fraud.

The second paragraph of subsection (e) was added to that subsection by Session Laws 1959, c. 1259, s. 8, but was erroneously codified in the 1959 Supplement and in subsequent supplements and replacement volumes as the last para-

graph of subsection (c). The second 1973 amendatory act referred to "the second and last sentences of subsection (e)." This act has been interpreted as referring to the second and last sentences of the subsection as it appears in 1972 Replacement Volume 2D rather than to the two sentences added by the 1959 act.

As subsections (d), (i) and (j) were not changed by the amendments, they are not set out.

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

Applied in *State v. Locklear*, 21 N.C. App. 48, 203 S.E.2d 63 (1974).

§ 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. — (a) If any tax imposed by this Subchapter, or any other tax levied by the State and payable to the Secretary of Revenue, or any portion of such tax be not paid within 30 days after the same becomes due and payable, and after the same has been assessed, the Secretary of Revenue shall issue an order under his hand and official seal, directed to the sheriff of any county of the State, commanding him to levy upon and sell the real and personal property of the taxpayer found within his county for the payment of the amount thereof, with the added penalties, additional taxes, interest, and cost of executing the same, and to return to the Secretary of Revenue the money collected by virtue thereof within a time to be therein specified, not less than 60 days from the date of the order. The said sheriff shall, thereupon, proceed upon the same in all respects with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the order, to be collected in the same manner.

(b) Bank deposits, rents, salaries, wages, and all other choses in action or property incapable of manual levy or delivery, hereinafter called the intangible, belonging, owing, or to become due to any taxpayer subject to any of the provisions of this Subchapter, or which has been transferred by such taxpayer under circumstances which would permit it to be levied upon if it were tangible, shall be subject to attachment or garnishment as herein provided, and the person owing said intangible, matured or unmatured, or having same in his possession or control, hereinafter called the garnishee, shall become liable for all sums due

by the taxpayer under this Subchapter to the extent of the amount of the intangible belonging, owing, or to become due to the taxpayer subject to the setoff of any matured or unmatured indebtedness of the taxpayer to the garnishee; provided, however, the garnishee shall not become liable for any sums represented by or held pursuant to any negotiable instrument issued and delivered by the garnishee to the taxpayer and negotiated by the taxpayer to a bona fide holder in due course, and whenever any sums due by the taxpayer and subject to garnishment are so held or represented, the garnishee shall hold such sums for payment to the Secretary of Revenue upon the garnishee's receipt of such negotiable instrument, unless such instrument is presented to the garnishee for payment by a bona fide holder in due course in which event such sums may be paid in accordance with such instrument to such holder in due course. To effect such attachment or garnishment the Secretary of Revenue shall serve or cause to be served upon the taxpayer and the garnishee a notice as hereinafter provided, which notice may be served by any deputy or employee of the Secretary of Revenue or by any officer having authority to serve summonses. Provided, if the taxpayer no longer resides within North Carolina or cannot be located therein the notice may be served upon the taxpayer by registered or certified mail, return receipt requested, and such service shall be conclusively presumed to have been made upon the exhibition of the return receipt. Said notice shall show:

- (1) The name of the taxpayer and his address, if known;
- (2) The nature and amount of the tax, and the interest and penalties thereon, and the year or years for which the same were levied or assessed, and
- (3) Shall be accompanied by a copy of this subsection, and thereupon the procedure shall be as follows:

If the garnishee has no defense to offer or no setoff against the taxpayer, he shall within 10 days after service of said notice, answer the same by sending to the Secretary of Revenue by registered mail a statement to that effect, and if the amount due or belonging to the taxpayer is then due or subject to his demand, it shall be remitted to the Secretary with said statement, but if said amount is to mature in the future, the statement shall set forth that fact and the same shall be paid to the Secretary upon maturity, and any payment by the garnishee hereunder shall be a complete extinguishment of any liability therefor on his part to the taxpayer. If the garnishee has any defense or setoff, he shall state the same in writing under oath, and, within 10 days after service of said notice, shall send two copies of said statement to the Secretary by registered mail; if the Secretary admits such defense or setoff, he shall so advise the garnishee in writing within 10 days after receipt of such statement and the attachment or garnishment shall thereupon be discharged to the amount required by such defense or setoff, and any amount attached or garnished hereunder which is not affected by such defense or setoff shall be remitted to the Secretary as above provided in cases where the garnishee has no defense or setoff, and with like effect. If the Secretary shall not admit the defense or setoff, he shall set forth in writing his objections thereto and shall send a copy thereof to the garnishee within 10 days after receipt of the garnishee's statement, or within such further time as may be agreed on by the garnishee, and at the same time he shall file a copy of said notice, a copy of the garnishee's statement, and a copy of his objections thereto in the superior court of the county where the garnishee resides or does business where the issues made shall be tried as in civil actions.

If judgment is entered in favor of the Secretary of Revenue by default or after hearing, the garnishee shall become liable for the taxes, interest and penalties due by the taxpayer to the extent of the amount over and above any defense or setoff of the garnishee belonging, owing, or to become due to the taxpayer, but payments shall not be required from amounts which are to become due to

the taxpayer until the maturity thereof, nor shall more than 10 percent of any taxpayer's salary or wages be required to be paid hereunder in any one month. The garnishee may satisfy said judgment upon paying said amount, and if he fails to do so, execution may issue as provided by law. From any judgment or order entered upon such hearing either the Secretary of Revenue or the garnishee may appeal as provided by law. If, before or after judgment, adequate security is filed for the payment of said taxes, interest, penalties, and costs, the attachment or garnishment may be released or execution stayed pending appeal, but the final judgment shall be paid or enforced as above provided. The taxpayer's sole remedies to question his liability for said taxes, interest, and penalties shall be those provided in this Subchapter, as now or hereafter amended or supplemented. If any third person claims any intangible attached or garnished hereunder and his lawful right thereto, or to any part thereof, is shown to the Secretary, he shall discharge the attachment or garnishment to the extent necessary to protect such right, and if such right is asserted after the filing of said copies as aforesaid, it may be established by interpleader as now or hereafter provided by law in cases of attachment and garnishment. In case such third party has no notice of proceedings hereunder, he shall have the right to file his petition under oath with the Secretary at any time within 12 months after said intangible is paid to him and if the Secretary finds that such party is lawfully entitled thereto or to any part thereof, he shall pay the same to such party as provided for refunds by G.S. 105-407, and if such payment is denied, said party may appeal from the determination of the Secretary under the provisions of G.S. 105-241.4; provided, that in taking an appeal to the superior court, said party may appeal either to the Superior Court of Wake County or to the superior court of the county wherein he resides or does business. The intangibles of a taxpayer shall be paid or collected hereunder only to the extent necessary to satisfy said taxes, interest, penalties, and costs. Except as hereinafter set forth, the remedy provided in this section shall not be resorted to unless a warrant for collection or execution against the taxpayer has been returned unsatisfied: Provided, however, if the Secretary is of opinion that the only effective remedy is that herein provided, it shall not be necessary that a warrant for collection or execution shall be first returned unsatisfied, and in no case shall it be a defense to the remedy herein provided that a warrant for collection or execution has not been first returned unsatisfied.

This subsection shall be applicable with respect to the wages, salary or other compensation of officials and employees of this State and its agencies and instrumentalities, officials and employees of political subdivisions of this State and their agencies and instrumentalities, and also officials and employees of the United States and its agencies and instrumentalities insofar as the same is permitted by the Constitution and laws of the United States. In the case of State or federal employees, the notice shall be served upon such employee and upon the head or chief officer of the department, agency, instrumentality or institution by which the taxpayer is employed. In case the taxpayer is an employee of a political subdivision of the State, the notice shall be served upon such employee and upon the chief fiscal officer, or any officer or person charged with making up the payrolls, or disbursing funds, of the political subdivision by which the taxpayer is employed. Such head or chief officer or fiscal officer or other person as specified above shall thereafter, subject to the limitations herein provided, make deductions from the salary or wages due or to become due the taxpayer and remit same to the Secretary until the tax, penalty, interest and costs allowed by law are fully paid. Such deductions and remittances shall, pro tanto, constitute a satisfaction of the salary or wages due the taxpayer.

(c) In addition to the remedy herein provided, the Secretary of Revenue is authorized and empowered to make a certificate setting forth the essential particulars relating to the said tax, including the amount thereof, the date when the same was due and payable, the person, firm, or corporation chargeable

therewith, and the nature of the tax, and under his hand and seal transmit the same to the clerk of the superior court of any county in which the delinquent taxpayer resides or has property; whereupon, it shall be the duty of the clerk of the superior court of the county to docket the said certificate and index the same on the cross index of judgments, and execution may issue thereon with the same force and effect as an execution upon any other judgment of the superior court (said tax shall become a lien on realty only from the date of the docketing of such certificate in the office of the clerk of the superior court and on personalty only from the date of the levy on such personalty and upon the execution thereon no homestead or personal property exemption shall be allowed).

Except as provided in subsection (e) of G.S. 105-241.2, no sale of real or personal property shall be made under any execution issued on a certificate docketed pursuant to the provisions of this subsection before the administrative action of the Secretary of Revenue or the Tax Review Board is completed when a hearing has been requested of the Secretary or a petition for review has been filed with the Tax Review Board, nor shall such sale be made before the assessment on which the certificate is based becomes final when there is no request for a hearing before the Secretary or petition for review by the Tax Review Board. Neither the title to real estate nor to personal property sold under execution issued upon a certificate docketed under this subsection shall be drawn in question upon the ground that the administrative action contemplated by this paragraph was not completed prior to the sale of such property under execution. Nothing in this paragraph shall prevent the sheriff to whom an execution is issued from levying upon either real or personal property pending an administrative determination of tax liability and, in the case of personal property, the sheriff may hold such property in his custody or may restore the execution defendant to the possession thereof upon the giving of a sufficient forthcoming bond. Upon a final administrative determination of the tax liability being had, if the assessment or any part thereof is sustained, the sheriff shall, upon request of the Secretary of Revenue, proceed to advertise and sell the property under the original execution notwithstanding the original return date of the execution may have expired.

A certificate or judgment in favor of the State or the Secretary of Revenue for taxes payable to the Department of Revenue, whether docketed before or after the effective date of this paragraph, shall be valid and enforceable for a period of 10 years from the date of docketing. When any such certificate or judgment, whether docketed before or after the effective date of this paragraph, remains unsatisfied for 10 years from the date of its docketing, the same shall be unenforceable and the tax represented thereby shall abate. Upon the expiration of said 10-year period, the Secretary of Revenue or his duly authorized deputy shall cancel of record said certificate or judgment. Any such certificate or judgment now on record which has been docketed for more than 10 years shall, upon the request of any interested party, be canceled of record by the Secretary of Revenue or his duly authorized deputy; provided, in the event of the death of the judgment debtor or his absence from the State before the expiration of the 10-year period herein provided, the running of said 10-year period shall be stopped for the period of his absence from the State or during the pendency of the settlement of the estate and for one year thereafter, and the time elapsed during the pendency of any action or actions to set aside the judgment debtor's conveyance or conveyances as fraudulent, or the time during the pendency of any insolvency proceeding, or the time during the existence of any statutory or judicial bar to the enforcement of the judgment shall not be counted in computing the running of said 10-year period. And, provided further, that any execution sale which has been instituted upon any such judgment before the expiration of the 10-year period may be completed after the expiration of the 10-year period, notwithstanding the fact that resales may be required

because of the posting of increased bids. Provided further, that, notwithstanding the expiration of the 10-year period provided and notwithstanding the fact that no proceedings to collect the judgment by execution or otherwise has been commenced within the 10-year period, the Secretary of Revenue may accept any payments tendered upon said judgments after the expiration of said 10-year period.

If the Secretary of Revenue shall find that it will be for the best interest of the State in that it will probably facilitate, expedite or enhance the State's chances for ultimately collecting a tax due the State, he may authorize a deputy or agent to release the lien of a State tax judgment or certificate of tax liability upon a specified parcel or parcels of real estate by noting such release upon the judgment docket where such certificate of tax liability is recorded. Such release shall be signed by the deputy or agent and witnessed by the clerk of court or his deputy or assistant and shall be in substantially the following form: "The lien of this judgment upon (insert here a short description of the property to be released sufficient to identify it, such as reference to a particular tract described in a recorded instrument) is hereby released, but this judgment shall continue in full force and effect as to other real property to which it has heretofore attached or may hereafter attach. This day of , 19....

.....
Revenue Collector N.C. Department of Revenue

WITNESS:

..... C.S.C."

The release shall be noted on the judgment docket only upon conditions prescribed by the Secretary and shall have effect only as to the real estate described therein and shall not affect any other rights of the State under said judgment.

(d) The remedies herein given are cumulative and in addition to all other remedies provided by law for the collection of said taxes. (1939, c. 158, s. 913; 1941, c. 50, s. 10; 1949, c. 392, s. 6; 1951, c. 643, s. 9; 1955, c. 1285; c. 1350, s. 23; 1957, c. 1340, s. 10; 1959, c. 368; 1963, c. 1169, s. 6; 1969, c. 1071, s. 1; 1973, c. 476, s. 193; c. 1287, s. 13.)

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, 1974, substituted "Revenue Collector N.C.

Department of Revenue" for "Deputy Collector N.C. Department of Revenue" at the end of the form in the next-to-last paragraph of subsection (c).

§ 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. — Any officer, trustee, or receiver of any corporation required to file report with the Secretary of Revenue, having in his custody funds of the corporation, who allows said funds to be paid out or distributed to the stockholders of said corporation without having satisfied the Secretary of Revenue for any State taxes which are due and have accrued, shall be personally responsible for the payment of said tax, and in addition thereto shall be subject to a penalty of not more than the amount of the tax, nor less than twenty-five percent (25%) of such tax found to be due or accrued.

Each responsible corporate officer is made personally and individually liable:

- (1) For all sales and use taxes collected by a corporation upon taxable transactions of the corporation, which liability shall be satisfied upon timely remittance of such taxes to the Secretary by the corporation; and
- (2) For all sales and use taxes due upon taxable transactions of the corporation but upon which the corporation failed to collect the tax, but only if the responsible officer knew, or in the exercise of reasonable care should have known, that the tax was not being collected.

His liability shall be satisfied upon timely remittance of such tax to the Secretary by the corporation. If said tax shall remain unpaid by the corporation, after the same is due and payable, the Secretary of Revenue may assess the tax against, and collect the tax from, any responsible corporate officer in accordance with the provisions of G.S. 105-241.1, which officer shall be the "taxpayer" in such case, as referred to in G.S. 105-241.1 et seq. As used in this section, the words "responsible corporate officers" mean the president and the treasurer of a corporation and may include such other officers as have been assigned the duty of filing tax returns and remitting sales and use tax to the Secretary of Revenue on behalf of the corporation. Any penalties which may be imposed pursuant to the provisions of G.S. 105-236 and which are applicable to a deficiency shall apply to any assessment provided for herein. All other provisions of Article 9, Schedule J of the Revenue Laws shall apply to such assessment to the extent that they are not inconsistent with the provisions of this section.

The Secretary of State shall withhold the issuance of any certificate of dissolution to, or withdrawal of, any corporation, domestic or foreign, until the receipt by him of a notice from the Secretary of Revenue to the effect that any such corporation has met the requirements with respect to reports and taxes required by this Subchapter. (1939, c. 158, s. 923; 1941, c. 50, s. 10; 1955, c. 1350, s. 23; 1973, c. 476, s. 193; c. 1287, s. 13.)

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, 1974, added the second paragraph.

Session Laws 1973, c. 1287, s. 15, provides that the second 1973 amendment to this section shall not affect the liability of any taxpayer arising prior to July 1, 1974.

§ 105-254. Blanks furnished by Secretary of Revenue.

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.

§ 105-255. Secretary of Revenue to 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.

§ 105-256. Preparation and publication of statistics.

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.

§ 105-257. Report to General Assembly on tax system.

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

§ 105-258. Powers of Secretary of Revenue; who may sign and verify pleadings, legal documents, 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.

§ 105-259. Secrecy required of officials; penalty for violation. — Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the Secretary of Revenue, any deputy, agent, clerk, other officer, employee, or former officer or employee, to divulge or make known in any manner the amount of income, income tax or other taxes of any taxpayer, or information relating thereto or from which the amount of income, income tax or other taxes or any part thereof might be determined, deduced or estimated, whether the same be set forth or disclosed in or by means of any report or return required to be filed or furnished under this Subchapter, or in or by means of any audit, assessment, application, correspondence, schedule or other document relating to such taxpayer, notwithstanding the provisions of Chapter 132 of the General Statutes or of any other law or laws relating to public records. It shall likewise be unlawful to abstract, compile or furnish to any person, firm or corporation, not otherwise entitled to information relating to the amount of income, income tax or other taxes of a taxpayer, any list of names, addresses, social security numbers or other personal information concerning such taxpayers, whether or not such list discloses a taxpayer's income, income tax or other taxes, or any part thereof. [Provided, that when an election is made by a husband and wife under G.S. 105-152(e) to file their separate returns on a single form, any information given to one spouse concerning the income or income tax of the other spouse reported or reportable on such single return shall not be deemed to be in violation of the provisions of this paragraph.]

Nothing in this section shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns, and the items thereof; the inspection of such reports or returns by the Governor, Attorney General, or their duly authorized representative; or the inspection by a legal representative of the State of the report or return of any taxpayer who shall bring an action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or penalty imposed by this Subchapter; nor shall the provisions of this section prohibit the Department of Revenue furnishing information to other governmental agencies, of persons and firms properly licensed under Schedule B, G.S. 105-33 to 105-113. The Department of Revenue may exchange information with the officers of organized associations of taxpayers under

Schedule B, G.S. 105-33 to 105-113, with respect to parties liable for such taxes and as to parties who have paid such license taxes.

When any record of the Department of Revenue shall have been photographed, photocopied or microphotocopied pursuant to the authority contained in G.S. 8-45.3, the original of said record may thereafter be destroyed at any time upon the order of the Secretary of Revenue, notwithstanding the provisions of G.S. 121-5, G.S. 132-3 or any other law or laws relating to the preservation of public records. Any record which shall not have been so photographed, photocopied or microphotocopied shall be preserved for three years, and thereafter until the Secretary of Revenue shall order the same to be destroyed.

Any person, officer, agent, clerk, employee, or former officer or employee violating the provisions of this section shall be guilty of a misdemeanor, and fined not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000) and/or imprisoned, in the discretion of the court; and if such offending person be an officer or employee of the State, he shall be dismissed from such office or employment, and shall not hold any public office or employment in this State for a period of five years thereafter.

Notwithstanding the provisions of this section, the Secretary of Revenue may permit the Commissioner of Internal Revenue of the United States, or the revenue officer of any other state imposing any of the taxes imposed in this Subchapter, or the duly authorized representative of either, to inspect the report or return of any taxpayer; or may furnish such officer or his authorized agent an abstract of the report or return of any taxpayer; or supply such officer with information concerning any item contained in any report or return, or disclosed by the report of any investigation of such report or return of any taxpayer. Such permission, however, shall be granted or such information furnished to such officer, or his duly authorized representatives, only if the statutes of the United States or of such other state grants substantially similar privilege to the Secretary of Revenue of this State or his duly authorized representative. Nothing in this section or any other law shall prevent the exchange of information between the Department of Revenue and the Department of Motor Vehicles when such information is needed by either or both of said departments for the purpose of properly enforcing the laws with the administration of which either or both of said departments is charged. (1939, c. 158, s. 928; 1951, c. 190, s. 2; 1973, c. 476, s. 193; c. 903, s. 4; c. 1287, s. 13.)

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 Jan. 1, 1974, added to the first paragraph a proviso excepting from the application of that paragraph information given to one spouse concerning the income or income tax of the other in cases where election has been made by a husband and wife to file their separate returns on a single form.

The third 1973 amendment rewrote the first paragraph, added the first sentence of the third paragraph and substituted "Any record which shall not have been so photographed, photocopied or microphotocopied" for "Reports and returns" at the beginning of the second sentence of the third paragraph.

In the section as set out above, the proviso added by the second 1973 amendatory act has been added, in brackets, to the first paragraph as rewritten by the third 1973 amendatory act.

§ 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. — If the Secretary of Revenue discovers from the examination of any return, or otherwise, that any taxpayer has overpaid the correct amount of tax (including penalties, interest and costs if any), such overpayment if the amount of three dollars (\$3.00) or more, shall be refunded to the taxpayer within 60 days after it is ascertained together with interest thereon at the rate of four percent (4%) per annum; provided, that interest on any such refund shall be computed from a date 90 days after the date the tax was originally paid by the taxpayer. If said overpayment is less than three dollars (\$3.00) said overpayment shall be refunded as aforesaid but only upon receipt by the Secretary of Revenue of a written demand for such refund from the taxpayer. Provided, however, that no overpayment shall be refunded irrespective of whether upon discovery or receipt of written demand if such discovery is not made or such demand is not received within three years from the date set by the statute for the filing of the return or within six months of the payment of the tax alleged to be an overpayment, whichever date is the later. The provisions of this paragraph shall not apply to interest required under G.S. 105-267. When a husband and wife have elected under G.S. 105-152(e) to file their separate income tax returns on a single form and a refund for overpayment of tax is made payable to both spouses as provided in that subsection, the provisions of this section shall apply to such refund. (1939, c. 158, s. 937; 1941, c. 50, s. 10; 1947, c. 501, s. 9; 1949, c. 392, s. 6; 1951, c. 643, s. 9; 1957, c. 1340, s. 14; 1973, c. 476, s. 193; c. 903, 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 for taxable years beginning on and after Jan. 1, 1974, added the last sentence.

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, effective July 1, 1973, amends this section by

substituting "Secretary of Revenue" for "Director of the Department of Tax 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) Cotton, tobacco, other farm products, goods, wares, and merchandise held or stored for shipment to any foreign country, except any such products, goods, wares, and merchandise that have been so stored for more than 12 months on the date as of which property is listed for taxation. Such property shall be listed (by quantity only, and with a statement that it is being held for export) in the county in which it is located on the tax listing date, but shall not be assessed or taxed. On the next tax listing date, any such property which has not been exported shall be listed, assessed and taxed in the same manner as other taxable property. (The purpose of this classification is to encourage the development of the ports of North Carolina.)
- (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 by a manufacturer, fabricator, or processor (whether or not the owner thereof) for the purpose of or in the process of manufacture, fabrication, processing or delivery. 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 Department of Human Resources, 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 either by a nonprofit corporation formed under the provisions of Chapter 55A of the General Statutes or by a bona fide charitable organization, and either operated by such owning organization or leased to another such nonprofit corporation or charitable organization, 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 [Department of Natural and Economic Resources] furnishes a certificate to the tax supervisor of the county in which the property is situated or to be situated stating that the Environmental Management Commission 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 Environmental Management Commission indicate that it will comply with the requirements of the Environmental Management Commission;
 - 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 Environmental Management Commission; 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) Repealed by Session Laws 1973, c. 904.
- (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.)
- (16) Dogs, owned and held by individuals for their personal use and not otherwise used in connection with a business, trade or profession for the production of income.
- (17) Real and personal property belonging to the American Legion, Veterans of Foreign Wars, Disabled American Veterans, or to any similar veterans organizations chartered by the Congress of the United States or organized and operated on a statewide or nationwide basis, and any post or local organization thereof, when used exclusively for meeting or lodge purposes by said organization, together with such additional adjacent real property as may be necessary for the convenient and normal use of the buildings thereon. Notwithstanding the exclusive-use requirement hereinabove established, if a part of a property that otherwise meets this subdivision's requirements is used for a purpose that would require that it not be listed, appraised, assessed or taxed if the entire property were so used, that part, according to its value, shall not be listed, appraised, assessed or taxed. The fact that a building or facility is incidentally available to and patronized by the general public, so far as there is no material amount of business or patronage with the general public, shall not defeat the classification granted by this section.
- (18) Real and personal property belonging to the Grand Lodge of Ancient, Free and Accepted Masons of North Carolina, the Prince Hall Masonic Grand Lodge of North Carolina, their subordinate lodges and appendant bodies including the Ancient and Arabic Order Nobles of the Mystic Shrine, and the Ancient Egyptian Order Nobles of the Mystic Shrine, when used exclusively for meeting or lodge purposes by said organization, together with such additional adjacent real property as may be necessary for the convenient normal use of the buildings thereon. Notwithstanding the exclusive-use requirement hereinabove established, if a part of a property that otherwise meets this subdivision's requirements is used for a purpose that would require that it not be listed, appraised, assessed or taxed if the entire property were so used, that part, according to its value, shall not be listed, appraised, assessed or taxed. The fact that a building or facility is incidentally available to and patronized by the general public, so far as there is no material amount of business or patronage with the general public, shall not defeat the classification granted by this section.
- (19) Real and personal property belonging to the Loyal Order of Moose, the Benevolent and Protective Order of Elks, the Knights of Pythias, the Odd Fellows and similar fraternal or civic orders and organizations operated for nonprofit benevolent, patriotic, historical, charitable, or civic purposes, when used exclusively for meeting or lodge purposes by said organization, together with such additional adjacent real property as may be necessary for the convenient normal use of the buildings thereon. Notwithstanding the exclusive-use requirement hereinabove established, if a part of a property that otherwise meets this subdivision's requirements is used for a purpose that would require

that it not be listed, appraised, assessed or taxed if the entire property were so used, that part, according to its value shall not be listed, appraised, assessed or taxed. The fact that a building or facility is incidentally available to and patronized by the general public, so far as there is no material amount of business or patronage with the general public, shall not defeat the classification granted by this section. Nothing in this section shall be construed so as to include social fraternities, sororities, and similar college, university, or high school organizations in the classification for exclusion from ad valorem taxes.

- (20) Real and personal property belonging to Goodwill Industries and other charitable organizations organized for the training and rehabilitation of disabled persons when used exclusively for training and rehabilitation, including commercial activities directly related to such training and rehabilitation. (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; c. 476, s. 128; c. 484; c. 695, s. 1; c. 790, s. 1; cc. 904, 962, 1028, 1034, 1077; c. 1262, s. 23; c. 1264, 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, effective July 1, 1973, substituted "Department of Human Resources" for "North Carolina State Board of Health" in subdivision (6).

The fourth 1973 amendment added subdivision (14).

The fifth 1973 amendment, effective Jan. 1, 1974, rewrote the section.

The sixth 1973 amendment, effective Jan. 1, 1974, added subdivision (15).

The seventh 1973 amendment (c. 904), repealed subdivision (13), relating to motor chassis belonging to nonresidents.

The eighth 1973 amendment (c. 962), applicable to all years beginning with the year 1974, inserted "either" near the beginning of subdivision (7)a and added to subdivision (7)a the language beginning "or by a bona fide charitable organization" and ending "or charitable organization." The amendatory act purported to rewrite only subdivision (7)a, but it also set out (7)b, in which it made no change.

The ninth 1973 amendment (c. 1028), effective for taxable years beginning on and after Jan. 1, 1974, rewrote the first sentence of subdivision (6).

The tenth 1973 amendment (c. 1034), effective for taxable years beginning on and after Jan. 1, 1974, rewrote subdivision (1).

The eleventh 1973 amendment (c. 1077), effective Jan. 1, 1975 added subdivision (16).

The twelfth 1973 amendment (c. 1262), effective July 1, 1974, substituted "[Department of Natural and Economic

Resources]" for "Board of Water and Air Resources" in the introductory paragraph of subdivision (8) and "Environmental Management Commission" for "Board" in that paragraph and in subdivisions (8)b and (8)c.

A literal compliance with the twelfth 1973 act would have required that "Environmental Management Commission" also be substituted for "Board of Water and Air Resources" in the introductory paragraph of subdivision (8), but, because s. 23(a)(1) of the act directed that "Department of Natural and Economic Resources" be used in a similar provision in repealed § 105-278, the editors have substituted "Department of Natural and Economic Resources," in brackets, for "Board of Water and Air Resources" in subdivision (8) as set out above.

The thirteenth 1973 amendment (c. 1264), applicable to taxable years beginning on and after Jan. 1, 1974, added subdivisions (17), (18), (19) and (20).

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 fifth 1973 amendment.

Session Laws 1973, c. 1264, s. 3, provides: "The organizations entitled to the exclusion herein [in subdivisions (17) through (20)] provided shall be subject to the provisions of G.S. 105-282.1(a)(3) simplifying the procedure for filing applications for exemption or exclusion from property taxes." Section 2 of the act contains a severability clause.

The word "transshipment" is a word of art meaning a short delay in the shipping of goods in interstate commerce. In re Appeal of Martin, 22 N.C. App. 225, 206 S.E.2d 334 (1974).

And it evolved from maritime law. In re Appeal of Martin, 22 N.C. App. 225, 206 S.E.2d 334 (1974).

The word "transportation" implies a temporary interruption of goods in transit while being moved from one carrier to another.

In re Appeal of Martin, 22 N.C. App. 225, 206 S.E.2d 334 (1974).

Storage of Goods Subject to Ad Valorem Tax. — Where the ultimate designee is unknown at the time the goods owned by a nonresident corporation are shipped to the

public warehouse, their storage therein was not a mere temporary break in the shipment of goods and they are subject to ad valorem taxation. In re Appeal of Martin, 22 N.C. App. 225, 206 S.E.2d 334 (1974).

§ 105-276. Taxation of intangible personal property. — Except for the classes of intangible personal property which have been classified for taxation under Schedule H (G.S. 105-198 through G.S. 105-217) all intangible personal property having a taxable situs in this State shall be subject to the provisions of this Subchapter. The classification of such property for taxation under Schedule H shall not exclude the property from the system property valuation of public service companies under Article 23 provided proper adjustments are made to prevent duplicate taxation. (1939, c. 310, s. 601; 1971, c. 806, s. 1; 1973, c. 1180.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, rewrote this section.

§ 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 $\frac{1}{2}$; 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.

Subcatchline of Subsection (a) Does Not Control over Body of Subsection. — See *In re Appeal of Forsyth County*, 285 N.C. 64, 203 S.E.2d 51 (1974).

Assuming the subcatchline "(a) Agricultural Products in Storage" was inserted by the General Assembly and not by a compiler, nevertheless the body of subsection (a) provides that the product be held for manufacturing and processing. *In re Appeal of Forsyth County*, 285 N.C. 64, 203 S.E.2d 51 (1974).

Tobacco removed from the shed where hogsheads were stored during the early part of the aging process is still an agricultural product and retains its preferred status. *In re Appeal of Forsyth County*, 285 N.C. 64, 203 S.E.2d 51 (1974).

§ 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 on or before March 31, in the year 1974; and thereafter, 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 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 conveys the property to anyone other than a spouse, parent, child, or sibling of the owner or ownership of the property passes to anyone other than such an enumerated family member by will or intestacy, 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; c. 905; c. 906, ss. 1, 2.)

Editor's Note. — Session Laws 1973, c. 709, s. 2, makes the act effective Jan. 1, 1974.

The first 1973 amendment deleted "all" preceding "the real property of the taxpayer" in the second sentence of subsection (c).

The second 1973 amendment rewrote the third sentence of subsection (a) and substituted, near the end of the second

sentence of subsection (c), "conveys the property to anyone other than a spouse, parent, child, or sibling of the owner or ownership of the property passes to anyone other than such an enumerated family member by will or intestacy" for "disposes of the property."

§ 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.

Editor's Note. — This section was amended by Session Laws 1973, c. 1262, s. 23, effective July 1, 1974.

§ 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 (i) sale or rental or (ii) 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 clergy, rabbis, priests or nuns assigned to or serving a congregation, parish, mission or similar

local unit, or a conference, association, presbytery, diocese, district, synod, province or similar unit of a church or religious body or residences for clergy on furlough or unassigned, 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; c. 1421.)

Editor's Note. — Session Laws 1973, c. 695, s. 21, makes the act effective Jan. 1, 1974.

The 1973 amendment, effective for taxable years beginning on and after Jan. 1, 1974, substituted "clergy, rabbis, priests or nuns" for

"ministers" near the middle of the third sentence of subdivision (d)(1) and inserted near the end of that sentence, the language beginning "or a conference" and ending "unassigned."

§ 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. Applications for property tax exemption or exclusion. —

(a) Every owner of property claiming exemption or exclusion from property taxes under the provisions of this Subchapter has the burden of establishing that the property is entitled thereto. Except as otherwise provided below, every owner claiming exemption or exclusion hereunder shall annually, during the regular listing period, file an application therefor with the tax supervisor of the county in which the property would be subject to taxes if taxable. For the year 1974, the application may be filed not later than May 31, 1974. If the property covered by the application is located within a municipality, that fact shall be shown on the application. Each such application shall be submitted on a form approved by the Department of Revenue. The forms shall be made available by the tax supervisor.

- (1) The United States government, the State of North Carolina and the counties and municipalities of the State are exempted from the requirement that owners file applications for exemption.
- (2) Owners of the special classes of property excluded from taxation under G.S. 105-275(5), (13) and (15) or property exempted under G.S. 105-278.2 shall not be required to file applications for the exclusion of such property.
- (3) After an owner of property entitled to exemption under G.S. 105-278.3, 105-278.4, 105-278.5, 105-278.6, 105-278.7, or 105-278.8 or exclusion under G.S. 105-275(3), (7) or (12) has applied for exemption and the exemption has been approved, such owner shall not be required to file applications in subsequent years except in the following circumstances:
 - a. New or additional property is acquired or improvements are added or removed, necessitating a change in the valuation of the property, or
 - b. There is a change in the use of the property necessitating a review of the exemption.
- (4) Nothing in this section shall be construed to relieve any governmental unit or private owner of the duty of listing for taxation property that is not entitled to exemption.

(b) Applications for exemption or exclusion that are approved by the tax supervisor shall be filed in his office and shall be made available to authorized representatives of any municipality within the county. If an application for exemption or exclusion is denied by the tax supervisor, he shall notify the owner of his decision in time for him to appeal to the board of equalization and review and from the county board to the Property Tax Commission as provided in G.S. 105-322 and 105-324. If the notice of denial covers property located within a municipality, the tax supervisor shall send a copy of the notice and a copy of the application to the governing body of the municipality. The municipal governing body shall then advise the owner whether it will adopt the decision of the county board or require the owner to file a separate appeal with the municipal governing body. In the event the owner is required to appeal to the municipal governing body and that body renders an adverse decision, the owner may appeal to the Property Tax Commission as provided in G.S. 105-324. Nothing in this section shall prevent the governing body of a municipality from denying an application which has been approved by the tax supervisor or by the county board provided the owner's rights to notice and hearing are not abridged. Applications handled separately by a municipality shall be filed in the office of the person designated by the governing body, or in the absence of such designation, in the office of the chief fiscal officer of the municipality.

(c) When an owner of property who is required to file an application for exemption or exclusion fails to do so, the tax supervisor shall proceed to discover the property as provided in G.S. 105-312. If upon appeal to the county board of

equalization and review or board of commissioners, the owner demonstrates that the property meets the conditions for exemption, the exemption may be approved by the board at that time. Discovery of the property by the county shall automatically constitute a discovery by any other taxing unit in which the property also has a taxable situs.

(d) 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.
- (5) The total value of exempt property in the county and in each municipality therein.

(e) A duplicate copy of the roster shall be forwarded to the Department of Revenue on or before November 1, 1974. In subsequent years, on or before November 1, a report shall be filed with the Department of Revenue showing all changes since the last report. (1973, c. 695, s. 8; c. 1252.)

Editor's Note. — Session Laws 1973, c. 695, s. 21, makes this section effective Jan. 1, 1974.

The 1973 amendment, applicable to taxable years beginning on and after Jan. 1, 1974, rewrote the section.

Subdivision (13) of § 105-275, referred to in

subdivision (a)(2) of this section, was repealed by Session Laws 1973, c. 904.

The reference in subdivision (a)(2) to subdivision (15) of § 105-275 should be to subdivision (17). Subdivision (17) was designated (15) in Session Laws 1973, c. 1264, which added it to § 105-275.

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 W. 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 W. 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 valuation of their property. Albemarle Elec. arbitrary, and that appellants were Membership Corp. v. Alexander, 282 N.C. 402, substantially injured by a resulting excessive 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 amendments, 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):
- Modifying or confirming the order adopting the schedules, standards, and rules challenged, or
 - 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."

Where Corporate Owner Must List Property. — A corporate owner is not

authorized to list its property anywhere except the situs of its home office. In re Appeal of McLean Trucking Co., 283 N.C. 650, 197 S.E.2d 520 (1973), decided under former provisions of § 105-302.

§ 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. — (a) Listing Instructions. — This section shall apply to all taxable tangible personal property that has a tax situs in this State and that is not required by this Subchapter to

be appraised originally by the Department of Revenue. The place in this State at which such property is taxable shall be determined according to the rules prescribed in subsections (c) through (h), below. The person whose duty it is to list property shall list it in the county in which the place of taxation is located, indicating on the abstract the information required by G.S. 105-309(d). If the place of taxation lies within a city or town that requires separate listing under G.S. 105-326(a), the person whose duty it is to list shall also list the property for taxation in the city or town.

(f) **Property Situated or Commonly Used at Premises Other Than Owner's Residence.** — Subject to the provisions of subsection (e), above:

- (1) Tangible personal property situated at or commonly used in connection with a temporary or seasonal dwelling owned or leased by the owner of the personal property shall be taxable at the place at which the temporary or seasonal dwelling is situated.
- (2) Tangible personal property situated at or commonly used in connection with a business premises hired, occupied, or used by the owner of the personal property (or by the owner's agent or employee) shall be taxable at the place at which the business premises is situated. Tangible personal property that may be used by the public generally or that is used to sell or vend merchandise to the public shall be regarded as falling within the provisions of this subdivision (f)(2).
- (3) Tangible personal property situated at or commonly used in connection with a premise owned, hired, occupied, or used by a person who is in possession of the personal property under a business agreement with the property's owner shall be taxable at the place at which the possessor's premise is situated. For purposes of this subdivision (f)(3), the term "business agreement" means a commercial lease, bailment for hire, consignment, or similar business arrangement.
- (4) In applying the provisions of subdivisions (f)(1), (f)(2), and (f)(3), above, the temporary absence of tangible personal property from the place at which it is taxable under one of those subdivisions on the day as of which property is to be listed shall not affect the application of the rules established in those subdivisions. The presence of tangible personal property at a location specified in subdivision (f)(1), (f)(2), or (f)(3) on the day as of which property is to be listed shall be *prima facie* evidence that it is situated at or commonly used in connection with that location.

(1973, c. 476, s. 193; c. 1180.)

Editor's Note. —

The first 1973 amendment, effective July 1, 1973, substituted "Department of Revenue" for "State Board of Assessment" in subsection (a).

The second 1973 amendment, effective July 1, 1974, added present subdivision (3) in subsection (f), redesignated former subdivision (3) of subsection (f) as subdivision (4) and, in subdivision (4), inserted the reference to subdivision (f)(3) and substituted "the place at which it is taxable under one of those subdivisions" for "a temporary or seasonal dwelling or business premises" in the first sentence, substituted "location specified in

subdivision (f)(1), (f)(2), or (f)(3)" for "temporary or seasonal dwelling or business premises" near the beginning of the second sentence and substituted "that location" for "the temporary or seasonal dwelling or business premises" at the end of the second sentence.

As the rest of the section was not changed by the amendments, only subsections (a) and (f) are set out.

Stated in *Powell v. County of Haywood*, 15 N.C. App. 109, 189 S.E.2d 785 (1972).

Cited in *Szabo Food Serv., Inc. v. Balentine's, Inc.*, 285 N.C. 452, 206 S.E.2d 242 (1974).

§ 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."

§ 105-306. In whose name personal property is to be listed.

Cited in *Szabo Food Serv., Inc. v. Balentine's, Inc.*, 285 N.C. 452, 206 S.E.2d 242 (1974).

§ 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.

first 1973 amendatory act by substituting "31" for "3" at the end of the second paragraph of this section.

The second 1973 amendment amended the

§ 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 W. 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.

Years for which City May Impose Taxes.

— A city has the right to impose taxes on

discovered property for the preceding five years or for any of them in which the property escaped taxation. In re Appeal of McLean Trucking Co., 283 N.C. 650, 197 S.E.2d 520 (1973).

Application of Former Discovered-Property Statute. — See In re Appeal of McLean Trucking Co., 283 N.C. 650, 197 S.E.2d 520 (1973).

Definition of Phrase "Discovered Property" as Used under Former Law. — See In re Appeal of McLean Trucking Co., 283 N.C. 650, 197 S.E.2d 520 (1973).

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, s. 193, effective July 1, 1973, amends this

section by substituting "Department of 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 W. 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)a 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, effective July 1, 1973, substituted "Property Tax Commission" for "State Board of 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 Commission" for "State Board of Assessment." s. 193, effective July 1, 1973, amends this

§ 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 as herein provided:

a. As to interstate carrier companies domiciled in North Carolina, this definition shall include carriers who regularly transport property by tractor trailer to or from one or more terminals owned or leased by the carrier outside this State or two or more terminals inside this State. For purposes of appraisal and allocation only, the definition shall also include a North Carolina interstate carrier which does not have a terminal outside this State but whose operations outside the State are sufficient to require the payment of ad valorem taxes on a portion of the value of the rolling stock of such carrier to taxing units in one or more other states.

b. As to interstate carrier companies domiciled outside this State, this definition shall include carriers who regularly transport property by tractor trailer to or from one or more terminals owned or leased by the carrier inside this State.

c. As to intrastate carrier companies, this definition shall include only those carriers which are engaged in the transportation of property by tractor trailer to or from two or more terminals owned or leased by the carrier in this State.

(12) "Nonsystem property" means the real and tangible personal property owned by a public service company but not used in its public service activities.

(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.)

(15) "Railroad company" means a public service company engaged in the business of operating a railroad to, from, within or through this State on rights-of-way owned or leased by the company. It also means a company operating a passenger service on the lines of any railroad located wholly or partly in this State.

(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.

- (17) "System property" means the real property and tangible and intangible personal property used by a public service company in its public service activities. It also means public service company property under construction on the day as of which property is assessed which when completed will be used by the owner in its public service activities.
- (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; c. 1180.)

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.

The third 1973 amendment, effective July 1, 1974, rewrote subdivision (10), substituted "real and tangible personal property" for "real property and tangible and intangible personal property (except that assessed under Schedule H of the Revenue Act)" in subdivision (12), rewrote the first sentence and added the second sentence in subdivision (15) and added the second sentence of subdivision (17).

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 shall appraise at its true value (as defined in G.S. 105-283) each public service company's nonsystem tangible personal property 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) **Bus Company Rolling Stock.** — Each year as of January 1, the Department shall appraise at its true value (as defined in G.S. 105-283) the rolling stock owned or leased by or operated under the control of each bus line company, which bus line company is domiciled in this State or which is regularly engaged in business in this State.
 - (2) **Motor Freight Carrier Company Rolling Stock.** — Each year as of January 1, the Department shall appraise at its true value (as defined in G.S. 105-283) the rolling stock owned by a motor freight carrier company or leased by a motor freight carrier company and operated by its employees which motor freight carrier company is domiciled in this State or is regularly engaged in business in this State at a terminal owned or leased by the carrier.
 - (3) **Flight Equipment.** — Each year, as of January 1, the Department 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. (1939, c. 310, s. 1608; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 783, s. 6; c. 1180.)

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).

The third 1973 amendment, effective July 1, 1974, substituted "nonsystem tangible personal property" for "nonsystem personal property (except that assessed under Schedule H of the Revenue Act)" in subdivision

(b)(2), rewrote former subdivision (c)(1) as present subdivisions (c)(1) and (c)(2) redesignated former subdivision (c)(2), as present subdivision (c)(3) and deleted the former second sentence of present subdivision (c)(3), providing that the Department should be governed by § 105-336 in making the appraisal and should adhere to the provisions of § 105-337 in determining the portion of the total value of the company's flight equipment subject to taxation in this State. The amendment also deleted "of Revenue" following "Department" in subdivisions (b)(2) and (c)(3).

§ 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. — (a) **State Board's Duty.** — For purposes of taxation by local taxing units in this State, the Department of Revenue shall allocate the valuations of public service company property among the local taxing units in accordance with the provisions of this section.

(b) **System Valuation of Companies Other Than Those Noted in Subsection (c).** —

(1) **System Property of Railroad Companies.** — The appraised valuation of the distributable system property of a railroad shall be allocated for taxation to the local taxing units in accordance with the ratio of the miles of all the company's tracks in the local taxing unit to the total miles of all the company's tracks in this State, adjusted to reflect density of traffic in the local taxing unit.

(2) **System Property of Telephone Companies.** —

a. The Department of Revenue shall divide each telephone company's system property in this State into the following two classes and shall determine the original cost of that property and the percentage thereof represented by the property in each of the two classes.

—Class 1: Property located in this State that is identified under the applicable uniform system of accounts as central office equipment, large P.B.X. equipment, motor vehicles, tools and work equipment, office furniture and equipment, materials and supplies, and land and buildings (including towers and other structures).

—Class 2: Property located in this State that does not come within Class 1.

The Department of Revenue shall then apply the percentages obtained in accordance with this subdivision to the appraised valuation of the company's system property in this State and thereby derive the proportions of appraised valuation to be allocated as Class 1 and Class 2 valuations to local taxing units in accordance with subdivision (b)(2)b, below.

b. Having made the division required by subdivision (b)(2)a, above, the Department of Revenue shall allocate the appraised valuation of the properties in each class among the local taxing units of the State as follows:

—Class 1: The appraised valuations of property in this class shall be allocated among the local taxing units in which such property of the company is situated on January 1 in the proportion that the original cost of such property in the taxing unit bears to the original cost of all such property in this State.

—Class 2: The appraised valuations of property in this class shall be allocated among the local taxing units in which the company operates in the proportion that the miles of the company's single aerial wire and single wire in cable (including single tube in coaxial cable) in the taxing unit bears to the total of such wire miles of the company in this State.

(3) System Property of Other Companies Appraised by the Department of Revenue. —

a. The provisions of this subdivision (b)(3) shall govern the allocation of the property of all companies appraised by the Department of Revenue except railroad, telephone, bus line, motor freight carrier, and airline companies.

b. The appraised valuation of the system property of such a company shall be allocated for taxation to the local taxing units in which the company operates in the proportion that the original cost of the taxable system property in the local taxing unit on January 1 bears to the original cost of all the taxable system property in this State. If in any local taxing unit the company owns system property acquired prior to January 1, 1972, for which the original cost cannot be definitely ascertained, a reasonable estimate of the original cost of that property shall be made by the company, and this estimate shall be used by the Department of Revenue for allocation purposes as if it were the actual original cost of the property.

(c) Property of Bus Line, Motor Freight Carrier, and Airline Companies.—

(1) The appraised valuation of a bus line company's rolling stock shall be allocated for taxation to each local taxing unit according to the ratio of the company's scheduled miles during the calendar year preceding January 1 in each such unit to the company's total scheduled miles in this State for the same period. In no event, however, shall the State Board make an allocation to a taxing unit if, when computed, the valuation for that taxing unit amounts to less than five hundred dollars (\$500.00).

(2) The appraised valuation of the rolling stock (other than locally assigned rolling stock) owned or leased by a motor freight carrier company shall be allocated for taxation to each local taxing unit in which the company has a terminal according to the ratio of the tons of freight handled in the calendar year preceding January 1 at the company's terminals within the taxing unit to the total tons of freight handled by the company in this State in the same period. If a North Carolina interstate motor freight carrier company has no terminal outside this State, but has been required to pay ad valorem tax to one or more taxing units outside this State, there shall be allowed a reduction in the North Carolina valuation measured by the ratio of the rolling stock subject to ad valorem taxation outside the State to all of the carrier's rolling stock.

(3) The appraised valuation of an airline company's flight equipment shall be allocated for taxation to each local taxing unit in which an airport used by the company is situated according to the ratio obtained by averaging the following two ratios: the ratio of the company's ground hours in the taxing unit in the year preceding January 1 to the

company's ground hours in the State in the same period, and the ratio of the company's gross revenue in the taxing unit in the year preceding January 1 to the company's gross revenue in the State in the same period. (1939, c. 310, s. 1610; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 1180.)

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 July 1, 1974, added the second sentence of subdivision (c)(2).

§ 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, effective July 1, 1973, substituted "Department of Revenue" for "State Board of Assessment" in the first sentence, "Secretary of Revenue" for "State Board of Assessment" in the second sentence, and "Secretary" for "Board" in the last sentence.

§ 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."

ARTICLE 26.

Collection and Foreclosure of Taxes.

§ 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.

This section authorizes a tax lien on the land to which improvements are connected for the value of the tax on those improvements. *Mid-State Serv. Co. v. Dunford*, 18 N.C. App. 641, 197 S.E.2d 626 (1973).

This lien attaches the date the land is listed. *Mid-State Serv. Co. v. Dunford*, 18 N.C. App. 641, 197 S.E.2d 626 (1973).

Subsection (a)(2) was not effective until July 1, 1971, and could not operate to create a lien until the next listing period. *Mid-State Serv. Co. v. Dunford*, 18 N.C. App. 641, 197 S.E.2d 626 (1973).

When Tax on Personal Property Becomes Lien on That Property. — A tax on personal property becomes a lien on that personal property only after levy or attachment of the

personal property taxed. *Mid-State Serv. Co. v. Dunford*, 18 N.C. App. 641, 197 S.E.2d 626 (1973).

And When It Becomes Lien on Real Property. — A tax assessed against personal property becomes a lien on real property only when both the realty and personalty are owned by the same owner. *Mid-State Serv. Co. v. Dunford*, 18 N.C. App. 641, 197 S.E.2d 626 (1973).

Lessee's Obligation to Pay Taxes Extinguished. — Any obligation a lessee may have had to pay taxes was extinguished with the release and cancellation of the lease contract. *Mid-State Serv. Co. v. Dunford*, 18 N.C. App. 641, 197 S.E.2d 626 (1973).

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) including the amount due under G.S. 105-277.4(c) if the property should lose its eligibility for the benefit of classification under G.S. 105-277.2 et seq. that are 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:
- An owner of the real property;
 - An occupant of the real property;
 - A person having a lien on the real property;
 - A person having a legal interest or estate in the real property;
 - 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;
 - 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; c. 1340.)

Editor's Note. — The first 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).

The second 1973 amendment, effective Jan. 1, 1975, inserted, near the end of the first sentence of subsection (a), the language beginning "including the amount due" and ending "G.S. 105-277.2 et seq." The amendment also deleted "made" following "that are" near the end of the same sentence.

§ 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 percent¹ (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 "refunding" for "discharging,"

remitting, commuting" in subsection (a) and substituted "refunded" for "discharged,"

remitted, commuted," and "refund" for subsections (b) and (c) and added the second "discharge, remission, commutation," in 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.

Tax Accrues upon Delivery of Gasoline to Service Station Operator on Consignment. —

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).

§ 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. — Any person, association, firm or corporation, who shall buy any motor fuels, as defined in this Article, for the purpose of use, and the same is actually used, for other than the operation of a motor vehicle designed and licensed for use upon the highways shall be reimbursed at the rate of seven cents (7¢) per gallon for the year ending December 31, 1969, and at the rate of eight cents (8¢) per gallon for subsequent years ending December 31 of the amount of such tax or taxes paid under this Article upon the following conditions and in the following manner:

- (1) On or before April 15, 1968, application for reimbursement as provided in this section on taxes paid under this Article for the period from July 1, 1967, through December 31, 1967, and thereafter on or before April 15 of any subsequent year ending the preceding December 31, application for reimbursement as provided in this section on taxes paid under this Article for the preceding year shall be filed with the Secretary of Revenue. Such application shall be made upon oath or affirmation upon such forms as the Secretary of Revenue shall prescribe, and the Secretary of Revenue is hereby authorized to prescribe different forms of application for the several classes of uses for which said fuels may have been purchased, provided that as to all such applications for reimbursement the applicant shall be required to state whether or not such applicant has filed a North Carolina income tax return with the Secretary of Revenue; provided, however, that said application shall show on its face that the purchase price of the motor fuel therein referred to has been paid by applicant or that the payment of said purchase price has been secured to the seller's satisfaction. Refunds made pursuant to applications filed after April 15th of the year following the year in which the tax was paid shall be subject to the following late filing penalties: Applications filed within 30 days after said date, twenty-five percent (25%); applications filed after 30 days but within six months after said date, fifty percent (50%); but refunds applied for after six months following said date shall be barred.
- (2) The Secretary of Revenue shall have authority to issue rules and regulations as to how claims shall be filed and the information that shall be submitted with said claims and the records required to support said claims.
- (3) If, upon the filing of such application, the Secretary of Revenue shall be satisfied that the same is made in good faith and that the motor fuels

upon which said tax refund is requested have been or are to be used exclusively for purposes as set forth in said application and for purposes other than the operation of a motor vehicle designed and licensed for use upon the highway, he shall issue to such applicant a warrant upon the State Treasurer for the tax refund.

- (4) If the Secretary of Revenue shall be satisfied that the applicant for any refund authorized by this section has collected or sought to collect any refund of tax or taxes on fuels used in a motor vehicle designed and licensed for use on the highways, he shall issue to such applicant notice to show cause why such application should not be disallowed, which notice shall state a time and place of hearing upon said notice. If upon such hearing the Secretary shall find as a fact that such applicant has collected or sought to collect any refund on fuels which have been used in a motor vehicle designed and licensed for use on the highways, he shall disallow the application in its entirety and the applicant shall be required to repay all tax or taxes which have been refunded to him on said application.
- (5) Any applicant for a refund may seek administrative review or appeal from the decision of the Secretary of Revenue under the provisions of G.S. 105-241.2, 105-241.3 and 105-241.4.
- (6) The Secretary of Revenue is hereby authorized and directed, if at any time in his opinion there is reason to doubt the accuracy of the facts set forth in any application for tax refund to refer the matter to any agent of the Department of Revenue, and such person so designated shall make a careful investigation of all the facts and circumstances relating to said application in the use of the motor fuels therein referred to, and shall have a right to have access to the books and records of any retailer or distributor of motor fuel products for the purpose of obtaining the necessary information concerning such matters, and shall make due report thereof to the Secretary of Revenue.
- (7) If any court of last resort shall hold that the provisions for refund herein set out shall render the levying and collecting of the tax hereinbefore provided invalid, it is the intention of the General Assembly that such provisions for refund shall be annulled and the tax shall be levied without any provisions for such refund and that this Article shall be so construed.

Any person making a false application or affidavit for the purpose of securing a refund to which he is not entitled under the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding five hundred dollars (\$500.00) or imprisoned not exceeding two years, in the discretion of the court. (1931, c. 145, s. 24; c. 304; 1933, c. 211; 1937, c. 111; 1941, c. 15; 1943, c. 123; 1955, c. 1350, s. 24; 1957, c. 1236, s. 1; 1961, cc. 480, 668; 1967, c. 699; 1969, c. 600, s. 20; c. 1298, s. 3; 1973, c. 476, s. 193; c. 1287, s. 14.)

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, 1974, inserted "upon oath or af-

firmation" near the beginning of the second sentence of subdivision (1) and deleted "and all such applications shall be sworn before an officer authorized to administer oaths" immediately preceding the proviso to that sentence.

§ 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 upon filing with the Secretary of Revenue a statement 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 department on which the tax levied by G.S. 105-434 has been paid, which statement shall be made upon the oath or affirmation of 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 department. 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; c. 1287, s. 14.)

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."

The third 1973 amendment, effective July 1, 1974, rewrote the first sentence. The only change of substance was the insertion of the requirement that the statement shall be made "upon the oath or affirmation" of one of the listed officers rather than that it be "sworn to" by such officer.

Pursuant to Session Laws 1973, c. 507, s. 5, effective July 1, 1973, "Board of Transportation" has been substituted for "State Highway Commission" and for "Highway Commission" in the first sentence of this section as rewritten by Session Laws 1973, c. 1287, s. 14.

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. — (a) Any person, association, firm or corporation, who shall purchase any motor fuels, as defined in this Article, for the purpose of use, and the same is actually used, in the operation of motor buses transporting fare-paying passengers in connection with a city transit system as hereinafter defined in subsection (b) of this section shall be entitled to be reimbursed at the rate of eight cents (8¢) per gallon of tax levied by this Article upon filing with the Secretary of Revenue an application upon the oath or affirmation of the applicant or his agent showing the number of gallons of motor fuel so purchased and used. All claims for refunds of taxes 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.

(c) The Secretary of Revenue shall have authority to issue rules and regulations as to how claims shall be filed and the information that shall be

submitted with said claims and the records required to support said claims.

(d) If, upon the filing of such application, the Secretary of Revenue shall be satisfied that the same is made in good faith and that the motor fuels upon which said tax refund is requested have been or are to be used exclusively for purposes as set forth in said application and for the operation of a city transit system, he shall issue to such applicant a warrant upon the State Treasurer for the tax refund.

(e) If the Secretary of Revenue shall be satisfied that the applicant for any refund authorized by this section has collected or sought to collect any refund of tax or taxes on fuels not used in the operation of a city transit system, he shall issue to such applicant notice to show cause why such application should not be disallowed, which notice shall state a time and place of hearing upon said notice. If upon such hearing the Secretary shall find as a fact that such applicant has collected or sought to collect any refund on fuels which have not been used in the operation of a city transit system, he shall disallow the application in its entirety and the applicant shall be required to repay all tax or taxes which have been refunded to him on said application.

(f) Any applicant for a refund may seek administrative review or appeal from the decision of the Secretary of Revenue under the provisions of G.S. 105-241.2, G.S. 105-241.3 and G.S. 105-241.4.

(g) The Secretary of Revenue is hereby authorized and directed, if at any time in his opinion there is reason to doubt the accuracy of the facts set forth in any application for tax refund to refer the matter to any agent of the Department of Revenue, and such person so designated shall make a careful investigation of all the facts and circumstances relating to said application in the use of the motor fuels therein referred to, and shall have a right to have access to the books and records of any retailer or distributor of motor fuel products for the purpose of obtaining the necessary information concerning such matters, and shall make due report thereof to the Secretary of Revenue.

(1973, c. 476, s. 193; c. 1287, s. 14.)

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, 1974, substituted, near the end of the first sentence of subsection (a), "filing with the Secretary of Revenue an application upon the oath or affirmation of the applicant or his agent" for "the filing of an application sworn

to by the applicant or his agent with the Secretary of Revenue."

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

"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. — The following words, terms and phrases as used in this Article are, for the purposes thereof, hereby defined as follows:

(1) "Secretary" shall mean the Secretary of Revenue.

(3) "Fuel" or "fuels" shall mean and include all combustible gases and liquids, used, purchased or sold for use in an internal combustion engine or motor for the generation of power to propel motor vehicles on the public highways, except methanol (CH₃OH) in its unadulterated state or methanol in combination with other alcohols, and except such fuels as are subject to the tax imposed by G.S. 105-434.

(1973, c. 476, s. 193; c. 1431.)

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 inserted "except methanol (CH₃OH) in its unadulterated state or methanol in combination with other alcohols, and" in subdivision (3).

As the rest of the section was not changed by the amendments, only the introductory language and subdivisions (1) and (3) are set out.

§ 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, the Commissioner of Revenue to Secretary of Revenue.
s. 193, effective July 1, 1973, changes the title of

§ 105-449.28. Retention of records by licensees.

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

§ 105-449.29. Inspection of records, etc.

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

§ 105-449.30. Refund for nonhighway use.

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

§ 105-449.31. Refund where taxpaid fuels transported to another state for sale or use.

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

§ 105-449.32. Rules and regulations; forms.

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

§ 105-449.34. Acts and omissions declared to be misdemeanors; penalties.

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

§ 105-449.35. Exchange of information among the states.

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

§ 105-449.36. July 1, 1969, inventory.

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

ARTICLE 36B.

*Tax on Carriers Using Fuel Purchased outside State.***§ 105-449.37. Definitions.**

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

§ 105-449.39. Credit for payment of motor fuel tax.

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

§ 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.

The reference in this section to § 105-276 is to that section as it existed before the 1971 revision of Subchapter II of this Chapter. See now § 105-291.

§ 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.

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 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, 1974

I, James H. Carson, Jr., Attorney General of North Carolina, do hereby certify that the foregoing 1974 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.

JAMES H. CARSON, JR.

Attorney General of North Carolina

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