HE GENERAL STATUTES OF NORTH CAROLINA

1981 SUPPLEMENT

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

Under the Direction of
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Volume 2D

1979 Replacement

Annotated through 302 N.C. 222 and 50 N.C. App. 567. For complete scope of annotations, see scope of volume page.

Place in Pocket of Corresponding Volume of Main Set.

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Preface

This Supplement to Replacement Volume 2D contains the general laws of a permanent nature enacted by the General Assembly at the 1979 Second Session and the 1981 Session through October 10, 1981, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the chapters 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 will appear in Replacement Volumes 4B and 4C.

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 30 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 by the General Assembly at the 1979 Second Session and the 1981 Session through October 10, 1981, affecting Chapters 97 through 105A of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through volume 302, p. 222.
North Carolina Court of Appeals Reports through volume 50, p. 567.
Federal Reporter 2nd Series volumes through volume 650, p. 292.
Federal Supplement through volume 515, p. 55.
Federal Rules Decision through volume 89, p. 719.
Bankruptcy Reporter through volume 11, p. 138.
United States Reports through volume 449, p. 410.
Supreme Court Reporter through volume 101, p. 2881.
North Carolina Law Review.
Wake Forest Law Review.
Campbell Law Review.
Duke Law Journal.
North Carolina Central Law Journal.
Opinions of the Attorney General.

The General Statutes of North Carolina
1981 Supplement

Volume 2D

Chapter 97.
Workers' Compensation Act.

Article 1.

Workers' Compensation Act.

Article 1.

Workers' Compensation Act.

§ 97-1. Short title.

Cross References. — As to application of this chapter to incapacitated State law-enforcement officers, see § 143-166.14.

Legal Periodicals. — For note discussing the nonexistence of a private right of action for retaliatory discharge resulting from pursuit of workmen's compensation benefits, see 15 Wake Forest L. Rev. 139 (1979).

For note on worker's compensation and retaliatory discharge, see 58 N.C.L. Rev. 629 (1980).

For comment on injury by accident in worker's compensation, see 59 N.C.L. Rev. 175 (1980).

For a note on occupational disease under workers' compensation statute, see 16 Wake Forest L. Rev. 288 (1980).

CASE NOTES

Purpose of Act. —
The purpose of the workers' compensation act is to furnish compensation for loss of earning capacity. Wilhite v. Liberty Veneer Co., 47 N.C. App. 434, 267 S.E.2d 566, cert. granted, 301 N.C. 106, 273 S.E.2d 312 (1980).

The philosophy which supports, etc. —
In accord with 1st paragraph in original. See Porterfield v. RPC Corp., 47 N.C. App. 140, 266 S.E.2d 760 (1980).

§ 97-2. Definitions.

When used in this Article, unless the context otherwise requires —

(1) Employment. — The term "employment" includes employment by the State and all political subdivisions thereof, and all public and quasi-public corporations therein and all private employments in which four or more employees are regularly employed in the same business or establishment or in which one or more employees are employed in activities which involve the use or presence of radiation, except agriculture and domestic services, and an individual sawmill and logging operator with less than 10 employees, who saws and logs less than 60 days in any six consecutive months and whose principal business is unrelated to sawmilling or logging.

(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, 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.

The term employee shall also include senior members of the Civil Air Patrol, 18 years of age or older, and currently certified pursuant to G.S. 143B-491(a) when performing duties in the course and scope of a State requested and approved mission pursuant to Article 11 of Chapter 143B.

Employee shall not include any person performing voluntary service as a ski patrolman who receives no compensation for such services other than meals or lodging or the use of ski tow or ski lift facilities or any combination thereof.

Any sole proprietor or partner of a business whose employees are eligible for benefits under this Article may elect to be included as an employee under the workers' compensation coverage of such business if he is actively engaged in the operation of the business and if the insurer is notified of his election to be so included. Any such sole proprietor or partner shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this Article.

(3) Employer. — The term "employer" means the State and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment and the legal representative of a deceased person or the receiver or trustee of any person. The board of commissioners of each county of the State, for the purposes of this law, shall be considered as "employer" of all deputy sheriffs serving within such county, or persons serving or performing the duties of a deputy sheriff, whether such persons are appointed by the sheriff or by the board of commissioners and whether serving on a fee basis or salary basis. Each county is authorized to insure its compensation liability for deputy sheriffs to the same extent it is authorized to insure other compensation liability for employees thereof.

(4) Person. — The term "person" means individual, partnership, association or corporation.

(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 leaving dependents surviving, 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 or for the death of a minor without dependents 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 or senior members of the State Civil Air Patrol functioning under Article 11, Chapter 143B, 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 or senior member of the State Civil Air Patrol was earning in the employment wherein he principally earned his livelihood as of the date of injury.

(6) Injury. — "Injury and personal injury" shall mean only injury by accident arising out of and in the course of the employment, and shall not include a disease in any form, except where it results naturally and unavoidably from the accident. Injury shall include breakage or damage to eyeglasses, hearing aids, dentures, or other prosthetic devices which function as part of the body; provided, however, that eyeglasses and hearing aids will not be replaced, repaired, or otherwise compensated for unless injury to them is incidental to a compensable injury.

The Commissioner of Insurance shall hold a rate hearing, within 60 days of July 1, 1975, in order to make necessary rate adjustments.

(7) Carrier. — The term "carrier" or "insurer" means any person or fund authorized under G.S. 97-93 to insure under this Article, and includes self-insurers.

(8) Commission. — The term "Commission" means the North Carolina Industrial Commission, to be created under the provisions of this Article.

(9) Disability. — The term "disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment.

(10) Death. — The term "death" as a basis for a right to compensation means only death resulting from an injury.

(11) Compensation. — The term "compensation" means the money allowance payable to an employee or to his dependents as provided for in this Article, and includes funeral benefits provided herein.

(12) Child, Grandchild, Brother, Sister. — The term "child" shall include a posthumous child, a child legally adopted prior to the injury of the employee, and a stepchild or acknowledged illegitimate child dependent upon the deceased, but does not include married children unless wholly dependent upon him. "Grandchild" means a child as above defined of a child as above defined. "Brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but does not include married brothers nor married sisters unless wholly dependent on the employee. "Child," "grandchild," "brother," and "sister" include only persons who at the time of the death of the deceased employee are under 18 years of age.

(13) Parent. — The term "parent" includes stepparents and parents by adoption, parents-in-law, and any person who for more than three years prior to the death of the deceased employee stood in the place of a parent to him, if dependent on the injured employee.

(14) Widow. — The term "widow" includes only the decedent's wife living with or dependent for support upon him at the time of his death; or living apart for justifiable cause or by reason of his desertion at such time.

(15) Widower. — The term "widower" includes only the decedent's husband living with or dependent for support upon her at the time of her death or living apart for justifiable cause or by reason of her desertion at such time.

(16) Adoption. — The term "adoption" or "adopted" means legal adoption prior to the time of the injury.

(17) Singular. — The singular includes the plural and the masculine includes the feminine and neuter.

(18) Hernia. — In all claims for compensation for hernia or rupture, resulting from injury by accident arising out of and in the course of the employee's employment, it must be definitely proven to the satisfaction of the Industrial Commission:

a. That there was an injury resulting in hernia or rupture.
b. That the hernia or rupture appeared suddenly.
c. That it was accompanied by pain.
d. That the hernia or rupture immediately followed an accident.
e. That the hernia or rupture did not exist prior to the accident for which compensation is claimed.

All hernia or rupture, inguinal, femoral or otherwise, so proven to be the result of an injury by accident arising out of and in the course of employment, shall be treated in a surgical manner by a radical

operation. If death results from such operation, the death shall be considered as a result of the injury, and compensation paid in accordance with the provisions of G.S. 97-38. In nonfatal cases, if it is shown by special examination, as provided in G.S. 97-27, that the injured employee has a disability resulting after the operation, compensation for such disability shall be paid in accordance with the provisions of this Article.

In case the injured employee refuses to undergo the radical operation for the cure of said hernia or rupture, no compensation will be allowed during the time such refusal continues. If, however, it is shown that the employee has some chronic disease, or is otherwise in such physical condition that the Commission considers it unsafe for the employee to undergo said operation, the employee shall be paid compensation in accordance with the provisions of this Article. (1929, c. 120, s. 2; 1933, c. 448; 1939, c. 277, s. 1; 1943, c. 543; c. 672, s. 1; 1945, c. 766; 1947, c. 698; 1949, c. 399; 1953, c. 619; 1955, c. 644; c. 1026, s. 1; c. 1055; 1957, c. 95; 1959, c. 289; 1961, cc. 231, 235; 1967, c. 1229, s. 1; 1969, c. 206, s. 2; c. 707; 1971, c. 284, s. 1; c. 1231, s. 1; 1973, c. 521, ss. 1, 2; c. 763, ss. 1-3; c. 1291, s. 14; 1975, c. 266, s. 1; c. 284, ss. 2, 3; c. 288; c. 718, s. 3; c. 817, s. 1; 1977, c. 419; c. 893, s. 1; 1979, cc. 86, 374; c. 516, ss. 4, 5; c. 714, s. 3; 1981, c. 421, ss. 1, 2.)

Construction. —

The legislature has provided that the Workers' Compensation Act shall be liberally construed but it does not permit either the commission or the courts to hurry evidence beyond the speed which its own force generates. Weidle v. Cloverdale Ford, 50 N.C. App. 555, — S.E.2d — (1981).

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, and applicable to cases arising on and after that date, deleted a proviso near the middle of the fifth sentence of the first paragraph of subdivision (2), which read: "Provided, that the third and fourth sentences herein shall not apply to Alleghany, Avery, Bladen, Carteret, Cherokee, Gates, Hyde, Pender, Perquimans, Watauga and Wilkes Counties," and deleted a proviso from the end of the third sentence of subdivision (3), which read: "Provided, that the last two sentences herein shall not apply to Alleghany, Avery, Bladen, Carteret, Cherokee, Gates, Hyde, Pender, Perquimans, Union, Watauga and Wilkes Counties."

Legal Periodicals. — For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

For note discussing the use of age, education, and work experience in determining disability in workmen's compensation cases, see 15 Wake Forest L. Rev. 570 (1979).

For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For comment on injury by accident in worker's compensation, see 59 N.C.L. Rev. 175 (1980).

CASE NOTES

I. IN GENERAL.

Liberal Construction. —

In accord with 2nd paragraph in original. See Porterfield v. RPC Corp., 47 N.C. App. 140, 266 S.E.2d 760 (1980).

Applied in Development Assocs. v. Wake County Bd. of Adjustment, 48 N.C. App. 541, 269 S.E.2d 700 (1980).

Quoted in Taylor v. J.P. Stevens & Co., 300 N.C. 94, 265 S.E.2d 144 (1980).

Stated in Thornton v. Thornton, 45 N.C. App. 25, 262 S.E.2d 326 (1980).

Cited in Morrison v. Burlington Indus., 47 N.C. App. 50, 266 S.E.2d 741 (1980).

II. EMPLOYMENT; EMPLOYEE; EMPLOYER.

A. Employment.

Full-Time Employment. — Employees who are employed in distributive education programs may not be fairly and justly classified as full-time for purposes of the Workers' Compensation Act. Mabry v. Bowers Implement Co., 48 N.C. App. 139, 269 S.E.2d 165 (1980).

B. Employee.

1. In General.

Claimant Has Burden of Proving Employer-Employee Relationship. — In

order to bring himself within the coverage of the Workmen's Compensation Act, the claimant has the burden of proving that the employer-employee relationship existed. Lloyd v. Jenkins Context Co., 46 N.C. App. 817, 266 S.E.2d 35 (1980).

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

Employment Covered Despite Its Casual Nature. — An accident is compensable if it happens in employment incident to the proper operation of a business although the employment is casual. Boyd v. Mitchell, 48 N.C. App. 219, 268 S.E.2d 252 (1980).

3. Employees and Independent Contractors.

Estoppel to Deny Employee Relationship. — Where a contractor and subcontractor agreed that members of the subcontractor's work crew would be considered as "employees" of the contractor while working on a highway construction project, the contractor was reimbursed by the subcontractor for wages it paid to the crew and for workers' compensation insurance premiums it paid on those wages, a member of the subcontractor's work crew was killed while working on the highway project, and the Industrial Commission found that decedent was in fact an employee of the subcontractor, the contractor's workers' compensation insurance carrier was estopped to deny that it was liable for a portion of the workers' compensation benefits due because of the employee's death if it accepted premiums for workers' compensation insurance on the deceased employee. Britt v. Colony Constr. Co., 35 N.C. App. 23, 240 S.E.2d 479 (1978).

While the evidence in a workers' compensation proceeding would have supported the Industrial Commission's conclusion that defendant insurer was estopped to deny that a pulpwood cutter was acting as an employee of the two defendant woodyards at the time of his death by accident while cutting pulpwood, the Commission's findings of fact were insufficient to support such conclusion, and the proceeding was therefore remanded for further findings of fact and conclusions of law based on the record. Allred v. Piedmont Woodyards, Inc., 32 N.C. App. 516, 232 S.E.2d 879 (1977).

III. AVERAGE WEEKLY WAGES.

Basis for Compensation for Death of Minor. — Under subdivision (5) of this section, compensation for the death of a minor employee must be based on the average weekly wage of adults employed in a similar class of work by the same employer to which decedent would probably have been promoted had he not been killed, if such method can be used, and it is only when such method cannot be used that compensation may be based upon a wage sufficient to yield the maximum weekly compensation benefit. Hensley v. Caswell Action Comm., Inc., 296 N.C. 527, 251 S.E.2d 399 (1979).

Averaging Full- and Part-Time Work Weeks. — The Industrial Commission erred in determining a deceased minor employee's average weekly wage on the basis of 11 weeks during the summer when he worked full-time, and the commission should have averaged the 11 weeks of full-time with the 41 weeks of part-time employment contemplated in his distributive education job at the undisputed hourly wage rate of $2.65 in order to reach a result fair and just to both the employee and employer. Mabry v. Bowers Implement Co., 48 N.C. App. 139, 269 S.E.2d 165 (1980).

Wages of Pulpwood Cutter Assisted Part-time. — The Industrial Commission erred in determining a pulpwood cutter's average weekly wage based on all of the proceeds of sales of pulpwood to two woodyards where the evidence showed that the cutter was assisted in his work part of the time by his two sons and that they received part of the proceeds from the sales of pulpwood for their labor. Allred v. Piedmont Woodyards, Inc., 32 N.C. App. 516, 232 S.E.2d 879 (1977).

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

A. In General.

The threefold conditions antecedent, etc. —

In accord with 1st paragraph in original. See King v. Exxon Co., 46 N.C. App. 750, 266 S.E.2d 37 (1980).

In accord with 8th paragraph in original. See Hollar v. Montclair Furn. Co., 48 N.C. App. 489, 269 S.E.2d 667 (1980).

Expert Testimony. — Where the exact nature and probable genesis of a particular type of injury involves complicated medical questions far removed from the ordinary experience and knowledge of laymen, only an expert can give competent opinion evidence as to the cause of the injury. Click v. Pilot Freight Carriers, Inc., 300 N.C. 164, 265 S.E.2d 389 (1980).

Standard of Review on Appeal. — Whether an injury arose out of and in the course of employment is a mixed question of law and fact, and where there is evidence to support the commissioner's findings in this regard, the court is bound by those findings. Barham v. Food World, Inc., 300 N.C. 329, 266 S.E.2d 676, rehearing denied, — N.C. —, 270 S.E.2d 105 (1980).

B. Accident.

Accident and injury are considered separate, etc. —

In accord with 2nd paragraph in original. See Porter v. Shelby Knit, Inc., 46 N.C. App. 22, 264 S.E.2d 360 (1980).

In accord with 3rd paragraph in original. See Reams v. Burlington Indus., 42 N.C. App. 54, 255 S.E.2d 586 (1979).

In accord with 4th paragraph in original. See Reams v. Burlington Indus., 42 N.C. App. 54, 255 S.E.2d 586 (1979).

"Accident" Defined. —

In accord with 1st paragraph in original. See Porter v. Shelby Knit, Inc., 46 N.C. App. 22, 246 S.E.2d 360 (1980).

In accord with 2nd paragraph in original. See Reams v. Burlington Indus., 42 N.C. App. 54, 255 S.E.2d 586 (1979).

Accident involves the interruption, etc. —

In accord with 7th paragraph in original. See King v. Exxon Co., 46 N.C. App. 750, 266 S.E.2d 37 (1980).

Filling in for Absent Employee Not an Interruption. — Evidence was sufficient to support a finding by the Industrial Commission that there was no interruption of plaintiff's work routine or the introduction of some new circumstance not a part of the usual work routine, the fact that plaintiff was filling in for absent employees and therefore engaged in a greater volume of lifting than was her ordinarily assigned task not rendering her performance at the time of the injury other than a part of the usual work routine. Dyer v. Mack Foster Poultry & Livestock, Inc., 50 N.C. App. 291, 273 S.E.2d 321 (1981).

There must be competent evidence to support the inference that the accident in question resulted in the injury complained of, i.e., some evidence that the accident at least might have or could have produced the particular disability in question. Click v. Pilot Freight Carriers, Inc., 300 N.C. 164, 265 S.E.2d 389 (1980).

Injury While Performing Work in Usual Way Is Not Accident. — If the employee is performing his regular duties in the usual and customary manner, and is injured, there is no "accident" and the injury is not compensable. Porter v. Shelby Knit, Inc., 46 N.C. App. 22, 264 S.E.2d 360 (1980).

Physical exertion may in and of itself be the precipitating cause of an injury by accident within the meaning of this section. Hollar v. Montclair Furn. Co., 48 N.C. App. 489, 269 S.E.2d 667 (1980).

Evidence of the necessity of extreme exertion is sufficient to bring into an event causing an injury the necessary element of unusualness and unexpectedness from which accident may be inferred. Porter v. Shelby Knit, Inc., 46 N.C. App. 22, 264 S.E.2d 360 (1980).

Where it was clear from the evidence in a workmen's compensation case that acute myocardial infarction suffered by plaintiff deputy sheriff occurred suddenly and immediately after the foot chase of a suspect, and that it was the overexertion experienced during the foot chase that caused the injury to his heart, it was not necessary for plaintiff to show that the overexertion which was the cause of his injury occurred while he was engaged in some unusual activity, since it was the extent and nature of the exertion that classified the resulting injury to the plaintiff's heart as an injury by accident within the meaning of this section. King v. Forsyth County, 45 N.C. App. 467, 263 S.E.2d 283 (1980).

Injury Resulting from Accident — Examples. — The Industrial Commission properly determined that plaintiff suffered an injury by "accident" where the evidence supported findings by the commission that plaintiff, in the course of her duties as a knitter, was pulling a rod out of a roll of cloth; this activity was a part of plaintiff's regular and customary job; on this occasion, the withdrawal of the rod was more difficult than usual because the roll of cloth was "extra tight"; and the extraordinary effort plaintiff exerted in her attempt to withdraw the rod injured her back, causing a ruptured intervertebral disc. Porter v. Shelby Knit, Inc., 46 N.C. App. 22, 264 S.E.2d 360 (1980).

Injury Not Resulting from Accident. —

Under the evidence, the Industrial Commission properly determined that the death of a traveling mechanic from the rupture of a congenital aneurysm in the left carotid artery did not result from an accident arising out of and in the course of his employment. King v. Exxon Co., 46 N.C. App. 750, 266 S.E.2d 37 (1980).

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

1. In General.

Injuries by accident arising out of, etc. —

In accord with 4th paragraph in original. See Barham v. Food World, Inc., 300 N.C. 329, 266 S.E.2d 676, rehearing denied, N.C. , 270 S.E.2d 105 (1980).

"In the Course of" the Employment Construed. —

In accord with 4th paragraph in original. See Brown v. Jim Brown's Serv. Station, 45 N.C. App. 255, 262 S.E.2d 700 (1980).

The phrase "in the course of" employment deals with time, place, and circumstance. "Time and Place" do not necessarily mean the regular hours of employment and on the premises of the employer. If the employee is doing work at the direction and for the benefit of the employer,

the time and place of work are for the benefit of the employer and a part of the employment of the employee. This satisfies the condition of time and place although the work is done off the premises of the employer and after regular working hours. In respect to "circumstance," compensable accidents are those sustained while the employee is doing what a man so employed may reasonably do within a time he is employed, and at a place where he may reasonably be during the time to do that thing. Brown v. Jim Brown's Serv. Station, 45 N.C. App. 255, 262 S.E.2d 700 (1980).

"Out of and in the Course of" Construed. —

In accord with 1st paragraph in original. See Long v. Asphalt Paving Co., 47 N.C. App. 564, 268 S.E.2d 1 (1980).

"Out of" and "in the Course of" Distinguished. —

The phrases "arising out of" and "in the course of" in subdivision (6) of this section are not synonymous and both must be fulfilled in order for the plaintiff to recover. Brown v. Jim Brown's Serv. Station, 45 N.C. App. 255, 262 S.E.2d 700 (1980).

The term "arising out of" refers to the origin or causal connection of the injury to the employment; the phrase "in the course of" refers to the time, place and circumstances under which the injury by accident occurs. Barham v. Food World, Inc., 300 N.C. 329, 266 S.E.2d 676, rehearing denied, N.C. , 270 S.E.2d 105 (1980).

The two requirements for compensability of "arising out of" and "in the course of" employment are separate and distinct, and both must be satisfied in order to render an injury compensable. Barham v. Food World, Inc., 300 N.C. 329, 266 S.E.2d 676, rehearing denied, N.C. , 270 S.E.2d 105 (1980).

"Arising Out of" Defined. —

In accord with 17th paragraph in original. See Brown v. Jim Brown's Serv. Station, 45 N.C. App. 255, 262 S.E.2d 700 (1980).

The test for determining, etc. —

Where a claimant's right to recovery is based on an injury by accident, the employment need not be the sole causative force to render the injury compensable. Walston v. Burlington Indus., 49 N.C. App. 301, 271 S.E.2d 516 (1980).

Mixed Question of Law and Fact. —

In accord with 1st paragraph in original. See Long v. Asphalt Paving Co., 47 N.C. App. 564, 268 S.E.2d 1 (1980).

Whether an accident grew out of the employment is a mixed question of law and fact which the court has the right to review on appeal. If the detailed findings of fact force a conclusion opposite that reached by the commission, it is the duty of the court to reverse the commission. Warren v. City of Wilmington, 43 N.C. App. 748, 259 S.E.2d 786 (1979).

Unexplained Injury Where Performance of Duties Is Only Active Force Involved. — Where the cause of plaintiff's fall was unknown, but the only active force involved was plaintiff's exertion in the performance of his duties, the court gave effect to the liberal intent of the law by finding the accident to have arisen out of plaintiff's employment. Slizewski v. International Seafood, Inc., 46 N.C. App. 228, 264 S.E.2d 810 (1980).

Injuries to Trucker Preparing Truck for Job. — Injuries to an owner-operator of a truck leased to an Interstate Commerce Commission franchise holder arose out of and in the course of employment where the plaintiff accepted the offer of a job driving from Greensboro to San Francisco, part of the duties of his employment was to present the tractor-trailer in condition to make the trip, and plaintiff was injured while preparing the truck. Thompson v. Refrigerated Transp. Co., 32 N.C. App. 693, 236 S.E.2d 312 (1977).

2. Origin and Cause of Accident.

a. Risks Incident to the Employment Generally.

Nurse Turning Obese Patient. — Plaintiff's injury suffered during the course of her employment was not the result of an accident within the meaning of subdivision (6) of this section where the injury occurred while plaintiff nurse was turning an unconscious, obese patient, where turning patients was part of plaintiff's job, and there was no evidence that the hospital room and its condition were any different than plaintiff was used to working in and the patient, although obese, did not present an exceptional condition to plaintiff. Artis v. N.C. Baptist Hosps., 44 N.C. App. 64, 259 S.E.2d 789 (1979).

b. Falls.

When Fall Constitutes, etc. —

In accord with 2nd paragraph in original. See Hollar v. Montclair Furn. Co., 48 N.C. App. 489, 269 S.E.2d 667 (1980).

There is a clear line of distinction in fall cases: (1) where the injury is clearly attributable to an idiopathic condition of the employee, with no other factors intervening or operating to cause or contribute to the injury, no award should be made; (2) where the injury is associated with any risk attributable to the employment, compensation should be allowed, even though the employee may have suffered from an idiopathic condition which precipitated or contributed to the injury. Hollar v. Montclair Furn. Co., 48 N.C. App. 489, 269 S.E.2d 667 (1980).

d. Street and Highway Accidents.

Employer-Owned Road with Risks Not Different from Highway. — Plaintiffs were

not injured by accident arising out of and in the course of their employment when they were injured in a collision between two automobiles driven by fellow employees while they were leaving work on a two mile long private road maintained by the employer to provide ingress to and egress from the employer's plant where defendants, in driving plaintiffs home pursuant to a private arrangement, were not performing assigned duties for their employer; the accident occurred one and one-half miles from the employer's plant and parking lot on a road which was designed and constructed like a public highway; and the risks the employees were exposed to on the private road were not materially different from those encountered on a public highway. Strickland v. King, 293 N.C. 731, 239 S.E.2d 243 (1977).

Teacher Killed in Accident at End of School Day. — In an action to recover death benefits for the death of a school teacher which occurred when she backed her car, at the end of the school day, into the path of a truck, evidence and findings that the deceased was required as part of her duties to visit students in their homes after school hours, and that she was also required from time to time to purchase incidental supplies at retail stores for use in her class, along with related evidence and findings, presented nothing more than a scenario of what the deceased might do on a given day, and was not sufficient to support a finding that the deceased was performing one of the duties of her employment at the time of the accident. Franklin v. Wilson County Bd. of Educ., 29 N.C. App. 491, 224 S.E.2d 657 (1976).

Injury in Public Street During Fatigue Break. — Claimant's injury by accident did not arise out of her employment where claimant left her employer's premises during a fatigue break and walked down a public street to where oil tanks for the use of defendant employer were being buried in the street, and claimant there stumbled over a cement block and fell in the street, injuring her hip and back. Smith v. Dacotah Cotton Mills, Inc., 31 N.C. App. 687, 230 S.E.2d 772 (1976).

f. Horseplay.

Death by Drowning Held Compensable. — The death of a 14-year-old employee of a sanitary district by drowning while he was attempting to wade across a reservoir to complete his work of cutting weeds on the side arose out of and in the course of his employment, although he had received general instructions at an earlier time not to go into the water, where the place at which he stepped into the water was shallow and the danger was not obvious, and decedent's actions were thus not so extreme as to break the causal connection between his employment and his death. Hensley v. Caswell Action Comm., Inc., 296 N.C. 527, 251 S.E.2d 399 (1979).

Death by Drowning Held Not Compensable. — The death of a 15-year-old laborer by drowning while swimming in a lake on his employer's premises during his lunch hour when the lifeguard was not on duty did not arise out of and in the course of his employment where all the evidence showed that deceased was acting in contravention of specific instructions from his employer and that he was engaged in an independent recreational activity totally unrelated to his work of cutting grass. Martin v. Bonclarken Ass'y, 296 N.C. 540, 251 S.E.2d 403 (1979).

3. Time, Place and Circumstances of Accident.

b. Injuries While Going to and from Work.

(1) General Rule.

Injury Suffered Going to or Returning from Work. —

In accord with 1st paragraph in original. See Robertson v. Shepherd Constr. Co., 44 N.C. App. 335, 261 S.E.2d 16 (1979), cert. denied, 299 N.C. 545, 265 S.E.2d 405 (1980); Barham v. Food World, Inc., 300 N.C. 329, 266 S.E.2d 676, rehearing denied, N.C. , 270 S.E.2d 105 (1980).

Where Going to and from Meetings Part of Duties. — Plaintiff's accident on a city street as she was returning home to write a report about a work-related meeting she had just attended was an accident in the course of her employment, where going to and from the meetings was a part of plaintiff's job duties for which she was paid the same as when actually in the office or at community meetings. Warren v. City of Wilmington, 43 N.C. App. 748, 259 S.E.2d 786 (1979).

(3) On Employer's Premises.

Injury on Employer's Premises May Be Compensable. —

In accord with 3rd paragraph in original. See Barham v. Food World, Inc., 45 N.C. App. 409, 263 S.E.2d 285 (1980).

In order for an accident to be "on-premises," it is not necessary that the employer own or lease the area in question. It is enough that the employer controls the area and uses it in his business. Barham v. Food World, Inc., 45 N.C. App. 409, 263 S.E.2d 285 (1980).

Loading Zone. — An injury to plaintiff grocery store employee when she slipped and fell on ice in a loading zone in front of defendant employer's store in a shopping center while she was walking to her work site after parking her car in the shopping center parking lot did not occur on her employer's premises and thus did

not arise out of and in the course of her employment where defendant neither owned nor leased the parking lot or the loading zone; although defendant had instructed employees not to park in the loading zone and had occasionally asked customers to move their cars from the zone, it had no responsibility for the upkeep of the loading zone area and had no authority or obligation under its lease with the shopping center to instruct drivers not to park in any area; the parking lot and loading zone were common areas and all of the stores had access to them for the convenience of their customers; and plaintiff failed to show that she was performing any duties for defendant employer at the time of her injury or that she was exposed to any danger greater than that of the public generally. Barham v. Food World, Inc., 300 N.C. 329, 266 S.E.2d 676, rehearing denied, N.C. , 270 S.E.2d 105 (1980).

(4) Where Employer Furnishes Transportation.

Where Employer Furnishes Transportation as Incident, etc. —

In accord with 1st paragraph in original. See Robertson v. Shepherd Constr. Co., 44 N.C. App. 335, 261 S.E.2d 16 (1979), cert. denied, 299 N.C. 545, 265 S.E.2d 405 (1980).

The test in such cases, etc. —

In accord with original. See Robertson v. Shepherd Constr. Co., 44 N.C. App. 335, 261 S.E.2d 16 (1979).

Isolated Instance of Permission to Drive Company Truck Home. — In an action for workmen's compensation, where the deceased employee had permission to drive the company truck home the day of the accident, the permission given the deceased on this single, isolated occasion would not make the operation of the pickup truck an incident of his contract of employment. Robertson v. Shepherd Constr. Co., 44 N.C. App. 335, 261 S.E.2d 16 (1979), cert. denied, 299 N.C. 545, 265 S.E.2d 405 (1980).

e. Injuries While Traveling.

Necessary Business Trip Combining Simultaneous Private Purpose. — If the work of the employee creates the necessity for travel, such is in the course of his employment, though he is serving at same time some purpose of his own. Bee v. Yates Aluminum Window Co., 46 N.C. App. 96, 264 S.E.2d 368 (1980).

4. Evidence and Burden of Proof.

In the compensation cases holding medical testimony unnecessary to make a prima facie case of causation, the distinguishing features are an uncomplicated situation, the immediate appearance of symptoms, the prompt reporting of the occurrence by the workman to his supervisor and consultation with a physician, and the fact that the plaintiff was theretofore in good health and free from any disability of the kind involved. A further relevant factor is the absence of expert testimony that the alleged precipitating event could not have been the cause of the injury. Slizewski v. International Seafood, Inc., 46 N.C. App. 228, 264 S.E.2d 810 (1980).

5. Miscellaneous Illustrative Cases.

Injury at Annual Department Picnic. — Plaintiff was not entitled to workmen's compensation for a broken ankle suffered while playing volleyball at an annual picnic for faculty members in the radiology department in defendant school, where it was not clear that the radiology department in fact sponsored the picnic; attendance at the picnic was voluntary; no record of attendance was taken; participants were not paid for the time spent at the picnic, nor was any employee required to work at the medical school if he did not attend; the picnic, while certainly an annual custom, was not an event that employee regarded as being a benefit to which he was entitled as a matter of right, and the radiology department did not utilize the picnic as an opportunity to give a "pep" talk or grant awards. Chilton v. Bowman Gray School of Medicine, 45 N.C. App. 13, 262 S.E.2d 347 (1980).

Award Held Improper. — The Industrial Commission erred in awarding plaintiff workmen's compensation for a herniated intervertebral disc in the absence of expert medical testimony tending to establish a causal relationship between plaintiff's work related accident and the injury for which compensation was sought. Click v. Pilot Freight Carriers, Inc., 300 N.C. 164, 265 S.E.2d 389 (1980).

E. Aggravation of Existing Infirmity; Contributing to Injury.

Policy Considerations. — If the employee by reason of constitutional infirmities is predisposed to sustain injuries while engaged in labor, nevertheless the leniency and humanity of the law permit him to recover compensation if the physical aspects of the employment contribute in some reasonable degree to bring about or intensify the condition which renders him susceptible to such accident and consequent injury. Moore v. J.P. Stevens & Co., 47 N.C. App. 744, 269 S.E.2d 159, cert. denied, 301 N.C. 401, 274 S.E.2d 226 (1980); Walston v. Burlington Indus., 49 N.C. App. 301, 271 S.E.2d 516 (1980).

V. DISABILITY.

"Disability" Construed. —

In accord with original. See Porter v. Shelby Knit, Inc., 46 N.C. App. 22, 264 S.E.2d 360 (1980).

"Disability" Signifies Impairment of Wage-Earning Capacity. —

In accord with 2nd paragraph in original. See Wood v. J.P. Stevens & Co., 297 N.C. 636, 256 S.E.2d 692 (1979).

Ability to Carry Out "Normal Life Functions" Not Determinative. — Physicians' estimates of plaintiff's disability which referred only to the degree of loss of use of her nervous system and to the impairment of her ability to carry out "total life functions" were insufficient to support the commission's finding that plaintiff was entitled to compensation for permanent partial disability or loss of use of her back and not to benefits for total incapacity to work, since a person may be wholly incapable of working and earning wages even though her ability to carry out normal life functions has not been wholly destroyed and even though she has not lost 100 percent use of her nervous system. Little v. Anson County Schools Food Serv., 295 N.C. 527, 246 S.E.2d 743 (1978).

How Disability Measured for Second Compensable Injury. — While, in the ordinary case, "disability" can be measured in terms of percentage, in those cases where the claimant has a preexisting "disability" to the same part of the body which is affected by a subsequent compensable injury, "disability" must be measured in terms of capacity to earn wages. Ridenhour v. Fisher Transp. Corp., 50 N.C. App. 126, 272 S.E.2d 889 (1980).

Effect of Preexisting Conditions. — If preexisting conditions such as an employee's age, education and work experience are such that an injury causes him a greater degree of incapacity for work than the same injury would cause some other person, the employee must be compensated for the incapacity which he or she suffers, and not for the degree of disability which would be suffered by someone with superior education or work experience or who is younger or in better health. Little v. Anson County Schools Food Serv., 295 N.C. 527, 246 S.E.2d 743 (1978).

Award for Loss of Use of Back Insufficient. — Where physicians indicated that an injury to the plaintiff's spinal cord resulted in weakness in all of her extremities, and numbness or loss of sensation throughout her body, and the doctors further testified that she suffered diminished mobility and has difficulty with position sense and with recognition of things in her hands when objects are placed in her hands, the commission could not limit the plaintiff to an award under § 97-31(32) for loss of use of the back. Little v. Anson County Schools Food Serv., 295 N.C. 527, 246 S.E.2d 743 (1978).

VIII. WIDOW; WIDOWER.

A second or subsequent, etc. —

In accord with original. See Ivory v. Greer Bros., 45 N.C. App. 455, 263 S.E.2d 290 (1980).

Whether Presumption of Subsequent Marriage's Validity Is Overcome Is Question of Fact. — The question of whether a first wife of a deceased employee had overcome the presumption of the validity of a subsequent marriage was a question of fact for the commission. Ivory v. Greer Bros., 45 N.C. App. 455, 263 S.E.2d 290 (1980).

§ 97-3. Presumption that all employers and employees have come under provisions of Article.

Legal Periodicals. — For comment on injury by accident in worker's compensation, see 59 N.C.L. Rev. 175 (1980).

CASE NOTES

Cited in Wood v. J.P. Stevens & Co., 297 N.C. 636, 256 S.E.2d 692 (1979).

§ 97-6. No special contract can relieve an employer of obligations.

Legal Periodicals. — For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

For note discussing the nonexistence of a private right of action for retaliatory discharge resulting from pursuit of workmen's compensa-

tion benefits, see 15 Wake Forest L. Rev. 139 (1979).

For note on worker's compensation and retaliatory discharge, see 58 N.C.L. Rev. 629 (1980).

CASE NOTES

Cited in Wood v. J.P. Stevens & Co., 297 N.C. 636, 256 S.E.2d 692 (1979).

§ 97-6.1. Protection of claimants from discharge or demotion by employers.

Legal Periodicals. — For note on worker's compensation and retaliatory discharge, see 58 N.C.L. Rev. 629 (1980).

§ 97-9. Employer to secure payment of compensation.

Legal Periodicals. — For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

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

Legal Periodicals. — For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

CASE NOTES

This section implements the purpose of the act, which is to provide certain limited benefits to an injured employee regardless of negligence on the part of the employer, and simultaneously to deprive the employee of certain rights he had at the common law. Brown v. Motor Inns of Carolina, Inc., 47 N.C. App. 115, 266 S.E.2d 848 (1980).

Act is Inapplicable Where, etc. —

In accord with original. See Brown v. Motor Inns of Carolina, Inc., 47 N.C. App. 115, 266 S.E.2d 848 (1980).

Employee's Rights and Remedies under, etc. —

In accord with 3rd paragraph in original. See Brown v. Motor Inns of Carolina, Inc., 47 N.C. App. 115, 266 S.E.2d 848 (1980).

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

CASE NOTES

Distribution of Wrongful Death Settlement Following Disapproval of Compensation Agreement. — Where the Industrial Commission disapproved an agreement for compensation for death only because the employee's widow was a minor and the death benefits had been miscalculated, but the employer's admission of liability was not

disapproved, the Commission had jurisdiction to issue an order for the distribution of a wrongful death settlement made before the Commission finally approved the compensation agreement. Williams v. Insurance Repair Specialists of N.C., Inc., 32 N.C. App. 235, 232 S.E.2d 5 (1977).

Distribution of Wrongful Death Settlement Despite Liability Carrier's Possible Loss. — Where an employee's death arose out of and in the course of his employment, the employer filed with the Industrial Commission a written admission of liability, the compensation insurance carrier notified the third-party tort-feasor's liability insurance carrier that a compensation settlement was in process and that it would expect its lien upon any settlement of a wrongful death claim by the liability carrier, the liability carrier settled the wrongful death claim for $55,000 and paid that amount to the deceased employee's administrator, and the Industrial Commission later approved a workmen's compensation settlement awarding $28,500 to the widow, the Industrial Commission thereafter had authority under this section to issue an order of distribution of the $55,000 wrongful death settlement, including a requirement that the liability carrier pay $28,500 to the compensation carrier in settlement of its subrogation interest, notwithstanding that the widow may have spent her entire distributive share of the wrongful death settlement and all of the workmen's compensation benefits paid to her and the liability carrier may be unable to recoup any of the amount previously paid from the widow or the decedent's administrator. Williams v. Insurance Repair Specialists of N.C., Inc., 32 N.C. App. 235, 232 S.E.2d 5 (1977).

§ 97-12. Use of intoxicant or controlled substance; willful neglect; willful disobedience of statutory duty, safety regulation or rule.

CASE NOTES

Suicide Induced by Injury. — In accord with 3rd paragraph in original. See Thompson v. Lenoir Transf. Co., 48 N.C. App. 47, 268 S.E.2d 534, cert. denied, 301 N.C. 405, 273 S.E.2d 450 (1980).

§ 97-13. Exceptions from provisions of Article.

(a) Employees of Certain Railroads. — This Article shall not apply to railroads or railroad employees nor in any way repeal, amend, alter or affect Article 8 of Chapter 60 or any section thereof relating to the liability of railroads for injuries to employees, nor upon the trial of any action in tort for injuries not coming under the provisions of this Article, shall any provision herein be placed in evidence or be permitted to be argued to the jury. Provided, however, that the foregoing exemption to railroads and railroad employees shall not apply to electric street railroads or employees thereof; and this Article shall apply to electric street railroads and employees thereof and to this extent the provisions of Article 8 of Chapter 60 are hereby amended.

(b) Casual Employment, Domestic Servants, Farm Laborers, Federal Government, Employer of Less than Four Employees. — This Article shall not apply to casual employees, farm laborers, federal government employees in North Carolina, and domestic servants, nor to employees of such persons, nor to any person, firm or private corporation that has regularly in service less than four employees in the same business within this State, except that any employer without regard to number of employees, including an employer of domestic servants, farm laborers, or one who previously had exempted himself, who has purchased workers' compensation insurance to cover his compensation liability shall be conclusively presumed during life of the policy to have accepted the provisions of this Article from the effective date of said policy and his employees shall be so bound unless waived as provided in this Article; provided however, that this Article shall apply to all employers of one or more

employees who are employed in activities which involve the use or presence of radiation.

(c) Prisoners. — This Article shall not apply to prisoners being worked by the State or any subdivision thereof, except to the following extent: Whenever any prisoner assigned to the State Department of Correction shall suffer accidental injury or accidental death arising out of and in the course of the employment to which he had been assigned, if there be death or if the results of such injury continue until after the date of the lawful discharge of such prisoner to such an extent as to amount to a disability as defined in this Article, then such discharged prisoner or the dependents or next of kin of such discharged prisoner may have the benefit of this Article by applying to the Industrial Commission as any other employee; provided, such application is made within 12 months from the date of the discharge; and provided further that the maximum compensation to any prisoner or to the dependents or next of kin of any deceased prisoner shall not exceed thirty dollars ($30.00) per week and the period of compensation shall relate to the date of his discharge rather than the date of the accident. If any person who has been awarded compensation under the provisions of this subsection shall be recommitted to prison upon conviction of an offense committed subsequent to the award, such compensation shall immediately cease. Any awards made under the terms of this subsection shall be paid by the State Department of Correction from the funds available for the operation of the Department of Corrections. The provisions of G.S. 97-10.1 and 97-10.2 shall apply to prisoners and discharged prisoners entitled to compensation under this subsection and to the State in the same manner as said section applies to employees and employers.

(d) Sellers of Agricultural Products. — This Article shall not apply to persons, firms or corporations engaged in selling agricultural products for the producers thereof on commission or for other compensation, paid by the producers, provided the product is prepared for sale by the producer. (1929, c. 120, s. 14; 1933, c. 401; 1935, c. 150; 1941, c. 295; 1943, c. 543; 1945, c. 766; 1957, c. 349, s. 10; c. 809; 1967, c. 996, s. 13; 1971, c. 284, s. 2; c. 1176; 1975, c. 718, s. 3; 1979, c. 247, s. 1; c. 714, s. 2; 1981, c. 378, s. 1.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "thirty dollars ($30.00)" for "twenty dollars ($20.00)" near the end of the first sentence of subsection (c).

§ 97-17. Settlements allowed in accordance with Article.

CASE NOTES

Setting Aside Settlement. —

This statutory provision clearly grants the Industrial Commission the authority to rehear and set aside prior orders approving settlements on any one of the stated grounds, i.e., fraud, misrepresentation, undue influence or mutual mistake. Graham v. City of Hendersonville, 42 N.C. App. 456, 255 S.E.2d 795, cert. denied, 298 N.C. 568, 261 S.E.2d 121 (1979).

§ 97-22. Notice of accident to employer.

CASE NOTES

Application of Section in Occupational Disease Cases under § 97-58 (b). See Booker v. Duke Medical Center, 297 N.C. 458, 256 S.E.2d 189 (1979).

Effect of Personal Knowledge of Employer. — The failure of plaintiff faculty member to file a written claim within the time set forth in this section did not bar his claim to

workmen's compensation where several members of the faculty had personal knowledge of plaintiff's injury the second it happened, and there is evidence that the dean of the school knew of plaintiff's injury. Chilton v. Bowman Gray School of Medicine, 45 N.C. App. 13, 262 S.E.2d 347 (1980).

Appeal of Notice Issue. — An employer who fails to raise the issue of notice at the hearing before the compensation board may not raise it on appeal. Booker v. Duke Medical Center, 297 N.C. 458, 256 S.E.2d 189 (1979).

The purpose of the notice-of-injury requirement is two-fold. It allows the employer to provide immediate medical diagnosis and treatment with a view to minimizing the seriousness of the injury, and it facilitates the earliest possible investigation of the circumstances surrounding the injury. Booker v. Duke Medical Center, 297 N.C. 458, 256 S.E.2d 189 (1979).

To allow an employer to raise the issue of notice for the first time on appeal would deprive the claimants of the benefits of that determination and could easily lead to a denial of compensation in a case where the facts would justify a finding of no prejudice. Booker v. Duke Medical Center, 297 N.C. 458, 256 S.E.2d 189 (1979).

Quoted in Taylor v. J.P. Stevens & Co., 300 N.C. 94, 265 S.E.2d 144 (1980).

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

Cross References. —
As to filing of claim for compensation by incapacitated State law-enforcement officer whose salary has been paid for two years following inception of incapacity, see § 143-166.16.

Legal Periodicals. — For a note on occupation disease under worker's compensation statute, see 16 Wake Forest L. Rev. 288 (1980).

CASE NOTES

Quoted in Taylor v. J.P. Stevens & Co., 300 N.C. 94, 265 S.E.2d 144 (1980).

§ 97-25. Medical treatment and supplies.

CASE NOTES

Application of 1973 Amendment. — The 1973 amendment to this section which eliminated the 10-week limitation for the recovery of medical expenses for an employee's treatments which are necessary "to effect a cure or give relief" will not be applied retroactively to a case in which the claim arose out of an accident occurring prior to the effective date of the amendment. Peeler v. State Hwy. Comm'n, 302 N.C. 183, 273 S.E.2d 705 (1981).

The provisions of this section are in pari materia and must be construed together as a whole. Schofield v. Great Atl. & Pac. Tea Co., 299 N.C. 582, 264 S.E.2d 56 (1980).

The phrase "lessen the period of disability" as used in this section means "lessen the period of time of diminution in earnings." Peeler v. State Hwy. Comm'n, 48 N.C. App. 1, 269 S.E.2d 153 (1980), aff'd, — N.C. —, 273 S.E.2d 705 (1981).

Employer's Inability to Provide Services Amounts to Failure to Provide. — An employee is justified under this section in seeking another physician in an emergency where the employer's "failure to provide" medical services amounts merely to an inability to provide those services. Schofield v. Great Atl. & Pac. Tea Co., 299 N.C. 582, 264 S.E.2d 56 (1980).

Proviso to Entire Section. — The proviso at the end of this section, relating to choice of personal physician, constitutes a proviso to the entire section, and not solely to the emergency provision. Schofield v. Great Atl. & Pac. Tea Co., 299 N.C. 582, 264 S.E.2d 56 (1980).

Employee May Choose Physician Even in Absence of Emergency. — The proviso to this section, relating to choice of personal physician, constitutes a proviso to the entire section, and not solely to the emergency provision.

Construed in this light, the proviso clearly states that an injured employee has the right to procure, even in the absence of an emergency, a physician of his own choosing, subject to the approval of the commission. Schofield v. Great Atl. & Pac. Tea Co., 299 N.C. 582, 264 S.E.2d 56 (1980).

Same Terms Apply to Treatment Whether Chosen by Employee or Employer. — Fairness requires that medical treatment provided by the employee's own doctor be subject to the same limitations, terms and conditions as apply to medical treatment provided by the employer. Schofield v. Great Atl. & Pac. Tea Co., 299 N.C. 582, 264 S.E.2d 56 (1980).

Emergency Treatment. — Treatment received by a plaintiff employee in a workmen's compensation case can be of an emergency nature even though it extended over a 17-month period of time. Schofield v. Great Atl. & Pac. Tea Co., 43 N.C. 567, 259 S.E.2d 338 (1979), vacated on other grounds, 299 N.C. 582, 264 S.E.2d 56 (1980).

"Emergency" Function of Circumstances. — This section does not define an emergency. What may be an emergency under one set of circumstances may not qualify as such under another. Schofield v. Great Atl. & Pac. Tea Co., 43 N.C. 567, 259 S.E.2d 338 (1979), vacated on other grounds, 299 N.C. 582, 264 S.E.2d 56 (1980).

Substitute Physician Must Be Approved. — In order for the defendant to be responsible for the costs of a substitute physician, the Industrial Commission must approve of the change, but there is no requirement that such approval must be in advance of the change — only that the change must be approved. Schofield v. Great Atl. & Pac. Tea Co., 43 N.C. 567, 259 S.E.2d 338 (1979), vacated on other grounds, 299 N.C. 582, 264 S.E.2d 56 (1980).

An employee is required to obtain approval of the commission within a reasonable time after he has selected a physician of his own choosing to assume treatment. Schofield v. Great Atl. & Pac. Tea Co., 299 N.C. 582, 264 S.E.2d 56 (1980).

Findings Required to Support Approval of Claim for Treatment. — Upon submission of a claim for approval for medical treatment rendered by the employee's own physician, there must be findings based upon competent evidence that the treatment was "required to effect a cure or give relief," or where additional time is involved, that it has "tend[ed] to lessen the period of disability." There should also be findings that the condition treated is, or was, caused by, or was otherwise traceable to or related to the injury giving rise to the compensable claim. Schofield v. Great Atl. & Pac. Tea Co., 299 N.C. 582, 264 S.E.2d 56 (1980).

Since an employee who procures his own doctor must obtain approval by the commission within a reasonable time after such procurement, the commission must make findings relative to whether such approval was sought within a reasonable time. Schofield v. Great Atl. & Pac. Tea Co., 299 N.C. 582, 264 S.E.2d 56 (1980).

Implicit in determining whether the cost of emergency treatment is reasonable is a determination of how long the emergency lasted. Before approving the cost of emergency treatment rendered by "a physician other than provided by the employer," the Industrial Commission must make findings, based upon competent evidence, relative to the duration of the emergency. Schofield v. Great Atl. & Pac. Tea Co., 299 N.C. 582, 264 S.E.2d 56 (1980).

Appeal of Award Does Not Suspend Jurisdiction of Commission. — An appeal of an award of the Industrial Commission does not suspend that agency's authority to accept notification of an employee's decision to select his own doctor; neither does an appeal deprive the commission of its jurisdiction to accept the submission of a claim. It may well be that the determination of the particular claim will be delayed until the outcome of the appeal. Nevertheless, the commission has jurisdiction to receive the claim and is, in fact, the only agency vested with that jurisdiction. Schofield v. Great Atl. & Pac. Tea Co., 299 N.C. 582, 264 S.E.2d 56 (1980).

§ 97-27. Medical examination; facts not privileged; refusal to be examined suspends compensation; autopsy.

Cross References. — As to application of this section to incapacitated State law-enforcement officers, see § 143-166.15.

CASE NOTES

The language of this section is mandatory as to the employee. The employee "shall" submit himself to an examination if it is requested by an employer or ordered by the Industrial Commission. The language of this section, however, imposes no mandatory obligation on the Industrial Commission to order an examination. Taylor v. M.L. Hatcher Pick-Up & Delivery Serv., 45 N.C. App. 682, 263 S.E.2d 788 (1980).

Commission Approval of Request for Examination Is Discretionary. — When an employer requests the commission to order an employee to submit to an examination, whether the commission grants or denies the employer's request is within the discretion of the commission. Taylor v. M.L. Hatcher Pick-Up & Delivery Serv., 45 N.C. App. 682, 263 S.E.2d 788 (1980).

Applied in Clark v. Burlington Indus., 49 N.C. App. 269, 271 S.E.2d 101 (1980).

§ 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 ($66^2/_3\%$) of his average weekly wages, but not more than the amount established annually to be effective October 1 as provided herein, nor less than thirty dollars ($30.00) 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 of 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 established annually in accordance with the last paragraph of this section 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 thirty dollars ($30.00) a week as fixed herein.

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 July 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 January 1 following such computation. Such maximum weekly benefit shall apply to all provisions of this Chapter effective August 1, 1975, and shall be adjusted July 1 and effective January 1 of each year thereafter as herein provided. (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; c. 1103, s. 1; c. 1308, ss. 1, 2; 1975, c. 284, s. 4; 1979, c. 244; 1981, c. 276, s. 2; c. 378, s. 1; c. 421, s. 3; c. 521, s. 2; c. 920, s. 1.)

Cross References. — As to payment of full salary in lieu of compensation to incapacitated State law-enforcement officers, see § 143-166.16.

Effect of Amendments. — The first 1981 amendment substituted "the amount established annually to be effective October 1 as provided herein" for "eighty dollars ($80.00)" near the end of the first paragraph.

The second 1981 amendment, effective July 1, 1981, substituted "thirty dollars ($30.00)" for "twenty dollars ($20.00)" in the first and third paragraphs.

The third 1981 amendment, effective July 1, 1981, and applicable to cases arising on and after that date, deleted a proviso from the end of the second sentence of the third paragraph, which read: "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."

The fourth 1981 amendment substituted "July" for "August" in the first and last sentences of the last paragraph, substituted "January" for "November" near the end of the second sentence of the last paragraph and for "October" in the last sentence of the last paragraph.

The fifth 1981 amendment substituted "established annually in accordance with the last paragraph of this section" for "of eighty dollars ($80.00)" near the end of the first sentence of the third paragraph.

Session Laws 1981, c. 920, s. 3, makes the act effective upon ratification and applicable to cases arising on and after that date. The act was ratified July 10, 1981.

Legal Periodicals. — For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

For note discussing the use of age, education, and work experience in determining disability in workmen's compensation cases, see 15 Wake Forest L. Rev. 570 (1979).

CASE NOTES

Under the traditional four-way classification of disabilities, a total disability under this section must be either permanent or temporary. Gamble v. Borden, Inc., 45 N.C. App. 506, 263 S.E.2d 280 (1980).

Medical Expenses Compensated Only Where Disability Is Total and Permanent. — This section entitles a claimant to recover compensation for medical care only where disability is found to be total and permanent. Peeler v. State Hwy. Comm'n, 48 N.C. App. 1, 269 S.E.2d 153 (1980), aff'd, — N.C. —, 273 S.E.2d 705 (1981).

The commission can only apportion when the claimant retains some capacity to work. Morrison v. Burlington Indus., 47 N.C. App. 50, 266 S.E.2d 741 (1980).

Apportionment Held Improper. — If an employee's incapacity to work is total and that incapacity is occasioned by a compensable injury or disease, the employee's incapacity to work cannot be apportioned to other preexisting or latent illnesses or infirmities, nor may the entitlement to compensation be dismissed for such conditions. Therefore, where the Industrial Commission found that plaintiff was totally disabled to work, that 55 percent of her disability was due to her occupational disease, and that 45 percent of her disability was due to physical infirmities not related to her work, the commission erred in holding that plaintiff was entitled only to compensation for partial rather than total disability. Morrison v. Burlington Indus., 47 N.C. App. 50, 266 S.E.2d 741 (1980).

The 1973 amendment to this section governing the maximum weekly workmen's compensation benefit applies to § 97-38 so that § 97-38 no longer limits recovery for death claims to $80.00 per week. Andrews v. Nu-Woods, Inc., 43 N.C. App. 591, 259 S.E.2d 306 (1979), aff'd, 299 N.C. 723, 264 S.E.2d 99 (1980).

The 1973 amendment clearly establishes maximum weekly benefits for all sections of the Workers' Compensation Act, including benefits for total incapacity and death and benefits under § 97-38 no longer limited to $80.00 per week. Andrews v. Nu-Woods, Inc., 299 N.C. 723, 264 S.E.2d 99 (1980).

Cited in In re Annexation Ordinance, 300 N.C. 337, 266 S.E.2d 661 (1980); Morrison v. Burlington Indus., 301 N.C. 226, 271 S.E.2d 364 (1980); Peeler v. State Hwy. Comm'n, 302 N.C. 183, 273 S.E.2d 705 (1981).

§ 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 ($66^2/_3\%$) 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 the amount established annually to be effective October 1 as provided in G.S. 97-29 a week, and in no case shall the period covered by such compensation be greater than 300 weeks from the date of injury. In case the partial disability begins after a period of total disability, the latter period shall be deducted from the maximum period herein allowed for partial disability. An officer or member of the State Highway Patrol shall not be awarded any weekly compensation under the provisions of this section for the first two years of any incapacity resulting from an injury by accident arising out of and in the course of the performance by him of his official duties if, during such incapacity, he continues to be an officer or member of the State Highway Patrol, but he shall be awarded any other benefits to which he may be entitled under the provisions of this Article. (1929, c. 120, s. 30; 1943, c. 502, s. 4; 1947, c. 823; 1951, c. 70, s. 2; 1953, c. 1195, s. 3; 1955, c. 1026, s. 6; 1957, c. 1217; 1963, c. 604, s. 2; 1967, c. 84, s. 2; 1969, c. 143, s. 2; 1971, c. 281, s. 2; 1973, c. 515, s. 2; c. 759, s. 2; 1981, c. 276, s. 1.)

Cross References. —

As to payment of full salary in lieu of compensation to incapacitated State law-enforcement officers, see § 143-166.16.

Effect of Amendments. — The 1981 amendment substituted "the amount established annually to be effective October 1 as provided in G.S. 97-29" for "eighty dollars ($80.00)" near the end of the first sentence.

Legal Periodicals. — For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

CASE NOTES

Test of Earning Capacity. —

In accord with 1st paragraph in original. See Wilhite v. Liberty Veneer Co., 47 N.C. App. 434, 267 S.E.2d 566, cert. granted, 301 N.C. 106, 273 S.E.2d 312 (1980).

The commission can only apportion when the claimant retains some capacity to work. Morrison v. Burlington Indus., 47 N.C. App. 50, 266 S.E.2d 741 (1980).

Apportionment Held Improper. — If an employee's incapacity to work is total and that incapacity is occasioned by a compensable injury or disease, the employee's incapacity to work cannot be apportioned to other preexisting or latent illnesses or infirmities, nor may the entitlement to compensation be dismissed for such conditions. Therefore, where the Industrial Commission found that plaintiff was totally disabled to work, that 55 percent of her disability was due to her occupational disease, and that 45 percent of her disability was due to physical infirmities not related to her work, the commission erred in holding that plaintiff was entitled only to compensation for partial rather than total disability. Morrison v. Burlington Indus., 47 N.C. App. 50, 266 S.E.2d 741 (1980).

Cited in Gamble v. Borden, Inc., 45 N.C. App. 506, 263 S.E.2d 280 (1980); Morrison v. Burlington Indus., 301 N.C. 226, 271 S.E.2d 364 (1980).

§ 97-31. Schedule of injuries; rate and period of compensation.

Legal Periodicals. — For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

For note discussing the use of age, education, and work experience in determining disability in workmen's compensation cases, see 15 Wake Forest L. Rev. 570 (1979).

CASE NOTES

Disfigurement alone is not made compensable by the act. Before it is compensable it must be not only (1) marked disfigurement, but also one which (2) impairs the future usefulness or occupational opportunities of the injured employee. Wilhite v. Liberty Veneer Co., 47 N.C. App. 434, 267 S.E.2d 566, cert. granted, 301 N.C. 106, 273 S.E.2d 312 (1980).

There is a serious disfigurement in law, etc. —

In accord with original. See Wilhite v. Liberty Veneer Co., 47 N.C. App. 434, 267 S.E.2d 566, cert. granted, 301 N.C. 106, 273 S.E.2d 312 (1980).

Determining Award for Serious, etc. —

In accord with original. See Wilhite v. Liberty Veneer Co., 47 N.C. App. 434, 267 S.E.2d 566, cert. granted, 301 N.C. 106, 273 S.E.2d 312 (1980).

Disfigurement of Forearm and Permanent Partial Disability of Hand. — An employee who had received compensation for the permanent partial disability of his left hand was entitled under subdivision (22) of this section to additional compensation for serious disfigurement because of surgical scars on his left forearm above the wrist. While a double recovery for a single injury compensated pursuant to this section is not authorized, since the settlement related only to partial loss of use of plaintiff's hand, and there was no evidence indicating that the scars extended to the wrist, plaintiff was entitled to the additional compensation. Thompson v. Frank Ix & Sons, 33 N.C. App. 350, 235 S.E.2d 250 (1977), aff'd, 294 N.C. 358, 240 S.E.2d 783 (1978).

Injury to Finger Not Serious Bodily Disfigurement. — In an action to recover an award for "serious bodily disfigurement" resulting from a cut finger sustained by an accident arising out of and in the course of plaintiff's employment with the defendant-employer where plaintiff's finger was scarred and the nail had a roughish appearance and was deformed and where plaintiff suffered no pain or embarrassment as a result of the injury, there was no evidence in the record to support a finding by the Industrial Commission that the injury to plaintiff's finger resulted in "serious bodily disfigurement." Weidle v. Cloverdale Ford, 50 N.C. App. 555, — S.E.2d — (1981).

Compensation under This Section or Commission Rule. — When plaintiff can prove a case under either partial loss of a member subject to Industrial Commission Rule XV or partial loss of the use of that member, he is entitled to compensation under either heading. This interpretation is consistent with the plain and explicit language of subdivision (19) of this section. Caesar v. Piedmont Publishing Co., 46 N.C. App. 619, 265 S.E.2d 474 (1980).

Where the distal portion of an employee's left thumb was amputated, the rate of compensation for permanent partial disability was not limited to 25 percent under Industrial Commission Rule XV(1) for partial loss of the thumb itself, and the employee could be compensated at a higher rate under subdivisions (1) and (19) of this section for loss of use of the thumb. Caesar v. Piedmont Publishing Co., 46 N.C. App. 619, 265 S.E.2d 474 (1980).

No Award for Disfigurement for Period Covered by Temporary Total Disability Award. — There can be no recovery for disfigurement during the period in which an award was made for temporary total disability payments, otherwise there would, in effect, be a double recovery for the same injury. Wilhite v. Liberty Veneer Co., 47 N.C. App. 434, 267 S.E.2d 566, cert. granted, 301 N.C. 106, 273 S.E.2d 312 (1980).

Proof Required for Claim under Subsection (24). — In order for plaintiff to be entitled to workers' compensation pursuant to subsection (24) of this section, he must show from medical evidence that he has loss of or permanent injury to an important external or internal organ or part of his body for which no compensation is payable under any other subdivision of this section. Porterfield v. RPC Corp., 47 N.C. App. 140, 266 S.E.2d 760 (1980).

Rights Where Employee Dies Prior to Determination of Award. — Generally speaking, a lump sum award made prior to decedent's death is deemed to be an accrued benefit, but logic compels the conclusion that if, pursuant to subsection (22) of this section, no determination of the lump sum award for disfigurement had been made prior to death, then such entitlements are unaccrued until such time as they are determined, and, for that reason, the payment of the lump sum award for disfigurement would pass to the worker's dependents pursuant to this section rather than to the deceased worker's estate. Wilhite v. Liberty Veneer Co., 47 N.C. App. 434, 267 S.E.2d 566, cert. granted, 301 N.C. 106, 273 S.E.2d 312 (1980).

Dependents of an employee who suffers a serious bodily disfigurement due to an accident covered by the Workers' Compensation Act, but who dies due to an unrelated cause, are entitled to a post mortem award for serious bodily disfigurement. Bridges v. McCrary Stone Servs., Inc., 48 N.C. App. 185, 268 S.E.2d 559 (1980).

The dependents of a deceased employee who suffered a serious bodily disfigurement due to

an accident covered by the Workers' Compensation Act but who died due to an unrelated cause are entitled to a post mortem award for serious bodily disfigurement based on the best possible medical estimate as to the probable residual disability that would have remained had the employee lived to complete his healing period, notwithstanding the employee had not filed a workers' compensation claim for disfigurement before he died. Wilhite v. Liberty Veneer Co., 47 N.C. App. 434, 267 S.E.2d 566, cert. granted, 301 N.C. 106, 372 S.E.2d 312 (1980).

§ 97-31.1. Effective date of legislative changes in benefits.

Every act of the General Assembly that changes the benefits enumerated in this Chapter shall have a ratification date of no later than June 1 and shall have an effective date of no earlier than January 1 of the year after which it is ratified. (1981, c. 521, s. 3.)

§ 97-37. Where injured employee dies before total compensation is paid.

CASE NOTES

Recovery Where Employee Died After Filing Claim. — In the situation where a claimant dies after a claim has been filed, the claimant's estate may recover all accrued but unpaid benefits, and all unaccrued benefits to which the employee would have been entitled had he lived are payable to decedent's dependents pursuant to this section. Wilhite v. Liberty Veneer Co., 47 N.C. App. 434, 267 S.E.2d 566, cert. granted, 301 N.C. 106, 273 S.E.2d 312 (1980).

Recovery Where Employee Died Without Filing Claim. — Allowing a dependent widow of a deceased worker to recover that to which her husband would have been entitled is consistent with the statutory purpose of this section, and a widow's claim will not be denied because her husband had not filed a worker's compensation claim for disfigurement before he died. Wilhite v. Liberty Veneer Co., 47 N.C. App. 434, 267 S.E.2d 566, cert. granted, 301 N.C. 106, 273 S.E.2d 312 (1980).

Basis for Award. — The dependents of a deceased employee who suffered a serious bodily disfigurement due to an accident covered by the Workers' Compensation Act but who died due to an unrelated cause are entitled to a post mortem award for serious bodily disfigurement based on the best possible medical estimate as to the probable residual disability that would have remained had the employee lived to complete his healing period, notwithstanding the employee had not filed a worker's compensation claim for disfigurement before he died. Wilhite v. Liberty Veneer Co., 47 N.C. App. 434, 267 S.E.2d 566, cert. granted, 301 N.C. 106, 273 S.E.2d 312 (1980).

Applied in Bridges v. McCrary Stone Servs., Inc., 48 N.C. App. 185, 268 S.E.2d 559 (1980).

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

If death results proximately 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 ($66^2/_3\%$) of the average weekly wages of the deceased employee at the time of the accident, but not more than the amount established annually to be effective October 1 as provided in G.S. 97-29, nor less than thirty dollars ($30.00), per week, and burial expenses not exceeding one thousand dollars ($1,000), 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 by 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. (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. 1308, ss. 3, 4; c. 1357, ss. 1, 2; 1977, c. 4 09; 1981, c. 276, s. 1; c. 378, s. 1; c. 379.)

Effect of Amendments. — The first 1981 amendment substituted "the amount established annually to be effective October 1 as provided in G.S. 97-29" for "eighty dollars ($80.00)" near the end of the introductory paragraph.

The second 1981 amendment, effective July 1, 1981, substituted "thirty dollars ($30.00)" for "twenty dollars ($20.00)" near the end of the introductory paragraph.

The third 1981 amendment, effective July 1, 1981, and applicable to cases arising on and after that date, substituted "one thousand dollars ($1,000)" for "five hundred dollars ($500.00)" near the end of the introductory paragraph.

Legal Periodicals. — For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For a note on occupation disease under workers' compensation statute, see 16 Wake Forest L. Rev. 288 (1980).

CASE NOTES

Section Criticized. See Booker v. Duke Medical Center, 297 N.C. 458, 256 S.E.2d 189 (1979).

The 1973 amendment to § 97-29 governing the maximum weekly workmen's compensation benefit applies to this section so that this section no longer limits recovery for death claims to $80.00 per week. Andrews v. Nu-Woods, Inc., 43 N.C. App. 591, 259 S.E.2d 306 (1979), aff'd, 299 N.C. 723, 264 S.E.2d 99 (1980).

Statute in Effect at Time of Death Controls Award. — Where an employee died of serum hepatitis, which was found to be a disease characteristic of and peculiar to his occupation of lab technician, the commission did not err in awarding compensation according to the statute in effect when the employee died rather than the statute in effect at the time he contracted the disease. Booker v. Duke Medical Center, 297 N.C. 458, 256 S.E.2d 189 (1979).

No Finding of Permanent Disability Required for Disabled Widow. — The provision in this section for compensation for life or until remarriage for the disabled widow of an employee who dies under compensable circumstances does not on its face require a finding of permanent disability. Hedrick v. Southland Corp., 41 N.C. App. 431, 255 S.E.2d 198, cert. denied, 298 N.C. 296, 259 S.E.2d 912 (1979).

Date of "Accident" in Occupational Disease Case. — Where employee died 15 months after he became totally disabled by serum hepatitis, the claim of deceased employee's dependents for death benefits was not barred by this section providing compensation if death results from an accident within two years or, while total disability continues, within six years after the accident, since the date of the "accident" in cases involving occupational disease is treated as the date on which disablement occurs and not as the date employee contracted the disease. Booker v. Duke Medical Center, 297 N.C. 458, 256 S.E.2d 189 (1979).

Cited in In re Annexation Ordinance, 300 N.C. 337, 266 S.E.2d 661 (1980); Thompson v. Lenoir Transf. Co., 48 N.C. App. 47, 268 S.E.2d 534 (1980).

§ 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.

Subject to the provisions of G.S. 97-38, if the deceased employee leaves neither whole nor partial dependents, then the compensation which would be payable under G.S. 97-38 to whole dependents shall be commuted to its present value and paid in a lump sum to the next of kin as herein defined. For purposes of this section and G.S. 97-38, "next of kin" shall include only child, father, mother, brother or sister of the deceased employee, including adult children or adult brothers or adult sisters of the deceased, but excluding a parent who has willfully abandoned the care and maintenance of his or her child and who has not resumed its care and maintenance at least one year prior to the first occurring of the majority or death of the child and continued its care and maintenance until its death or majority. For all such next of kin who are neither wholly nor partially dependent upon the deceased employee and who take under this section, the order of priority among them shall be governed by

the general law applicable to the distribution of the personal estate of persons dying intestate. In the event of exclusion of a parent based on abandonment, the claim for compensation benefits shall be treated as though the abandoning parent had predeceased the employee. For all such next of kin who were also partially dependent on the deceased employee but who exercise the election provided for partial dependents by G.S. 97-38, the general law applicable to the distribution of the personal estate of persons dying intestate shall not apply and such person or persons upon the exercise of such election, shall be entitled, share and share alike, to the compensation provided in G.S. 97-38 for whole dependents commuted to its present value and paid in a lump sum.

If the deceased employee leaves neither whole dependents, partial dependents, nor next of kin as hereinabove defined, then no compensation shall be due or payable on account of the death of the deceased employee, except that the employer shall pay or cause to be paid the burial expenses of the deceased employee not exceeding one thousand dollars ($1,000) to the person or persons entitled thereto. (1929, c. 120, s. 40; 1931, c. 274, s. 5; c. 319; 1945, c. 766; 1953, c. 53, s. 2; c. 1135, s. 2; 1963, c. 604, s. 4; 1965, c. 419; 1967, c. 84, s. 5; 1971, c. 1179; 1981, c. 379.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, and applicable to cases arising on and after that date, substituted "one thousand dollars ($1,000)" for "five hundred dollars ($500.00)" near the end of the second paragraph.

CASE NOTES

Quoted in Harris v. Lee Paving Co., 47 N.C. App. 348, 267 S.E.2d 381 (1980).

§ 97-44. Lump sums.

CASE NOTES

Lump Sum Payable Only in Unusual Cases. — The general statutory scheme for periodic payment of income benefits can be changed to a lump sum payment only in unusual cases and when the commissioner deems it to be in the best interest of the employee or his dependents. Harris v. Lee Paving Co., 47 N.C. App. 348, 267 S.E.2d 381, cert. denied, 301 N.C. 88, 273 S.E.2d 297 (1980).

The maximum amount of the lump sum under this section is not its commuted value or its commutable value but rather its uncommuted value. Harris v. Lee Paving Co., 47 N.C. App. 348, 267 S.E.2d 381, cert. denied, 301 N.C. 88, 273 S.E.2d 297 (1980).

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

CASE NOTES

"Change of condition" refers to a, etc. — In accord with original. See Edwards v. Smith & Sons, 49 N.C. App. 191, 270 S.E.2d 569 (1980), cert. denied, — N.C. —, 274 S.E.2d 228 (1981).

Change of Opinion Is Not Change of Condition. — Change of condition under this section occurs where conditions are different from those existent when the award was made; and a continued incapacity of the same kind and character and for the same injury is not a change of condition, the change must be actual, and not a mere change of opinion with respect to a preexisting condition. Edwards v. Smith & Sons, 49 N.C. App. 191, 270 S.E.2d 569 (1980), cert. denied, — N.C. —, 274 S.E.2d 228 (1981).

Avenue of Review Where Appeal Not Taken. — Where the plaintiff did not perfect an appeal from the Industrial Commission's order denying her claim for workers' compensation based upon an accident which arose out of and in the course of her employment, she was not entitled to a hearing de novo, and the only avenue of review open to her was an application for review based on a change of condition pursuant to the provisions of this section. Smith v. Carolina Footwear, Inc., 50 N.C. App. 460, — S.E.2d — (1981).

§ 97-52. Occupational disease made compensable; "accident" defined.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For comment on injury by accident in worker's compensation, see 59 N.C.L. Rev. 175 (1980).

For a note on occupation disease under workers' compensation statute, see 16 Wake Forest L. Rev. 288 (1980).

CASE NOTES

Applicability of § 97-53(13). — The current version of § 97-53(13) applies to all claims for disablement in which the disability occurs after the effective date of subdivision (13) of § 97-53 as amended, i.e., July 1, 1971, since under this section of the Workmen's Compensation Act injury resulting from occupational disease is compensable only when it leads to disablement, and until that time the employee has no cause of action and the employer has no liability. Wood v. J.P. Stevens & Co., 297 N.C. 636, 256 S.E.2d 692 (1979).

Claimant Must Prove Causation. — A claimant's right to compensation for an occupational disease under § 97-53(13) and this section depends upon proper proof of causation, and the burden of proving each and every element of compensability is upon the plaintiff. Moore v. J.P. Stevens & Co., 47 N.C. App. 744, 269 S.E.2d 159, cert. denied, 301 N.C. 401, 274 S.E.2d 226 (1980).

Date of "Accident" in Occupational Disease Cases. — Where employee died 15 months after he became totally disabled by serum hepatitis, the claim of deceased employee's dependents for death benefits was not barred by § 97-38 providing compensation if death results from an accident within two years or, while total disability continues, within six years after the accident, since the date of the "accident" in cases involving occupational disease is treated as the date on which disablement occurs and not as the date employee contracted the disease. Booker v. Duke Medical Center, 297 N.C. 458, 256 S.E.2d 189 (1979).

The date when plaintiff became disabled due to byssinosis is deemed to be the date upon which she sustained an injury by accident. Taylor v. J.P. Stevens & Co., 300 N.C. 94, 265 S.E.2d 144 (1980).

Applied in Clark v. Burlington Indus., 49 N.C. App. 269, 271 S.E.2d 101 (1980).

Quoted in Taylor v. J.P. Stevens & Co., 300 N.C. 94, 265 S.E.2d 144 (1980).

Cited in Morrison v. Burlington Indus., 47 N.C. App. 50, 266 S.E.2d 741 (1980).

§ 97-53. Occupational diseases enumerated; when due to exposure of chemicals.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For a note on occupation disease under workers' compensation statute, see 16 Wake Forest L. Rev. 288 (1980).

CASE NOTES

Legislative Intent. — The clear intent of the General Assembly in enacting the current version of this section was to bring North Carolina in line with the vast majority of states by providing comprehensive coverage for occupational diseases. Booker v. Duke Medical Center, 297 N.C. 458, 256 S.E.2d 189 (1979).

When Illness Compensable. — An illness is compensable under this section, whether mentioned specifically in the statute or falling within the general definition in subdivision (13) of this section, only if it also comes within "well understood definitions of the term 'occupational diseases.'" Booker v. Duke Medical Center, 297 N.C. 458, 256 S.E.2d 189 (1979).

Findings of Fact. — In determining whether a given illness falls within a definition set out in this section, it is the duty of the commission to consider all of the competent evidence, make definitive findings, draw its conclusions of law from these findings, and enter the appropriate award. In making its findings, the commission's function is to weigh and evaluate the entire evidence and determine as best it can where the truth lies. Harrell v. J.P. Stevens & Co., 45 N.C. App. 197, 262 S.E.2d 830, cert. denied, 300 N.C. 196, 269 S.E.2d 623 (1980).

Where the commission awards compensation for disablement due to an occupational disease encompassed by subsection (13), the opinion and award must contain explicit findings as to the characteristics, symptoms and manifestations of the disease from which the plaintiff suffers, as well as a conclusion of law as to whether the disease falls within the statutory provision. Moore v. J.P. Stevens & Co., 47 N.C. App. 744, 269 S.E.2d 159, cert. denied, 301 N.C. 401, 274 S.E.2d 226 (1980).

Proof of Causation Essential. — Proof of a causal connection between the disease and the employee's occupation is an essential element in proving the existence of a compensable occupational disease within the meaning of this section. Hansel v. Sherman Textiles, 49 N.C. App. 1, 270 S.E.2d 585 (1980).

In order for an occupational disease which develops over a long period of time to be compensable under subsection (13) of this section, it must be proved that it was caused by the plaintiff's employment. Brown v. J.P. Stevens & Co., 49 N.C. App. 118, 270 S.E.2d 602 (1980).

Claimant Must Prove Causation. — A claimant's right to compensation for an occupational disease under subsection (13) of this section and § 97-52 depends upon proper proof of causation, and the burden of proving each and every element of compensability is upon the plaintiff. Moore v. J.P. Stevens & Co., 47 N.C. App. 744, 269 S.E.2d 159, cert. denied, 301 N.C. 401, 274 S.E.2d 226 (1980).

If a disease is produced by some extrinsic or independent agency, it may not be imputed to the occupation or the employment. Moore v. J.P. Stevens & Co., 47 N.C. App. 744, 269 S.E.2d 159, cert. denied, 301 N.C. 401, 274 S.E.2d 226 (1980).

Applicability of Amended Subdivision (13). — The current version of subdivision (13) applies to all claims for disablement in which the disability occurs after the effective date of subdivision (13), as amended, i.e., July 1, 1971, since under § 97-52 of the Workmen's Compensation Act injury resulting from occupational disease is compensable only when it leads to disablement, and until that time the employee has no cause of action and the employer has no liability. Wood v. J.P. Stevens & Co., 297 N.C. 636, 256 S.E.2d 692 (1979).

Subdivision (13) Intended to Define "Occupational Disease". — Except for those diseases specifically named in the statute, the legislature intended the present version of subdivision (13) to define the term "occupational disease." To the extent that this statute conflicts with prior judicial definitions of the term "occupational disease," the older definitions must give way. Booker v. Duke Medical Center, 297 N.C. 458, 256 S.E.2d 189 (1979).

Whether a given illness falls within the general definition set out in subdivision (13) presents a mixed question of fact and law. The Commission must determine first the nature of the disease from which the plaintiff is suffering — that is, its characteristics, symptoms and manifestations. Ordinarily, such findings will be based on expert medical testimony. Having made appropriate findings of fact, the next question the Commission must answer is whether or not the illness plaintiff has contracted falls within the definition set out in the statute. This latter judgment requires a conclusion of law. Wood v. J.P. Stevens & Co., 297 N.C. 636, 256 S.E.2d 692 (1979); Harrell v. J.P. Stevens & Co., 45 N.C. App. 197, 262 S.E.2d 830, cert. denied, 300 N.C. 196, 269 S.E.2d 623 (1980).

Where, in a hearing before the industrial commission on a claim for workmen's compensation benefits, the critical issue raised by the evidence is whether the calcification of tendons and ligaments in plaintiff's shoulders, resulting in a 10 percent permanent partial disability to both arms, is an occupational disease within the meaning of subdivision (13), this issue engenders two distinct findings of fact which must be made: (1) an explicit description of plaintiff's duties in performing her occupation, and (2) a determination of whether such duties caused the calcification and resulting

disability to either or both of plaintiff's arms. Cannady v. Gold Kist, 43 N.C. App. 482, 259 S.E.2d 342 (1979).

Whether a given illness falls within the general definitions set out in subsection (13) of this section presents a mixed question of fact and law. Taylor v. J.P. Stevens & Co., 300 N.C. 94, 265 S.E.2d 144 (1980).

Determination of When Disablement Occurred Required. — Given plaintiff's allegation that she was disabled after the effective date of the present version of subdivision (13), it is incumbent upon the Commission to determine when plaintiff became disabled before it decides which law applies to her claim. Where the Commission heard no evidence on this point and made no factual determination as to the date of disablement, the case must be remanded for a determination of that issue. Wood v. J.P. Stevens & Co., 297 N.C. 636, 256 S.E.2d 692 (1979).

When Disease "Characteristic" of Profession. — To be compensable under subdivision (13) of this section, a disease must, inter alia, be "characteristic of and peculiar to a particular trade, occupation or employment." A disease is "characteristic" of a profession when there is a recognizable link between the nature of the job and an increased risk of contracting the disease in question. Booker v. Duke Medical Center, 297 N.C. 458, 256 S.E.2d 189 (1979).

Qualifying Disease Compensable Even if Also "Injury by Accident". — If an employee contracts an infectious disease as a result of his employment and it falls within either the schedule of diseases set out in the statute or the general definition of "occupational disease" in subdivision (13), it should be treated as a compensable event regardless of the fact that it might also qualify as an "injury by accident" under § 97-2(6). Booker v. Duke Medical Center, 297 N.C. 458, 256 S.E.2d 189 (1979).

Circumstances Showing Connection Between Disease and Occupation. — In the case of occupational diseases proof of a causal connection between the disease and the employee's occupation must of necessity be based on circumstantial evidence. Among the circumstances which may be considered are the following: (1) the extent of exposure to the disease or disease-causing agents during employment, (2) the extent of exposure outside employment, and (3) absence of the disease prior to the work-related exposure as shown by the employee's medical history. Booker v. Duke Medical Center, 297 N.C. 458, 256 S.E.2d 189 (1979); Hansel v. Sherman Textiles, 49 N.C. App. 1, 270 S.E.2d 585 (1980).

Exposure to Environmental Irritants. — Where an employee is exposed in his work place to environmental irritants which in fact hasten the onset of a disabling condition which did not previously exist, such aggravation is tantamount to causation for purposes of subdivision (13) of this section, and the resulting disability is an occupational disease thereunder. Walston v. Burlington Indus., 49 N.C. App. 301, 271 S.E.2d 516 (1980).

Time of disablement for the purpose of deciding which version of the Workers' Compensation Act to apply runs from the date the claimant was incapable of working due to a later diagnosed occupational disease. Taylor v. J.P. Stevens & Co., 300 N.C. 94, 265 S.E.2d 144 (1980).

When Serum Hepatitis Compensable Injury. — Because serum hepatitis is not expressly mentioned in the schedule of diseases contained in this section, it is a compensable injury only if it falls within the general definition set out in subdivision (13). Booker v. Duke Medical Center, 297 N.C. 458, 256 S.E.2d 189 (1979).

Serum Hepatitis Held Compensable Injury.—See Booker v. Duke Medical Center, 297 N.C. 458, 256 S.E.2d 189 (1979).

Judicial Notice as to Essential Characteristics of Byssinosis Inappropriate. — The Commission erred in assuming that byssinosis is an irritation of the pulmonary air passages without hearing evidence and making findings of fact as to the nature of claimant's illness, which is required of the Commission in determining whether a given illness falls within the general definition set out in subdivision (13). The causes and development of byssinosis, and the structural and functional changes produced by the disease, are still the subject of scientific debate, and the Supreme Court has never before considered a case involving byssinosis. Under these circumstances judicial notice as to the essential characteristics of the disease is inappropriate. Wood v. J.P. Stevens & Co., 297 N.C. 636, 256 S.E.2d 692 (1979).

Applied in Clark v. Burlington Indus., 49 N.C. App. 269, 271 S.E.2d 101 (1980).

Cited in Morrison v. Burlington Indus., 47 N.C. App. 50, 266 S.E.2d 741 (1980).

§ 97-54. "Disablement" defined.

CASE NOTES

Silicosis and Asbestosis Disablement Means Inability to Work Near Dust. — Unlike the case of disablement from other occupational diseases, disablement from silicosis and asbestosis is measured from the time a claimant can no longer work at dusty trades, not from the time he can no longer work at any job. Taylor v. J.P. Stevens & Co., 300 N.C. 94, 265 S.E.2d 144 (1980).

Quoted in Taylor v. J.P. Stevens & Co., 300 N.C. 94, 265 S.E.2d 144 (1980).

§ 97-55. "Disability" defined.

CASE NOTES

Quoted in Taylor v. J.P. Stevens & Co., 300 N.C. 94, 265 S.E.2d 144 (1980).

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

(a) Except as otherwise provided in G.S. 97-61.6, an employer shall not be liable for any compensation for asbestosis unless disablement or death results within 10 years after the last exposure to that disease, or, in case of death, unless death follows continuous disablement from such disease, commencing within the period of 10 years limited herein, and for which compensation has been paid or awarded or timely claim made. An employer shall not be liable for any compensation for lead poisoning unless disablement or death results within two years after the last exposure to that disease, or, in case of death, unless death follows continuous disablement from such disease, commencing within the period of two years limited herein, and for which compensation has been paid or awarded or timely claim made.

(b) The report and notice to the employer as required by G.S. 97-22 shall apply in all cases of occupational disease except in case of asbestosis, silicosis, or lead poisoning. The time of notice of an occupational disease shall run from the date that the employee has been advised by competent medical authority that he has same.

(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; 1981, c. 734, s. 1.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, and applicable to claims filed with the Industrial Commission on and after that date, rewrote subsection (a).

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

The purpose of the notice-of-injury requirement is two-fold. It allows the employer to provide immediate medical diagnosis and treatment with a view to minimizing the seriousness of the injury, and it facilitates the earliest possible investigation of the circumstances surrounding the injury. Booker v. Duke Medical Center, 297 N.C. 458, 256 S.E.2d 189 (1979).

Report and Notice, etc. —

Reading subsection (b) in conjunction with § 97-22, a claim for compensation under the act is barred if the employer is not notified within 30 days of the date the claimant is informed of the diagnosis unless reasonable excuse is made to the satisfaction of the Industrial Commission for not giving such notice and the Commission is satisfied that the employer has not been prejudiced thereby. Booker v. Duke Medical Center, 297 N.C. 458, 256 S.E.2d 189 (1979).

Appeal of Notice Issue. — An employer who fails to raise the issue of notice at the hearing before the compensation board may not raise it on appeal. Booker v. Duke Medical Center, 297 N.C. 458, 256 S.E.2d 189 (1979).

In an action by the dependents of an employee, who died of hepatitis, to recover death benefits, the employer waived its right to notice of the employee's disease where it failed to raise that issue at the hearing before the Industrial Commission; moreover, under the circumstances of the case it was unrealistic to assume that the employer did not immediately receive notice of the diagnosis of the employee's disease where the employee continued to work in the same laboratory in which he contracted the disease, and where his duties were changed after he "suffered" the disease, so that he no longer handled blood. Booker v. Duke Medical Center, 297 N.C. 458, 256 S.E.2d 189 (1979).

Disablement Dates from Time, etc. —

With reference to occupational diseases the time within which an employee must give notice or file claim begins to run when the employee is first informed by competent medical authority of the nature and work-related cause of the disease. Taylor v. J.P. Stevens & Co., 300 N.C. 94, 265 S.E.2d 144 (1980).

Two factors trigger the onset of the two-year period in the case of an occupational disease. Time begins running when an employee has suffered: (1) injury from an occupational disease which (2) renders the employee incapable of earning the wages the employee was receiving at the time of the incapacity by injury. Taylor v. J.P. Stevens & Co., 300 N.C. 94, 265 S.E.2d 144 (1980).

Last Exposure Rule Inapplicable to Diseases Other Than Silicosis, Asbestosis. — A worker claiming disability from an occupational disease other than silicosis or asbestosis under the North Carolina Workers' Compensation Act, is not required to prove the disability arose within one year from the last exposure to hazardous working conditions. Taylor v. J.P. Stevens & Co., 300 N.C. 94, 265 S.E.2d 144 (1980).

The dependents' claim for compensation would not be barred by the employee's failure to file within the statutory period where the dependents were not parties to the proceeding brought by the employee. Booker v. Duke Medical Center, 297 N.C. 458, 256 S.E.2d 189 (1979).

Applied in Taylor v. J.P. Stevens & Co., 43 N.C. App. 216, 258 S.E.2d 426 (1979); Eller v. Porter-Hayden Co., 48 N.C. App. 610, 269 S.E.2d 284 (1980).

§ 97-59. Employer to pay for treatment.

Medical, surgical, hospital, nursing services, medicine, sick travel, rehabilitation services and other treatment as may reasonably be required to tend to lessen the period of disability or provide needed relief shall be paid by the employer in cases in which awards are made for disability or damage to organs as a result of an occupational disease after bills for same have been approved by the Industrial Commission.

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. (1935, c. 123; 1945, c. 762; 1973, c. 1061; 1981, c. 339.)

Effect of Amendments. — The 1981 amendment rewrote this section.

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

(a) After the employer and employee have received notice of the first committee report, the Industrial Commission, unless it has already approved an agreement between the employer and employee, shall set the matter for hearing at a time and place to be decided by it, to hear any controverted questions, determine if and to whom liability attaches, and where appropriate, file a written opinion with its findings of fact and conclusions of law and cause its award to be issued thereon, all of which shall be subject to modification as provided in G.S. 97-61.6.

(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 ($66^2/_3\%$) of his average weekly wages before removal from the industry, but not more than the amount established annually to be effective October 1 as provided in G.S. 97-29 or less than thirty dollars ($30.00) 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, ch. 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; 1981, c. 276, s. 1; c. 378, s. 1.)

Effect of Amendments. — The first 1981 amendment substituted "the amount established annually to be effective October 1 as provided in G.S. 97-29" for "eighty dollars ($80.00)" near the end of the first sentence of subsection (b).

The second 1981 amendment, effective July 1, 1981, substituted "thirty dollars ($30.00)" for "twenty dollars ($20.00)" near the end of the first sentence of subsection (b).

§ 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 ($66^2/_3\%$) 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 the amount established annually to be effective October 1 as provided in G.S. 97-29, 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. If the employee was totally disabled as a result of asbestosis or silicosis, compensation shall be paid 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 be paid for an additional 300 weeks. (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 2; c. 1354; 1957, c. 1271; 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; c. 1308, ss. 6, 7; 1979, c. 246; 1981, c. 276, s. 1.)

Effect of Amendments. — The 1981 amendment substituted "the amount established annually to be effective October 1 as provided in G.S. 97-29" for "eighty dollars ($80.00)" in the third paragraph.

§ 97-71. Filing report; right of hearing on report.

CASE NOTES

Cited in Harrell v. J.P. Stevens & Co., 45 N.C. App. 197, 262 S.E.2d 830 (1980).

§ 97-72. Appointment of advisory medical committee; terms of office; duties and functions; salaries and expenses.

(a) There shall be an advisory medical committee consisting of three members, who shall be licensed physicians in good professional standing and peculiarly qualified in the diagnosis and/or treatment of occupational diseases. They shall be appointed by the Industrial Commission with the approval of the Governor, and one of them shall be designated as chairman of the committee by the Industrial Commission. The members of committee shall be appointed to serve terms as follows: one for a term of two years, one for a term of four

years, and one for a term of six years. Upon the expiration of each term as above mentioned the Industrial Commission shall appoint a successor for a term of six years; except that the terms of the members first appointed shall expire June 30, 1936. The function of the committee shall be to conduct examinations and make reports as required by G.S. 97-61 and 97-68 to 97-71, and to assist in any postmortem examinations provided for in G.S. 97-67 when so directed by the Industrial Commission. Members of the committee shall devote to the duties of the office so much of their time as may be required in the conducting of examinations with reasonable promptness, and they shall attend hearings as scheduled by the Industrial Commission when their attendance is desired for the purpose of examining and cross-examining them respecting any report or reports made by them.

(b) The members of the advisory medical committee shall be paid one hundred dollars ($100.00) per month and not to exceed three dollars ($3.00) per film examined. The fee per film shall be determined and approved by the Secretary of Human Resources. (1935, c. 123; 1955, c. 525, s. 7; 1981, c. 562, s. 2.)

Effect of Amendments. — The 1981 amendment designated the first and second paragraphs as subsections (a) and (b) and rewrote subsection (b).

Session Laws 1981, c. 562, § 10, contains a severability clause.

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

CASE NOTES

Stated in Caesar v. Piedmont Publishing Co., 46 N.C. App. 619, 265 S.E.2d 474 (1980).

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

CASE NOTES

Proper Exercise of Fact-Finding Authority Essential. —

In accord with original. See Cannady v. Gold Kist, 43 N.C. App. 482, 259 S.E.2d 342 (1979).

Specific findings of fact, etc. —

Specific findings covering the crucial questions of fact upon which a plaintiff's right to compensation depends are required, and the importance of this responsibility cannot be overstated. Cannady v. Gold Kist, 43 N.C. App. 482, 259 S.E.2d 342 (1979).

Where the commission awards compensation for disablement due to an occupational disease encompassed by § 97-53(13), the opinion and award must contain explicit findings as to the characteristics, symptoms and manifestations of the disease from which the plaintiff suffers, as well as a conclusion of law as to whether the disease falls within the statutory provision. Moore v. J.P. Stevens & Co., 47 N.C. App. 744, 269 S.E.2d 159, cert. denied, 301 N.C. 401, 274 S.E.2d 226 (1980).

The Industrial Commission must make specific findings of fact as to each material fact upon which the rights of the parties in a case involving a claim for compensation depend. Moore v. J.P. Stevens & Co., 47 N.C. App. 744, 269 S.E.2d 159 (1980); Walston v. Burlington Indus., 49 N.C. App. 301, 271 S.E.2d 516, cert. denied, 301 N.C. 401, 274 S.E.2d 226 (1981).

Cause May Be Remanded for Findings. — If the findings of fact of the commission are

insufficient to enable the court to determine the rights of the parties upon the matters in controversy, the cause must be remanded to the commission for proper findings of fact. Moore v. J.P. Stevens & Co., 47 N.C. App. 744, 269 S.E.2d 159, cert. denied, 301 N.C. 401, 274 S.E.2d 226 (1981).

§ 97-85. Review of award.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

Plenary Powers of Commission. — The plenary powers of the Commission are such that upon review, it may adopt, modify, or reject the findings of fact of the hearing commissioner, and in doing so may weigh the evidence and make its own determination as to the weight and credibility of the evidence. Hollar v. Montclair Furn. Co., 48 N.C. App. 489, 269 S.E.2d 667 (1980).

Applied in Wood v. J.P. Stevens & Co., 297 N.C. 636, 256 S.E.2d 692 (1979).

Stated in Peeler v. State Hwy. Comm'n, 48 N.C. App. 1, 269 S.E.2d 153 (1980).

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

CASE NOTES

Scope of Review. —

In accord with 2nd paragraph in original. See Eller v. Porter-Hayden Co., 48 N.C. App. 610, 269 S.E.2d 284, cert. denied, 301 N.C. 527, 273 S.E.2d 452 (1980).

In accord with 3rd paragraph in original. See King v. Exxon Co., 46 N.C. App. 750, 266 S.E.2d 37 (1980); Peeler v. State Hwy. Comm'n, 48 N.C. App. 1, 269 S.E.2d 153 (1980), aff'd, — N.C. —, 273 S.E.2d 705 (1981).

In accord with 8th paragraph in original. See Hollar v. Montclair Furn. Co., 48 N.C. App. 489, 269 S.E.2d 667 (1980).

In accord with 11th paragraph in original. See Ivory v. Greer Bros., 45 N.C. App. 455, 263 S.E.2d 290 (1980); Taylor v. M.L. Hatcher Pick-Up & Delivery Serv., 45 N.C. App. 682, 263 S.E.2d 788 (1980); Click v. Pilot Freight Carriers, Inc., 300 N.C. 164, 265 S.E.2d 389 (1980).

In accord with 12th paragraph in original. See King v. Forsyth County, 45 N.C. App. 467, 263 S.E.2d 283 (1980); Barham v. Food World, Inc., 300 N.C. 329, 266 S.E.2d 676, rehearing denied, — N.C. —, 270 S.E.2d 105 (1980); Hansel v. Sherman Textiles, 49 N.C. App. 1, 270 S.E.2d 585 (1980); Walston v. Burlington Indus., 49 N.C. App. 301, 271 S.E.2d 516 (1980).

In accord with 13th paragraph in original. See Gamble v. Borden, Inc., 45 N.C. App. 506, 263 S.E.2d 280 (1980).

In accord with 18th paragraph in original. See Porterfield v. RPC Corp., 27 N.C. App. 140, 266 S.E.2d 760 (1980); Peeler v. State Hwy. Comm'n, 48 N.C. App. 1, 269 S.E.2d 153 (1980).

If the finding of fact is supported by the evidence, the decision of the full Commission must be affirmed. Brown v. J.P. Stevens & Co., 49 N.C. App. 118, 270 S.E.2d 602 (1980).

Upon review of the opinion and award of the full Commission, the Court of Appeals does not weigh the evidence, but may only determine whether there is evidence in the record to support the findings made by the Commission. If there is any evidence of substance which directly or by reasonable inference tends to support the findings, this court is bound by such evidence, even though there is evidence that would have supported a finding to the contrary. Porterfield v. RPC Corp., 47 N.C. App. 140, 266 S.E.2d 760 (1980).

Conclusions of law entered by the Industrial Commission are not binding on the Court of Appeals, and are reviewable for purposes of determining their evidentiary basis and the reasonableness of the legal inferences made therefrom. Walston v. Burlington Indus., 49 N.C. App. 301, 271 S.E.2d 516 (1980).

A conclusion of law is made no less reviewable by virtue of the fact that it is denominated a finding of fact. Walston v. Burlington Indus., 49 N.C. App. 301, 271 S.E.2d 516 (1980).

Raising Question of Commission's Jurisdiction. —

The reviewing court is not bound by the findings of jurisdictional facts by the Industrial Commission, and must make its own finding from a consideration of all the evidence in the case. Lloyd v. Jenkins Context Co., 46 N.C. App. 817, 266 S.E.2d 35 (1980).

Commission's Jurisdiction Not Suspended by Appeal. —

An appeal of an award of the Industrial Commission does not suspend that agency's authority to accept notification of an employee's decision to select his own doctor; neither does an appeal deprive the Commission of its jurisdiction to accept the submission of a claim. It may well be that the determination of the particular claim will be delayed until the outcome of the appeal. Nevertheless, the Commission has jurisdiction to receive the claim and is, in fact, the only agency vested with that jurisdiction. Schofield v. Great Atl. & Pac. Tea Co., 299 N.C. 582, 264 S.E.2d 56 (1980).

The findings of fact of the Industrial, etc. —

In accord with 23rd paragraph in original. See Hansel v. Sherman Textiles, 49 N.C. App. 1, 270 S.E.2d 585 (1980).

In accord with 27th paragraph in original. See Long v. Asphalt Paving Co., 47 N.C. App. 564, 268 S.E.2d 1 (1980); Walston v. Burlington Indus., 49 N.C. App. 301, 271 S.E.2d 516 (1980).

Remand Where Findings Insufficient. —

In accord with 2nd paragraph in original. See Walston v. Burlington Indus., 49 N.C. App. 301, 271 S.E.2d 516 (1980).

Cited in Harrell v. J.P. Stevens & Co., 45 N.C. App. 197, 262 S.E.2d 830 (1980).

§ 97-86.2. Interest on awards after hearing.

When, in a worker's compensation case, a hearing or hearings have been held and an award made pursuant thereto, if there is an appeal from that award by the employer or carrier which results in the affirmance of that award or any part thereof which remains unpaid pending appeal, the insurance carrier or employer shall pay interest on the final award from the date the initial award was filed at the Industrial Commission until paid at the legal rate of interest provided in G.S. 24-1. If interest is paid it shall not be a part of, or in any way increase attorneys' fees, but shall be paid in full to the claimant. (1981, c. 242, s. 1.)

Editor's Note. — Session Laws 1981, c. 242, s. 2, makes the act effective upon ratification and applicable to awards made on and after that date. The act was ratified April 23, 1981.

§ 97-87. Filing agreements approved by Commission or awards; judgment in accordance therewith; discharge or restoration of lien.

CASE NOTES

Cited in Weydener v. Carolina Village, 45 N.C. App. 549, 263 S.E.2d 329 (1980).

§ 97-89. Commission may appoint qualified physician to make necessary examinations; expenses; fees.

CASE NOTES

This section does not provide for examination by an additional physician. Clark v. Burlington Indus., 49 N.C. App. 269, 271 S.E.2d 101 (1980).

§ 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.

(b) Any person (i) who receives any fee, other consideration, or any gratuity on account of services so rendered, unless such consideration or gratuity is approved by the Commission or such court, or (ii) who makes it a business to solicit employment for a lawyer or for himself in respect of any claim or award for compensation, shall be guilty of a misdemeanor, and upon conviction thereof shall, for each offense, be punished by a fine of not more than five hundred dollars ($500.00) or by imprisonment not to exceed one year, or by both such fine and imprisonment.

(c) If an attorney has an agreement for fee or compensation under this Article, he shall file a copy or memorandum thereof with the hearing officer or Commission prior to the conclusion of the hearing. If the agreement is not considered unreasonable, the hearing officer or Commission shall approve it at the time of rendering decision. If the agreement is found to be unreasonable by the hearing officer or Commission, the reasons therefor shall be given and what is considered to be reasonable fee allowed. If within five days after receipt of notice of such fee allowance, the attorney shall file notice of appeal to the full Commission, the full Commission shall hear the matter and determine whether or not the attorney's agreement as to a fee or the fee allowed is unreasonable. If the full Commission is of the opinion that such agreement or fee allowance is unreasonable and so finds, then the attorney may, by filing written notice of appeal within 10 days after receipt of such action by the full Commission, appeal to the resident judge of the superior court or the judge holding the courts of the district of or in the county in which the cause of action arose or in which the claimant resides; and upon such appeal said judge shall consider the matter and determine in his discretion the reasonableness of said agreement or fix the fee and direct an order to the Commission following his determination therein. The Commission shall, within 20 days after receipt of notice of appeal from its action concerning said agreement or allowance, transmit its findings and reasons as to its action concerning such agreement or allowance to the judge of the superior court designated in the notice of appeal. In all other cases where there is no agreement for fee or compensation, the attorney or claimant may, by filing written notice of appeal within five days after receipt of notice of action of the full Commission with respect to attorneys' fees, appeal to the resident judge of the superior court or the judge holding the courts of the district of the county in which the cause arose or in which the claimant resides; and upon such appeal said judge shall consider the matter of such fee and determine in his discretion the attorneys' fees to be allowed in the cause. The Commission shall, within 20 days after notice of appeal has been filed, transmit its findings and reasons as to its action concerning such fee or compensation to the judge of the superior court designated in the notice of appeal; provided that the Commission shall in no event have any jurisdiction over any attorneys' fees in any third-party action.

(d) Provided, that nothing contained in this section shall prevent the collection of such reasonable fees of physicians and charges for hospitalization as may be recovered in an action, or embraced in settlement of a claim, against a third-party tort-feasor as described in G.S. 97-10.

(e) The fees provided for in subsection (a) of this section shall be approved by the Commission no later than June 1 of the year in which the Commission exercises its authority under subsection (a) of this section, but shall not become effective until July 1 following such approval. (1929, c. 120, s. 64; 1955, c. 1026, s. 4; 1959, cc. 1268, 1307; 1973, c. 520, s. 4; 1981, c. 521, s. 4.)

Effect of Amendments. — The 1981 amendment added subsection (e).

CASE NOTES

All Bills to Be Submitted to and Approved by Commission. — The superior court had no authority to order defendants to pay medical bills incurred by plaintiff for treatment of her work-related injury, though the Industrial Commission had ordered that defendants pay all such bills, since the bills in question had not been submitted to or approved by the Industrial Commission. Weydener v. Carolina Village, 45 N.C. App. 549, 263 S.E.2d 329 (1980).

Chapter 99B.

Products Liability.

Sec.

99B-5 to 99B-9. [Reserved.]

99B-10. Immunity for donated food.

§ 99B-1. Definitions.

Legal Periodicals. — For survey of 1979 commercial law, see 58 N.C.L. Rev. 1290 (1980).

For article entitled, "North Carolina's New Products Liability Act: A Critical Analysis," see 16 Wake Forest L. Rev. 171 (1980).

CASE NOTES

Strict Liability. — This chapter does not adopt strict liability in product liability cases. Smith v. Fiber Controls Corp., 300 N.C. 669, 268 S.E.2d 504 (1980); Seese v. Volkswagenwerk, 648 F.2d 833 (3rd Cir. 1981).

§ 99B-2. Liability of seller and manufacturer.

Legal Periodicals. — For survey of 1979 commercial law, see 58 N.C.L. Rev. 1290 (1980).

For article entitled, "North Carolina's New Products Liability Act: A Critical Analysis," see 16 Wake Forest L. Rev. 171 (1980).

For note on requirement of privity and express warranties, see 16 Wake Forest L. Rev. 857 (1980).

CASE NOTES

Act Inapplicable to Purchaser's Employee. — The protections of the Products Liability Act would not extend to the employee of a purchaser where the employee is covered by workers' compensation insurance. Davis v. Siloo Inc., 47 N.C. App. 237, 267 S.E.2d 354 (1980).

Liability under Crashworthiness Theory. — In a products liability action an automobile manufacturer was held liable under a crashworthiness theory for the additional injuries resulting from a product's negligent design, even though the defect which caused the injuries to be enhanced, a negligently designed window retention system, was not the same defect that caused the accident. Seese v. Volkswagenwerk, 648 F.2d 833 (3rd Cir. 1981).

§ 99B-3. Alteration or modification of product.

Legal Periodicals. — For survey of 1979 commercial law, see 58 N.C.L. Rev. 1290 (1980).

For article entitled, "North Carolina's New Products Liability Act: A Critical Analysis," see 16 Wake Forest L. Rev. 171 (1980).

§ 99B-4. Injured parties' knowledge or reasonable care.

Legal Periodicals. — For survey of 1979 commercial law, see 58 N.C.L. Rev. 1290 (1980).

For article entitled, "North Carolina's New Products Liability Act: A Critical Analysis," see 16 Wake Forest L. Rev. 171 (1980).

CASE NOTES

Defense of Contributory Negligence Reaffirmed. — This section specifically reaffirms the applicability of contributory negligence as a defense in product liability actions. Smith v. Fiber Controls Corp., 300 N.C. 669, 268 S.E.2d 504 (1980).

What Constitutes Contributory Negligence. — Plaintiff may be contributorily negligent if his conduct ignores unreasonable risks or dangers which would have been apparent to a prudent person exercising ordinary care for his own safety. Smith v. Fiber Controls Corp., 300 N.C. 669, 268 S.E.2d 504 (1980).

The defense of contributory negligence is not invariably barred by defendant's failure to warn of a danger when, as in this case, the facts indicate that plaintiff, in the exercise of ordinary care, should have known of the danger of injury independent of any warning by defendant. Smith v. Fiber Controls Corp., 300 N.C. 669, 268 S.E.2d 504 (1980).

§§ 99B-5 to 99B-9: Reserved for future codification purposes.

§ 99B-10. Immunity for donated food.

(a) Notwithstanding the provisions of Article 12 of Chapter 106 of the General Statutes, or any other provision of law, any person, including but not limited to a seller, farmer, processor, distributor, wholesaler or retailer of food, who donates an item of food for use or distribution by a nonprofit organization or nonprofit corporation shall not be liable for civil damages or criminal penalties resulting from the nature, age, condition, or packaging of the donated food, unless it is established that the donor knew or had reasonable grounds to believe that the food was adulterated as defined in G.S. 106-129 at the time the donor made the gift.

(b) Nothing in this section limits the liability of the donee organization or corporation accepting the food. (1979, 2nd Sess., c. 1188, s. 1.)

Chapter 99C.

Actions Relating to Skier Safety and Skiing Accidents.

§ 99C-1. Definitions.

When used in this Chapter, unless the context otherwise requires:

(1) "Competitor" means a skier actually engaged in competition or in practice therefor with the permission of the ski area operator on any slope or trail or portion thereof designated by the ski area operator for the purpose of competition.

(2) "Passenger" means any person who is being transported or is awaiting transportation, or being conveyed on a passenger tramway or is moving from the disembarkation point of a passenger tramway or is in the act of embarking upon or disembarking from a passenger tramway.

(3) "Passenger Tramway" shall mean any device used to transport passengers uphill on skis, or in cars on tracks, or suspended in the air, by the use of steel cables, chains, belts or ropes. Such definition shall include such devices as a chair lift, J Bar, or platter pull, rope tow, and wire tow.

(4) "Ski Area" means all the ski slopes, ski trails, and passenger tramways, that are administered or operated as a ski area enterprise within this State.

(5) "Ski Area Operator" means a person, corporation, or organization that is responsible for the safe operation and maintenance of the ski area.

(6) "Skier" means any person who is wearing skis or any person who for the purpose of skiing is on a designated and clearly marked ski slope or ski trail that is located at a ski area, or any person who is a passenger or spectator at a ski area. (1981, c. 939, s. 1.)

Cross References. — As to regulation of aerial passenger tramways, chair lifts and similar devices, see § 95-116 et seq.

Editor's Note. — Session Laws 1981, c. 939, s. 3, makes the act effective Oct. 1, 1981.

§ 99C-2. Duties of ski operators and skiers.

(a) A ski area operator shall be responsible for the maintenance and safe operation of any passenger tramway in his ski area and insure that such is in conformity with the rules and regulations prescribed and adopted by the North Carolina Department of Labor pursuant to G.S. 95-120(1) as such appear in the North Carolina Administrative Procedures Act. The North Carolina Department of Labor shall conduct certifications and inspections of passenger tramways.

A ski area operator's responsibility regarding passenger tramways shall include, but is not limited to, insuring operating personnel are adequately trained and are adequate in number; meeting all standards set forth for terminals, stations, line structures, and line equipment; meeting all rules and regulations regarding the safe operation and maintenance of all passenger lifts and tramways, including all necessary inspections and record keeping.

(b) A skier and/or a passenger shall have the following responsibilities:
(1) To know the range of his own abilities to negotiate any ski slope or trail and to ski within the limits of such ability;
(2) To maintain control of his speed and course at all times when skiing and to maintain a proper lookout so as to be able to avoid other skiers and visible objects;
(3) To stay clear of snow grooming equipment, all vehicles, lift towers, signs, and any other equipment on the ski slopes and trails;
(4) To heed all posted information and other warnings and to refrain from acting in a manner which may cause or contribute to the injury of the skier or others;
(5) To wear retention straps, ski brakes, or other devices to prevent runaway skis;
(6) Before beginning to ski from a stationary position or before entering a ski slope or trail from the side, to avoid moving skiers already on the ski slope or trail;
(7) To not move uphill on any passenger tramway or use any ski slope or trail while such person's ability to do so is impaired by the consumption of alcohol or by the use of any narcotic or other drug or while such person is under the influence of alcohol or any narcotic or any drug;
(8) If involved in a collision with another skier or person, to not leave the vicinity of the collision before giving his name and current address to an employee of the ski area operator, a member of the ski patrol, or the other skier or person with whom the skier collided, except in those cases when medical treatment is required; in which case, said information shall be provided as soon as practical after the medical treatment has been obtained. If the other person involved in the collision is unknown, the skier shall leave the personal identification required by this subsection with the ski area operator;
(9) Not to embark upon or disembark from a passenger tramway except at an area that is designated for such purpose;
(10) Not to throw or expel any object from a passenger tramway;
(11) Not to perform any action that interferes with the operation or running of a passenger tramway;
(12) Not to use such tramway unless he has the ability to use it with reasonable safety;
(13) Not to engage willfully or negligently in any type conduct that contributes to or causes injury to another person or his properties;
(14) Not to embark upon a passenger tramway without the authority of the ski area operator.

(c) A ski area operator shall have the following responsibilities:
(1) To mark all trails and maintenance vehicles and to furnish such vehicles with flashing or rotating lights that shall be in operation whenever the vehicles are working or moving in the ski area;
(2) To mark with a visible sign or other warning implement the location of any hydrant or similar equipment that is used in snowmaking operations and located anywhere in the ski area;
(3) To indicate the relative degree of difficulty of a slope or trail by appropriate signs. Such signs are to be prominently displayed at the base of a slope where skiers embark on a passenger tramway serving the slope or trail, or at the top of a slope or trail. The signs must be of the type that have been approved by the National Ski Areas Association and are in current use by the industry;
(4) To post at or near the top of or entrance to, any designated slope or trail, signs giving reasonable notice of unusual conditions on the slope or trail;

(5) To provide adequate ski patrols;
(6) To mark clearly any hidden rock, hidden stump, or any other hidden hazard known by the ski area operator to exist;
(7) Not to engage willfully or negligently in any type conduct that contributes to or causes injury to another person or his properties. (1981, c. 939, s. 1.)

§ 99C-3. Violation constitutes negligence.

A violation of any responsibility placed on the skier, passenger or ski area operator as set forth in G.S. 99C-2, to the extent such violation proximately causes injury to any person or damage to any property, shall constitute negligence on the part of the person violating the provisions of that section. (1981, c. 939, s. 1.)

§ 99C-4. Competition.

The ski area operator shall, prior to the beginning of a competition, allow each competitor a reasonable visual inspection of the course or area where the competition is to be held. The competitor shall be held to assume risk of all course conditions including, but not limited to, weather and snow conditions, course construction or layout, and obstacles which a visual inspection should have revealed. No liability shall attach to a ski area operator for injury or death of any competitor proximately caused by such assumed risk. (1981, c. 939, s. 1.)

§ 99C-5. Operation of passenger tramway.

The operation of a passenger tramway shall not constitute the operation of a common carrier. (1981, c. 939, s. 1.)

Chapter 100.

Monuments, Memorials and Parks.

Article 1.

Approval of Memorials, Works of Art, etc.

Article 1.

Approval of Memorials, Works of Art, etc.

§ 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 North Carolina Historical Commission; 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 North Carolina Historical Commission. 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 Resources and Community Development and the Department of Cultural Resources as provided by Chapter 197 of the Public Laws of 1935. (1941, c. 341, s. 2; 1957, c. 65, s. 11; 1973, c. 476, s. 48; c. 507, s. 5; c. 1262, s. 86; 1977, c. 771, s. 4; 1979, 2nd Sess., c. 1306, ss. 3, 4.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, substituted "the North Carolina Historical Commission" for "the Art Commission or the North Carolina Historical Commission as appropriate" in the first and second sentences. The amendment also corrected an error by substituting "statue" for "statute" in the third 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 North Carolina Historical Commission 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 North Carolina Historical Commission and approval of said plans by the North Carolina Historical Commission. 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; 1979, 2nd Sess., c. 1306, s. 3.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, substituted "the North Carolina Historical Commission" for "the Art Commission or the North Carolina Historical Commission as appropriate" in three places.

§ 100-4. Governor to accept works of art approved by 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 North Carolina Historical Commission and by it judged worthy of acceptance. (1941, c. 341, s. 4; 1973, c. 476, s. 48; 1979, 2nd Sess., c. 1306, s. 3.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, substituted "the North Carolina Historical Commission" for "the Art Commission or the North Carolina Historical Commission as appropriate" in the second sentence.

§ 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 North Carolina Historical Commission 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; 1979, 2nd Sess., c. 1306, s. 3.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, substituted "the North Carolina Historical Commission" for "the Art Commission or the North Carolina Historical Commission as appropriate" in the first sentence.

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

Any member of the North Carolina Historical Commission who shall be employed by the State to execute a work of art or structure of any kind requiring submission to the North Carolina Historical Commission, 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; 1979, 2nd Sess., c. 1306, s. 3.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, substituted "the North Carolina Historical Commission" for "the Art Commission or the North Carolina Historical Commission as appropriate" in two places.

§ 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 North Carolina Historical Commission 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; 1979, 2nd Sess., c. 1306, s. 3.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1981, substituted "the North Carolina Historical Commission" for "the Art Commission or the North Carolina Historical Commission as appropriate" in the second sentence.

§ 100-8. Memorials to persons within 25 years of death; acceptance of commemorative funds for useful work.

No monument, statue, tablet, painting, or other article or structure of a permanent nature intended primarily to commemorate any person or persons shall be purchased from State funds or shall be placed in or upon or allowed to extend over State property within 25 years after the death of the person or persons so commemorated: Provided, nevertheless, that nothing in this Article shall be interpreted as prohibiting the acceptance of funds by State agencies or institutions from individuals or societies who wish to commemorate some person or persons by providing funds for educational, health, charitable, or other useful work. The agency or institution to which such funds are offered for memorial enterprises shall exercise its discretion as to the acceptance and expenditure of such funds. Nothing in this Article shall be interpreted as prohibiting the erection on the lands of the Cliffs of the Neuse State Park an appropriate tablet or plaque honoring the life and memory of the late Lionel Weil of Wayne County. Nothing in this Article shall be interpreted as prohibiting the erection on the lands of the Morrow Mountain State Park an appropriate tablet or plaque honoring the life and memory of the late James McKnight Morrow of Stanly County. Nothing in this Article shall be interpreted as prohibiting the erection on the lands of the Cliffs of the Neuse State Park an appropriate tablet or plaque, of such size and containing such language, as may be agreed upon by the donors and Director of State Parks, honoring the Whitfield heirs for their contributions to the establishment of the said park. (1941, c. 341, s. 8; 1957, c. 181; 1961, c. 976; 1963, c. 1128; 1979, 2nd Sess., c. 1306, s. 4.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, corrected an error by substituting "statue" for "statute" near the beginning of the first sentence.

Chapter 101.

Names of Persons.

Sec.

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

Cross References. — As to effect of changing name upon registration to vote, see § 163-69.1.

§ 101-8. Resumption of name by widow.

A woman at any time after she is widowed, may resume the use of her maiden name or the name of a prior deceased husband or of a previously divorced husband upon application to the clerk of superior court of the county in which she resides, setting forth her intention to do so. The application shall set forth the full name of the last husband of the applicant, shall include a copy of his death certificate, and shall be signed by the applicant in her full name. The clerks of court of the several counties of this State shall record and index such applications in the manner required by the Administrative Office of the Courts. (1979, c. 768; 1981, c. 564, s. 2.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, deleted "and forward a copy of the same to the State Registrar of Vital Statistics on a form provided by him" from the end of the third sentence.

Chapter 103.

Sundays, Holidays and Special Days.

Sec.

§ 103-2. Hunting on Sunday.

If any person shall, except in defense of his own property, hunt on Sunday, having with him a shotgun, rifle, or pistol, he shall be guilty of a misdemeanor and pay a fine not exceeding fifty dollars ($50.00) or [be] imprisoned not exceeding 30 days. Provided, that the provisions hereof shall not be applicable to military reservations, the jurisdiction of which is exclusively in the federal government. Wildlife protectors are granted authority to enforce the provisions of this section. (1868-9, c. 18, ss. 1, 2; Code, s. 3783; Rev., s. 3842; C. S., s. 3956; 1945, c. 1047; 1967, c. 1003; 1979, c. 830, s. 13.)

Effect of Amendments. — The 1979 amendment, effective July 1, 1980, added the last sentence of the section.

§ 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.
(3a) Greek Independence Day, March 25.
(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.
(11a) Yom Kippur.
(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; 1979, c. 84; 1981, c. 135.)

Effect of Amendments. — The 1981 amendment added subdivision (3a) of subsection (a).

§ 103-8. Indian solidarity week.

The last full week in September of each year is designated as Indian solidarity week in North Carolina. (1981, c. 769.)

Chapter 104.

United States Lands.

§ 104-7. Acquisition of lands for public buildings; cession of jurisdiction; exemption from taxation.

CASE NOTES

Applied in State v. Graham, 47 N.C. App. 303, 267 S.E.2d 56 (1980).

Chapter 104C.

Atomic Energy, Radioactivity and Ionizing Radiation.

§§ 104C-4, 104C-5: Recodified as §§ 104E-1 to 104E-23, effective July 1, 1975.

Editor's Note. — Session Laws 1975, c. 718, s. 8, was amended by Session Laws 1981, c. 393, so as to delete the provision for expiration of the act.

Chapter 104E.

North Carolina Radiation Protection Act.

Cross References. — As to review and evaluation of the programs and functions authorized under this Chapter, see § 143-34.26.

Repeal of chapter. —

The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Chapter effective July 1, 1983, was itself repealed by Session Laws 1981, c. 932, s. 1.

Editor's Note. —

Session Laws 1975, c. 718, s. 8, was amended by Session Laws 1981, c. 393, so as to delete the provision for expiration of the act.

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§ 104E-5. Definitions.

Unless a different meaning is required by the context, the following terms as used in this Chapter shall have the meanings hereinafter respectively ascribed to them:

(1) "Agreement materials" means those materials licensed by the State under agreement with the United States Nuclear Regulatory Commission and which include by-product, source or special nuclear materials in a quantity not sufficient to form a critical mass, as defined by the Atomic Energy Act of 1954 as amended.

(2) "Agreement state" means any state which has consummated an agreement with the United States Nuclear Regulatory Commission under the authority of section 274 of the Atomic Energy Act of 1954 as amended, as authorized by compatible state legislation providing for acceptance by that state of licensing authority for agreement materials and the discontinuance of such licensing activities by the United States Nuclear Regulatory Commission.

(3) "Atomic energy" means all forms of energy released in the course of nuclear fission or nuclear fusion or other atomic transformations.

(4) "By-product material" means any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(5) "Commission" means the Radiation Protection Commission.

(6) "Department" means the State Department of Human Resources.

(7) "Emergency" means any condition existing outside the bounds of nuclear operating sites owned or licensed by a federal agency, and

further any condition existing within or outside of the jurisdictional confines of a facility licensed by the Department and arising from the presence of by-product material, source material, special nuclear materials, or other radioactive materials, which is endangering or could reasonably be expected to endanger the health and safety of the public, or to contaminate the environment.

(8) "General license" means a license effective pursuant to regulations promulgated under the provisions of this Chapter without the filing of an application to transfer, acquire, own, possess, or use quantities of, or devices or equipment utilizing by-product, source, special nuclear materials, or other radioactive materials occurring naturally or produced artificially.

(9) "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high speed electrons, protons, neutrons, and other nuclear particles; but not sound or radio waves, or visible, infrared, or ultraviolet light.

(9a) "Low-level radioactive waste" means radioactive waste not classified as high-level radioactive waste or spent nuclear fuel as defined by the U.S. Nuclear Regulatory Commission, transuranic waste, or byproduct material as defined in Section 11(e) (2) of the Atomic Energy Act of 1954, as amended.

(9b) "Low-level radioactive waste facility" means a facility for the storage, collection, processing, treatment, recycling, recovery or disposal of low-level radioactive waste.

(9c) "Low-level radioactive waste landfill facility" means any facility or any portion of a facility for disposal of low-level radioactive waste on or in land in accordance with rules promulgated under this Chapter.

(10) "Nonionizing radiation" means radiation in any portion of the electromagnetic spectrum not defined as ionizing radiation, including, but not limited to, such sources as laser, maser or microwave devices.

(11) "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 Nuclear Regulatory Commission, or any successor thereto, and other than federal government agencies licensed by the United States Nuclear Regulatory Commission, or any successor thereto.

(12) "Radiation" means gamma rays and x-rays, alpha and beta particles, high speed electrons, protons, neutrons, and other nuclear particles, and electromagnetic radiation consisting of associated and interacting electric and magnetic waves including those with frequencies between three times 10 to the eighth power cycles per second and three times 10 to the twenty-fourth power cycles per second and wavelengths between one times 10 to the minus fourteenth power centimeters and 100 centimeters.

(13) "Radiation machine" means any device designed to produce or which produces radiation or nuclear particles when the associated control devices of the machine are operated.

(14) "Radioactive material" means any solid, liquid, or gas which emits ionizing radiation spontaneously.

(15) "Source material" means (i) uranium, thorium, or any other material which the Department declares to be source material after the United States Nuclear Regulatory Commission, or any successor thereto has determined the material to be such; or (ii) ores containing one or more of the foregoing materials, in such concentration as the Department declares to be source material after the United States Nuclear

Regulatory Commission, or any successor thereto, has determined the material in such concentration to be source material.

(16) "Special nuclear material" means (i) plutonium, uranium 233, uranium 235, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Department declares to be special nuclear material after the United States Nuclear Regulatory Commission, or any successor thereto, has determined the material to be such, but does not include source material; or (ii) any material artificially enriched by any of the foregoing, but does not include source material.

(17) "Specific license" means a license, issued after application, to use, manufacture, produce, transfer, receive, acquire, own or process quantities of, or devices or equipment utilizing by-product, source, special nuclear materials, or other radioactive materials occurring naturally or produced artificially. Nothing in this Chapter shall require the licensing of individual natural persons involved in the use of radiation machines or radioactive materials for medical diagnosis or treatment.

(18) "Transuranic waste" means waste containing more than 10 nanocuries of radioactive materials with atomic numbers of 93 or higher per gram of waste. (1975, c. 718, s. 1; 1981, c. 704, s. 8.)

Effect of Amendments. — The 1981 amendment added subdivisions (9a), (9b), (9c), and (18).

Session Laws 1981, c. 704, ss. 1 and 2, provides:

"Section 1. Short title. This act may be referred to as the Waste Management Act of 1981.

"Sec. 2. Purpose. The purpose of this act is to provide for a comprehensive system for management of hazardous and low-level radioactive waste in North Carolina as reflected in the 1981 Report of the Governor's Task Force on Waste Management."

Session Laws 1981, c. 704, s. 26, provides that the act shall be liberally construed to carry out the policies set forth in the act.

Session Laws 1981, c. 704, s. 27, contains a severability clause.

§ 104E-6.1. Conveyance of land used for low-level radioactive waste landfill facility to State.

(a) No land may be used as a low-level radioactive waste landfill facility until fee simple title to the land has been conveyed to the State of North Carolina. In consideration for such conveyance, the State shall enter into a lease agreement with the grantor for a term equal to the estimated life of the facility in which the State will be the lessor and the grantor the lessee. Such lease agreement shall specify that for an annual rent of fifty dollars ($50.00), the lessee shall be allowed to use the land for the development and operation of a low-level radioactive waste landfill facility. Such lease agreement shall provide that the lessor or any person authorized by the lessor shall have at all times the right to enter without a search warrant or permission of the lessee upon any and all parts of the premises for monitoring, inspection and all other purposes necessary to carry out the provisions of Chapter 104E. The lessee shall remain fully liable for all damages, losses, personal injury or property damage which may result or arise out of the lessee's operation of the facility, and for compliance with regulatory requirements concerning insurance, bonding for closure and post-closure costs, monitoring and other financial or health and safety requirements as required by applicable law and regulations. The State, as lessor, shall be immune from liability except as otherwise provided by statute. The lease shall be transferrable with the written consent of the lessor, which consent will not be unreasonably withheld. In the case of such a transfer of the lease, the transferee shall be subject to all terms and condi-

tions that the State deems necessary to ensure compliance with applicable laws and regulations. If the lessee or any successor in interest fails in any material respect to comply with any applicable law, regulation, or permit condition, or with any term or condition of the lease, the State may terminate the lease after giving the lessee written notice specifically describing the failure to comply and upon providing the lessee a reasonable time to comply. If the lessee does not effect compliance within the reasonable time allowed, the State may reenter and take possession of the premises.

(b) Notwithstanding the termination of the lease by either the lessee or the lessor for any reason, the lessee shall remain liable for, and be obligated to perform all acts necessary or required by law, regulation, permit conditions or the lease for the permanent closure of the site until the site has either been permanently closed or until a substitute operator has been secured and assumed the obligations of the lessee.

(c) In the event of changes in laws or regulations applicable to the facility which make continued operation by the lessee impossible or or economically infeasible, the lessee shall have the right to terminate the lease upon giving the State reasonable notice of not less than six months, in which case the lessor shall have the right to secure a substitute lessee and operator.

(d) In the event of termination of the lease by the lessor as provided in subsection (a) of this section, or by the lessee as provided in subsection (c) of this section, the lessee shall be paid the fair market value of any improvements made to the leased premises less the costs to the lessor resulting from termination of the lease and securing a substituted lessee and operator; provided, that the lessor shall have no obligation to secure a substitute lessee or operator and may require the lessee to permanently close the facility. (1981, c. 704, s. 9.)

Editor's Note. — As to short title and purpose of Session Laws 1981, c. 704, see note to § 104E-5.

Session Laws 1981, c. 704, s. 26, provides that the act shall be liberally construed to carry out the policies set forth in the act.

Session Laws 1981, c. 704, s. 27, contains a severability clause.

§ 104E-6.2. Local ordinances prohibiting low-level radioactive waste facilities invalid; petition to establish facility.

(a) Notwithstanding any authority heretofore granted to counties, municipalities, or other local authorities to adopt local ordinances, including those regulating land use, any local ordinance which prohibits or has the effect of prohibiting the establishment or operation of a low-level radioactive waste facility or a low-level radioactive waste landfill facility which the Governor's Waste Management Board and the Governor have approved pursuant to the procedures in subsections (b) and (c), shall be invalid from June 26, 1981, but only to the extent necessary to effectuate the purposes of this Article. For the purpose of this section, the Governor's Waste Management Board shall include, in addition to the members enumerated in G.S. 143B-216.12(a), two members appointed by the local governing body (i) of the city in which the proposed site is located or (ii) of the county in which the proposed site is located (if the proposed site is outside city limits), as the case may be. The terms of the members appointed by the local governing body shall end upon the final determination made by the Governor under this section.

(b) When a low-level radioactive waste facility would be prevented from construction or operation by a county, municipal, or other local ordinance(s), the developer or operator of the facility may petition the Governor's Waste Management Board to review the matter. After receipt of a petition, the board shall hold a hearing in accordance with the procedures in subsection (c) and

shall recommend to the Governor that he either approve or disapprove the establishment and operation of the facility.

After receiving a written recommendation from the board, if the Governor makes the four findings set forth in subsection (c) of this section he shall approve the establishment or operation of the facility. If the Governor does not make all of the four findings set forth in subsection (c) of this section he shall disapprove the establishment or operation of the facility. The Governor shall affirm or disaffirm the findings of the board and may make additional findings. The decision of the Governor shall be final unless a party to the action shall, pursuant to G.S. 7A-29, file a written appeal within 30 days of the date of such decision. The record on appeal shall include all materials and information submitted to or considered by the Governor in accordance with subsection (c) of this section. The scope of judicial review shall be limited to questions of abuse of discretion.

(c) When a petition as described in subsection (b) of this section has been filed with the Governor's Waste Management Board, the board shall hold a public hearing to consider the petition. Such hearing shall be held in the affected locality in accordance with G.S. 150A, Article 2, within a reasonable time after receipt of the petition by the board. The board shall publish notice of the hearing twice a week for two successive weeks in a newspaper of general circulation in the county where the proposed site is located. The final notice shall appear at least 15 days but not more than 25 days before the hearing date. Any interested person may appear before the board at the hearing to offer testimony. In addition to testimony before the board, any interested person may submit written material to the board for its consideration. No later than 60 days after the hearing, the board shall present its written recommendation to the Governor to approve or disapprove the facility. Before recommending that the Governor approve the facility, the board must make the following findings:

(1) That the proposed facility is needed in order to establish adequate capability for the management of low-level radioactive waste generated in North Carolina and therefore serves the interest of the citizens of the State as a whole;

(2) That all legally required State and federal permits or approvals have been issued by the appropriate State and federal agencies;

(3) That local citizens and elected officials have had adequate opportunity to participate in the siting process;

(4) That the construction and operation of the facility will not pose an unreasonable health or environmental risk to the surrounding locality and that the facility developer or operator has taken or consented to take any reasonable measures to avoid or manage foreseeable risks and to comply to the maximum feasible extent with any applicable ordinances.

The board's written recommendation shall include a complete transcript of the hearing, all written material presented to the board regarding the site location and the specific findings required in this subsection and any minority positions on the recommendation and the specific findings required in this subsection. The Governor shall issue his decision within a reasonable time following receipt of the recommendation from the board and may consider any additional information he deems relevant. The Governor's decision shall be in writing and shall identify the material submitted to him by the board plus any additional materials used in arriving at his decision. (1981, c. 704, s. 9.)

Editor's Note. — As to short title and purpose of Session Laws 1981, c. 704, see note to § 104E-5.

Session Laws 1981, c. 704, s. 26, provides that the act shall be liberally construed to carry out the policies set forth in the act.

Session Laws 1981, c. 704, s. 27, contains a severability clause.

§ 104E-7. Radiation Protection Commission — creation and powers.

There is hereby created the North Carolina Radiation Protection Commission of the Department of Human Resources with the power to promulgate rules and regulations to be followed in the administration of a radiation protection program. All rules and regulations for radiation protection that were adopted by the Commission for Health Services and are not inconsistent with the provisions of this Chapter shall remain in full force and effect unless and until repealed or superseded by action of the Radiation Protection Commission. The Radiation Protection Commission is authorized:

(1) To advise the Department in the development of comprehensive policies and programs for the evaluation, determination, and reduction of hazards associated with the use of radiation;

(2) To adopt, promulgate, amend and repeal such rules, regulations and standards relating to the manufacture, production, transportation, use, handling, servicing, installation, storage, sale, lease, or other disposition of radioactive material and radiation machines as may be necessary to carry out the policy, purpose and provisions of this Chapter. To this end, the Commission is authorized to require licensing or registration of all persons who manufacture, produce, transport, use, handle, service, install, store, sell, lease, or otherwise dispose of radioactive material and radiation machines, as the Commission deems necessary to provide an adequate protection and supervisory program: provided, that prior to adoption of any regulation or standard, or amendment or repeal thereof, the Commission shall afford interested parties the opportunity, at a public hearing, as provided in G.S. 104E-13, to submit data or views orally or in writing. The recommendations of nationally recognized bodies in the field of radiation protection shall be taken into consideration in such standards relative to permissible dosage of radiation;

(3) To require all sources of ionizing radiation to be shielded, transported, handled, used, stored, or disposed of in such a manner to provide compliance with the provisions of this Chapter and rules, regulations and standards adopted hereunder;

(4) To require, on prescribed forms furnished by the Department, registration, periodic reregistration, licensing, or periodic relicensing of persons to use, manufacture, produce, transport, transfer, install, service, receive, acquire, own, or possess radiation machines and other sources of radiation;

(5) To exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this Chapter when the Commission determines that the exemption of such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public;

(6) To promulgate rules and regulations pursuant to this Chapter which may provide for recognition of other state and federal licenses as the Commission shall deem desirable, subject to such registration requirements as it may prescribe; and exercise all incidental powers necessary to carry out the provisions of this Chapter;

(7) To provide by rule and regulation for an electronic product safety program to protect the public health and safety, which program may authorize regulation and inspection of sources of nonionizing radiation throughout the State.

(8) To adopt, amend, repeal or promulgate such rules, regulations, and standards relating to the nonradioactive, toxic and hazardous aspects of radioactive waste disposal, as may be necessary to protect the public health and safety.

(9) To adopt regulations establishing financial responsibility requirements for maintenance, operation and long-term care of low-level radioactive waste facilities, including insurance during the operation of the facility and adequate assurance of availability of funds for facility closure and post-closure monitoring and corrective measures. (1975, c. 718, s. 1; 1979, c. 694, s. 3; 1981, c. 704, s. 10.)

Effect of Amendments. — The 1981 amendment added subdivision (9).

As to short title and purpose of Session Laws 1981, c. 704, see note to § 104E-5.

Session Laws 1981, c. 704, s. 26, provides that the act shall be liberally construed to carry out the policies set forth in the act.

Session Laws 1981, c. 704, s. 27, contains a severability clause.

§ 104E-9. Powers and functions of Department of Human Resources.

The Department of Human Resources is authorized:

(1) To advise, consult and cooperate with other public agencies and with affected groups and industries;

(2) To encourage, participate in, or conduct studies, investigations, public hearings, training, research, and demonstrations relating to the control of sources of radiation, the measurement of radiation, the effect upon public health and safety of exposure to radiation and related problems;

(3) To require the submission of plans, specifications, and reports for new construction and material alterations on (i) the design and protective shielding of installations for radioactive material and radiation machines and (ii) systems for the disposal of radioactive waste materials, for the determination of any radiation hazard and may render opinions, approve or disapprove such plans and specifications;

(4) To collect and disseminate information relating to the sources of radiation, including but not limited to: (i) maintenance of a record of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations; and (ii) maintenance of a record of registrants and licensees possessing sources of radiation requiring registration or licensure under the provisions of this Chapter, and regulations hereunder, and any administrative or judicial action pertaining thereto; and to develop and implement a responsible data management program for the purpose of collecting and analyzing statistical information necessary to protect the public health and safety. The Department may refuse to make public dissemination of information relating to the source of radiation within this State after the Department first determines that the disclosure of such information will contravene the stated policy and purposes of this Chapter and such disclosure would be against the health, welfare and safety of the public.

(5) To respond to any emergency which involves possible or actual release of radioactive material; and to perform or supervise decontamination and otherwise protect the public health and safety in any manner deemed necessary. This section does not in any way alter or change the provisions of Chapter 166 of the North Carolina General Statutes concerning response during an emergency by the Department of Military and Veterans Affairs or its successor.

(6) To develop and maintain a statewide environmental radiation program for monitoring the radioactivity levels in air, water, soil, vegetation, animal life, milk, and food as necessary to ensure protection of the public and the environment from radiation hazards.

(7) To implement the provisions of this Chapter and the regulations duly promulgated under the Chapter.

(8) To establish annual fees for activities under this Chapter based on actual administrative costs to be applied to training, enforcement, and inspection pursuant to the provisions of this Chapter and to charge and collect fees from operators of low-level radioactive waste landfill facilities pursuant to the provisions of this Chapter. (1975, c. 718, s. 1; 1979, c. 694, s. 4; 1981, c. 704, s. 10.1.)

Effect of Amendments. — The 1981 amendment added subdivision (8).

As to short title and purpose of Session Laws 1981, c. 704, see note to § 104E-5.

Session Laws 1981, c. 704, s. 26, provides that the act shall be liberally construed to carry out the policies set forth in the act.

Session Laws 1981, c. 704, s. 27, contains a severability clause.

§ 104E-10. Licensing of by-product, source, and special nuclear materials and other sources of ionizing radiation.

(a) The Governor, on behalf of this State, is authorized to enter into agreements with the federal government providing for discontinuance of certain of the responsibilities of the federal government with respect to sources of ionizing radiation and the assumption thereof by this State.

(b) Upon the signing of an agreement with the Nuclear Regulatory Commission or its successor as provided in subsection (a) above, the Commission shall provide by rule or regulation for general or specific licensing of persons to use, manufacture, produce, transport, transfer, receive, acquire, own, or possess by-product, source, or special nuclear materials or devices, installations, or equipment utilizing such materials. Such rule or regulation shall provide for amendment, suspension, renewal or revocation of licenses. Each application for a specific license shall be in writing on forms prescribed by the Commission and furnished by the Department and shall state, and be accompanied by, such information or documents, including, but not limited to plans, specifications and reports for new construction or material alterations as the Commission may determine to be reasonable and necessary to decide the qualifications of the applicant to protect the public health and safety. The Commission may require all applications or statements to be made under oath or affirmation. Each license shall be in such form and contain such terms and conditions as the Commission may deem necessary. No license issued under the authority of this Chapter and no right to possess or utilize sources of radiation granted by any license shall be assigned or in any manner disposed of; and the terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules, regulations, or orders issued in accordance with the provisions of this Chapter.

(c) Any person who, on the effective date of an agreement under subsection (a) above, possesses a license issued by the federal government shall be deemed to possess the same pursuant to a license issued under this Chapter, which shall expire either 90 days after receipt from the Department of a notice of expiration of such license, or on the date of expiration specified in the federal license, whichever is earlier.

(d) Within five days of receiving an application for a license or an amendment to a license to operate a low-level radioactive waste facility, the Depart-

ment shall notify the clerk to the board of county commissioners or, if the facility is located within a city, the city clerk where the facility is proposed to be located. Prior to the issuance of a license or an amendment of an existing license the Department shall issue public notice. The Radiation Protection Commission or a designee shall conduct a public hearing in any county in which a person proposes to operate a radioactive waste processing or disposal facility, as defined by regulation by the Commission, or to enlarge an existing facility for such processing or disposal. Notice and the public hearing shall be in accordance with Chapter 150A. (1975, c. 718, s. 1; 1979, c. 694, s. 1; 1981, c. 704, s. 11.1.)

Effect of Amendments. — The 1981 amendment added the first sentence of subsection (d).

As to short title and purpose of Session Laws 1981, c. 704, see note to § 104E-5.

Sessions Laws 1981, c. 704, s. 26, provides that the act shall be liberally construed to carry out the policies set forth in the act.

Sessions Laws 1981, c. 704, s. 27, contains a severability clause.

§ 104E-10.1. Additional requirements for low-level radioactive waste facilities.

An applicant for a permit for a low-level radioactive facility shall satisfy the department that:

(1) Any low-level radioactive waste facility heretofore constructed or operated by the applicant (or any parent or subsidiary corporation if the applicant is a corporation) has been operated in accordance with sound waste management practices and in substantial compliance with federal and State laws and regulations; and

(2) The applicant (or any parent or subsidiary corporation if the applicant is a corporation) is financially qualified to operate the subject low-level radioactive waste facility. (1981, c. 704, s. 11.)

Editor's Note. — As to short title and purpose of Session Laws 1981, c. 704, see note to § 104E-5.

Session Laws 1981, c. 704, s. 26, provides that the act shall be liberally construed to carry out the policies set forth in the act.

Session Laws 1981, c. 704, s. 27, contains a severability clause.

§ 104E-10.2. Conveyance of property used for radioactive material disposal.

A license to dispose of radioactive waste materials on land shall include a legal description of the disposal site that would be sufficient as a description in an instrument of conveyance. The license to dispose of radioactive waste materials shall not be effective unless the owner of the disposal site files a certified copy of the license in the register of deeds' office in the county or counties in which the site is located. The register of deeds shall record the certified copy of the license and index it in the grantor index under the name of the owner of the land. When any such site is sold, leased, conveyed or transferred in any manner, the deed or other instrument of transfer shall contain in the description section in no smaller type than that used in the body of the deed or instrument a statement that the property has been used as a disposal site for radioactive waste materials and a reference by book and page to the recordation of the license. (1981, c. 480, s. 1.)

Editor's Note. — Session Laws 1981, c. 480, s. 5, makes the act effective Oct. 1, 1981.

§ 104E-16. Nonreverting Radiation Protection Fund.

(a) There is hereby established under the control and direction of the Department a Nonreverting Radiation Protection Fund which shall be used to defray the expenses of any project or activity for:

(1) Emergency response to and decontamination of radiation accidents as provided in G.S. 104E-9(5), or

(2) Perpetual maintenance and custody of radioactive materials as the Department may undertake.

In addition to any moneys that shall be appropriated or otherwise made available to it, the Fund may be maintained by fees, charges, penalties or other moneys paid to or recovered by or on behalf of the Department under the provisions of this Chapter. Any moneys paid to or recovered by or on behalf of the Department as fees, charges, penalties or other payments authorized by this Chapter shall be paid to the Radiation Protection Fund in an amount equal to the sum expended for the projects or activities in subdivisions (1) and (2) above.

(b) All moneys collected from low-level radioactive waste landfills according to the provisions of G.S. 104E-19(b) shall be paid to the Fund. Such moneys shall be separately accounted for and shall be available to defray the costs to the State for monitoring and care of low-level radioactive waste landfill facilities after the termination of the period during which the facility operator is required by applicable State and federal statutes and regulations to remain responsible for post-closure monitoring and care. The establishment of this Fund shall in no way be construed to relieve or reduce the liability of facility operators or any other persons for damages caused by the facility. The Fund shall be maintained by fees collected pursuant to the provisions of G.S. 104E-19(b). (1975, c. 718, s. 1; 1981, c. 704, s. 11.2.)

Effect of Amendments. — The 1981 amendment designated the former provisions of this section as subsection (a), and added subsection (b). The amendment also inserted "Nonreverting" preceding "Radiation Protection Fund" near the beginning of the introductory paragraph of subsection (a).

As to short title and purpose of Session Laws 1981, c. 704, see note to § 104E-5.

Session Laws 1981, c. 704, s. 26, provides that the act shall be liberally construed to carry out the policies set forth in the act.

Session Laws 1981, c. 704, s. 27, contains a severability clause.

§ 104E-18. Security for emergency response and perpetual maintenance costs.

(a) No person shall use, manufacture, produce, transport, transfer, receive, acquire, own, possess or dispose of radioactive material until that person shall have procured and filed with the Department such bond, insurance or other security as the Commission may by regulation require. Such bond, insurance or other security shall:

(1) Run in favor of the Radiation Protection Fund in the amount of the estimated total cost as established by the Commission that may be incurred by the State in any project or activity stated in G.S. 104E-16, and

(2) Have as indemnitor on such bond or insurance an insurance company licensed to do business in the State of North Carolina.

(b) The Commission may from time to time:

(1) Cause an audit to be made of any person that insures itself by means of other security as provided for in subsection (a) above;

(2) Amend or modify the estimated total cost for security established pursuant to this section; and

(3) Provide by regulation for the discontinuance of indemnification by one insurer and the assumption thereof by another insurer, as the Commission deems necessary to carry out the provisions of this Chapter and rules and regulations adopted and promulgated hereunder. (1975, c. 718, s. 1; 1981, c. 704, s. 12.)

Effect of Amendments. — The 1981 amendment substituted "own, possess or dispose of radioactive material" for "own or possess radioactive material" near the middle of the first sentence of the introductory paragraph of subsection (a). The amendatory act referred to the "second sentence" of subsection (a), but the "second line" was plainly intended.

As to short title and purpose of Session Laws 1981, c. 704, see note to § 104E-5.

Session Laws 1981, c. 704, s. 26, provides that the act shall be liberally construed to carry out the policies set forth in the act.

Session Laws 1981, c. 704, s. 27, contains a severability clause.

§ 104E-19. Fees.

(a) In order to meet the anticipated costs of administering the educational and training programs in G.S. 104E-11(c) and of enforcing and carrying out the inspection provisions in G.S. 104E-7(7) and 104E-11(a), the Department is authorized to charge and collect such reasonable fees as it may by rule or regulation establish.

(b) The Department is authorized to charge and collect fees from operators of low-level radioactive waste landfill facilities. Such fees shall be used to establish a fund sufficient for each individual facility to defray the anticipated costs to the State for monitoring and care of the facility after the termination of the period during which the facility operator is required by applicable State and federal statutes or regulations to remain responsible for post-closure monitoring and care. In establishing any such fees, consideration shall be given to the size of the facility, the nature of the low-level radioactive waste and the projected life of the facility. (1975, c. 718, s. 1; 1981, c. 704, s. 13.)

Effect of Amendments. — The 1981 amendment designated the former section as subsection (a) and added subsection (b). The amendment also substituted "it" for "the Commission" near the end of subsection (a).

As to short title and purpose of Session Laws 1981, c. 704, see note to § 104E-5.

Session Laws 1981, c. 704, s. 26, provides that the act shall be liberally construed to carry out the policies set forth in the act.

Session Laws 1981, c. 704, s. 27, contains a severability clause.

§ 104E-21. Conflicting laws.

(a) Ordinances, resolutions or regulations, now or hereafter in effect, of the governing body of a municipality or county or board of health relating to by-product, source and special nuclear materials shall not be superseded by this Chapter. Provided, that such ordinances or regulations are and continue to be consistent and compatible with the provisions of this Chapter, as amended, and rules and regulations promulgated by the Commission.

(b) It is the intent of the General Assembly to prescribe a uniform system for the management of low-level radioactive waste and to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of low-level radioactive waste by special, local or private acts or resolutions as provided in G.S. 143B-216.10(b). (1975, c. 718, s. 1; 1981, c. 704, s. 25.)

Effect of Amendments. — The 1981 amendment designated the former provisions of this section as subsection (a), and added subsection (b).

As to short title and purpose of Session Laws 1981, c. 704, see note to § 104E-5.

Session Laws 1981, c. 704, s. 26, provides that the act shall be liberally construed to carry out the policies set forth in the act.

Session Laws 1981, c. 704, s. 27, contains a severability clause.

§ 104E-23. Penalties; injunctive relief.

(a) Any person who violates the provisions of G.S. 104E-15 or 104E-20, or who hinders, obstructs, or otherwise interferes with any authorized representative of the Department in the discharge of his official duties in making inspections as provided in G.S. 104E-11, or in impounding materials as provided in G.S. 104E-14, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided by law. Any person who willfully violates the provisions of G.S. 104E-10.2 shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided by law.

(b) The Secretary may, either before or after the institution of any other action or proceedings authorized by law, institute a civil action in the superior court of the county in which the defendant in said action resides for injunctive relief to prevent a threatened or continued violation of any provision of this Chapter or any order or regulation issued pursuant to this Chapter. (1975, c. 718, s. 1; 1979, c. 694, s. 5; 1981, c. 480, s. 2.)

Effect of Amendments. — The 1981 amendment, effective Oct. 1, 1981, added the second sentence of subsection (a).

§ 104E-24. Administrative penalties.

(a) The Department may impose an administrative penalty on any person:

(1) Who fails to comply with this Chapter, any order issued hereunder, or any rules adopted pursuant to this Chapter;

(2) Who refuses to allow an authorized representative of the Radiation Protection Commission or the Department of Human Resources a right of entry as provided for in G.S. 104E-11 or impounding materials as provided for in G.S. 104E-14.

(b) Each day of a continuing violation shall constitute a separate violation. Such penalty shall not exceed ten thousand dollars ($10,000) per day. In determining the amount of the penalty, the Department shall consider the degree and extent of the harm caused by the violation. Any person assessed a penalty shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment.

(c) Any person wishing to contest a penalty or order issued under this section shall be entitled to an administrative hearing and judicial review in accordance with the procedures outlined in G.S. 150A-23 through 150A-52.

(d) The Secretary may bring a civil action in the superior court of the county in which such violation is alleged to have occurred to recover the amount of administrative penalty whenever a person:

(1) Who has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of such penalty, or

(2) Who has requested an administrative hearing fails to pay the penalty within 60 days after service of a written copy of the decision as provided in G.S. 105A-36. (1981, c. 704, s. 14.)

Editor's Note. — As to short title and purpose of Session Laws 1981, c. 704, see note to § 104E-5.

Session Laws 1981, c. 704, s. 26, provides that the act shall be liberally construed to carry out the policies set forth in the act.

Session Laws 1981, c. 704, s. 27, contains a severability clause.

Chapter 105.

Taxation.

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SUBCHAPTER V. GASOLINE TAX.

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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, in operation of a taxicab transporting fare-paying passengers, and in operation of private nonprofit transportation services.
105-446.3:1. Refund of taxes paid on gasohol.
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105-449. Exemption of gasoline used in public school transportation; false returns, etc.
105-449.01. July 1, 1981, inventory.

Article 36A.

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105-449.2. Definitions.
105-449.10. Records and reports required of user-seller or user.
105-449.16. Levy of tax; purposes; special provisions for gasohol and nonanhydrous ethanol.

SUBCHAPTER I. LEVY OF TAXES.

§ 105-1. Title and purpose of Subchapter.

CASE NOTES

Abortion Funding as Necessary Use and Purpose. — The funding of elective abortions constitutes a "necessary use and purpose of government" within the meaning of this section, and the appropriation and expenditure of State tax moneys for elective abortions does not violate N.C. Const., Art. V, § 5. Stam v. State, 47 N.C. App. 209, 267 S.E.2d 335 (1980).

ARTICLE 1.

Schedule A. Inheritance Tax.

§ 105-2. General provisions.

Legal Periodicals. — For note comparing federal and North Carolina estate, inheritance, and gift taxation with respect to creation and termination of tenancies by the entirety, see 15 Wake Forest L. Rev. 307 (1979).

For survey of 1979 tax law, see 58 N.C.L. Rev. 1548 (1980).

§ 105-3. Property exempt.

The following property shall be exempt from taxation under this Article:

(1) Property passing to or for the use of any one or more of the following: the United States, any state, territory or any political subdivision thereof, or the District of Columbia, for exclusively public purposes.

(2) Property passing to religious, charitable, or educational corporations, or to churches, hospitals, orphan asylums, public libraries, religious, benevolent, or charitable organizations, or passing to any trustee or trustees for religious, benevolent, or charitable purposes, where such religious, charitable, or educational institutions, corporations, churches, trusts, etc., are located within the State and not conducted for profit.

(3) Property passing to religious, educational, or charitable corporations, foundations or trusts, not conducted for profit, incorporated or created

or administered under the laws of any other state: If such other state levies no inheritance or estate taxes on property similarly passing from residents of such state to religious, educational or charitable corporations, foundations or trusts incorporated or created or administered under the laws of this State; or if such corporation, foundation or trust is one receiving and disbursing funds donated in this State for religious, educational or charitable purposes.

(4) The proceeds of all life insurance policies payable to beneficiaries named in subdivisions (1), (2) and (3) of this section. And also proceeds of all policies of insurance and the proceeds of all adjusted service certificates that have been or may be paid by the United States government, or that have been or may be paid on account of policies required to be carried by the United States government or any agency thereof, to the estate, beneficiary, or beneficiaries of any person who has served in the armed forces of the United States or in the merchant marine during the first or second World War or any subsequent military engagement; and proceeds, not exceeding the sum of twenty thousand dollars ($20,000), of all policies of insurance paid to the estate, beneficiary or beneficiaries of any person whose death was caused by enemy action during the second World War or any subsequent military engagement involving the United States. This provision will be operative only when satisfactory proof that the death was caused by enemy action is filed by the executor, administrator, or beneficiary with the Secretary of Revenue.

(5) The value of an annuity or other payment (other than a lump sum distribution described in section 402(e)(4) of the United States Internal Revenue Code, determined without regard to the next to the last sentence of section 402(e)(4)(A) of such Code) receivable by any beneficiary (other than the executor) under (a) an employees' trust (or under a contract or insurance policy purchased by an employees' trust) forming part of a pension, stock bonus, or profit-sharing plan, which at the time of the decedent's separation from employment (whether by death or otherwise), or at the time of termination of the plan if earlier, met the requirements of section 401(a) of the United States Internal Revenue Code; or (b) a retirement annuity contract purchased by an employer (and not by an employees' trust) pursuant to a plan, which at the time of decedent's separation from employment (by death or otherwise), or at the time of termination of the plan if earlier, met the requirements of section 403(a) or 403(b) of such Code. If such amounts payable after the death of the decedent under a plan described in clause (a) or (b) are attributable to any extent to payments or contributions made by the decedent, no exemption shall be allowed for that part of the value of such amounts in the proportion that the total payments or contributions made by the decedent bears to the total payments or contributions made. For purposes of the preceding sentence contributions or payments made by the decedent's employer or former employer under a trust or plan described in clause (a) or (b) shall not be considered to be contributed by the decedent. For purposes of this subdivision, contributions or payments on behalf of the decedent while he was an employee within the meaning of section 401(c)(1) of the United States Internal Revenue Code made under a trust or plan described in clause (a) or (b) shall, to the extent allowable as a deduction under section 404 of such Code, be considered to be made by a person other than the decedent and, to the extent not so allowable, shall be considered to be made by the decedent. Provided, that the value of such annuities or other payments receivable described in this subdivision shall not be exempt unless the payments received

therefrom are or will be subject to income taxation under Article 4 of this Subchapter, and if such payments are not or will not be subject to income taxation under Article 4 of this Subchapter the value of such annuities or other payments receivable shall be included in the gross value of the estate of the decedent and taxable under the provisions of this Article.

(6) The value of an annuity receivable by any beneficiary (other than the executor) under:

a. An individual retirement account described in section 408(a) of the Internal Revenue Code of 1954 as amended,

b. An individual retirement annuity described in section 408(b) of the Internal Revenue Code of 1954 as amended, or

c. A retirement bond described in section 409(a) of the Internal Revenue Code of 1954 as amended.

If any payment to an account described in paragraph a or for an annuity described in paragraph b or a bond described in paragraph c was not allowable as a deduction under section 219 or 220 of the Internal Revenue Code of 1954 as amended and was not a rollover contribution described in section 402(a)(5), 403(a)(4), 408(d)(3), or 409(b)(3)(C) of such Code, the preceding sentence shall not apply to that portion of the value of the amount receivable under such account, annuity, or bond (as the case may be) which bears the same ratio to the total value of the amount so receivable as the total amount which was paid to or for such account, annuity, or bond and which was not allowable as a deduction under section 219 or 220 of such Code and was not such a rollover contribution bears to the total amount paid to or for such account, annuity, or bond. For purposes of this subdivision, the term "annuity" means an annuity contract or other arrangement providing for a series of substantially equal periodic payments to be made to a beneficiary (other than the executor) for his life or over a period extending for at least 36 months after the date of the decedent's death.

(7) The total value of proceeds of an annuity or other payment receivable by any beneficiary (other than the executor) under a military family protection, or survivor benefit, plan, or other comparable plan, pursuant to Chapter 73 of Title 10 of the United States Code. (1939, c. 158, s. 2; 1943, c. 400, s. 1; 1947, c. 501, s. 1; 1951, c. 643, s. 1; 1959, c. 1247; 1973, c. 476, s. 193; 1975, c. 534, s. 1; c. 535; 1977, c. 900, ss. 2, 3; c. 1025; 1979, c. 801, ss. 17-19.)

Editor's Note. — This section is set out to correct an error in subdivision (4) as it appears in the 1979 replacement volume.

Legal Periodicals. — For survey of 1979 tax law, see 58 N.C.L. Rev. 1548 (1980).

§ 105-4. Rate of tax — Class A.

(b) (1) The surviving spouse of a decedent shall be allowed a credit of three thousand one hundred fifty dollars ($3,150) against the taxes imposed under this Article. Notwithstanding any other provisions of this Article, the credit allowed by this subdivision shall not exceed the amount of the tax imposed by this Article.

(2) If there is no surviving spouse or to the extent that a surviving spouse has not used all of the credit allowed under subdivision (1) of this subsection, the remainder of the credit shall be allowed on a pro rata basis according to tax liability to 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 the decedent's death, or who is then institutionalized on account of such mental incapacity or physical disability. Notwithstanding any other provisions of this Article, the credit allowed by this subdivision shall not exceed the amount of the tax imposed by this Article.

(3) To the extent that minor children and physically and mentally disabled children have not used all of the credit allowed under subdivision (2) of this subsection, the remainder of the credit shall be allowed on a pro rata basis according to tax liability to each of the other Class A beneficiaries. Notwithstanding any other provisions of this Article, the credit allowed by this subdivision shall not exceed the amount of the tax imposed by this Article. (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; 1977, c. 1004; 1979, c. 75; c. 801, ss. 20, 21; 1979, 2nd Sess., c. 1183, s. 1.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective as to estates of decedents dying on or after July 1, 1980, deleted, at the end of subdivision (3) of subsection (b), "except lineal ancestors of the decedent."

Only Part of Section Set Out. — As subsection (a) was not changed by the amendment, it is not set out.

Legal Periodicals. — For note comparing federal and North Carolina estate, inheritance, and gift taxation with respect to creation and termination of tenancies by the entirety, see 15 Wake Forest L. Rev. 307 (1979).

For survey of 1979 tax law, see 58 N.C.L. Rev. 1548 (1980).

§ 105-7. Estate tax.

Legal Periodicals. — For note comparing federal and North Carolina estate, inheritance, and gift taxation with respect to creation and termination of tenancies by the entirety, see 15 Wake Forest L. Rev. 307 (1979).

§ 105-7.1. Generation skipping transfer tax.

Legal Periodicals. — For survey of 1979 tax law, see 58 N.C.L. Rev. 1548 (1980).

§ 105-9. Deductions.

CASE NOTES

Life Insurance Proceeds Not a Deductible Decedents' Debt. — Where decedent obligated himself in a separation agreement to maintain in full force and effect a life insurance trust in the amount of at least $150,000 for the benefit of his former wife and his children, this obligation was fulfilled by decedent's payment of the necessary life insurance premiums, and the life insurance proceeds were not a debt of the decedent deductible for inheritance tax purposes under this section. In re Estate of Kapoor, 47 N.C. App. 500, 267 S.E.2d 418, cert. granted, 301 N.C. 90, 273 S.E.2d 296 (1980).

§ 105-9.1. As of what date property valued.

Legal Periodicals. — For note comparing federal and North Carolina estate, inheritance, and gift taxation with respect to creation and termination of tenancies by the entirety, see 15 Wake Forest L. Rev. 307 (1979).

§ 105-13. Life insurance proceeds.

Legal Periodicals. — For survey of 1978 law on taxation, see 57 N.C.L. Rev. 1142 (1979).

§ 105-15. When all heirs, legatees, etc., are discharged from liability.

Legal Periodicals. — For survey of 1978 law on taxation, see 57 N.C.L. Rev. 1142 (1979).

§ 105-23. Information by administrator and executor.

Legal Periodicals. — For survey of 1979 tax law, see 58 N.C.L. Rev. 1548 (1980).

ARTICLE 2.

Schedule B. License Taxes.

§ 105-33. Taxes under this Article.

(a) Taxes in this Article or schedule shall be imposed as State license taxes for the privilege of carrying on the business, exercising the privilege, or doing the act named, and nothing in this Article shall be construed to relieve any person, firm, or corporation from the payment of the tax prescribed in this Article or schedule: Provided, the obtaining of a license required by this Article shall not of itself authorize the practice of a profession, business, or trade for which a State qualification license is required.

(b) If the business made taxable or the privilege to be exercised under this Article or schedule is carried on at two or more separate places, a separate State license for each place or location of such business shall be required.

(c) Every State license issued under this Article or schedule shall be for 12 months, shall expire on the thirtieth day of June of each year, and shall be for the full amount of tax prescribed; provided, that where the tax is levied on an annual basis and the licensee begins such business or exercises such privilege after the first day of January and prior to the thirtieth day of June of each year, then such licensee shall be required to pay one half of the tax prescribed other than the tax prescribed to be computed and levied upon a gross receipts and/or percentage basis for the conducting of such business or the exercising of such privilege to and including the thirtieth day of June, next following. Every county, city and town license issued under this Article or schedule shall be for 12 months, and shall expire on the thirty-first day of May or thirtieth day of June of each year as the governing body of such county, city or town may determine: Provided, that where the licensee begins such business or exercises such privilege after the expiration of seven months of the current license year

of such municipality, then such licensee shall be required to pay one half of the tax prescribed other than the tax prescribed to be computed upon a gross receipts and/or percentage basis.

(d) The State license issued under G.S. 105-41, 105-42, 105-45, 105-53, 105-54, 105-55, 105-56, 105-57, 105-58, 105-59 and 105-91 shall be and constitute a personal privilege to conduct the profession or business named in the State license, shall not be transferable to any other person, firm or corporation and shall be construed to limit the person, firm or corporation named in the license to conducting the profession or business and exercising the privilege named in the State license to the county and/or city and location specified in the State license, unless otherwise provided in this Article or schedule. Other license issued for a tax year for the conduct of a business at a specified location shall upon a sale or transfer of the business be deemed a sufficient license for the succeeding purchaser for the conduct of the business specified at such location for the balance of the tax year: Provided, that if the holder of a license under this schedule moves the business for which a license has been paid to another location, a new license may be issued to the licensee at a new location for the balance of the license year, upon surrender of the original license for cancellation and the payment of a fee of five dollars ($5.00) for each license certificate reissued.

(e) Whenever, in any section of this Article or schedule, the tax is graduated with reference to the population of the city or town in which the business is to be conducted or the privilege exercised, the minimum tax provided in such section shall be applied to the same business or privilege when conducted or exercised outside of the municipality, unless such business is conducted or privilege exercised within one mile of the corporate limits of such municipality, in which event the same tax shall be imposed and collected as if the business conducted or the privilege exercised were inside of the corporate limits of such municipality: Provided, that with respect to taxes in this Article, assessed on a population basis, the same rates shall apply to incorporated towns and unincorporated places or towns alike, with the best estimate of population available being used as a basis for determining the tax in unincorporated places or towns. The term "places or towns" means any unincorporated community, point or collection of people having a geographical name by which it may be generally known, and is so generally designated.

(f) All State taxes imposed by this Article shall be paid to the Secretary of Revenue, or to one of his deputies; shall be due and payable on or before the first day of July of each year, and after such date shall be deemed delinquent, and subject to all the remedies available and the penalties imposed for the payment of delinquent State license and privilege taxes; provided, that if a person, firm, or corporation begins any business or the exercise of any privilege requiring a license under this Article or schedule after the thirtieth day of June and prior to the thirtieth day of the following June of any year, then such person, firm, or corporation shall apply for and obtain a State license for conducting such business or exercising any such privilege in advance, and before the beginning of such business or the exercise of such privilege; and a failure to so apply and to obtain such State license shall be and constitute a delinquent payment of the State license tax due, and such person, firm, or corporation shall be subject to the remedies available and penalties imposed for the payment of such delinquent taxes.

(g) The taxes imposed and the rates specified in this Article or schedule shall apply to the subjects taxed on and after the first day of June, 1939, and prior to said date the taxes imposed and the rates specified in the Revenue Act of 1937 shall apply.

(h) It shall be the duty of a grantee, transferee, or purchaser of any business or property subject to the State license taxes imposed in this Article to make diligent inquiry as to whether the State license tax has been paid, but when

such business or property has been granted, sold, transferred, or conveyed to an innocent purchaser for value and without notice that the vendor owed or is liable for any of the State license taxes imposed under this Article, such property, while in the possession of such innocent purchaser, shall not be subject to any lien for such State license taxes.

(i) All county or municipal taxes levied by the board of county commissioners of any county, or by the board of aldermen or other governing body of any municipality within this State, under the authority conferred in this Article, shall be collected by the sheriff or tax collector of such county and by the tax collector of such city, and the county or municipal license shall be issued by such officer.

(j) Any person, firm, or corporation who shall wilfully make any false statement in an application for a license under any section of this Article or schedule shall be guilty of a misdemeanor, and upon conviction shall be fined and/or imprisoned in the discretion of the court, which fine shall not be less than the amount of tax specified under such section, and shall be in addition to the amount of such tax.

(k) Wherever the business taxed in G.S. 105-61, 105-62, and/or 105-65.2 is of a seasonal character at summer or winter resorts, license may be issued for such seasonal business at one half of the annual license tax for the four months' period from June first to October first in summer resorts and from December first to April first in winter resorts. (1939, c. 158, s. 100; 1943, c. 400, s. 2; 1951, c. 643, s. 2; 1953, c. 981, s. 1; 1963, c. 294, s. 3; 1973, c. 476, s. 193; 1977, c. 657, s. 1; 1981, c. 83, ss. 1, 2.)

Effect of Amendments. — The 1981 amendment deleted "105-48" from the list of statutory provisions in the first sentence of subsection (d), and substituted "and/or 105-65.2" for "105-79 and/or 105-84" in the list of statutory provisions in subsection (k).

§ 105-36.1. Amusements — outdoor theatres.

(a) Every person, firm or corporation engaged in the business of operating an outdoor or drive-in moving picture show for compensation shall apply for and obtain in advance from the Secretary of Revenue a State license for the privilege of engaging in such business and shall pay a tax in accordance with the following schedule:

For drive-in or outdoor theatres located in or within 10 miles of a corporate limits of cities and towns of

	Car Capacity Up to 150	Car Capacity 150 to 300	Car Capacity 300 to 500	Car Capacity 500 or over
Less than 3,000 pop.	$ .67 per car	$ .75 per car	$ .80 per car	$ .87 per car
3,000 to 5,000 pop.	.74 per car	.80 per car	.87 per car	.94 per car
5,000 to 10,000 pop.	.80 per car	.87 per car	.95 per car	1.00 per car
10,000 to 20,000 pop.	.87 per car	.94 per car	1.00 per car	1.07 per car
20,000 to 40,000 pop.	.94 per car	1.00 per car	1.07 per car	1.17 per car
40,000 and over	1.00 per car	1.07 per car	1.17 per car	1.34 per car

In addition to the foregoing tax based upon population and car capacity, every operator of a business taxed under this section shall pay a tax of one dollar (1.00) for each seat or seating space provided for patrons outside of motor vehicles driven into the enclosure by patrons. For the purpose of this section, car capacity shall be determined by the number of outlets provided for individual speakers. In the case of drive-in or outdoor theatres not equipped with individual speakers or outlets therefor, but which are equipped with one or more central speakers, the car capacity shall be regarded and rated as 200.

In the case of drive-in or outdoor theatres located within 10 miles of the corporate limits of more than one municipality, the tax herein levied shall be paid in accordance with the rate applicable to the largest of such municipalities.

For the purpose of this section, unincorporated communities shall be regarded as incorporated municipalities, with the corporate limits deemed to extend one mile in every direction from the intersection of the two principal streets in such unincorporated community; and if there is no such intersection, then from the recognized business center of such unincorporated community.

In the case of drive-in or outdoor theatres located more than 10 miles from the corporate limits of any municipality, the tax shall be paid at the rate herein provided for such theatres located within 10 miles of the corporate limits of a municipality having a population of 3,000 to 5,000.

In the case of drive-in or outdoor theatres operating less than six months each year, the tax shall be one half the tax herein levied.

(b) Cities and towns may levy upon the businesses taxed in this section not in excess of the following amounts:

In cities or towns of less than 1,500 population	$ 12.50
In cities or towns of 1,500 and less than 3,000 population	31.25
In cities or towns of 3,000 and less than 5,000 population	62.50
In cities or towns of 5,000 and less than 10,000 population	87.50
In cities or towns of 10,000 and less than 15,000 population	137.50
In cities or towns of 15,000 and less than 25,000 population	187.50
In cities or towns of 25,000 population or over	212.50

(1949, c. 392, s. 1; 1957, c. 1340, s. 2; 1959, c. 1259, s. 9F; 1973, c. 476, s. 193; 1981, c. 45, s. 1.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, deleted "or places where vaudeville exhibitions or performances are given" following "drive-in moving picture show" near the beginning of the first paragraph of subsection (a).

§ 105-37. Amusements — moving pictures — admission.

(a) Every person, firm, or corporation engaged in the business of operating a moving picture show for compensation shall apply for and obtain in advance from the Secretary of Revenue a State license for the privilege of engaging in such business, and shall pay for such State license for each room, hall, or tent used the following tax:

Population of Cities or Towns	Seating Capacity up to 600 Seats	Seating Capacity of 600 to 1200 Seats	Seating Capacity over 1200 Seats
Less than 1,500	$ 62.50	$ 75.00	$ 100.00
1,500 and less than 3,000	100.00	125.00	150.00
3,000 and less than 5,000	125.00	150.00	200.00
5,000 and less than 10,000	175.00	200.00	300.00
10,000 and less than 15,000	200.00	300.00	400.00
15,000 and less than 25,000	250.00	400.00	500.00
25,000 and less than 40,000	300.00	500.00	750.00
40,000 or over	350.00	700.00	1,200.00

(b), (c) Repealed by Session Laws 1979, c. 801, s. 26, effective July 1, 1979.

(d) For any moving picture show operated at bathing beaches or resort towns for less than six months each year, the tax levied shall be one half the annual tax provided above, based upon the population of the city or town in which such seasonal moving picture show shall be operated.

(e) For any motion picture show operating three days or less each week, the tax levied shall be one half the annual tax provided above, based upon the population of the city or town in which such theatre is located.

(f) Counties shall not levy any license tax on the business taxed under the foregoing portions of this section. On the business described in the first paragraph of this section, cities and towns may levy a license tax not in excess of the following:

In cities or towns of less than 1,500 population	$ 12.50
In cities or towns of 1,500 and less than 3,000 population	31.25
In cities or towns of 3,000 and less than 5,000 population	62.50
In cities or towns of 5,000 and less than 10,000 population	87.50
In cities or towns of 10,000 and less than 15,000 population	137.50
In cities or towns of 15,000 and less than 25,000 population	187.50
In cities or towns of 25,000 population or over	212.50

On a business described in subsections (d) or (e) of this section, cities and towns may levy a license tax not in excess of one half of the tax authorized by the schedule set forth in this subsection. (1939, c. 158, s. 105; 1943, c. 400, s. 2; 1945, c. 708, s. 2; 1947, c. 501, s. 2; 1949, c. 392, s. 1; c. 1201; 1957, c. 1340, s. 2; 1959, c. 1259, s. 9G; 1973, c. 476, s. 193; 1977, c. 657, s. 1; 1979, c. 801, ss. 25-27; 1981, c. 45, ss. 2, 3.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, deleted "or place where vaudeville exhibitions or performances are given or operating a theatre or opera house where public exhibitions or performances are given" following "moving picture show" near the beginning of the introductory paragraph of subsection (a).

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

(a) Every person, firm or corporation engaged in the business of giving, offering or managing any form of entertainment or amusement not otherwise taxed or specifically exempted in this Article, for which an admission is charged, shall pay an annual license tax for each room, hall, tent or other place where such admission charges are made, graduated according to population, as follows:

In cities or towns of less than 1,500 population	$10.00
In cities or towns of 1,500 and less than 3,000 population	15.00
In cities or towns of 3,000 and less than 5,000 population	20.00
In cities or towns of 5,000 and less than 10,000 population	25.00
In cities or towns of 10,000 and less than 15,000 population	30.00
In cities or towns of 15,000 and less than 25,000 population	40.00
In cities or towns of 25,000 population or over	50.00

In addition to the license tax levied in the above schedule, such person, firm, or corporation shall pay an additional tax upon the gross receipts of such business at the rate of tax levied in Article V, Schedule E, G.S. 105-164.1 to 105-164.44, upon retail sales of merchandise. Reports shall be made to the Secretary of Revenue, in such form as he may prescribe, within the first 10 days of each month covering all such gross receipts for the previous month, and the

additional tax herein levied shall be paid monthly at the time such reports are made. The annual license tax herein levied shall be treated as an advance payment of the tax upon gross receipts herein levied, and the annual license tax shall be applied as a credit upon or advance payment of the gross receipts tax.

Every person, firm, or corporation giving, offering, or managing any dance or athletic contest of any kind, except high school and elementary school athletic contests, for which an admission fee in excess of fifty cents (50¢) is charged, shall pay an annual license tax of five dollars ($5.00) for each location where such charges are made, and, in addition, a tax upon the gross receipts derived from admission charges in excess of fifty cents (50¢) at the rate of tax levied in Article V, Schedule E, G.S. 105-164.1 to 105-164.44, upon retail sales of merchandise. The additional tax upon gross receipts shall be levied and collected in accordance with such regulations as may be made by the Secretary of Revenue. No tax shall be levied on admission fees for high school and elementary school contests.

Dances and other amusements actually promoted and managed by civic organizations and private and public secondary schools, shall not be subject to the license tax imposed by this section and the first one thousand dollars ($1,000) of gross receipts derived from such events shall be exempt from the gross receipts tax herein levied when the entire proceeds of such dances or other amusements are used exclusively for the school or civic and charitable purposes of such organizations and not to defray the expenses of the organization conducting such dance or amusement. The mere sponsorship of dance or other amusement by such a school, civic, or fraternal organization shall not be deemed to exempt such dance or other amusement as provided in this paragraph, but the exemption shall apply only when the dance or amusement is actually managed and conducted by the school, civic, or fraternal organization and the proceeds are used as hereinbefore required.

Dances and other amusements promoted and managed by a qualifying corporation that operates a center for the performing and visual arts are exempt from the license tax and the gross receipts tax imposed under this section if the dance or other amusement is held at the center. "Qualifying corporation" means a corporation as defined in G.S. 105-130.2(1) that is exempt from income tax under G.S. 105-130.11(a)(3). "Center for the performing and visual arts" means a facility, having a fixed location, that provides space for dramatic performances, studios, classrooms and similar accommodations to organized arts groups and individual artists. This exemption shall not apply to athletic events.

(b) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of one half the base tax levied herein.

(c) No tax shall be collected pursuant to this section with respect to entertainments or amusements offered or given on the Cherokee Indian reservation when the person, firm or corporation giving, offering or managing such entertainment or amusement is authorized to do business on the reservation and pays the tribal gross receipts levy to the tribal council. (1939, c. 158, s. 105; 1943, c. 400, s. 2; 1945, c. 708, s. 2; 1947, c. 501, s. 2; 1963, c. 1231; 1967, c. 865; 1973, c. 476, s. 193; 1977, c. 657, s. 1; 1981, c. 2; c. 83, s. 3; c. 977.)

Effect of Amendments. — The first 1981 amendment, effective July 1, 1981, deleted the former fourth sentence of the third paragraph of subsection (a), which read: "The tax levied in this last portion of this section shall apply to all privately owned toll bridges, including all charges made for all vehicles, freight and passenger, and the minimum charge of fifty cents (50¢) for admission shall not apply to bridge tolls."

The second 1981 amendment substituted "G.S. 105-164.1 to 105-164.44" for "G.S.

105-164 to 105-187" in the second and third paragraphs of subsection (a).

The third 1981 amendment added the fifth paragraph of subsection (a).

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

Every person, firm, or corporation engaged in the business of exhibiting performances, such as a circus, menagerie, wild west show, dog and/or pony show, or any other show, exhibition or performance similar thereto, not taxed in other sections of this Article, shall apply for and obtain a State license from the Secretary of Revenue for the privilege of engaging in such business, and pay for such license the following tax for each day or part of a day:

(1) Such shows and/or exhibitions traveling on railroads and requiring transportation of:

Not more than two cars	$ 30.00
Three to five cars, inclusive	45.00
Six to 10 cars, inclusive	90.00
11 to 20 cars, inclusive	125.00
21 to 30 cars, inclusive	175.00
31 to 50 cars, inclusive	250.00
Over 50 cars	300.00

(2) Such shows and/or exhibitions traveling by automobiles, trucks, or other vehicles, other than railroad cars, and requiring transportation by:

Not over two vehicles	$ 7.50
Three to five vehicles	10.00
Six to 10 vehicles	15.00
11 to 20 vehicles	25.00
21 to 30 vehicles	45.00
31 to 50 vehicles	60.00
51 to 75 vehicles	75.00
76 to 100 vehicles	100.00
Over 100 vehicles, per vehicle in excess thereof	5.00

It is the intent of this subdivision that every vehicle used in transporting circus property or personnel, whether owned by the circus or by others, shall be counted in computing the tax.

(3) Every person, firm, or corporation by whom any show or exhibition taxed under this section is owned or controlled shall file with the Secretary of Revenue, not less than five days before entering this State for the purpose of such exhibitions or performances therein, a statement, under oath, setting out in detail such information as may be required by the Secretary of Revenue covering the places in the State where exhibitions or performances are to be given, the character of the exhibitions, the mode of travel, the number of cars or other conveyances used in transferring such shows, and such other and further information as may be required. Upon receipt of such statement, the Secretary of Revenue shall fix and determine the amount of State license tax with which such person, firm, or corporation is chargeable, shall endorse his findings upon such statement, and shall transmit a copy of such statement and findings to each such person, firm, or corporation to be charged, to the sheriff or tax collector of each county in which exhibitions or performances are to be given, and to the division deputy of the Secretary of Revenue, with full and particular instructions as to the State license tax to be paid.

Before giving any of the exhibitions or performances provided for in such statement, the person, firm, or corporation making such statement shall pay the Secretary of Revenue the tax so fixed and determined. If one or more of such exhibitions or performances included in such statement and for which the tax has been paid shall be canceled, the Secretary of Revenue may, upon proper application made to him, refund the tax for such canceled exhibitions or performances. Every such person, firm, or corporation shall give to the Secretary of Revenue a notice of not less than five days before giving any of such exhibitions or performances in each county.

(4) The sheriff of each county in which such exhibitions or performances are advertised to be exhibited shall promptly communicate such information to the Secretary of Revenue; and if the statement required in this section has not been filed as provided herein, or not filed in time for certified copies thereof, with proper instructions, to be transmitted to the sheriffs of the several counties and the division deputy commissioner, the Secretary of Revenue shall cause his division deputy to attend at one or more points in the State where such exhibitions or performances are advertised or expected to exhibit, for the purpose of securing such statement prescribed in this section, of fixing and determining the amount of State license tax with which such person, firm, or corporation is taxable, and to collect such tax or give instructions for the collection of such tax.

(5) Every such person, firm, or corporation by whom or which any such exhibition or performance described in this section is given in any county, city or town, or within five miles thereof, wherein is held an annual agricultural fair, during the week of such annual agricultural fair, shall pay a State license of one thousand dollars ($1,000) for each exhibition or performance in addition to the license tax first levied in this section, to be assessed and collected by the Secretary of Revenue or his duly authorized deputy.

(6) The provisions of this section, or any other section of this Article, shall not be construed to allow without the payment of the tax imposed in this section, any exhibition or performance described in this section for charitable, benevolent, educational, or any other purpose whatsoever, by any person, firm, or corporation who is engaged in giving such exhibitions or performances, no matter what terms of contract may be entered into or under what auspices such exhibitions or performances are given. It being the intent and purpose of this section that every person, firm, or corporation who or which is engaged in the business of giving such exhibitions or performances, whether a part or all of the proceeds are for charitable, benevolent, educational, or other purposes or not, shall pay the State license tax imposed in this section.

(7) Every such person, firm, or corporation who shall give any such exhibitions or performances mentioned in this section within this State, before the statement provided for has been filed with the Secretary of Revenue, or before the State license tax has been paid, or which shall, after the filing of such statement, give any such exhibitions or performances taxable at a higher rate than the exhibition or performance authorized by the Secretary of Revenue upon the statement filed, shall pay a State license tax of fifty percent (50%) greater than the tax hereinbefore prescribed, to be assessed and collected either by the Secretary of Revenue or by his division deputy.

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.

105-164.1 to 105-164.44, upon retail sales of merchandise. The license tax herein levied shall be treated as an advance payment of the tax upon 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 of supervision as may be necessary to effectuate the purpose of this Subchapter.

(8) In lieu of the tax levied in G.S. 105-86, each circus, or other form of amusement taxed under this section, advertising by means of outdoor advertising displays, a bill posting or as otherwise defined in G.S. 105-86, shall pay a tax of one hundred dollars ($100.00) for a statewide license for the privilege of advertising in this manner, said tax to be in addition to the other taxes levied in this section.

(9) Counties, cities, and towns may levy a license tax on the business taxed under this section not in excess of one half of the license tax levied by the State, but shall not levy a parade tax or a tax under subdivision (8) of this section. (1939, c. 158, s. 106; 1973, c. 476, s. 193; 1981, c. 83, s. 3.)

Effect of Amendments. — The 1981 amendment substituted "G.S. 105-164.1 to 105-164.44" for "G.S. 105-164 to 105-187" in the second paragraph of subdivision (7).

§ 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, or riding devices along with two or less concession stands 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 or concession stand. In lieu of the five dollars ($5.00) 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 or concession stand, 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 or concession

stands not in excess of five dollars ($5.00) for each such device or concession stand.

Provided further, that except for the operation of two or less concession stands, as authorized above, 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.

Provided, further, that the work "week" shall, for the purpose of this section mean any seven consecutive days.

(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.

The taxes levied herein shall not apply to any eating places or concession stands operated wholly and exclusively by any church, school, or civic organization.

(c) Subject to the exceptions provided in subsection (b), 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 the 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. 105-164.1 to 105-164.44, upon retail sales of merchandise. The license tax herein levied shall be treated as an advanced 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. 743, s. 2; 1973, c. 476, s. 193; c. 1227; 1975, c. 142, ss. 1-3; c. 726; 1981, c. 83, s. 3.)

Effect of Amendments. — The 1981 amendment substituted "G.S. 105-164.1 to 105-164.44" for "G.S. 105-164 to 105-187" in the third paragraph of subsection (c).

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

(a) Every practicing attorney-at-law, practicing physician, veterinary, surgeon, osteopath, chiropractor, chiropodist, dentist, oculist, optician, optometrist, any person practicing any professional art of healing for a fee or reward, every practicing professional engineer as defined in Chapter 89C of the General Statutes, every practicing land surveyor as defined in Chapter 89C of the General Statutes, every architect and landscape architect, photographer, canvasser for any photographer, agent of a photographer in transmitting pictures or photographs to be copied, enlarged or colored (including all persons enumerated in this section employed by the State, county, municipality, a corporation, firm or individual), and 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 the business of selling or offering for sale, buying or offering to buy, negotiating the purchase, sale, or exchange of real estate, or who is engaged in the business of leasing or offering to lease, renting or offering to rent, or of collecting any rents as agent for another for compensation, or who is engaged in the business of soliciting and/or negotiating loans on real estate as agent for another for a commission, brokerage and/or other compensation, shall apply for and obtain from the Secretary of Revenue a statewide license for the privilege of engaging in such business or profession, or the doing of the act named, and shall pay for such license twenty-five dollars ($25.00): Provided, that no professional man or woman shall be required to pay a privilege tax after he or she has arrived at the age of 75 years. Further provided, that it shall be unlawful for a nonresident of this State to engage in the real estate business in this State, as defined in this section, unless the State of residence of such person will permit a resident of this State to engage in such business. Any person who shall engage in the real estate business in this State in violation of the terms of this provision shall be guilty of a misdemeanor and shall be punished in the discretion of the court; and further provided, that the obtaining of a real estate dealer's license by such person shall not authorize such nonresident to engage in the real estate business in this State, and provided further that in all prosecutions under this section, a certificate under the hand and seal of the Secretary of Revenue that the accused filed no income tax returns with his department for the preceding taxable year shall be prima facie evidence that the accused is a nonresident and that his license is void.

(b) Persons practicing the professional art of healing for a fee or reward shall be exempt from the payment of the license tax levied in the preceding paragraph of this section, if such persons are adherents of established churches or religious organizations and confine their healing practice to prayer or spiritual means.

(c) Every person engaged in the public practice of accounting as a principal, or as a manager of the business of public accountant, shall pay for such license twenty-five dollars ($25.00), and in addition shall pay a license of twelve dollars and fifty cents ($12.50) for each person employed who is engaged in the capacity of supervising or handling the work of auditing, devising or installing systems of accounts.

(d) Every licensed mortician or embalmer shall in like manner apply for and obtain from the Secretary of Revenue a statewide license for practicing his profession, whether for himself or in the employ of another of ten dollars ($10.00).

(e) Licenses issued under this section are issued as personal privilege licenses and shall not be issued in the name of a firm or corporation: Provided, that a licensed photographer having a located place of business in this State,

shall be liable for a license tax on each agent or solicitor, employed by him for soliciting business. If any person engages in more than one of the activities for which a privilege tax is levied by this section, such person shall be liable for a privilege tax with respect to each activity engaged in.

(f) Repealed by Session Laws 1981, c. 17, effective July 1, 1981.

(g) License Revocable for Failure To Pay Tax. Whenever it shall be made to appear to any judge of the superior court that any person practicing any profession for which the payment of a license tax is required by this section has failed, or fails, to pay the professional tax levied in this section, and execution has been issued for the same by the Secretary of Revenue and returned by the proper officer "no property to be found," or returned for other cause without payment of the tax, it shall be the duty of the judge presiding in the superior court of the county in which such person resides, upon presentation therefor, to cause the clerk of said court to issue a rule requiring such person to show cause by the next session of court why such person should not be deprived of license to practice such profession for failure to pay such professional tax. Such rule shall be served by the sheriff upon said person 20 days before the next session of the court, and if at the return term of court such person fails to show sufficient cause, the said judge may enter a judgment suspending the professional license of such person until all such tax as may be due shall have been paid, and such order of suspension shall be binding upon all courts, boards and commissions having authority of law in this State with respect to the granting or continuing of license to practice any such profession.

(h) Counties, cities, or towns shall not levy any license tax on the business or professions taxed under this section; and the statewide license herein provided for shall privilege the licensee to engage in such business or profession in every county, city, or town in this State. (1939, c. 158, s. 109; 1941, c. 50, s. 3; 1943, c. 400, s. 2; 1949, c. 683; 1953, c. 1306; 1957, c. 1064; 1973, c. 476, s. 193; 1981, c. 17; c. 83, ss. 4, 5.)

Effect of Amendments. — The first 1981 amendment, effective July 1, 1981, deleted subsection (f), which read: "Only one-half of the tax levied in this section shall be collected from those persons whose gross receipts from the business or profession for the preceding year did not exceed one thousand dollars ($1,000)."

The second 1981 amendment substituted "Chapter 89C" for "Chapter 89" in two places near the beginning of the first sentence of subsection (a), and substituted "next session" for "next term" near the end of the first sentence of subsection (g) and near the beginning of the second sentence of subsection (g).

§ 105-42. Private detectives and investigators.

(a) Every person engaged in business as a "private detective" or "private investigator" 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). However, no officer or employee of this State, or of the United States, or of any political subdivision of either, while such officer or employee is engaged in the performance of official duties within the course and scope of his governmental employment, shall be subject to the tax imposed by this section.

(b) "Private detective" or "private investigator" means any person who engages in the business of or accepts employment to furnish, agrees to make, or makes an investigation for the purpose of obtaining information with reference to:

(1) Crime or wrong done or threatened against the United States or any state or territory of the United States;

(2) The identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person;

(3) The location, disposition, or recovery of lost or stolen property;
(4) The cause or responsibility for fires, libels, losses, accidents, damages, or injuries to persons or to properties, provided that scientific research laboratories and consultants shall not be included in this definition;
(5) Securing evidence to be used before any court, board, officer, or investigation committee; or
(6) Protection of individuals from serious bodily harm or death.

However, the employee of a security department of a private business which conducts investigations exclusively on matters internal to the business affairs of the business shall not be required to be licensed as a private detective or investigator under this section.

(c) So long as private detectives and private investigators are required to be licensed pursuant to the provisions of Chapter 74C of the General Statutes, or any successor thereto, no 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 Chapter 74C, or any successor thereto.

(d) 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; 1975, c. 19, s. 27; 1981, c. 83, s. 6.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, rewrote this section.

§ 105-48.1: Repealed by Session Laws 1981, c. 7, effective July 1, 1981.

§ 105-53. Peddlers.

(a) Any person, firm, or corporation who or which shall carry from place to place any goods, wares, or merchandise, and offer to sell or barter the same, or actually sells or barters the same, shall be deemed a peddler, except such person, firm, or corporation who or which is a wholesale dealer, with an established warehouse in this State and selling only to merchants for resale, and shall apply for and procure from the Secretary of Revenue a State license for the privilege of transacting such business, and shall pay for such license the following tax:

Peddler, on foot, for each county	$ 10.00
Peddler, with horse or other animal, and with or without vehicle, each county, for each vehicle	15.00
Peddler, resident of this State, with vehicle propelled by motor or other mechanical power, for each county, for each vehicle	25.00
Peddler, not a resident of this State, with vehicle propelled by motor or other mechanical power, for four or less counties, for each vehicle	100.00
Peddler, not a resident of this State, with vehicle propelled by motor or other mechanical power, for each county in excess of four, for each vehicle	25.00

(b) Any person, firm, or corporation employing the services of another as a peddler, either on a salary or commission basis, and/or furnishing spices, flavoring extracts, toilet articles, soaps, insecticide, proprietary medicine and household remedies in original packages of the manufacturer and other packaged articles of the kind commonly used on the farm and in the home, to be sold by a peddler, under any kind of contractual agreement, shall be liable for the payment of taxes levied in this section, instead of the peddler.

Provided, however, any person peddling fruits, vegetables, or products of the farm shall pay a license tax of twenty-five dollars ($25.00) per year, which

license shall be statewide. Counties, cities and towns may levy a tax under this subsection not in excess of one half of the State tax. Provided, however, no county, city or town shall issue any license, or permit any person, firm, or corporation to do any business under the provisions of this subsection, until and unless such person shall produce and exhibit to the tax collector of such county, city or town, his or its State license for the privilege of engaging in such business.

(c) Any person, firm or corporation who or which sells or offers to sell from a cart, truck, automobile, or other vehicle operated over and upon the streets and/or highways within this State any fresh fruits and/or vegetables shall be deemed a peddler within the meaning of this section and shall pay the annual license tax levied in subsection (a) of this section with reference to the character of the vehicle employed. Any person, firm, or corporation who or which sells or offers for sale from any railway car fresh fruits and/or vegetables shall be deemed a peddler within the meaning of this section, and shall pay an annual tax of twenty-five dollars ($25.00). Nothing in this section shall apply to the sale of farm products raised on the premises owned or occupied by the person, firm, or corporation, his or its bona fide agent or employee selling same.

(d) Every itinerant salesman or merchant who shall expose for sale, either on the street or in a building occupied, in whole or in part, for that purpose, any goods, wares or merchandise, not being a regular merchant in such county, shall apply for in advance and procure a State license from the Secretary of Revenue for the privilege of transacting such business, and shall pay for such license a tax of one hundred dollars ($100.00) in each county in which he shall conduct or carry on such business.

Any person, firm, or corporation which operates a flea market at which any itinerant salesman or merchant exposes for sale any goods, wares, or merchandise shall apply for in advance and procure a State license from the Secretary of Revenue and shall pay for such license a tax of one hundred dollars ($100.00) for each county in which such a flea market is operated. No itinerant salesman or merchant shall be required to procure or pay for a separate license under this section to offer merchandise for sale only at a flea market already licensed under this paragraph.

Any salesman or merchant, offering for sale goods, wares or merchandise, other than fruits and farm products, shall be deemed an itinerant, within the meaning of this subsection, who conducts said business within the county for less than six consecutive months, except in case of discontinuance for one of the reasons hereinafter mentioned. When any salesman or merchant, beginning said business, does not pay the tax herein levied in advance, on the ground of stated intention to become a regular merchant, the Secretary of Revenue may, in his discretion, require said salesman or merchant to post satisfactory bond, or make a cash deposit, in the sum of one hundred dollars ($100.00), which bond or deposit shall be forfeited in payment of the tax herein levied in case such salesman or merchant discontinues said business in the county within less than six months for any reason other than death or disablement of said salesman or merchant, or insolvency of said business, or destruction of the stock by fire or other catastrophe. In like manner the tax collector of any county or city levying a tax, as permitted by subsection (g), on the business taxed in this subsection, may, in his discretion, require posting of satisfactory bond or cash deposit in an amount equivalent to the tax so levied by said county or city; and said bond or deposit shall in like manner be subject to forfeiture in payment of said tax. Any salesman or merchant failing to post such bond or make such deposit within three days after being notified to do so by the Secretary or collector, shall immediately become liable for the taxes levied or authorized to be levied on the business taxed in this subsection. When any salesman or merchant, having been required to post such bond or deposit, has conducted said business for six consecutive months, or has discontinued said business

within six months for one of the reasons specifically mentioned herein, he shall be entitled to have said bond canceled or said deposit returned.

(e) The provisions of this section shall not apply to any person, firm, or corporation who sells or offers for sale books, periodicals, printed music, ice, wood for fuel, fish, beef, mutton, pork, bread, cakes, pies, products of the dairy, poultry, eggs, livestock, or articles produced by the individual vendor offering them for sale, but shall apply to medicines, drugs, or articles assembled.

(f) The board of county commissioners of any county in this State, upon proper application, may exempt from the annual license tax levied in this section disabled soldiers of the first and second World Wars, who have been bona fide residents of this State for 12 or more months, continuously, and the blind who have been bona fide residents of this State for 12 or more months continuously, widows with dependent children; and when so exempted, the board of county commissioners shall furnish such person or persons with a certificate of exemption, and such certificate shall entitle the holder thereof to peddle within the limits of such county without payment of any license tax to the State.

(g) Counties, cities, or towns may levy a license tax on the business taxed under this section not in excess of the annual license levied by the State. But the board of county commissioners of any county may levy a license tax on the business taxed in this section not in excess of that levied by the State for each unincorporated town or village in the county with a population of 1,000 or more within a radius of one mile in which such business is engaged in; and any county or city may levy on peddlers of goods, wares, or merchandise with vehicle propelled by motor or other mechanical power, taxed by the State under subsection (a) of this section, a tax not exceeding two hundred dollars ($200.00) for each vehicle, which said tax may, in the discretion of the governing body, be graduated in accordance with the size or weight of said vehicles, the amount of merchandising space in and on said vehicles, the average value of goods carried, the types of products offered for sale, or any other reasonable principle, except that the tax levied hereunder on account of a vehicle of one-half ton capacity or less shall not exceed twenty-five dollars ($25.00).

No county, city, or town shall levy any license tax under this section upon the persons so exempted in this section, nor upon any person, firm or corporation who or which is a wholesale dealer, with an established warehouse in this State and selling only to merchants for resale, nor upon drummers selling by wholesale.

(h) Any person, firm, or corporation who or which maintains a fixed permanent location at or in which at least ninety percent (90%) of his or its total sales volume is made and who or which pays all applicable State and local taxes for such fixed permanent location shall not be deemed a peddler with respect to other sales which may be made from vehicles within the county wherein the fixed permanent location is maintained. (1939, c. 158, s. 121; 1941, c. 50, s. 3; 1943, c. 400, s. 2; 1945, c. 708, s. 2; 1951, c. 643, s. 2; 1955, c. 1315; 1973, c. 476, s. 193; 1979, c. 74; 1981, c. 16.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, deleted "Confederate soldiers, disabled veterans of the Spanish-American War" preceding "disabled soldiers of the first and second World Wars" near the beginning of subsection (f).

§ 105-54. Contractors and construction companies.

(a) Every person, firm, or corporation who, for a fixed price, commission, fee, or wage, offers or bids to construct within the State of North Carolina any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, railway, reservoir or dam, hydraulic or power

plant, transmission line, tower, dock, wharf, excavation, grading or other improvement or structure, or any part thereof, the cost of which exceeds the sum of ten thousand dollars ($10,000), shall apply for and obtain from the Secretary of Revenue an annual statewide license, and shall pay for such license a tax of one hundred dollars ($100.00) at the time of or prior to offering or submitting any bid on any of the above enumerated projects.

(b) In addition to the tax levied in subsection (a) of this section, every person, firm, or corporation who, for a fixed price, commission, fee, or wage, undertakes or executes a contract for the construction, or who superintends the construction of any of the above enumerated projects, shall, before or at the time of entering into such projects and/or such contract, apply for and procure from the Secretary of Revenue a statewide license, and shall pay for such license the following tax:

When the total contract price or estimated cost of such project is over:

$ 5,000 and not more than $ 10,000	$ 25.00
10,000 and not more than $ 50,000	50.00
50,000 and not more than $ 100,000	125.00
100,000 and not more than $ 250,000	175.00
250,000 and not more than $ 500,000	300.00
500,000 and not more than $ 750,000	400.00
750,000 and not more than $1,000,000	500.00
1,000,000	625.00

(c) The application for license under subsection (b) of this section shall be made to the Secretary of Revenue and shall be accompanied by the affidavit of the applicant, stating the contract price, if known, and if the contract price is not known, his estimate of the entire cost of the said improvement or structure, and if the applicant proposes to construct only a part of said improvement or structures, the contract price, if known, or his estimated cost of the part of the project he proposes to superintend or construct.

In the event the construction of any of the above-mentioned improvements or structures shall be divided and let under two or more contracts to the same person, firm, or corporation, the several contracts shall be considered as one contract for the purpose of this Article, and the Secretary of Revenue shall collect from such person, firm, or corporation the license tax herein imposed as if only one contract had been entered into for the entire improvement or structure.

(d) In the event any person, firm, or corporation has procured a license in one of the lower classes provided for in subsection (b) of this section, and constructs or undertakes to construct or to superintend any of the above-mentioned improvements or structures or parts thereof, the completed cost of which is greater than that covered by the license already secured, application shall be made to the Secretary of Revenue, accompanied by the license certificate held by the applicant, which shall be surrendered to the Secretary of Revenue, and upon paying the difference between the cost of the license surrendered and the price of the license applied for, the Secretary of Revenue shall issue to the applicant the annual statewide license applied for, showing thereon that it was issued on the surrender of the former license and payment of the additional tax.

(e) No employee or subcontractor of any person, firm, or corporation who or which has paid the tax herein provided for, shall be required to pay the license tax provided for in this section while so employed by such person, firm, or corporation.

(f) In the event joint bidders shall submit one joint bid for the construction of any of the projects enumerated under subsection (a), each of the joint bidders shall procure in his own name a bidder's license under subsection (a); provided, that if a joint bidder has already procured a bidder's license for the current year, he will not be required to procure an additional bidder's license by reason of joining in a joint bid, and the license so procured shall entitle the licensee

to submit other bids, either severally or in conjunction with others, during the remainder of the current license tax year. In the event a contract shall be awarded to joint bidders, a new project license shall be procured under subsection (b) in the full amount of the contract price or estimated cost of the project, in the same name or names under which the contract is awarded, which new license will be valid for the remainder of the license tax year for the same combination of joint bidders in other joint projects, but will not be valid for a part of the joint bidders, nor for all of them plus others, nor for a part of them plus others.

For the purpose of this subsection, "joint bidders" shall mean two or more separate entities consisting of either individuals, partnerships or corporations who or which combine for the purpose of submitting one joint bid for the construction of a particular project, or who or which jointly enter into a contract for the construction of a particular project.

(g) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy an annual contractor's license tax not in excess of ten dollars ($10.00) when the license provided for under this section has been paid: Provided, that this subsection shall not be construed to prevent the collection of building, electrical, and plumbing inspection charges by municipalities to cover the actual cost of said inspection.

(h) The tax under this section shall not apply to the business taxed in G.S. 105-91. (1939, c. 158, s. 122; 1951, c. 643, s. 2; 1973, c. 476, s. 193; 1981, c. 18.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, deleted "electric or steam" preceding "railway" near the middle of subsection (a).

§ 105-56: Repealed by Session Laws 1981, c. 5, effective July 1, 1981.

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

Cross References. — As to prohibition against use of hotels, motels, tourist courts, or tourist homes for precious metal dealing, see § 66-165.

§ 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 merchandising 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 fixed 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 G.S. 105-65.2.

(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), (4) Repealed by Session Laws 1979, c. 150, s. 3, effective July 1, 1979.

(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.

(d) Sales of merchandise herein referred to shall be subject to the provisions of Article 5 of this Chapter, and the tax therein levied shall be paid by the distributor or operator of such dispensers or machines.

(e) Counties, cities and towns shall not levy or collect any annual distributor's or operator's occupational license levied for the distribution or operation of any of the dispensers or machines described in subsection (a), nor any per dispenser or per machine license tax for any machine or dispenser described in subsections (a) or (b) of this section, nor upon the sale of any commodities through such machine or dispenser.

(f) The word "dispenser" or "dispensers" as used in this section shall include any machine or mechanical device through the medium of which any of the merchandise referred to in this section is purchased, distributed or sold.

(g) Neither the tax levied under subsection (b) upon dispensers, nor the tax levied under subsection (a) upon distributors or operators, shall apply to dispensers or vending machines which dispense only milk, milk drinks, products of the dairy, pure uncarbonated fruit or vegetable juices, or newspapers. (1939, c. 158, s. 130; 1941, c. 50, s. 3; 1943, c. 105; c. 400, s. 2; 1945, c. 708, s. 2; 1949, c. 1220, s. 1; 1953, c. 1142; 1955, cc. 1271, 1344; 1957, c. 1340, s. 2; 1963, c. 1169, s. 10; 1965, c. 1078, s. 1; 1967, c. 1118, s. 2; 1973, c. 476, s. 193; c. 1200, s. 2; 1979, c. 150, s. 3; 1981, c. 83, s. 7.)

Effect of Amendments. — The 1981 amendment substituted "G.S. 105-65.2" for "subsection (b)(3)" at the end of the last paragraph of subsection (a).

§ 105-75: Repealed by Session Laws 1979, 2nd Session, c. 1304, s. 1, effective July 1, 1981.

Cross References. — For present section covering the subject matter of the repealed section, see § 105-75.1.

§ 105-75.1. Municipal license tax on barbershops and beauty salons.

Cities and towns may levy a license tax on every person, firm, or corporation engaged in the business of conducting a barbershop, beauty salon, or other shop of like kind for the privilege of conducting such business at a rate not to exceed the following:

For each barber, manicurist, cosmetologist, beautician, or other operator employed in such barbershop or beauty shop or parlor — $2.50. (1979, 2nd Sess., c. 1304, s. 2.)

Editor's Note. — Session Laws 1979, 2nd Sess., c. 1304, s. 3, makes the act effective July 1, 1981.

§ 105-83. Installment paper dealers.

(a) Every person, firm, or corporation, foreign or domestic, engaged in the business of dealing in, buying, and/or discounting installment paper, notes, bonds, contracts, evidences of debt and/or other securities, where at the time of or in connection with the execution of said instruments, a lien is reserved or taken upon personal property located in this State to secure the payment of such obligations, shall apply for and obtain from the Secretary of Revenue a State license for the privilege of engaging in such business or for the purchasing of such obligations in this State, and shall pay for such license an annual tax of one hundred dollars ($100.00).

(b) In addition to the tax levied in subsection (a) of this section, such person, firm, or corporation shall submit to the Revenue Secretary quarterly no later than the twentieth day of January, April, July, and October of each year, upon forms prescribed by the said Secretary, a full, accurate, and complete statement, verified by the officer, agent, or person making such statement, of the total face value of the installment paper, notes, bonds, contracts, evidences of debt, and/or other securities described in this section dealt in, bought and/or discounted within the preceding three calendar months and, at the same time, shall pay a tax of two hundred and seventy-five thousandths of one percent (.275%) of the face value of such obligations dealt in, bought and/or discounted for such period.

(c) If any person, firm, or corporation, foreign or domestic, shall deal in, buy and/or discount any such paper, notes, bonds, contracts, evidences of debt and/or other securities described in this section without applying for and obtaining a license for the privilege of engaging in such business of dealing in such obligations, or shall fail, refuse, or neglect to pay the taxes levied in this section, such obligation shall not be recoverable or the collection thereof enforceable at law or by suit in equity in any of the courts of this State until and when the license taxes prescribed in this section have been paid, together with any and all penalties prescribed in this Article for the nonpayment of taxes.

(d) This section shall not apply to corporations organized under the State or national banking laws.

(e) Counties, cities and towns shall not levy any license tax on the business taxed under this section. (1939, c. 158, s. 148; 1957, c. 1340, s. 2; 1973, c. 476, s. 193; 1981, c. 83, ss. 8, 9.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, inserted "at the time of or in connection with the execution of said instruments" near the middle of subsection (a), substituted "no later than the twentieth day" for "on the first day" near the beginning of subsection (b), and substituted "preceding three calendar months" for "preceding three months" near the end of subsection (b).

§ 105-85. Laundries.

CASE NOTES

Sales Tax Unaffected by 1975 Amendment. — The General Assembly did not intend by the 1975 amendment to this section, exempting apartment owners from the privilege license tax on laundries, to exclude the payment of sales tax by apartment owners on

the receipts from coin-operated washers or dryers. In re Proposed Assmt. of Additional Sales & Use Tax, 46 N.C. App. 631, 265 S.E.2d 461 (1980).

§ 105-87: Repealed by Session Laws 1981, c. 6, effective July 1, 1981.

§ 105-102.3. Banks.

There is hereby imposed upon every bank or banking association, including each national banking association, that is 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; provided further, however, where a bank operates an international banking facility, as defined in G.S. 105-130.5(b)(13), the assets upon which the tax is levied shall be reduced by the average amount for the taxable year of all assets of the international banking facility which are employed outside the United States, as computed pursuant to G.S. 105-130.5(b)(13)c. 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, nor on the business of an international banking facility as defined in subsection (b)(13) of G.S. 105-130.5. (1973, c. 1053, s. 7; 1981, c. 855, s. 2.)

Effect of Amendments. — The 1981 amendment deleted "organized and" preceding "operating in this State" near the beginning of the first sentence, added the second proviso at the end of the second sentence, and added "nor on the business of an international banking facility as defined in subsection (b)(13) of G.S. 105-130.5" at the end of the last sentence.

Article 2B.

Schedule B-B. Soft Drink Tax.

§ 105-113.61. Criminal acts.

(a) It shall be unlawful for any person willfully to:

(1) Remove, wash, restore, alter or otherwise prepare any adhesive stamp or crown with intent to use it or cause it to be used after it has already been used;

(2) Knowingly or willfully buy, sell, offer for sale or give away any such washed, restored or altered stamp or crown to any person;

(3) Knowingly use or have in his possession any washed, restored or altered stamps or crowns which have been removed from the articles to which they have been previously affixed;

(4) For the purpose of indicating the payment of any tax under this Article, reuse any stamp or crown that has theretofore been used for the purpose of denoting payment of the tax provided in this Article.

(b) It shall be unlawful for any person to prepare, buy, sell, offer for sale or have in his possession any counterfeit, or false stamps or crowns, or any stamps or crowns printed, fabricated or manufactured contrary to the provisions of this Article. Violation of subsection (b) of this section is hereby made a Class I felony. (1969, c. 1075, s. 3; 1979, 2nd Sess., c. 1316, s. 29.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1981, and applicable to offenses committed on or after that date, substituted "Class I felony" for "felony punishable by a fine of not more than five thousand dollars ($5,000) or imprisonment in the State prison for not more than five years, or both, in the discretion of the court" in subsection (b). The 1979, 2nd Sess., amendatory act was originally made effective March 1, 1981. It was postponed to April 15, 1981, by Session Laws 1981, c. 63; and to July 1, 1981, by Session Laws 1981, c. 179.

ARTICLE 2C.

Schedule B-C. Alcoholic Beverages Tax.

§ 105-113.68. Definitions.

(a) As used in this Article:

(1) "Alcoholic beverage" means any beverage containing at least one half of one percent (0.5%) alcohol by volume, including malt beverages, unfortified wine, fortified wine, spirituous liquor, and mixed beverages.

(2) "Fortified wine" means any wine made by fermentation from grapes, fruits, berries, rice, or honey, to which nothing has been added other than pure brandy made from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine, and which has an alcoholic content of not more than twenty-four percent (24%) alcohol by volume.

(3) "License" means a written or printed certificate issued pursuant to this Article by the Secretary of Revenue or by a city or county, which allows a person to engage in some phase of the alcoholic beverage industry.

(4) "Malt beverage" means beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage containing at least one half of one percent (0.5%) and not more than six percent (6%) alcohol by volume.

(5) "Person" means an individual, firm, partnership, association, corporation, other organization or group, or other combination of individuals acting as a unit.

(6) "Sale" means any transfer, trade, exchange, or barter, in any manner or by any means, for consideration.

(7) "Spirituous liquor" or "liquor" means distilled spirits or ethyl alcohol, including spirits of wine, whiskey, rum, brandy, gin and all other distilled spirits and mixtures of cordials, liqueur, and premixed cocktails, in closed containers for beverage use regardless of their dilution.

(8) "Unfortified wine" means wine that has an alcoholic content produced only by natural fermentation or by the addition of pure cane, beet, or dextrose sugar, and that has an alcoholic content of not less than six percent (6%) and not more than seventeen percent (17%) alcohol by volume.

(b) All alcoholic beverages shall be taxed as provided in this Article whether or not meeting all criteria of the definitions in subsection (a).

(c) All references in this Article to permits are to the ABC permits provided for and defined in Articles 9, 10 and 11 of Chapter 18B. (1971, c. 872, s. 2; 1973, c. 476, s. 193; 1975, c. 411, s. 1; 1981, c. 747, s. 2.)

Editor's Note. —

Session Laws 1981, c. 747, ss. 1-32, extensively amended this Article so as to bring it into conformity with the revision of the laws governing alcoholic beverages, contained in Article 18B as enacted by Session Laws 1981, c. 412. Session Laws 1981, c. 747, s. 67, provides in part: "Sections 1-34 of this act become effective January 1, 1982. State, city and county revenue licenses issued under Article 2C of Chapter 105 in effect on that date shall remain valid until they expire or until replaced by the equivalent license issued under this act. Each applicant for a new or replacement ABC permit under Article 11 of Chapter 18B shall pay the fee required by G.S. 18B-902(d). No fee may be charged for replacement after January 1, 1982, of a State, city or county revenue license that would otherwise be valid until April 30, 1982.

Effect of Amendments. — The 1981 amendment, effective Jan. 1, 1982, rewrote the former introductory language in subdivisions (1) to (12) as subsection (a), designated the former last paragraph of the section as subsection (b) and substituted "alcoholic beverages" for "intoxicating liquor" and "definitions in subsection (a)" for "above definitions" in that provision and added subsection (c).

§ 105-113.69. Requirements, effect of revenue license.

(a) A license required by this Article is a license for the same activity that is authorized by the equivalent ABC permit. No license may be issued under this Article until the applicant has received from the Alcoholic Beverage Control Commission the applicable ABC permit for that activity. The qualifications for a revenue license are the same as for the equivalent ABC permit. Each person receiving an ABC permit must apply for and pay the fee for the equivalent license or licenses under this Article. Upon proper application and payment of the prescribed fee, issuance of a revenue license is mandatory if the applicant has received and remains presently qualified for the equivalent ABC permit.

(b) Unless otherwise stated, all revenue licenses are annual licenses for the period from May 1 to April 30.

(c) Neither the State nor any local government may require any revenue license for activities related to the manufacture or sale of alcoholic beverages other than the licenses stated in this Article.

(d) Failure to secure a license required by this Article is a misdemeanor. (1949, c. 974, s. 6; 1951, c. 378, s. 4; 1963, c. 426, s. 12; 1971, c. 872, s. 2; 1981, c. 747, s. 3.)

Effect of Amendments. — The 1981 amendment, effective Jan. 1, 1982, rewrote this section in conformity with the revision of the laws governing alcoholic beverages contained in Chapter 18B. See the Editor's Note under § 105-113.68.

§ 105-113.70. State brewery and unfortified winery licenses.

(a) Each person holding a brewery permit must secure from the Secretary of Revenue a State brewery license. The annual fee for this license is five hundred dollars ($500.00).

(b) The holder of a State brewery license may sell, deliver and ship malt beverages only to wholesalers licensed under this Article, except that malt beverages may be sold to nonresident wholesalers when the purchase is not for resale in this State.

(c) Each person holding an unfortified winery permit must secure from the Secretary of Revenue a State unfortified winery license. The annual fee for this license is one hundred dollars ($100.00).

(d) The holder of a State unfortified winery license may sell, deliver and ship unfortified wine only to wholesalers licensed under this Article, except that wine may be sold to nonresident wholesalers when the purchase is not for resale in this State. The holder of a State unfortified winery license may also ship his wine to individual purchasers inside and outside this State.

(e) No State license is required for an individual who makes native wines and malt beverages for his own use and the use of his family and guests as provided in G.S. 18B-306. Native wines are wines made principally from honey, grapes, or other fruit or grain grown in this State, or from wine kits containing honey, grapes, or other fruit or grain concentrates, and which have only that alcoholic content produced by natural fermentation. (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; 1975, c. 411, s. 10; 1979, c. 502, s. 1; 1981, c. 747, s. 4.)

Effect of Amendments. — The 1981 amendment, effective Jan. 1, 1982, rewrote this section in conformity with the revision of the laws governing alcoholic beverages contained in Chapter 18B. See the Editor's Note under § 105-113.68.

§ 105-113.71. State bottler license.

Each person holding a bottler permit must secure from the Secretary of Revenue a State bottler license. The annual fee for this license is two hundred fifty dollars ($250.00). The holder of a bottler license may sell, ship and deliver malt beverages, unfortified wine and fortified wine only to wholesalers licensed under this Article. (1939, c. 158, s. 505; 1941, c. 339, s. 4; 1945, c. 903, s. 5; 1971, c. 872, s. 2; 1981, c. 747, s. 5.)

§ 105-113.72. State fortified winery and distillery licenses.

(a) Each person holding a fortified winery permit must secure from the Secretary of Revenue a State fortified winery license. The annual fee for this license is one hundred dollars ($100.00).

(b) The holder of a State fortified winery license may sell, deliver and ship fortified wine only to wholesalers licensed under this Article, except that wine may be sold to nonresident wholesalers when the purchase is not for resale in this State. The holder of a State fortified winery license may also ship his wine to individual purchasers inside and outside this State.

(c) Each person holding a distillery permit must secure from the Secretary of Revenue a State distillery license. The annual fee for this license is one hundred dollars ($100.00).

(d) Each person holding a fuel alcohol permit must secure from the Secretary of Revenue a State fuel alcohol license. The annual fee for this license is ten dollars ($10.00). (1967, c. 614; 1971, c. 872, s. 2; 1975, c. 411, s. 9; 1979, c. 502, s. 2; c. 699, s. 5; 1979, 2nd Sess., c. 1329, s. 2; 1981, c. 747, s. 6.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective October 1, 1980, and applicable to all persons holding or obtaining federal permits on or after that date, added subsection (c).

The 1981 amendment, effective Jan. 1, 1982, rewrote this section in conformity with the revision of the laws governing alcoholic beverages contained in Chapter 18B. See the Editor's Note under § 105-113.68.

§ 105-113.73. Malt beverage and wine wholesaler licenses.

(a) Each person holding a malt beverage wholesaler permit must secure from the Secretary of Revenue a State malt beverages wholesaler license. The annual fee for this license is one hundred fifty dollars ($150.00).

(b) Each person holding a wine wholesaler permit must secure from the Secretary of Revenue a State wine wholesaler license. The annual fee for this license is one hundred fifty dollars ($150.00).

(c) The total annual fee for a person who secures both a State malt beverage wholesaler and State wine wholesaler license for the same business for the same year is two hundred fifty dollars ($250.00).

(d) The holder of a wholesaler license may sell, deliver, and ship his products only to wholesalers and retailers licensed under this Article, except that sales may also be made to his employees as provided in G.S. 18B-1107(3) and 18B-1109(a)(3). A malt beverage wholesaler may not sell to wholesalers and retailers less than one case or container at a time.

(e) A wholesaler who maintains more than one place of business or storage warehouse from which orders are received or beverages are distributed must secure a separate State license for each of those places.

(f) A city may require city malt beverage and wine wholesaler licenses for businesses located in the city, but may not require a license for a business located outside the city to sell or deliver inside the city. The annual fee for a city license may not be more than twenty-five percent (25%) of the annual fee for the equivalent State license. (1939, c. 158, s. 506; 1941, c. 339, s. 4; 1945, c. 903, s. 6; 1971, c. 872, s. 2; 1973, c. 476, s. 193; 1981, c. 747, s. 7.)

Effect of Amendments. — The 1981 amendment, effective Jan. 1, 1982, rewrote this section in conformity with the revision of the laws governing alcoholic beverages contained in Chapter 18B. See the Editor's Note under § 105-113.68.

§ 105-113.74: Repealed by Session Laws 1981, c. 747, s. 8, effective January 1, 1982.

§ 105-113.75. Sales on railroad trains.

Each person operating a railroad train in this State on which malt beverages or unfortified wine are sold must secure from the Secretary of Revenue a State railroad sales license. The annual fee for this license is one hundred dollars ($100.00) for each railroad system over which cars are operated in this State. Each person required to secure a license under this section shall report to the Secretary of Revenue by the fifteenth day of each calendar month the sales for the previous month and the payment of the tax on those sales at the rate levied in this Article. (1939, c. 158, s. 507; 1971, c. 872, s. 2; 1973, c. 476, s. 193; 1981, c. 747, s. 9.)

Effect of Amendments. — The 1981 amendment, effective Jan. 1, 1982, rewrote this section in conformity with the revision of the laws governing alcoholic beverages contained in Chapter 18B. See the Editor's Note under § 105-113.68.

§ 105-113.76. State salesman license.

Each person holding a salesman permit or a vendor representative permit must secure from the Secretary of Revenue a State salesman's license. A license may be issued only upon recommendation of the vendor whom the salesman or representative represents. The annual fee for this license is twelve dollars and fifty cents ($12.50). A person who holds more than one vendor

representative permit is required to obtain only one State salesman license. (1939, c. 158, s. 508; 1945, c. 903, s. 7; 1971, c. 872, s. 2; 1973, c. 476, s. 193; 1981, c. 747, s. 10.)

Effect of Amendments. — The 1981 amendment, effective Jan. 1, 1982, rewrote this section in conformity with the revision of the laws governing alcoholic beverages contained in Chapter 18B. See the Editor's Note under § 105-113.68.

§§ 105-113.77, 105-113.78: Repealed by Session Laws 1981, c. 747, s. 11, effective January 1, 1982.

§ 105-113.79. City malt beverage and unfortified wine retail licenses.

(a) Each person holding any of the following ABC permits for an establishment located within a city must secure from the city a city license for that activity, with the annual fee for each license indicated next to the kind of license:

(1) On-premises malt beverage $15.00;
(2) Off-premises malt beverage 5.00;
(3) On-premises unfortified wine 15.00;
(4) Off-premises unfortified wine . . . . . 10.00.

(b) The annual license fee stated in subsection (a) is the fee for the first license issued to a person. The fee for each additional license issued to that person for the same year is ten percent (10%) of the base license fee, that increase to apply progressively for each additional license. (1939, c. 158, s. 510; 1943, c. 400, s. 6; 1945, c. 708, s. 6; 1971, c. 872, s. 2; 1981, c. 747, s. 12.)

Effect of Amendments. — The 1981 amendment, effective Jan. 1, 1982, rewrote this section in conformity with the revision of the laws governing alcoholic beverages contained in Chapter 18B. See the Editor's Note under § 105-113.68.

§ 105-113.80. Application for city malt beverage or wine license.

Each person seeking a city malt beverage or wine license must complete and submit an application on a form prescribed by the city. The information required to be provided in the application shall be the same as required by the Alcoholic Beverage Control Commission for the equivalent permit. (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; 1981, c. 747, s. 13.)

Effect of Amendments. — The 1981 amendment, effective Jan. 1, 1982, rewrote this section in conformity with the revision of the laws governing alcoholic beverages contained in Chapter 18B. See the Editor's Note under § 105-113.68.

§ 105-113.81. County malt beverage and unfortified wine licenses.

(a) Each person holding any of the following ABC permits must secure from the county in which the establishment is located a county license for that activity, with the annual fee for each license indicated next to the kind of license:

(1) On-premises malt beverage $25.00;
(2) Off-premises malt beverage 5.00;
(3) On-premises unfortified wine 25.00;
(4) Off-premises unfortified wine . . . . . 25.00.

(b) Each person seeking a county license under this section or under G.S. 105-113.85 must complete and submit an application on a form prescribed by the county. The information required to be provided in the application shall be the same as required by the Alcoholic Beverage Control Commission for the equivalent permit. If the establishment for which the license is sought is located within a city, the application to the county must show that the equivalent city license has been issued. Issuance of the equivalent license by the city determines the right of the applicant to the county license upon compliance with the requirements of this Article. (1939, c. 158, s. 512; 1941, c. 339, s. 4; 1943, c. 400, s. 6; 1971, c. 872, s. 2; 1973, c. 476, s. 193; 1981, c. 747, s. 14.)

Effect of Amendments. — The 1981 amendment, effective Jan. 1, 1982, rewrote this section in conformity with the revision of the laws governing alcoholic beverages contained in Chapter 18B. See the Editor's Note under § 105-113.68.

§ 105-113.82. Issuance of local licenses mandatory.

(a) Except as provided in subsection (b), issuance of the city and county licenses provided in G.S. 105-113.73(f), 105-113.79, 105-113.81, and 105-113.85 is mandatory when the applicant has complied with the requirements of Chapter 18B and this Article. The governing board of a city or county may, however, refuse to issue a license if it finds that the applicant in the preceding year has committed any act or permitted any activity that would be grounds for suspension or revocation of his permit under G.S. 18B-104. Before denying the license, the governing board must give the applicant an opportunity to appear at a hearing before the board and to offer evidence. The applicant must be given at least 10 days' notice of the hearing. At the conclusion of the hearing the board must make written findings of fact based on the evidence at the hearing. The applicant may appeal the denial of a license to the superior court for that county, if notice of appeal is given within 10 days of the denial.

(b) The governing bodies of the following counties and cities in their discretion may decline to issue on-premises unfortified wine licenses: the counties of Alamance, Alexander, Ashe, Avery, Chatham, Clay, Duplin, Granville, Greene, Haywood, Jackson, Macon, Madison, McDowell, Montgomery, Nash, Pender, Randolph, Robeson, Sampson, Transylvania, Vance, Watauga, Wilkes, Yadkin; any city within any of those counties; and the cities of Greensboro, Aulander, Pink Hill, and Zebulon. (1939, c. 158, s. 513; c. 405; 1945, c. 708, s. 6; cc. 934, 935, 1037; 1947, c. 932; 1971, c. 872, s. 2; 1975, c. 242, s. 1; 1981, c. 747, s. 15.)

Effect of Amendments. — The 1981 amendment, effective Jan. 1, 1982, rewrote this section in conformity with the revision of the laws governing alcoholic beverages contained in Chapter 18B. See the Editor's Note under § 105-113.68.

§ 105-113.83. State unfortified wine retail licenses.

(a) Each person holding an on-premises unfortified wine permit must secure from the Secretary of Revenue a State on-premises unfortified wine license. The annual fee for this license is twenty-five dollars ($25.00).

(b) Each person holding an off-premises unfortified wine permit must secure from the Secretary of Revenue a State off-premises unfortified wine license. The annual fee for this license is twenty dollars ($20.00).

(c) The holder of a license under this section may purchase unfortified wine only from a wholesaler or importer maintaining a place of business in this State and licensed under this Article. (1939, c. 158, s. 516; 1941, c. 339, s. 4; 1971, c. 872, s. 2; 1973, c. 476, s. 193; 1975, c. 722, s. 2; 1979, c. 801, s. 28; 1981, c. 747, s. 16.)

Effect of Amendments. — The 1979 amendment, effective May 1, 1980, raised the tax for an "off-premises" license from five dollars to twenty dollars in this section as it stood prior to the 1981 amendment.

The 1981 amendment, effective Jan. 1, 1982, rewrote this section in conformity with the revision of the laws governing alcoholic beverages contained in Chapter 18B. See the Editor's Note under § 105-113.68.

§ 105-113.84. State malt beverage retail licenses.

(a) Each person holding either an on-premises or off-premises malt beverage permit must secure from the Secretary of Revenue a State retail malt beverage license. The annual fee for this license is twenty dollars ($20.00).

(b) The holder of a license under this section may purchase malt beverages only from a wholesaler or importer maintaining a place of business in this State and licensed under this Article. (1939, c. 158, s. 515; 1967, c. 162, s. 2; 1971, c. 872, s. 2; 1973, c. 476, s. 193; 1975, c. 654, s. 3; 1979, c. 801, s. 29; 1981, c. 747, s. 17.)

Effect of Amendments. — The 1979 amendment, effective May 1, 1980, rewrote the fee provisions of this section as it stood prior to the 1981 amendment.

The 1981 amendment, effective Jan. 1, 1982, rewrote this section in conformity with the revision of the laws governing alcoholic beverages contained in Chapter 18B. See the Editor's Note under § 105-113.68.

§ 105-113.85. Fortified wine retail licenses.

(a) Each person holding an on-premises fortified wine permit must secure from the Secretary of Revenue a State on-premises fortified wine license. The person also must secure from the county in which the establishment is located a county on-premises fortified wine license and, if the establishment is located within a city, must secure from the city a city on-premises fortified wine license. The annual fee for the license is twenty-five dollars ($25.00) for the State license, twenty-five dollars ($25.00) for the county license, and fifteen dollars ($15.00) for the city license, except as provided in subsection (c).

(b) Each person holding an off-premises fortified wine permit must secure from the Secretary of Revenue a State off-premises fortified wine license. The person also must secure from the county in which the establishment is located a county off-premises fortified wine license and, if the establishment is located within a city, must secure from the city a city off-premises fortified wine license. The annual fee for the license is twenty dollars ($20.00) for the State license, twenty-five dollars ($25.00) for the county license, and ten dollars ($10.00) for the city license, except as provided in subsection (c).

(c) A person receiving State and local licenses under this section who also receives for the same business for the same year unfortified wine licenses for the same type of sales is required to pay only the fee for the unfortified wine licenses and may not be charged additional fees for the fortified wine licenses.

(d) The holder of a license under this section may purchase fortified wine only from a wholesaler or importer maintaining a place of business in this State and licensed under this Article. (1941, c. 339, s. 6; 1945, c. 903, s. 11; 1963, c. 460, s. 2; 1971, c. 872, s. 2; 1973, c. 476, s. 193; 1979, c. 683, ss. 8, 15; 1981, c. 747, s. 18.)

Effect of Amendments. — The 1981 amendment, effective Jan. 1, 1982, rewrote this section in conformity with the revision of the laws governing alcoholic beverages contained in Chapter 18B. See the Editor's Note under § 105-113.68.

§ 105-113.86. Additional tax.

(a) (1) 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 on barrels of not less than seven and three-fourths gallons, and on barrels, bottles, or other containers of less than seven and three-fourths gallons, a tax of twenty-six and six hundred eighty-eight one-thousandths cents (26.688¢) per gallon.

(2) 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 on barrels of not less than seven and three-fourths gallons, and on barrels, bottles, or other containers of less than seven and three-fourths gallons, a tax of twenty-six and six hundred eighty-eight one-thousandths of a cent (26.688¢) per gallon. 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.

(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 in 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. The Secretary of Revenue may require such resident manufacturers, wholesale distributors, and importers to submit with the monthly report required under subsection (c) invoices or equivalent proof of such sales on which the excise tax is not levied.

The Secretary of Revenue may require 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 to 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 established pursuant to G.S. 105-241.1(i) 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 alcoholic beverages 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 levied upon the sale of unfortified wine at the rate of twenty-one cents (21¢) per liter. 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 one and one-fourth cents ($1^1/_4$¢) per liter.

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 license 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 sixty-two percent (62%) thereof, and from the taxes collected annually under G.S. 105-113.95 an amount equivalent to twenty-two percent (22%) 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 State Budget Officer. 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 most recent annual estimate of population as certified to the Secretary of Revenue by the State Budget Officer, 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) to (u) Repealed by Session Laws 1981, c. 747, s. 20, effective January 1, 1982.

(v) For purposes of subsection (p), 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; 1975, c. 53, s. 1; c. 275, s. 3; 1977, c. 657, s. 3; c. 1114, s. 5; 1979, c. 18, s. 1; c. 801, s. 30; 1979, 2nd Sess., c. 1137, s. 51; 1981, c. 669; c. 747, ss. 19, 20.)

Cross References. — As to withholding of tax owed under this section to county failing to pay full share of public assistance costs, see § 108A-147.

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, substituted "State Budget Officer" for "Secretary of the North Carolina Department of Administration" at the end of the second sentence and for "Secretary of Administration" in the proviso to the fourth sentence in subsection (p).

Session Laws 1979, 2nd Sess., c. 1137, s. 77, contains a severability clause.

The first 1981 amendment, effective Jan. 1,

1982, added the second sentence of the first paragraph of subsection (j), added "The Secretary of Revenue may require" at the beginning of the first sentence of the second paragraph of subsection (j), and substituted "to identify" for "shall identify" near the middle of the first sentence of the second paragraph of subsection (j).

The second 1981 amendment, effective Jan. 1, 1982, substituted "alcoholic beverages" for "intoxicating liquors" in subsection (l) and deleted subsections (q) through (u), which contained obsolete provisions relating to the years 1967 and 1968. See the Editor's Note under § 105-113.68.

§ 105-113.88. By whom excise taxes payable.

The excise tax levied in G.S. 105-113.86 upon the sale of malt beverages shall be paid to the Secretary of Revenue by the wholesale distributor or importer of such beverages, and the excise tax levied in G.S. 105-113.86 or 105-113.95 upon the sale of fortified and unfortified wine shall be paid to the Secretary of Revenue by the wholesale distributor or importer of such beverages; provided that the excise tax levied in G.S. 105-113.86 shall be paid and collected on the same beverages only once. The Secretary of Revenue shall require each wholesale distributor or importer to furnish bond in an indemnity company licensed to do business under the insurance laws of this State in such sums as the Secretary of Revenue shall find adequate to cover the tax liability of each such wholesale distributor or importer, proportioned to the volume of business of each such wholesale distributor or importer, but in no event to be less than five thousand dollars ($5,000) or more than fifty thousand dollars ($50,000), or to deposit federal, State, county, or municipal bonds in required amounts; such county and municipal bonds to be approved by the Secretary of Revenue. The Secretary of Revenue may grant such extension of time for compliance with this condition as may be found reasonable. For the purposes of this Article, where the term "wholesale distributor or importer" is used with reference to wholesale distributors or importers of fortified and unfortified wine, such term shall include resident manufacturers of fortified and unfortified wine who make retail sales thereof. (1939, c. 158, s. 518; 1941, c. 339, s. 4; 1967, c. 759, s. 21; 1971, c. 872, s. 2; 1973, c. 476, s. 193; 1979, c. 502, s. 3; 1981, c. 747, s. 21.)

Effect of Amendments. — The 1981 amendment, effective Jan. 1, 1982, substituted "five thousand dollars ($5,000)" for "one thousand dollars ($1,000)" in the second sentence and deleted, at the end of the last sentence, "pursuant to G.S. 18A-36.1, and G.S. 105-113.70(b) or 105-113.72." See the Editor's Note under § 105-113.68.

§ 105-113.89. State nonresident vendor license.

(a) Each person holding a nonresident malt beverage or wine vendor permit must secure from the Secretary of Revenue a State nonresident vendor license. The annual fee for this license is one hundred fifty dollars ($150.00), unless the vendor sells less than 500 cases of alcoholic beverages in North Carolina during the year, in which case the annual fee is twenty-five dollars ($25.00). A vendor who pays the lower annual fee must pay the one hundred twenty-five dollar ($125.00) difference between that and the higher fee once his sales reach 500 cases.

(b) The holder of a nonresident vendor license may sell, deliver and ship his product in this State only to wholesalers, importers, and bottlers maintaining places of business in this State and licensed under this Article. The holder of the nonresident vendor license shall include the number of his license on each invoice for alcoholic beverage sold, delivered or shipped to wholesalers, importers, or bottlers in this State.

(c) The Secretary of Revenue may require the holder of a license under this section to execute and deposit with the Secretary a bond in a sum not to exceed two thousand dollars ($2,000) conditioned upon the faithful compliance with the provisions of this Article, and particularly upon his making no sales of alcoholic beverages to any person in this State other than licensed wholesalers, importers, and bottlers. The Secretary may waive this bond entirely for a vendor who sells less than 500 cases of alcoholic beverages in North Carolina during the year. (1939, c. 158, s. 518½; 1945, c. 903, s. 9; 1971, c. 872, s. 2; 1973, c. 476, s. 193; 1981, c. 747, s. 22.)

Effect of Amendments. — The 1981 amendment, effective Jan. 1, 1982, rewrote this section in conformity with the revision of the laws governing alcoholic beverages contained in Chapter 18B. See the Editor's Note under § 105-113.68.

§ 105-113.90. Resident wholesalers shall not purchase beverages for resale from unlicensed nonresidents.

It shall be unlawful for any resident wholesaler, importer or bottler to purchase any malt beverages, or unfortified wine, or fortified wine for resale within this State from any nonresident who has not procured the license required in the preceding section [G.S. 105-113.89]. (1945, c. 708, s. 6; 1971, c. 872, s. 2; 1981, c. 747, s. 23.]

Effect of Amendments. — The 1981 amendment, effective Jan. 1, 1982, substituted "wholesaler, importer," for "wholesale distributor." See the Editor's Note under § 105-113.68.

§ 105-113.91. State malt beverage and wine importers licenses.

Each person holding a malt beverages or wine importer permit must secure from the Secretary of Revenue a State importer's license. The annual fee for this license is one hundred fifty dollars ($150.00). (1957, c. 1244; 1967, c. 759, s. 22; 1971, c. 872, s. 2; 1973, c. 476, s. 193; 1981, c. 747, s. 24.)

Effect of Amendments. — The 1981 amendment, effective Jan. 1, 1982, rewrote this section in conformity with the revision of the laws governing alcoholic beverages contained in Chapter 18B. See the Editor's Note under § 105-113.68.

§ 105-113.92: Repealed by Session Laws 1981, c. 747, s. 25, effective January 1, 1982.

§ 105-113.93. Tax on spirituous liquors.

In lieu of the taxes levied in the "North Carolina Sales and Use Tax Act" on the sale of spirituous liquors, there is hereby levied a tax of twenty-two and one-half percent (22½%) on the retail price of spirituous liquors and every kind that are sold in this State, including liquors sold in county or municipal A.B.C. stores, but not including spirituous liquors sold in mixed beverages as defined in G.S. 18B-101(10).

The taxes levied in this section shall be payable monthly, at the same time and in the same manner as the taxes levied in the "North Carolina Sales and Use Tax Act," and the liability for such tax shall be subject to all the rules,

regulations and penalties provided in said act, and in other sections of Subchapter I, Chapter 105 of the General Statutes, for the payment or collection of taxes. (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; 1975, c. 53, s. 2; 1979, c. 286, s. 6; 1981, c. 747, s. 26.)

Effect of Amendments. — The 1981 amendment, effective Jan. 1, 1982, substituted "G.S. 18B-101(10)" for "G.S. 18A-2(6)" at the end of the first paragraph. See the Editor's Note under § 105-113.68.

Legal Periodicals. — For an article entitled, "A History of Liquor-by-the-Drink Legislation in North Carolina," see 1 Campbell L. Rev. 61 (1979).

§ 105-113.96. Exemption from tax for sacramental wine.

The tax levied in this Article upon the sale of unfortified and fortified wine does not apply to wine received for use for sacramental purposes under G.S. 18B-103(8). (1945, c. 708, s. 6; 1971, c. 872, s. 2; 1981, c. 747, s. 27.)

Effect of Amendments. — The 1981 amendment, effective Jan. 1, 1982, inserted "and fortified" and substituted "does not apply to wine received for use for sacramental purposes under G.S. 18B-103(8)" for "shall not apply to sacramental wines received by ordained ministers of the gospel under the provisions of G.S. 18A-4." See the Editor's Note under § 105-113.68.

§ 105-113.98. Books, records, reports.

Every person licensed under any of the provisions of this Article shall keep accurate records of purchase and sale of all beverages taxable under this Article, such records to be kept separate from all purchases and sales of merchandise not taxable under this Article, including a separate file and record of all invoices. The Secretary of Revenue or any authorized agent shall at any time during business hours have access to such records. The Secretary of Revenue may also require regular or special reports to be made by every such person at such times and in such form as the Secretary may require. (1939, c. 158, s. 520; 1945, c. 903, s. 1; 1971, c. 872, s. 2; 1973, c. 476, s. 193; 1981, c. 747, s. 28.)

Effect of Amendments. — The 1981 amendment, effective Jan. 1, 1982, inserted "not" following "merchandise" near the end of the first sentence. See the Editor's Note under § 105-113.68.

§ 105-113.99. License shall be posted; not transferable.

Each form of license required by this Article shall be kept posted in a conspicuous place at each place where the business taxable under this Article is carried on, and a separate license shall be required for each place of business. A license may not be transferred from one person to another or from one location to another. (1939, c. 158, s. 522; 1971, c. 872, s. 2; 1981, c. 747, s. 29.)

Effect of Amendments. — The 1981 amendment, effective Jan. 1, 1982, rewrote the second sentence, which formerly read: "Licenses shall not be transferred to any other person, nor to any other location, except as expressly provided in this Article." See the Editor's Note under § 105-113.68.

§ 105-113.102. Rules and regulations.

The Secretary of Revenue shall, from time to time, initiate and prepare such regulations, not inconsistent with this Chapter and Chapter 18B or other provisions of law, as may be useful and necessary to implement the provisions of this Article, such regulations to become effective when approved by the Tax Review Board. All regulations and amendments thereto shall be published and made available by the Secretary of Revenue.

The Secretary of Revenue may, from time to time, make and prescribe such administrative rules, not inconsistent with law and the regulations approved by the Tax Review Board, as may be useful for the administration of his Department and the discharge of his responsibilities.

References to rules and regulations of the Secretary of Revenue in this Chapter and in any subsequent amendments or additions thereto (unless expressly provided to the contrary therein) shall be construed to mean those rules and regulations promulgated under the provisions of this section. (1955, c. 1350, s. 3; 1971, c. 872, s. 2; 1973, c. 476, s. 193; 1981, c. 747, s. 30.)

Effect of Amendments. — The 1981 amendment, effective Jan. 1, 1982, substituted "Chapter 18B" for "Chapter 18A" in the first sentence of the first paragraph. See the Editor's Note under § 105-113.68.

§ 105-113.103. Revocation of license upon revocation of permit.

Whenever the Alcoholic Beverage Control Commission shall certify to the Secretary of Revenue that any permit issued by said Commission has been canceled or revoked, the Secretary of Revenue shall thereupon immediately revoke any license that has been issued under this Article to the person whose permit has been revoked by said Commission; such revocation by the Secretary shall not entitle the person whose license was revoked to any refund of taxes or license fees paid for or under said license. (1945, c. 903, s. 12; 1971, c. 872, s. 2; 1981, c. 747, s. 31.)

Effect of Amendments. — The 1981 amendment, effective Jan. 1, 1982, substituted "Alcoholic Beverage Control Commission" for "State Board of Alcoholic Control" near the beginning of the section and substituted "Commission" for "Board" in two places. See the Editor's Note under § 105-113.68.

§ 105-113.104. Violation made misdemeanor; revocation of permits; forfeiture of license.

Except as otherwise expressly provided, whosoever violates any of the provisions of this Article, or any of the rules and regulations promulgated pursuant thereto, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine or by imprisonment, or by both fine and imprisonment, in the discretion of the court. The Secretary of Revenue may suspend or revoke any State license issued under this Article for up to three years for a violation of any provision of this Article or of Chapter 18B. The Secretary also may suspend or revoke any State license for up to three years upon notification that the person holding the license has been convicted of a violation of this Article or Chapter 18B. (1939, c. 158, s. 525; 1971, c. 872, s. 2; 1981, c. 747, s. 32.)

Effect of Amendments. — The 1981 amendment, effective Jan. 1, 1982, rewrote the second sentence, which formerly provided for revocation of a permit and license by the court upon

conviction of violation of this Article, and the third sentence, which formerly provided for forfeiture of a license upon conviction of sale of unauthorized liquors. See the Editor's Note under § 105-113.68.

ARTICLE 3.

Schedule C. Franchise Tax.

§ 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 Resources and Community Development 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 purchasing and installing equipment or constructing facilities for the purpose of recycling or resource recovering of or from solid waste or for the purpose of reducing the

volume of hazardous waste generated shall be treated as deductible for the purposes of this section upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Human Resources certifying that the Department of Human Resources has found as a fact that the equipment or facility has actually been purchased, installed or constructed, that it is in conformance with all rules and regulations of the Department of Human Resources, and the recycling or resource recovering is the primary purpose of the facility or equipment. 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. In the case of an international banking facility, the capital base shall be reduced by the excess of the amount as of the end of the taxable year of all assets of an international banking facility which are employed outside the United States over liabilities of the international banking facility owed to foreign persons. For purposes of such reduction, foreign persons shall have the same meaning as defined in G.S. 105-130.5(b)(13)d.

Every corporation doing business in this State which is a parent, subsidiary, or affiliate of another corporation shall add to its capital stock, surplus 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 Resources and Community Development 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 based 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.

(f) The report, statement and tax required by this section shall be in addition to all other reports required or taxes levied and assessed in this State.

(g) Counties, cities and towns shall not levy a franchise tax on corporations taxed under this section.

(h) Any corporation whose franchise tax return is due July 15, 1968, or August 15, 1968, the following credit shall be allowed from the total net franchise tax computed on such return. For any corporation whose franchise tax return is due July 15, 1968, the allowable credit shall be an amount equal to two twelfths of the total net franchise tax computed on such return. For any corporation whose franchise tax return is due August 15, 1968, the allowable credit shall be an amount equal to one twelfth of the total net franchise tax computed on such return.

Notwithstanding any other provisions of this Article, the taxes levied in G.S. 105-122 and 105-123 for the State's fiscal year, July 1, 1967, through June 30, 1968, shall be for that period and also for the period beginning on July 1, 1968, and ending on the last day of each corporation's then current income year provided the income tax return for such current income year is due before July 15, 1969. (1939, c. 158, s. 210; 1941, c. 50, s. 4; 1943, c. 400, s. 3; 1945, c. 708, s. 3; 1947, c. 501, s. 3; 1951, c. 643, s. 3; 1953, c. 1302, s. 3; 1955, c. 1100, s. 2½; c. 1350, s. 17; 1957, c. 1340, s. 3; 1959, c. 1259, s. 3; 1963, c. 1169, s. 1; 1967, c. 286; c. 892, ss. 10, 11; c. 1110, s. 2; 1973, c. 476, s. 193; c. 695, s. 17; c. 1262, s. 23; c. 1287, s. 3; 1975, c. 764, s. 2; 1977, c. 771, s. 4; 1981, c. 704, s. 18; c. 855, s. 3.)

Effect of Amendments. — The first 1981 amendment inserted "or for the purpose of reducing the volume of hazardous waste generated" near the beginning of the third sentence of subsection (b).

Session Laws 1981, c. 704, ss. 1 and 2, provide:

"Section 1. Short title. This act may be referred to as the Waste Management Act of 1981.

"Sec. 2. Purpose. The purpose of this act is to provide for a comprehensive system for management of hazardous and low-level radioactive waste in North Carolina as reflected in the 1981 Report of the Governor's Task Force on Waste Management."

Session Laws 1981, c. 704, s. 26, provides that the act shall be liberally construed to carry out the policies set forth in the act.

Session Laws 1981, c. 704, s. 27, contains a severability clause.

The second 1981 amendment added the last two sentences of the first paragraph of subsection (b).

ARTICLE 4.

Schedule D. Income Tax.

DIVISION I. CORPORATION INCOME TAX.

§ 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, 1981, 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; 1975, c. 275, s. 4; 1977, c. 657, s. 4; 1979, c. 179, s. 2; 1981, c. 15.)

Effect of Amendments. — The 1981 amendment, effective for taxable years beginning on and after Jan. 1, 1981, substituted "January 1, 1981" for "January 1, 1979" near the end of the second sentence of the first paragraph.

Legal Periodicals. — For an article entitled, "Foreign Corporations in North Carolina: The 'Doing Business' Standards of Qualification, Taxation, and Jurisdiction," see 16 Wake Forest L. Rev. 711 (1980).

§ 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 carryover 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.

(10) The amount of property taxes allowed under Division IV of this Article during the taxable year as a credit against the taxpayer's income tax.

(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, and facilities or equipment used for purposes of recycling or resource recovery of or from solid waste, or for purposes of reducing the volume of hazardous waste generated 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.

(11) The amount by which the deduction for an ordinary and necessary business expense on the corporation's federal income tax return was reduced or which was not allowed as a deduction because the corporation claimed in lieu of such amount a tax credit against its federal income tax liability for the income year.

(12) Reasonable expenses, in excess of deductions allowed for federal income tax purposes, paid for reforestation and cultivation of commercially grown trees; provided, that this deduction shall be allowed only to those corporations in which the real owenrs of all the shares of such corporation are natural persons actively engaged in the commercial growing of trees, or the spouse, siblings, or parents of such persons. Provided further, that in no case shall a corporation be allowed a deduction for the same reforestation or cultivation expenditure more than once.

(13) The eligible income of an international banking facility to the extent included in determining federal taxable income, determined as follows:

a. "International banking facility" shall have the same meaning as is set forth in the laws of the United States or regulations of the board of governors of the federal reserve system.

b. The eligible income of an international banking facility for the taxable year shall be an amount obtained by multiplying State taxable income as determined under G.S. 105-130.3 (determined without regard to eligible income of an international banking facility and allocation and apportionment, if applicable) for such year by a fraction, the denominator of which shall be the gross receipts for such year derived by the bank from all sources, and the numerator of which shall be the adjusted gross receipts for such year derived by the international banking facility from:

1. Making, arranging for, placing or servicing loans to foreign persons substantially all the proceeds of which are for use outside the United States;
2. Making or placing deposits with foreign persons which are banks or foreign branches of banks (including foreign subsidiaries or foreign branches of the taxpayer) or with other international banking facilities; or
3. Entering into foreign exchange trading or hedging transactions related to any of the transactions described in this paragraph.

c. The adjusted gross receipts shall be determined by multiplying the gross receipts of the international banking facility by a fraction the numerator of which is the average amount for the taxable year of all assets of the international banking facility which are employed outside the United States and the denominator of which is the average amount for the taxable year of all assets of the international banking facility.

d. For the purposes of this subsection the term "foreign person" means:

1. An individual who is not a resident of the United States;
2. A foreign corporation, a foreign partnership or a foreign trust, as defined in section 7701 of the Internal Revenue Code of 1954, other than a domestic branch thereof;
3. A foreign branch of a domestic corporation (including the taxpayer);
4. A foreign government or an international organization or an agency of either, or
5. An international banking facility.

For purposes of this paragraph, the terms "foreign" and "domestic" shall have the same meaning as set forth in section 7701 of the Internal Revenue Code of 1954.

(c) The following other adjustments to federal taxable income shall be made in determining State net income:

(1) In determining State net income, no deduction shall be allowed for annual amortization of bond premiums applicable to any bond acquired prior to January 1, 1963. The amount of premium paid on any such bond shall be deductible only in the year of sale or other disposition.

(2) Federal taxable income must be increased or decreased to account for any difference in the amount of depreciation, amortization, or gains or losses applicable to property which has been depreciated or amortized by use of a different basis or rate for State income tax purposes than used for federal income tax purposes prior to the effective date of this division.

(3) No deduction shall be allowed for any direct or indirect expense applicable to dividend income fully deductible under G.S. 105-130.7 (5).

(d) No gain or loss shall be recognized to a corporation from the sale or exchange by it of property within the 12-month period beginning on the date of the adoption by said corporation of a plan of complete liquidation if such gain or loss would not be recognized to such corporation for federal income tax purposes under the provisions of section 337 of the Federal Internal Revenue Code of 1954, including amendments, if any.

(e) Notwithstanding any other provision of this section, any recapture of depreciation required under the Internal Revenue Code must be included 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; 1975, c. 764. s. 4; 1977, 2nd Sess., c. 1200, s. 1; 1979, c. 179, s. 2; c. 801, s. 32; 1981, c. 704, s. 20; c. 855, s. 1.)

Effect of Amendments. — The first 1981 amendment substituted "and facilities or equipment used for purposes of recycling or resource recovery of or from solid waste, or for purposes of reducing the volume of hazardous waste generated" for "and recycling and resource recovering facilities or equipment" near the end of subdivision (6) of subsection (b).

As to short title and purpose of Session Laws 1981, c. 704, see note to § 105-122.

Session Laws 1981, c. 704, s. 26, provides that the act shall be liberally construed to carry out the policies set forth in the act.

Session Laws 1981, c. 704, s. 27, contains a severability clause.

The second 1981 amendment added subdivision (13) of subsection (b).

§ 105-130.10. Amortization of air-cleaning devices, waste treatment facilities and recycling facilities.

In lieu of any depreciation allowance, at the option of the corporation, a deduction shall be allowed for the amortization, based on a period of 60 months, of the cost of:

(1) 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. 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 subdivision 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 Resources and Community Development 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.

(2) Purchasing and installing equipment or constructing facilities for the purpose of recycling or resource recovering of or from solid waste, or for the purpose of reducing the volume of hazardous waste generated. The deduction provided for in this subdivision 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 Human Resources certifying that the Department of Human Resources has found as a fact that the equipment or facility has actually been purchased, installed or constructed, that it is in conformance with all rules and regulations of the Department of Human Resources, and that recycling or resource recovering is the primary purpose of the facility or equipment.

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; 1975, c. 764, s. 3; 1977, c. 771, s. 4; 1981, c. 704, s. 19.)

Effect of Amendments. — The 1981 amendment added "or for the purpose of reducing the volume of hazardous waste generated" at the end of the first sentence of subdivision (2).

As to short title and purpose of Session Laws 1981, c. 704, see note to § 105-122.

Session Laws 1981, c. 704, s. 26, provides that the act shall be liberally construed to carry out the policies set forth in the act.

Session Laws 1981, c. 704, s. 27, contains a severability clause.

§ 105-130.11. Conditional and other exemptions.

(a) The following organizations shall be exempt from taxation under this Division except as provided in subsections (b) and (c) 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 building and loan associations [association], and savings and loan associations subject to 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.

(11) Corporations or organizations, such as condominium associations, homeowner associations, or cooperative housing corporations not organized for profit, the membership of which is limited to the owners or occupants of residential units in the condominium, housing development or cooperative housing corporation, and operated exclusively for the management, operation, preservation, maintenance or landscaping of the common areas and facilities owned by such corporation or organization or its members situated contiguous to such houses, apartments or other dwellings or for the management, operation, preservation, maintenance and repair of such houses, apartments or other dwellings owned by the corporation or organization or its members, but only if no part of the net earnings of such corporation or organization inures (other than through the performance of related services for the members of such corporation or organization) to the benefit of any member of such corporation or organization or other person.

(b) Organizations described in subdivision (1), (3), (4), (5), (6), (7), (8) or (9) of subsection (a) of this section shall be subject to the tax provided for in G.S. 105-130.3 to the following extent:

Gross income derived by any organization from any trade or business the conduct of which is not substantially related (aside from the need of the organization for income) to the exercise or performance of those functions constituting the basis for its exemption in subsection (a) of this section, less all deductions allowed by this Division directly connected with carrying on such trade or business and less one thousand dollars ($1,000); provided, this paragraph shall not apply to interest, royalties, dividends or rents; provided further, this paragraph shall not apply to any trade or business (i) in which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or (ii) which is the selling of merchandise, substantially all of which is given to it; (iii) which is carried on by an organization described in G.S. 105-130.11(a)(3) primarily for the convenience of its members, students, patients or employees. Provided further, this paragraph shall not apply to net income derived from research (i) performed by a college, university or hospital; or (ii) performed for the United States, its instrumentalities or any state or political subdivision thereof; or (iii) performed by an organization operated primarily for the purpose of carrying on fundamental research, the results of which are freely available to the general public.

(c) Organizations described in subdivision (11) of subsection (a) of this section shall be subject to the tax provided for in G.S. 105-130.3 on its unrelated business income. For purposes of this subsection the term "unrelated business income" means gross income (excluding any membership income), less the deductions allowed by this Article which are directly connected with the production of such unrelated business income. The term "membership income" means the gross income from assessments, fees, charges, or similar amounts received from members of the organization for expenditure in the preservation, maintenance, and management of the common areas and facilities of or the residential units in the condominium or housing development. (1939, c. 158, s. 314; 1945, c. 708, s. 4; c. 752, s. 3; 1949, c. 392, s. 3; 1951, c. 937, s. 1; 1955, c. 1313, s. 1; 1957, c. 1340, s. 4; 1959, c. 1259, s. 4; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 1053, s. 4; 1975, c. 19, s. 28; c. 591, s. 2; 1981, c. 450, s. 2.)

Effect of Amendments. — The 1981 amendment, effective Jan. 1, 1982, substituted "subject to tax" for "subject to capital stock tax and/or excise tax" near the beginning of subdivision (2) of subsection (a).

Session Laws 1981, c. 450, s. 3, provides: "The share and deposit tax levied under Article 8D of G.S. Chapter 105 prior to the effective date of this act shall not be collected for taxable years beginning on or after that date. This act shall apply for income tax purposes to taxable years beginning on or after January 1, 1982, and shall apply for franchise tax purposes as of December 31, 1982."

§ 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.

(c) In the case of 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, which are required to file under subsection (a)(9) of G.S. 105-130.11, a return made on the basis of a calendar year shall be filed on or before the fifteenth day of the September following the close of the calendar year, and a return made on the basis of a fiscal year shall be filed on or before the fifteenth day of the ninth month following the close of the fiscal 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.

(d1) Organizations described in G.S. 105-130.11(a)(1), (3), (4), (5), (6), (7) and (8) that are required to file a return under G.S. 105-130.11(b) shall file a return made on the basis of a calendar year on or before the fifteenth day of May following the close of the calendar year and a return made on the basis of a fiscal year on or before the fifteenth day of the fifth month following the close of the fiscal year.

(e) Any corporation which ceases its operations in this State before the end of its income year because of its intention to dissolve or to withdraw from this State, or because of a merger or consolidation or for any other reason whatsoever shall file its return for the then current income year within 75 days after the date it terminates its business in this State.

(f) There shall be annexed to the return the affirmation of an officer of the corporation making 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." (1939, c. 158, s. 329; 1943, c. 400, s. 4; 1951, c. 643, s. 4; 1953, c. 1302, s. 4; 1955, c. 17, s. 1; 1957, c. 1340, s. 4; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 1287, s. 4; 1981, c. 56.)

Effect of Amendments. — The 1981 amendment, effective for taxable years beginning on or after Jan. 1, 1981, added subsection (d1).

§ 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 (11x) 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 were required to be built in compliance with section (11x) of the North Carolina Building Code; 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 (11x) of the North Carolina Building Code. When he has recorded the number of such units on the face of the occupancy permit, the building inspector shall promptly make and forward a copy of the permit to the Special Office for the Handicapped, Department of Insurance. (1973, c. 910, s. 1; 1979, c. 803, ss. 1, 2; 1981, c. 682, s. 16.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "(11x)" for "(IIX)" in three places.

§ 105-130.23. Credit against corporate income tax for solar hot water, heating and cooling.

(a) Any corporation which causes to be constructed or installed solar hot water, heating or cooling equipment in buildings to include residential buildings used or sold by the corporation for commercial or business purposes in North Carolina shall be allowed as a credit against the taxes imposed by this Division, an amount equal to twenty-five percent (25%) of the installation and equipment cost of the solar hot water, heating or cooling equipment; provided, that credit allowed under this section shall not exceed one thousand dollars ($1,000) per system or per year for any single building or each family dwelling

unit of a multi-dwelling building which is individually metered for electric power or natural gas or with separate furnace for oil heat paid for by the occupant; provided further, that to obtain the credit the taxpayer must own or control the use of the building at the time of the installation, except that in the case of a building constructed or modified for sale in which a solar system is constructed or installed, the credit shall be allowed to the owner who first occupies the building for use after the construction or installation of the system or the owner-lessor who first leases the building for use after the construction or installation of the system; provided, further, that the credit shall not be allowed to the extent that any of the cost of the system was provided by federal, State, or local grants; and provided further, that if the credit allowed by this section exceeds the taxes imposed by this Division reduced by all other credits allowed by the provisions of this Division, such excess shall be allowed against the taxes imposed by this Division for the next three succeeding years.

(b) For the purpose of this section, the term "solar hot water, heating and cooling equipment" means any hot water, heating, cooling, or heating and cooling equipment which meets the definitive performance criteria established by the U.S. Secretary of the Treasury or any other performance criteria approved and published by the Secretary of Revenue, or passive solar systems that meet the elgibility criteria approved and published by the Secretary of Revenue. (1977, c. 792, s. 4; 1979, c. 892, s. 1; 1981, c. 921, ss. 3, 4.)

Effect of Amendments. — The 1981 amendment, effective for taxable years beginning on and after Jan. 1, 1981, substituted "causes to be constructed or installed" for "constructs or installs" near the beginning of subsection (a), inserted "per system or per year" following "($1,000)" in the first proviso of subsection (a), substituted the second and third provisos of subsection (a) for the former second proviso, relating to similar subject matter, and added "or passive solar systems that meet the eligibility criteria approved and published by the Secretary of Revenue" at the end of subsection (b).

§ 105-130.26. Credit against corporate income tax for conversion of industrial boiler to wood fuel.

Any corporation which modifies or replaces an oil or gas-fired boiler or kiln and the associated fuel and residue handling equipment used in the manufacturing process of a manufacturing business located in this State with one which is capable of burning wood shall be allowed as a credit against the tax imposed by this Division, an amount equal to fifteen percent (15%) of the installation and equipment cost of such conversion; provided, that in order to secure the credit allowed by this section, the taxpayer must own or control the business in which such boiler or kiln is used at time of such conversion and payment in part or in whole for such installation and equipment must be made by the taxpayer during the tax year for which the credit is claimed; and the amount of credit allowed for any one income year shall be limited to fifteen percent (15%) of such costs paid during the year; and the credit allowed by this section shall not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except for payments of tax made by or on behalf of the taxpayer. (1979, c. 801, s. 35; 1979, 2nd Sess., c. 1318, s. 1.)

Effect of Amendments. — The 1979, 2nd Sess., amendment inserted "and the associated fuel and residue handling equipment" near the beginning of the section.

§ 105-130.27. Credit against corporate income tax for construction of a fuel ethanol distillery.

(a) Any corporation which constructs in North Carolina a distillery to make ethanol from agricultural or forestry products for use as a motor fuel shall be allowed a credit against the tax imposed by this Division equal to twenty percent (20%) of the installation and equipment costs of construction, and an additional ten percent (10%) of those costs if the distillery is powered primarily by use of an alternative fuel source. In order to secure the credit allowed by this section, the taxpayer must own or control the distillery at the time of construction, and payment for the installation and equipment must be made by the taxpayer during the tax year for which the credit is claimed. The amount of the credit allowed for any one income year shall be limited to twenty percent (20%) of the costs paid during the year, or thirty percent (30%) of those costs if the distillery is powered primarily by use of an alternative fuel source. Invoices or receipts shall be furnished to substantiate a claim or a credit under this section if requested by the Secretary of Revenue. The credit allowed by this section shall not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except for payments of tax made by or on behalf of the taxpayer.

(b) For purposes of this section, "alternative fuel source" includes agricultural and forestry products, waste petroleum products, and peat, but does not include other petroleum products, coal, or natural gas.

(c) The amount of credit allowed under this section may be carried over for the next succeeding five years. (1979, 2nd Sess., c. 1265, s. 1.)

Editor's Note. — Session Laws 1979, 2nd Sess., c. 1265, s. 3, makes the act effective with respect to taxable years beginning on and after July 1, 1980.

§ 105-130.28. Credit against corporate income tax for construction of a photovoltaic equipment facility.

(a) Any corporation that constructs in North Carolina a facility for the production of photovoltaic equipment shall be allowed a credit against the tax imposed by this Division equal to twenty percent (20%) of the installation and equipment costs of construction. This credit shall not be allowed to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. The credit allowed by this section may not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except payments of tax made by or on behalf of the taxpayer.

(b) As used in this section, "photovoltaic equipment" means those products designed, manufactured, and produced to convert sunlight directly into electricity without a need for additional generating or conversion equipment.

(c) The amount of credit allowed under this section may be carried over for the next succeeding five years. (1981, c. 921, s. 1.)

Editor's Note. — Session Laws 1981, c. 921, s. 7, makes the act effective for taxable years beginning on and after Jan. 1, 1981.

§ 105-130.29. Credit against corporate income tax for construction of an olivine brick facility.

(a) Any corporation that constructs in North Carolina a facility for the production of olivine bricks for thermal storage shall be allowed a credit against the tax imposed by this Division equal to twenty percent (20%) of the installation and equipment costs of construction. This credit shall not be allowed to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. The credit allowed by this section may not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except payments of tax made by or on behalf of the taxpayer.

(b) The amount of credit allowed under this section may be carried over for the next succeeding five years. (1981, c. 921, s. 1.)

Editor's Note. — Session Laws 1981, c. 921, s. 7, makes the act effective for taxable years beginning on and after Jan. 1, 1981.

§ 105-130.30. Credit against corporate income tax for construction of a methane gas facility.

(a) Any corporation that constructs in North Carolina a facility for the production of methane gas from renewable biomass resources shall be allowed a credit against the tax imposed by this Division equal to ten percent (10%) of the installation and equipment costs of construction. The credit allowed under this section may not exceed two thousand five hundred dollars ($2,500) for any single installation. This credit shall not be allowed to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. The credit allowed by this section may not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except payments of tax made by or on behalf of the taxpayer.

(b) As used in this section, "renewable biomass resources" means organic matter produced by terrestrial and aquatic plants and animals such as standing vegetation, aquatic crops, forestry and agricultural residues and animal wastes that can be used for the production of energy. (1981, c. 921, s. 1.)

Editor's Note. — Session Laws 1981, c. 921, s. 7, makes the act effective for taxable years beginning on and after Jan. 1, 1981.

§ 105-130.31. Credit against corporate income tax for installation of a wind energy device.

(a) Any corporation that constructs or installs a wind energy device for the production of electricity at a site located in this State shall be allowed a credit against the tax imposed by this Division equal to ten percent (10%) of the installation and equipment costs of the wind energy device. The credit allowed under this section may not exceed one thousand dollars ($1,000) for any single installation. This credit shall not be allowed to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the

time the wind energy device is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except payments of tax made by or on behalf of the taxpayer.

(b) As used in this section, "wind energy device" means equipment (and parts solely related to the functioning of the equipment) that, when installed on a site, transmits or uses wind energy to generate electricity. (1981, c. 921, s. 1.)

Editor's Note. — Session Laws 1981, c. 921, s. 7, makes the act effective for taxable years beginning on and after Jan. 1, 1981.

§ 105-130.32. Credit against corporate income tax for installation of solar equipment for the production of industrial heat.

(a) Any corporation that constructs or installs solar equipment for the production of heat in the manufacturing process of a manufacturing business located in this State shall be allowed a credit against the tax imposed by this Division equal to twenty percent (20%) of the installation and equipment costs of the solar equipment. The credit allowed under this section may not exceed eight thousand dollars ($8,000) for any single installation. This credit shall not be allowed to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the business at the time the solar equipment is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except payments of tax made by or on behalf of the taxpayer.

(b) As used in this section, "solar equipment" means equipment and materials designed to collect, store, transport, or control energy derived directly from the sun. (1981, c. 921, s. 1.)

Editor's Note. — Session Laws 1981, c. 921, s. 7, makes the act effective for taxable years beginning on and after Jan. 1, 1981.

§ 105-130.33. Credit against corporate income tax for installation of a hydroelectric generator.

(a) Any corporation that constructs or installs a hydroelectric generator with a capacity of at least three kilowatts (3KW) at an existing dam or free flowing stream located in this State shall be allowed a credit against the tax imposed by this division equal to ten percent (10%) of the installation and equipment costs of the hydroelectric generator. The credit allowed under this section may not exceed five thousand dollars ($5,000) for any single installation. This credit shall not be allowed to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the hydroelectric generator is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except payments of tax made by or on behalf of the taxpayer.

(b) The term "installation costs" includes spillway and other site construction and modifications necessary to accommodate the hydroelectric generator.

(c) As used in this section, "hydroelectric generator" means a machine that produces electricity by water power or by the friction of water or steam. (1981, c. 921, s. 1.)

Editor's Note. — Session Laws 1981, c. 921, s. 7, makes the act effective for taxable years beginning on and after Jan. 1, 1981.

Division II. Individual Income Tax.

§ 105-141. "Gross income" defined.

(a) Except as otherwise provided in subsection (b) of this section, "gross income" for purposes of this Division shall mean all income in whatever form and from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions and similar items;
(2) Gross income derived from business;
(3) Gains derived from dealings in property;
(4) Interest;
(5) Rents;
(6) Royalty;
(7) Dividends;
(8) Alimony and separate maintenance payments, subject to the provisions of G.S. 105-141.2;
(9) Annuities, subject to the provisions of G.S. 105-141.1;
(10) Income from life insurance and endowment contracts;
(11) Pensions;
(12) Income from discharge of indebtedness;
(13) Distributive share of partnership income subject to the provisions of G.S. 105-142(c);
(14) Income in respect of a decedent, subject to the provisions of G.S. 105-142.1;
(15) Income from an interest in an estate or trust;
(16) Payments made by or on behalf of an employer by reason of death of an employee to the widow or heirs of the employee, subject to certain exclusions as provided in subsection (b) of this section;
(17) Recovery of bad debts and similar items previously charged off;
(18) Amounts received as reimbursement for losses of such nature as those allowable under subdivision (9)a and (9)b of G.S. 105-147 in excess of the adjusted basis of property, subject to the limitations in G.S. 105-144.1;
(19) Prizes and awards, subject to the exceptions provided in subsection (b) of this section relating to scholarship and fellowship grants; and
(20) Subject to the provisions of G.S. 105-141(b)(4), amounts received or made available from:
    a. Individual retirement accounts described in section 408(a) of the Internal Revenue Code of 1954 as amended;
    b. Individual retirement annuities described in section 408(b) of the Internal Revenue Code of 1954 as amended; and
    c. Retirement bonds described in section 409 of the Internal Revenue Code of 1954 as amended

to the extent such amounts are includible in the recipient's gross income under the internal revenue laws of the United States.

(21) Reimbursement for moving expenses from one residence to another which is attributable to employment or self-employment must be included in gross income as a compensation for services when the income from the new principal place of employment is reportable for taxation to North Carolina under the provisions of this Division; provided, however, that when only a portion of the income earned at the new principal place of employment is reportable for taxation to North Carolina under the provisions of this Division, the moving expense reimbursement shall be apportioned for taxation by this State under rules and regulations prescribed by the Secretary of Revenue.

(22) The amount of property taxes allowed under Division IV of this Article during the taxable year as a credit against the taxpayer's income tax.

(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 subdivision (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 meals or lodging furnished for the convenience of the employer to the extent that the value of such meals or lodging is excluded from gross income under the provisions of section 119 of the Internal Revenue Code of 1954 as amended; 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, or plan qualifying under the provisions of section 401(a) of the Internal Revenue Code of 1954 as amended.

(12) Comepnsation 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, or was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone, except that this subdivision shall not apply with respect to compensation received while such member was

hospitalized for any month beginning more than two years after the date of the termination of combatant activities in such zone. With respect to service in the combat zone designated for purposes of the Vietnam conflict, this subdivision shall not apply with respect to compensation received while such member was hospitalized for any month beginning after January 2, 1977. 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; and the term "compensation" does not include pension and retirement pay.

(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; provided, however, that in the case of an employee who makes an election under section 415(c)(4)(D) of the Internal Revenue Code of 1954 as amended to have the provisions of section 415 apply, the exclusion allowance of the employee shall be computed under the provisions of section 415 of the Internal Revenue Code of 1954 as amended.

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.

c. For purposes of this Division, amounts paid by an employer described in paragraph a of this subdivision to a custodial account which satisfies the requirements of section 401(f)(2) of the Internal Revenue Code of 1954 as amended shall be treated as amounts contributed by him for an annuity contract for his employee if the amounts are paid to provide a retirement benefit for that employee and are to be invested in regulated investment company stocks to be held in that custodial account. For purposes of this Division, a custodial account which satisfies the requirements of section 401(f)(2) of the Internal Revenue Code of 1954 as amended shall be treated in the same manner as an exempt trust qualifying under the provisions of G.S. 105-161(f)(1)a solely for purposes of taxing the income earned or received by such account.

d. An amount distributed from an annuity contract described in this subdivision or a custodial account described in this subdivision which qualifies for rollover treatment as provided in the Internal Revenue Code of 1954 as amended, shall likewise qualify for rollover hereunder and shall be excluded from gross income to the extent such amount is excluded from gross income as provided in

the Internal Revenue Code of 1954 as amended unless such exclusion is contrary to the context and intent of State law.

(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; and amounts earned during the income year by an individual retirement account described in section 408(a) of the Internal Revenue Code of 1954 as amended, or an individual retirement annuity described in section 408(b) of the Internal Revenue Code of 1954 as amended, provided that such individual retirement account or individual retirement annuity is exempt from federal income taxation under section 408(e) 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 excluded 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.

(21) No amount shall be included in gross income by reason of the discharge of all or part of the indebtedness of an individual under a student loan if such discharge was pursuant to a provision of such loan under which all or part of the indebtedness of an individual would be discharged if the individual worked for a certain period of time in certain geographical areas or for certain classes of employers.

For the purposes of this subdivision, the term "student loan" has the same meaning as found in section 2117(b) of the Internal Revenue Code of 1954 as amended.

(22) In the case of a North Carolina resident any amounts excludable from gross income as income earned by individuals in certain camps under the provisions of section 911 of the Internal Revenue Code of 1954 as amended and as exemptions for certain allowances received by civilian officers or employees of the government of the United States under the provisions of section 912 of the Internal Revenue Code of 1954 as amended.

(23) Educational expenses incurred by the employer for educational assistance to the employee to the extent excluded from federal gross income under the provisions of section 127 of the Internal Revenue Code of 1954 as amended. No deduction or credit shall be allowed under any other section of this Division for any amount excluded from income by reason of this section.

(24) In the case of an individual whose principal residence is damaged or destroyed by fire, storm, or other casualty, or who is denied access to his principal residence by governmental authorities because of the occurrence or threat of occurrence of such a casaulty, gross income does not include amounts received by such individual under an insurance contract which are paid to compensate or reimburse such individual for living expenses incurred for himself and members of his household resulting from the loss of use or occupancy of such residence. The exclusion provided in this subdivision shall apply to amounts received by the taxpayer for living expenses incurred during any period only to the extent the amounts received do not exceed the amounts by which:

a. The actual living expenses incurred during such period for himself and members of his household resulting from the loss of use or occupancy of their residence, exceeds

b. The normal living expenses which would have been incurred for himself and members of his household during such period.

(25) Any amount, not exceeding one thousand five hundred dollars ($1,500), paid to an individual as compensation for the performance of duties as a member of the North Carolina organized militia, the national guard as defined in G.S. 127A-3.

(26) a. General Rule. — At the election of the taxpayer, gross income does not include gain from the sale or exchange of property if with respect to a sale or exchange of a residence on or after July 27, 1978,

1. The taxpayer has attained the age of 55 before the date of such sale or exchange, and

2. During the five-year period ending on the date of the sale or exchange, such property has been owned and used by the taxpayer as his principal residence for periods aggregating three years or more.

b. Limitation. —

1. The amount of the gain excluded from gross income under sub-subdivision a shall not exceed one hundred thousand dollars ($100,000) (not to exceed fifty thousand dollars ($50,000) to each spouse with respect to property held by a husband and wife as tenants by the entirety or held as joint tenants with right of survivorship).

2. Sub-subdivision a shall not apply to any sale or exchange by the taxpayer if an election by the taxpayer or his spouse under sub-subdivision a with respect to any other sale or exchange is in effect.

c. Election. — An election under sub-subdivision a may be made or revoked at any time before the expiration of the period for making a claim for credit or refund of the tax imposed by this Article for the taxable year in which the sale or exchange occurred, and shall be made or revoked in such manner as the Secretary of Revenue shall prescribe. In the case of a taxpayer who is married, an election under sub-subdivision a or a revocation thereof may be made only if his spouse joins in such election or revocation.

d. Special Rules. —

1. For purposes of this subdivision, if

I. Property is held by a husband and wife as tenants by the entirety or held as joint tenants with right of survivorship,

II. Such husband and wife make a joint return under section 6013 of the Internal Revenue Code for the taxable year of the sale or exchange, and

III. One spouse satisfies the age, holding, and use requirements of sub-subdivision a with respect to such property, then both husband and wife shall be treated as satisfying the age, holding, and use requirements of sub-subdivision a with respect to such property.

2. For purposes of this subdivision, if property is held by a husband and wife as tenants by the entirety or held as joint tenants with right of survivorship, they shall be treated as one person for purpose of determining a gain under this subdivision. After such gain has been determined, one half the gain shall be attributed as income to each spouse. In order to enjoy the benefits of the election with respect to entirety property or property held as joint tenants with right of survivorship, the husband and wife shall file a combined return.
3. For purposes of this subdivision, in the case of an unmarried individual whose spouse is deceased on the date of the sale or exchange of property, if
   I. The deceased spouse (during the five-year period ending on the date of the sale or exchange) satisfied the holding and use requirements of sub-subdivision a 2 with respect to the property, and
   II. No election by the deceased spouse under sub-subdivision a is in effect with respect to a prior sale or exchange, then such individual shall be treated as satisfying the holding and use requirements of sub-subdivision a with respect to the property.
4. For purposes of this subdivision, if the taxpayer holds stock as a tenant-stockholder (as defined in section 216 of the Internal Revenue Code) in a cooperative corporation (as defined in that section), then
   I. The holding requirements of sub-subdivision a shall be applied to the holding of the stock, and
   II. The use requirements of sub-subdivision a shall be applied to the house or apartment which the taxpayer was entitled to occupy as such stockholder.
5. For purposes of this subdivision, the destruction, theft, seizure, requisition, or condemnation of property shall be treated as the sale of the property.
6. In the case of property only a portion of which, during the five-year period ending on the date of the sale or exchange, has been owned and used by the taxpayer as his principal residence for periods aggregating three years or more, this subdivision shall apply with respect to so much of the gain from the sale or exchange of such property as is determined, under regulations prescribed by the Secretary of Revenue, to be attributable to the portion of the property so owned and used by the taxpayer.
7. In the case of any sale or exchange, for purposes of this subdivision:
   I. The determination of whether an individual is married shall be made as of the date of the sale or exchange, and
   II. An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.
8. In applying G.S. 105-144.1 (relating to involuntary conversions) and 105-144.2 (relating to sale or exchange of

residence), the amount realized from the sale or exchange of property shall be treated as being the amount determined without regard to this subdivision, reduced by the amount of gain not included in gross income pursuant to an election under this subdivision.

9. If the basis of property sold or exchanged is determined (in whole or in part) under subsection (b) of G.S. 105-144.1 (relating to the basis of property acquired through involuntary conversion), then the holding and use by the taxpayer of the converted property shall be treated as holding and use by the taxpayer of the property sold or exchanged.

(27) The portion of payments received from governmental programs listed under section 126 of the Internal Revenue Code which are excludable from gross income for federal income tax purposes. No deduction or credit allowable under any other provision of this Division shall be allowed for any expenditure made with the use of such payments or for any property acquired with such payments (to the extent that the basis is allocable to the use of such payments). No adjustment to basis shall be made for property acquired through the use of such payments, to the extent that such adjustment would reflect the amount of such payment.

(28) Interest received, not to exceed two hundred dollars ($200.00), from savings deposits or certificates evidencing savings deposits in banks, credit unions, and savings and loan associations located within the State of North Carolina.

(29) Money and other benefits, other than salary or wages, received by a driver or passenger while in a ridesharing arrangement as defined by G.S. 136-44.21. (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; 1975, c. 275, s. 4; c. 559, ss. 3, 4, 6; 1977, c. 657, s. 5; c. 900, ss. 4, 6; 1977, 2nd Sess., c. 1200, s. 2; c. 1221; 1979, c. 179, s. 2; c. 801, ss. 37-39; 1979, 2nd Sess., c. 1109; c. 1301, s. 1; 1981, c. 606, s. 4.)

Local Modification. — New Hanover County School Employees' Retirement Fund: 1979, 2nd Sess., c. 1307.

Editor's Note. —

Subdivision (26) of this section was originally made effective with respect to taxable years beginning on and after Jan. 1, 1979. Session Laws 1979, 2nd Sess., c. 1301, amended Session Laws 1979, c. 801, s. 102, so as to make the subdivision effective with respect to taxable years beginning on and after July 27, 1978, and Session Laws 1981, c. 80, amended the 1979 and 1979, 2nd Sess., acts so as to make subdivision (26) effective with respect to taxable years ending on and after July 27, 1978.

References to "workmen's compensation" are now deemed references to "workers' compensation." See § 97-1.1.

Effect of Amendments. — The first 1979, 2nd Sess., amendment substituted "July 27, 1978," for "January 1, 1979," at the end of the introductory language in paragraph a of subdivision (26) of subsection (b).

The second 1979, 2nd Sess., amendment, applicable to taxable years beginning on or after January 1, 1980, added subdivision (28) to subsection (b).

The 1981 amendment added subdivision (29) of subsection (b).

Legal Periodicals. — For survey of 1979 tax law, see 58 N.C.L. Rev. 1548 (1980).

§ 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 except to the extent such distribution is a rollover amount which is not includable in federal gross income under section 402(a) of the Internal Revenue Code of 1954 as amended, 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 corporation 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.

The amount paid or distributed out of an individual retirement account described in section 408(a) of the Internal Revenue Code of 1954 as amended, or individual retirement annuity described in section 408(b) of the Internal Revenue Code of 1954 as amended, shall be includable in the gross income of the payee or distributee to the extent such amounts are includable in the payee's or distributee's gross income for federal income tax purposes.

Subject to the provisions of G.S. 105-141(b)(4) the amount received or made available from a retirement bond described in section 409 of the Internal Revenue Code of 1954 as amended, shall be included in the gross income of the payee or distributee to the extent such amounts are includable in the payee's or distributee's gross income for federal income tax purposes.

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; provided, however, that such allocation or distribution shall not be includable in the gross income for the income year if it is excludable from gross income for federal income tax purposes under the provisions of section 1385 of the Internal Revenue Code.

(f) Installment Method. —

(1) General Rule. — Except as otherwise provided in this subsection, income from an installment sale shall be taken into account for purposes of this division under the installment method.

(2) Installment Sale Defined. — For purposes of this subsection:

a. In General. The term "installment sale" means a disposition of property where at least one payment is to be received after the close of the taxable year in which the disposition occurs.

b. Exceptions. The term "installment sale" does not include:

1. Dealer Disposition of Personal Property. — A disposition of personal property on the installment plan by a person who regularly sells or otherwise disposes of personal property on the installment plan.

2. Inventories of Personal Property. — A disposition of personal property of a kind which is required to be included in the inventory of the taxpayer if on hand at the close of the taxable year.

(3) Installment Method Defined. — For purposes of this subsection, the term "installment method" means a method under which the income recognized for any taxable year from a disposition is that proportion of the payments received in that year which the gross profit (realized or to be realized when payment is completed) bears to the total contract price.

(4) Election Out. —

a. In General. Subdivision (1) shall not apply to any disposition if the taxpayer elects to have subdivision (1) not apply to such disposition.

b. Time and Manner for Making Election. Except as otherwise provided by the Secretary of Revenue, an election under paragraph "a" with respect to a disposition may be made only on or before the due date prescribed by law (including extension) for filing the taxpayer's return of the tax imposed by this division for the taxable year in which the disposition occurs. Such an election shall be made in the manner prescribed by the Secretary.

c. Election Revocable Only with Consent. An election under paragraph "a" with respect to any disposition may be revoked only with the consent of the Secretary.

(5) Definitions and Special Rules. — For purposes of this subsection:

a. Marketable Securities. The term "marketable securities" means any security for which, as of the date of the disposition, there was a market on an established securities market or otherwise.

b. Payment. Except as provided in paragraph "c" the term "payment" does not include the receipt of evidences of indebtedness of the

person acquiring the property (whether or not payment of such indebtedness is guaranteed by another person).

c. Purchaser Evidences of Indebtedness Payable on Demand or Readily Tradable. Receipt of a bond or other evidence of indebtedness which

1. Is payable on demand, or
2. Is issued by a corporation or a government or political subdivision thereof and is readily tradable, shall be treated as receipt of payment.

d. Readily Tradable Defined. For purposes of paragraph "c," the term "readily tradable" means a bond or other evidence of indebtedness which is issued

1. With interest coupons attached or in registered form (other than one in registered form which the taxpayer establishes will not be readily tradable in an established securities market), or
2. In any other form designed to render such bond or other evidence of indebtedness readily tradable in an established securities market.

e. Like-Kind Exchanges. In the case of any exchange described in G.S. 105-145 (a):

1. The total contract price shall be reduced to take into account the amount of any property permitted to be received in such exchange without recognition of gain,
2. The gross profit from such exchange shall be reduced to take into account any amount not recognized by reason of G.S. 105-145(a), and
3. The term "payment" shall not include any property permitted to be received in such exchange without recognition of gain.

(6) Use of Installment Method by Shareholders in section 337 of the Internal Revenue Code Liquidations:

a. Receipt of Obligations Not Treated as Receipt of Payment:

1. In General. If, in connection with a liquidation to which section 337 of the Internal Revenue Code applies, in a transaction to which section 331 of the Internal Revenue Code applies the shareholder receives (in exchange for the shareholder's stock) an installment obligation acquired in respect of a sale or exchange by the corporation during the 12-month period set forth in section 337(a) of the Internal Revenue Code, then, for purposes of this subsection, the receipt of payments under such obligation (but not the receipt of such obligation) by the shareholder shall be treated as the receipt of payment for the stock.
2. Obligations Attributable to Sale of Inventory Must Result From Bulk Sale. Subparagraph 1 shall not apply to an installment obligation described in section 337(b)(1)(B) of the Internal Revenue Code unless such obligation is also described in section 337(b)(2)(B) of the Internal Revenue Code.
3. Sales by Liquidating Subsidiary. For purposes of subparagraph 1, in any case to which section 337(c)(3) of the Internal Revenue Code applies, an obligation acquired in respect of a sale or exchange by the selling corporation shall be treated as so acquired by the corporation distributing the obligation to the shareholder.

b. Distributions Received in More Than One Taxable Year of Shareholder. If:

1. Paragraph "a" applies with respect to any installment obligation received by a shareholder from a corporation and
2. By reason of the liquidation such shareholder receives property in more than one taxable year,

then, on completion of the liquidation, basis previously allocated to property so received shall be reallocated for all such taxable years so that the shareholder's basis in the stock of the corporation is properly allocated among all property received by such shareholder in such liquidation.

(7) Rules:

a. In General. The Secretary shall prescribe such rules as may be necessary or appropriate to carry out the provisions of this section.

b. Selling Price Not Readily Ascertainable. The rules prescribed under paragraph a shall include rules providing for ratable basis recovery in transactions where the gross profit or the total contract price (or both) cannot be readily ascertained.

(8) Installment Method for Dealers in Personal Property. —

a. General Rule.

1. In General. Under rules prescribed by the Secretary, a person 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. Total Contract Price. For purposes of paragraph 1, the total contract price of all sales of personal property on the installment plan includes such sales and is added on the books of account of the seller to the established cash selling price of such property. This paragraph shall not apply with respect to sales of personal property under a revolving credit type plan.

b. Carrying Charges Not Included in Total Contract Price. If the carrying charges or interest with respect to sales of personal property, the income from which is returned under subdivision a 1, is not included in the total contract price, payments received with respect to such sales shall be treated as applying first against such carrying charges or interest.

(9) Gain or Loss on Disposition of Installment Obligation. —

a. General Rule. If an installment obligation is satisfied at other than its face value or 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 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. Basis of Obligation. 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. Special Rule for Transmission at Death. Except as provided in G.S. 105-142.1 (relating to recipients of income in respect of decedents), this subsection shall not apply to the transmission of installment obligations at death.

(10) Obligation Becomes Unenforceable. — For purposes of this subsection, if any installment obligation is canceled or otherwise becomes unenforceable the obligation shall be treated as if it were disposed of in a transaction other than a sale or exchange. (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; 1975, c. 559, s. 5; 1979, c. 179, s. 2; 1981, c. 46, s. 1.)

Effect of Amendments. — The 1981 amendment rewrote subsection (f). Session Laws 1981, c. 46, s. 4, provides that the act shall become effective for dispositions made after Oct. 19, 1980, for taxable years ending after Oct. 19, 1980, except that subdivision (6) of subsection (f) shall apply in the case of distributions of installment obligations after March 31, 1980, subdivision (8) of subsection (f) shall apply to taxable years ending after Oct. 19, 1980, and subdivision (10) of subsection (f) shall apply to installment obligations becoming unenforceable after Oct. 19, 1980, and also provides that, in the case of any disposition made on or before Oct. 19, 1980, in any taxable year ending after that date, the provisions of G.S. 105-142(f)(2) as they existed before Oct. 19, 1980, shall be applied with respect to such disposition without regard to the first proviso of that subdivision and without regard to any requirement that more than one payment be received.

§ 105-142.1. Income in respect of decedents.

(a) The amount of all items of gross income in respect of a decedent which are not properly includable in the gross income of the decedent for the taxable period in which falls the date of his death or for a prior taxable period (including all items of gross income in respect of a prior decedent if the right to receive such items was acquired by reason of the death of the prior decedent or by bequest, devise or inheritance from the prior decedent) shall be included in the gross income, for the taxable year when received, of:

(1) The estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent;

(2) The person who, by reason of the death of the decedent, acquires the right to receive the amount if the right to receive the amount is not acquired by the decedent's estate from the decedent; or

(3) The person who acquires from the decedent the right to receive the amount by bequest, devise or inheritance if the amount is received after a distribution by the decedent's estate of such right or is received without an administration of the decedent's estate.

(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.

(c) The right, described in subsection (a) of this section, to receive an amount shall be treated in the hands of the estate of the decedent or any individual who acquires such right by reason of the death of the decedent, or by bequest, devise, or inheritance from the decedent, as if it had been acquired by the estate or such individual in the transaction in which the right to receive the income

was originally derived and the amount includible in gross income under subsections (a) and (b) shall be considered in the hands of the estate or such individuals to have the character which it would have had in the hands of the decedent if the decedent had lived and received such amount.

(d) For the purposes of this section an amount equal to the excess of the face amount of an installment obligation (the income from which was properly reportable by the decedent on the installment basis under G.S. 105-142) over the basis of such obligation in the hands of the decedent shall be considered as an item of gross income in respect of a decedent, and such obligation shall be considered a right to receive an item of gross income in respect of a 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.

(f) Other Rules Relating to Installment Obligations. —

(1) In General. — In the case of an installment obligation reportable by the decedent on the installment method under G.S. 105-142, for purposes of subsection (b) of this section;

a. The second sentence of subsection (b) of this section shall be applied by inserting "(other than the obligor)" after "or a transfer to a person."

b. Any cancellation of such an obligation shall be treated as a transfer, and

c. Any cancellation of such an obligation occurring at the death of the decedent shall be treated as a transfer by the estate of the decedent (or, if held by a person other than the decedent before the death of the decedent, by such person).

(2) Cancellation Includes Becoming Unenforceable. — For purposes of paragraph (1) of this subsection, an installment obligation which becomes unenforceable shall be treated as if it were cancelled. (1957, c. 1340, s. 4; 1967, c. 1110, s. 3; 1973, c. 1287, s. 5; 1981, c. 46, s. 3.)

Effect of Amendments. — The 1981 amendment, applicable in the case of decedent's dying after Oct. 19, 1980, added subsection (f).

§ 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.

(b) Except as hereinafter provided in subsection (c) of this section, the final distribution to the taxpayer of the assets of a corporation shall be treated as a sale of the stock or securities of the corporation owned by him, and the gain or loss shall be computed accordingly. Cash dividends paid by a corporation prior to January 1, 1969, from earnings derived from the sale of substantially all its assets under the provisions of section 337 of the Internal Revenue Code of 1954 shall be subject to the provision of G.S. 105-147(7) to the extent the gain on such sale shall be taxable by the State of North Carolina. Provided, however, that the preceding sentence shall not apply to pending litigation in a court of competent jurisdiction. Provided also, that if an individual receives an installment obligation in liquidation under the provisions of section 337 of the Internal Revenue Code, the gain realized shall be reported in accordance with G.S. 105-142(f).

(c) An election as to recognition of gain in certain liquidations of corporations shall be allowed subject to the following:

(1) General Rule. — In the case of property distributed in complete liquidation of a corporation, if

a. The liquidation is made in pursuance of a plan of liquidation adopted on or after June 21, 1961; and

b. The distribution is in complete cancellation or redemption of all the stock, and the transfer of all the property under the liquidation occurs within some one calendar month,

then in the case of each qualified electing shareholder (as defined in subdivision (2)) gain on the shares owned by him at the time of the adoption of the plan of liquidation shall be recognized only to the extent provided in subdivision (4).

(2) Qualified Electing Shareholders. — For purposes of this section, the term "qualified electing shareholder" means an individual who is a shareholder of any class of stock (whether or not entitled to vote on the adoption of such plan of liquidation) who is a shareholder at the time of the adoption of such plan, and whose written election to have the benefits of subdivision (1) has been made and filed in accordance with subdivision (3), but only if written elections have been so filed by shareholders (other than corporations) who at the time of the adoption of the plan of liquidation are owners of stock possessing at least eighty percent (80%) of the total combined voting power (exclusive of voting power possessed by stock owned by corporations) of all classes of stock entitled to vote on the adoption of such plan of liquidation.

(3) Making and Filing of Elections. — The written elections referred to in subdivision (2) shall be deemed to have been made and filed if, and only if, such written elections were duly made and filed for federal income tax purposes in conformity with the provisions of section 333 of the 1954 Internal Revenue Code and the regulations thereunder.

(4) Noncorporate Shareholders. — In the case of a qualified electing shareholder other than a corporation:

a. There shall be recognized, and treated as ordinary income, so much of the gain as is not in excess of his ratable share of the earnings and profits of the corporation accumulated after January 1, 1921, such earnings and profits to be determined as of the close of the month in which the transfer in liquidation occurred under subdivision (1), paragraph b, but without diminution by reason of distributions made during such month; but by including in the computation thereof all amounts accrued up to the date on which the transfer of all the property under the liquidation is completed; and

b. There shall be recognized and treated as gain so much of the remainder of the gain as is not in excess of the amount by which the value of that portion of the assets received by him which consists of money, or of stock or securities acquired by the corporation after December 31, 1962, exceeds his ratable share of such earnings and profits.

(5) Basis of Property Received in Liquidation. — If property was acquired by an individual shareholder in the liquidation of a corporation in cancellation or redemption of stock, and with respect to such acquisition gain was realized, but as the result of an election made by a shareholder under this section the extent to which gain was recognized was determined under this section, then the basis shall be the same as the basis of the stock cancelled or redeemed in the liquidation, decreased in the amount of any money received by the shareholder, and increased in the amount of gain recognized to him. (1939, c. 158, s. 319; 1941, c. 50, s. 5; 1957, c. 1340, s. 4; 1961, c. 1093; 1963, c. 1169, s. 2; 1965, c. 580; 1967, c. 1110, s. 3; 1969, c. 1120; 1973, c. 1287, s. 5; 1981, c. 46, s. 2.)

Effect of Amendments. — The 1981 amendment, effective for dispositions made after Oct. 19, 1980, for taxable years ending after Oct. 19, 1980, added the last sentence of subsection (b).

§ 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.

f. As to a North Carolina resident any amounts deductible as certain expenses of living abroad under the provisions of section 913 of the Internal Revenue Code of 1954 as amended.

g. As to taxpayers engaged in the commercial growing of trees, reasonable expenses paid for reforestation and cultivation, including site preparation, natural and artificial forestation, noncommercial removal of residual stands for silvicultural purposes, and cultivation of established young growth of desirable trees. Such expenses may, at the taxpayer's option, be amortized based on a period of 60 months. No deduction shall be allowable under this subdivision for amounts deducted under other provisions of this Division. The deduction provided under this subdivision shall be reduced by amounts received for incentive payments excludable from income under this Division. No adjustment to the basis of property shall be made for expenses deducted under this subdivision. The election under this subdivision for any taxable year shall be made within the time prescribed by law (including extensions thereof) for filing the return for the taxable year. The election shall be made in such manner as the Secretary of Revenue may prescribe, and such election may not be revoked.

(2) In the case of an individual, all the ordinary and necessary expenses paid or incurred during the income year for the production or collection of income; for the management, conservation, or maintenance of property held for the production of income; or in connection with the determination, collection or refund of any tax.

(3) All the ordinary and necessary expenses paid during the income year by any teacher, substitute teacher, principal or superintendent of the public schools of the State for the purpose of attending summer school in any accredited college or university. Ordinary and necessary expenses shall be construed to include but shall not be limited to

tuition, matriculation fees, registration fees, amounts paid for books and necessary classroom supplies, subsistence and individual athletic supplies. The deduction authorized under this subdivision shall not exceed the sum of two hundred and fifty dollars ($250.00) for any one year.

(4) Rentals or other payments required to be made as a condition of the continued use or possession for the purpose of the trade of property to which the taxpayer has not taken or is not taking title, or in which he has no equity.

(5) All interest paid during the income year on the indebtedness of the taxpayer except interest paid or accrued in connection with the ownership of property, the income from which is not taxable under this Division.

(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. Dividends received on shares of capital stock owned in a stock-owned savings and loan association taxed under Article 8D of this Chapter shall be deductible. 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. In no case shall the total amount of dividends that are deducted from a taxpayer's gross income as a result of the application of the provisions of this subdivision be in excess of fifteen thousand dollars ($15,000) for the taxable year, except that this limitation shall not apply to dividends received from a corporation for which a valid election to be taxed under Subchapter S of Chapter 1 of the Internal Revenue Code is in effect.

(8) In the case of an individual moving from one location to another, moving expenses paid or incurred during the taxable year 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; except, that no individual, other than a resident of North Carolina who qualifies for moving expense deductions under the provisions of subsection (i) of section 217 of the Internal Revenue Code of 1954 as amended, shall be allowed the deduction for such moving expenses unless the income earned at the new principal place of employment is reportable for taxation to North Carolina under the provisions of 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; provided, that if the reimbursement for the moving expenses is reportable for taxation to North Carolina under the provisions of G.S. 105-141(a)(21), the deduction for moving expenses shall be allowed to the extent allowed for federal income tax purposes; and provided further, that when only a portion of the income earned at the new principal place of employment is reportable for taxation to North Carolina under the provisions of this Division, the moving expense deduction shall be apportioned under rules and regulations prescribed by the Secretary of Revenue. 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. The deduction allowed by this subdivision for moving expenses shall be allowed as a business expense deductible from gross income in arriving at adjusted gross income.

(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 nondeductibility 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 of 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 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-two-hundred-dollar ($2,200) 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.

(12) An allowance for depreciation and obsolescence of property and an allowance for depletion in the case of mines, oil and gas wells, other natural deposits and timber to the extent allowed or allowable for federal income tax purposes under the provisions of the Internal Revenue Code of 1954 as amended; provided, that where joint returns are filed by husband and wife for federal income tax purposes the deduction allowed for additional first year depreciation shall be such amount as would have been allowable if separate federal returns had been filed; and provided further, that where there is a difference in the basis of property for State and federal purposes, such difference shall be taken into account in determining the depreciation, obsolescence or depletion allowable under this 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, based on a period of 60 months, of the cost of:

a. 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. 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 the items enumerated in this paragraph shall be allowed by the Secretary only upon the condition that the person or firm claiming such allowance shall furnish to the Secretary a certificate from the Department of Natural Resources and Community Development certifying that said 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.

b. Purchasing and installing equipment or constructing facilities for the purpose of recycling or resource recovering of or from solid waste, or for the purpose of reducing the volume of hazardous

waste generated. The deduction provided for the items enumerated in this paragraph shall be allowed by the Secretary of Revenue only upon the condition that the person claiming such allowance shall furnish to the Secretary a certificate from the Department of Human Resources certifying that the Department of Human Resources has found as a fact that the equipment or facility has actually been purchased, installed or constructed, that it is in conformance with all rules and regulations of the Department of Human Resources, and that recycling or resource recovering is the primary purpose of the facility or equipment.

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.

c. Rehabilitating certain certified historic structures, but only to the extent allowed by section 191 of the Internal Revenue Code.

d. Any equipment mandated by the Occupational Safety and Health Act, including the cost of planning, acquiring, constructing, modifying, and installing said equipment.

The term "equipment mandated by the Occupational Safety and Health Act" has the same meaning as in G.S. 105-130.10A.

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

(15) Contributions or gifts made by individuals, firms and partnerships within the income year to corporations, trusts, community chests, funds, foundations or associations organized, and operated exclusively for religious, charitable, literary, 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 private stockholder or individual, or contributions or gifts made by individuals, firms and partnerships within the income tax year to posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual, or the organization known as Alcoholics Anonymous or any local chapter thereof, or to a cemetery company owned and operated exclusively for the benefit of its members, or any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, if such company or corporation is not operated for profit and no part of the net earnings of such company or corporation inures to the benefit of any private shareholder or individual; or rescue squads, and volunteer fire departments, if such organization is not operated for profit and no part of the net earnings of such organization inures to the benefit of any private shareholder, member or individual: Provided, that in the case of such contributions or gifts by a partnership, such amounts shall not be deductible in determining the net income of the partnership but shall be allocated to each partner on the basis of the ratio used for determining each partner's share of the distributive gain or loss of the partnership, and shall be claimed to the extent allowable on each partner's individual return; and, provided further, that in the case of such contributions or gifts by individuals, the amount allowed as a deduction shall be limited to an amount not in excess of fifteen per centum (15%) of the individual's adjusted gross income. A mileage rate equal to ninety percent (90%) of the mileage rate allowed by the Secretary of Revenue for business expenses shall be allowed as compensation for the cost of operating an automobile in connection with gratuitous services rendered to an organization listed in this subdivision.

(15a) Contributions or gifts of property included in, or eligible for inclusion in, the National Register of Historical Places, when made by individuals, firms and partnerships within the income year to nonprofit corporations, trusts, foundations or associations organized and operated exclusively for charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and one of whose purposes includes the preservation or conservation of real or personal property of architectural, archeological, historic, artistic, cultural, natural or scenic significance. In the case of such contributions or gifts by a partnership, such amounts shall not be deductible in determining the net income of the partnership but shall be allocated to each partner on the basis of the ratio used for determining each partner's share of the distributive gain or loss of the partnership, and shall be claimed to the extent allowable on each partner's individual return.

Any taxpayer who makes a contribution deductible under the provisions of this subsection may elect to claim one fifth of the deduction with respect to the year in which the contribution was made, and the remaining four fifths may be claimed in equal amounts with respect to the four taxable years next succeeding the year in which the contribution was made. If a timely election is made on the basis prescribed above, the election shall be binding on the taxpayer and he may not after the date prescribed for filing his return change to another method of claiming the deduction; and, in like manner, if a timely election is made to claim the deduction wholly in the year in which the contribution was made, that election shall likewise be binding on the taxpayer.

A taxpayer shall not be entitled to a deduction under the provisions of this section for a contributions deduction claimed under the provisions of G.S. 105-147(15) or (16).

(16) Contributions or gifts made by individuals, firms, and partnerships within the income year to the State of North Carolina, any of its institutions, instrumentalities, or agencies, any county or municipality of this State, their institutions, instrumentalities, or agencies, contributions or gifts made by individuals, firms, and partnerships within the income year to educational institutions or nonprofit hospitals or the Civil Air Patrol located within North Carolina, and contributions or gifts made by individuals, firms, and partnerships within the income year to public-supported community foundations or public-supported community trusts, no part of the net earnings of which inures to the benefit of any private stockholder or individual; provided that in the case of contributions or gifts by a partnership such amounts shall not be deductible in determining the net income of the partnership but shall be allocated to each partner on the basis of the ratio used for determining each partner's share of the distributive gain or loss of the partnership; and shall be claimed to the extent allowable on each partner's individual return. For the purpose of this subdivision, the words "educational institution" shall mean only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where the educational activities are carried on.

The words "educational institution" shall be deemed to include all of such institution's departments, schools and colleges, a group of "educational institutions" and an organization (corporation, trust, foundation, association or other entity) organized and operated exclusively to receive, hold, invest and administer property and to make

expenditures to or for the sole benefit of an "educational institution" or group of "educational institutions."

For the purpose of this subdivision, the words "public-supported community foundations or public-supported community trusts" shall mean those community foundations or community trusts which are deemed to be publicly supported for purposes of the Internal Revenue Code of 1954, as amended, or regulations promulgated pursuant thereto.

A mileage rate equal to ninety percent (90%) of the mileage rate allowed by the Secretary of Revenue for business expenses shall be allowed as compensation for the cost of operating an automobile in connection with gratuitous services rendered to an organization listed in this subdivision.

(17) Amounts actually expended by an individual, taxable under this Division, in maintaining one or more relatives of the taxpayer, dependent upon the taxpayer for their chief support, in an institution for the care of mental or physical defectives irrespective of whether such dependent relatives be above or below the age of 18: Provided, that the deduction authorized in this subdivision shall apply only to actual expenditures in excess of the amounts allowed as personal exemption for such dependents under the provisions of subdivision (5) of subsection (a) of G.S. 105-149, and the maximum amount that may be deducted by an individual under the authorization herein stated shall not exceed eight hundred dollars ($800.00). Provided further, that any excess of such actual expenditures over the personal exemption for such dependents plus eight hundred dollars ($800.00) may be construed as medical expenses and may be deducted subject to the provisions of subdivision (11) of this section.

(18) In the case of a nonresident individual or partnership, the deductions allowed in this section other than deductions connected with income arising from sources within the State shall be allowed only in the proportion that the individual's adjusted gross income reportable to North Carolina relates to his total adjusted gross income, if the nonresident's state of principal residence allows similar apportionment of personal deductions. The proper apportionment and allocation of the deductions with respect to sources of income within and without the State shall be determined under rules prescribed by the Secretary of Revenue.

(19) In computing net income no deduction shall be allowed under this section for "ordinary and necessary expenses"; rental expense, interest expenses, taxes or contributions being otherwise deductible under this section, if (i) the same are not actually paid within the taxable year or within the time fixed by statute for filing the taxpayer's return; and (ii) if, by reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not, unless actually paid, includable in the gross income of such person for the taxable year in which or with which the taxable year of the taxpayer ends. In the case of taxpayers who keep their accounts and report for income tax purposes on a cash basis, items of expenditure of such nature as specified above in this subdivision shall not be allowed as a deduction unless such were actually paid within the income year for which a report is made.

(20) Reasonable amounts paid by employers to trusts which qualify for exemption under subsection (f)(1)a of G.S. 105-161 and 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; reasonable amounts paid by or on behalf of an individual for his benefit or for the benefit of himself and his spouse to an individual retirement account described in section 408(a) of the Internal Revenue Code of 1954 as amended, for an individual retirement annuity described in section 408(b) of the Internal Revenue Code of 1954 as amended, or for a retirement bond described in section 409 of the Internal Revenue Code of 1954 as amended (but only if the bond is not redeemed within 12 months of the date of its issuance); 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.

(21) Payments made by a divorced or estranged spouse to his or her spouse who is living separate and apart from the spouse making such payment for the separate support and maintenance of such spouse, except that only such amounts may be deducted under this subdivision as are includable in the gross income of the spouse receiving such payments under the provisions of G.S. 105-141.2. Provided, that any individual who reports his income to the State of North Carolina on the accrual basis may claim the deduction authorized by this subdivision if the payments claimed as a deduction are actually 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 fifty dollars ($550.00) whichever is 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.

(23) As to employers, the amount of the salary or other compensation of an employee which is paid for a period of not more than 24 months after the employee's death to his estate, widow, or heirs provided such payment is made in recognition of services rendered by the employee prior to his death and is reasonable in amount.

(24) Deduction for Removal of Architectural Barriers to the Handicapped. — Any taxpayer who shall renovate an existing building or facility owned by such 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 shall be allowed a deduction for the entire amount of the cost of such renovation. The deduction shall be allowable in the year the renovation is completed and shall be 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.

(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).

(26) Repealed by Session Laws 1981, c. 899, s. 1, effective January 1, 1981.

(27) a. There shall be allowed as a deduction any political contribution or newsletter fund contribution, payment of which is made by a taxpayer within the taxable year.

b. The deduction under subsection (a) above shall not exceed twenty-five dollars ($25.00), and shall be allowed only if such contribution is verified in such manner as the Secretary shall prescribe by administrative rule or regulation.

c. Definitions. — For the purposes of this subsection (27):

1. The term "political contribution" means any contribution or gift of money to

I. An individual who is a candidate for nomination or election to any federal, State, or local elective public office in any primary, general, or special election, for use by that individual to further his candidacy for nomination or election to such office;

II. Any committee, association, or organization (whether or not incorporated) organized and operated exclusively for the purpose of influencing, or attempting to influence, the nomination or election of one or more individuals who are candidates for nomination or election to any federal, State, or local elective public office, for use by such committee, association, or organization to further the candidacy of such individual or individuals for nomination or election to such office;

III. The national committee of a national political party;

IV. The State committee of a national political party as designated by the national committee of such party; or

V. A local committee of a national political party as designated by the State committee of such party designated under subparagraph IV.

2. The term "candidate" means, with respect to any federal, State, or local elective public office, an individual who

I. Publicly announces before the close of the calendar year following the calendar year in which the contribution or gift is made that he is a candidate for nomination or election to such office; and

II. Meets the qualifications prescribed by law to hold such office.

3. The term "national political party" means

I. In the case of contributions made during a taxable year of the taxpayer in which the electors of President and Vice-President are chosen, a political party presenting candidates or electors for such offices on the official election ballot of 10 or more states, or

II. In the case of contributions made during any other taxable year of the taxpayer, a political party which met the qualifications described in subparagraph I in the last preceding election of a president and vice-president.

4. The term "State" means the State of North Carolina; and the term "local" means one or more political subdivisions (or parts thereof) of the State.
5. The term "newsletter fund contribution" means a contribution or gift of money to a fund established and maintained by an individual who holds, has been elected to, or is a candidate for nomination or election to, any federal, State, or local elective public office for use by such individual exclusively for the preparation and circulation of a newsletter. (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; 1975, c. 236, s. 1; c. 559, s. 1; c. 661, s. 1; c. 764, s. 5; 1977, c. 487; c. 657, s. 5; c. 771, s. 4; c. 890, ss. 1, 2; c. 900, s. 1; 1979, c. 179, s. 2; c. 659; c. 776, s. 2; c. 801, ss. 41-47; 1981, c. 653, s. 1; c. 704, s. 17; c. 899, s. 1; c. 957; c. 973, ss. 1, 2.)

Effect of Amendments. — The introductory language and subdivision (1) of this section are set out above to correct an erroneous reference to the Internal Revenue Code in paragraph f of the subdivision in the replacement volume.

The first 1981 amendment, effective with respect to taxable years beginning on and after Jan. 1, 1981, added subdivision (15a).

The second 1981 amendment added "or for the purpose of reducing the volume of hazardous waste generated" at the end of the first sentence of paragraph d of subdivision (13). As to short title and purpose of Session Laws 1981, c. 704, see note to § 105-122.

The third 1981 amendment, effective for income tax years beginning on and after Jan. 1, 1981, deleted subdivision (26), which related to deductions for employment-related expenses, defined as amounts paid for expenses for household services and for the care of certain qualified individuals if such expenses were incurred to enable the taxpayer to be gainfully employed. As to credits against personal income tax for child care and certain employment-related expenses, see § 105-151.11.

The fourth 1981 amendment, effective for taxable years beginning on and after Jan. 1, 1982, added the second sentence of subdivision (15), and added the last paragraph of subdivision (16).

The fifth 1981 amendment, effective with respect to taxable years beginning on and after Jan. 1, 1981, rewrote subdivision (18), and deleted the former second paragraph of subdivision (22), which read "Provided, further, that the provisions of this subdivision shall not apply to taxpayers who are not residents of this State."

Session Laws 1981, c. 704, s. 27, contains a severability clause.

Legal Periodicals. — For survey of 1979 tax law, see 58 N.C.L. Rev. 1548 (1980).

CASE NOTES

Cited in W.R. Co. v. North Carolina Property Tax Comm'n, 48 N.C. App. 245, 269 S.E.2d 636 (1980).

§ 105-149. Exemptions.

Legal Periodicals. — For survey of 1979 tax law, see 58 N.C.L. Rev. 1548 (1980).

CASE NOTES

Stated in Coleman v. Arnette, 48 N.C. App. 733, 269 S.E.2d 755 (1980).

§ 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 (11x) of the North Carolina Building Code for the taxable year within which the construction of such dwelling units 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 were required to be built in compliance with section (11x) of the North Carolina Building Code; 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 (11x) of the North Carolina Building Code. When he has recorded the number of such units on the face of the occupancy permit, the building inspector shall promptly make and forward a copy of the permit to the Special Office for the Handicapped, Department of Insurance. (1973, c. 910, s. 2; 1979, c. 803, ss. 3, 4; 1981, c. 682, s. 17.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "(11x)" for "(IIX)" in three places.

§ 105-151.2. Credit against personal income tax for solar hot water, heating and cooling.

(a) Any person (to include partnerships) who causes to be constructed or installed a solar hot water, heating or cooling system in any residence or other building in North Carolina shall be allowed as a credit against the tax imposed by this Division, an amount equal to twenty-five percent (25%) of the installation and equipment cost of the solar hot water, heating or cooling equipment; provided, that credit allowed under this section shall not exceed one thousand dollars ($1,000) per system or per year on any single building or for each family dwelling unit of a multi-dwelling building which is individually metered for electric power or natural gas or with separate furnace for oil heat paid for by the occupant; provided further, that to obtain the credit the taxpayer must own or control the use of the building at the time of the installation, except that in

the case of a building constructed or modified for sale in which a solar system is constructed or installed, the credit shall be allowed to the owner who first occupies the building for use after the construction or installation of the system or the owner-lessor who first leases the building for use after the construction or installation of the system; provided further, that the credit shall not be allowed to the extent that any of the cost of the system was provided by federal, State, or local grants; and provided further, that if the credit allowed by this section exceeds the taxes imposed by this Division reduced by all other credits allowed by the provisions of this Division, such excess shall be allowed against the taxes imposed by this Division for the next three succeeding years.

(b) In the case of property owned by the entirety, where both spouses are required to file North Carolina income tax returns, each spouse may claim one half of the credit allowed by this section or one spouse may claim the entire credit allowed by this section by agreement with the other spouse, provided both spouses were living together at the end of the taxable year and file their separate returns for the taxable year on the combined form. Where only one spouse is required to file a North Carolina income tax return, such spouse may claim the credit allowed by this section.

(c) For the purpose of this section, the term "solar hot water, heating and cooling equipment" means any hot water, heating, cooling, or heating and cooling equipment which meets the definitive performance criteria established by the U.S. Secretary of the Treasury or any other performance criteria approved and published by the Secretary of Revenue, or passive solar systems that meet the eligibility criteria approved and published by the Secretary of Revenue. (1977, c. 792, s. 3; 1979, c. 892, s. 2; 1981, c. 921, ss. 5, 6.)

Effect of Amendments. — The 1981 amendment, effective for taxable years beginning on and after Jan. 1, 1981, substituted "causes to be constructed or installed" for "constructs or installs" near the beginning of subsection (a), inserted "per system or per year" following "($1,000)" near the middle of the first proviso to subsection (a), substituted the second and third provisos to subsection (a) for the former second proviso, relating to similar subject matter, and added "or passive solar systems that meet the eligibility criteria approved and published by the Secretary of Revenue" at the end of subsection (c).

§ 105-151.5. Credit against personal income tax for conversion of industrial boiler to wood fuel.

Any person who modifies or replaces an oil or gas-fired boiler or kiln and the associated fuel and residue handling equipment used in the manufacturing process of a manufacturing business located in this State with one which is capable of burning wood shall be allowed as a credit against the tax imposed by this Division, an amount equal to fifteen percent (15%) of the installation and equipment cost of such conversion; provided, that in order to secure the credit allowed by this section, the taxpayer must own or control the business in which such boiler or kiln is used at time of such conversion and payment in part or in whole for such installation and equipment must be made by the taxpayer during the tax year for which the credit is claimed; and the amount of credit allowed for any one income year shall be limited to fifteen percent (15%) of such costs paid during the year; and the credit allowed by this section shall not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except for payments of tax made by or on behalf of the taxpayer. (1979, c. 801, s. 68; 1979, 2nd Sess., c. 1318, s. 2.)

Effect of Amendments. — The 1979, 2nd Sess., amendment inserted "and the associated fuel and residue handling equipment" near the beginning of the section.

§ 105-151.6. Credit against personal income tax for construction of a fuel ethanol distillery.

(a) Any person who constructs in North Carolina a distillery to make ethanol from agricultural or forestry products for use as a motor fuel shall be allowed a credit against the tax imposed by this Division equal to twenty percent (20%) of the installation and equipment costs of construction, and an additional ten percent (10%) of those costs if the distillery is powered primarily by use of an alternative fuel source. In order to secure the credit allowed by this section, the taxpayer must own or control the distillery at the time of construction and payment for the installation and equipment must be made by the taxpayer during the tax year for which the credit is claimed. The amount of the credit allowed for any one income year shall be limited to twenty percent (20%) of the costs paid during the year, or thirty percent (30%) of those costs if the distillery is powered primarily by use of an alternative fuel source. Invoices or receipts shall be furnished to substantiate a claim of a credit under this section if requested by the Secretary of Revenue. The credit allowed by this section shall not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except for payments of tax made by or on behalf of the taxpayer.

(b) For purposes of this section, "alternative fuel source" includes agricultural and forestry products, waste petroleum products, and peat, but does not include other petroleum products, coal, or natural gas.

(c) The amount of credit allowed under this section may be carried over for the next succeeding five years. (1979, 2nd Sess., c. 1265, s. 3.)

Effect of Amendments. — Session Laws 1979, 2nd Sess., c. 1265, s. 3, makes the act effective with respect to taxable years beginning on and after July 1, 1980.

§ 105-151.7. Credit against personal income tax for installation of a hydroelectric generator.

(a) Any person who constructs or installs a hydroelectric generator with a capacity of at least three kilowatts (3KW) at an existing dam or free flowing stream located in this State shall be allowed a credit against the tax imposed by this Division equal to ten percent (10%) of the installation and equipment costs of the hydroelectric generator. The credit allowed under this section may not exceed five thousand dollars ($5,000) for any single installation. This credit shall not be allowed to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the hydroelectric generator is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except payments of tax made by or on behalf of the taxpayer.

(b) In the case of property owned by the entirety, where both spouses are required to file North Carolina income tax returns, each spouse may claim one half of the credit allowed by this section or one spouse may claim the entire credit allowed by this section by agreement with the other spouse, provided both spouses were living together at the end of the taxable year and file their separate returns for the taxable year on the combined form. Where only one spouse is required to file a North Carolina income tax return, such spouse may claim the credit allowed by this section.

(c) The term "installation costs" includes spillway and other site construction and modifications necessary to accommodate the hydroelectric generator.

(d) As used in this section, "hydroelectric generator" means a machine that produces electricity by water power or by the friction of water or steam. (1981, c. 921, s. 2.)

Editor's Note. — Session Laws 1981, c. 921, s. 7, makes the act effective for taxable years beginning on and after Jan. 1, 1981.

§ 105-151.8. Credit against personal income tax for installation of solar equipment for the production of industrial heat.

(a) Any person who constructs or installs solar equipment for the production of heat in the manufacturing process of a manufacturing business located in this State shall be allowed a credit against the tax imposed by this Division equal to twenty percent (20%) of the installation and equipment costs of the solar equipment. The credit allowed under this section may not exceed eight thousand dollars ($8,000) for any single installation. This credit shall not be allowed to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the business at the time the solar equipment is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except payment of tax made by or on behalf of the taxpayer. In no case shall a tax credit be allowed both under the provisions of this section and G.S. 105-151.2.

(b) In the case of property owned by the entirety, where both spouses are required to file North Carolina income tax returns, each spouse may claim one half of the credit allowed by this section or one spouse may claim the entire credit allowed by this section by agreement with the other spouse, provided both spouses were living together at the end of the taxable year and file their separate returns for the taxable year on the combined form. Where only one spouse is required to file a North Carolina income tax return, such spouse may claim the credit allowed by this section.

(c) As used in this section, "solar equipment" means equipment and materials designed to collect, store, transport, or control energy derived directly from the sun. (1981, c. 921, s. 2.)

Editor's Note. — Session Laws 1981, c. 921, s. 7, makes the act effective for taxable years beginning on and after Jan. 1, 1981.

§ 105-151.9. Credit against personal income tax for installation of a wind energy device.

(a) Any person who constructs or installs a wind energy device for the production of electricity at a site located in this State shall be allowed a credit against the tax imposed by this Division equal to ten percent (10%) of the installation and equipment costs of the wind energy device. The credit allowed under this section may not exceed one thousand dollars ($1,000) for any single installation. This credit shall not be allowed to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the wind energy device is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this Division for the taxable year

reduced by the sum of all credits allowable under this Division, except payments of tax made by or on behalf of the taxpayer.

(b) In the case of property owned by the entirety, where both spouses are required to file North Carolina income tax returns, each spouse may claim one half of the credit allowed by this section or one spouse may claim the entire credit allowed by this section by agreement with the other spouse, provided both spouses were living together at the end of the taxable year and file their separate returns for the taxable year on the combined form. Where only one spouse is required to file a North Carolina income tax return, such spouse may claim the credit allowed by this section.

(c) As used in this section, "wind energy device" means equipment (and parts solely related to the functioning of the equipment) that, when installed on a site, transmits or uses wind energy to generate electricity. (1981, c. 921, s. 2.)

Editor's Note. — Session Laws 1981, c. 921, s. 7, makes the act effective for taxable years beginning on and after Jan. 1, 1981.

§ 105-151.10. Credit against personal income tax for construction of a methane gas facility.

(a) Any person who constructs in North Carolina a facility for the production of methane gas from renewable biomass resources shall be allowed a credit against the tax imposed by this Division equal to ten percent (10%) of the installation and equipment costs of construction. The credit allowed under this section may not exceed two thousand five hundred dollars ($2,500) for any single installation. This credit shall not be allowed to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. The credit allowed by this section may not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except payments of tax made by or on behalf of the taxpayer.

(b) In the case of property owned by the entirety, where both spouses are required to file North Carolina income tax returns, each spouse may claim one half of the credit allowed by this section or one spouse may claim the entire credit allowed by this section by agreement with the other spouse, provided both spouses were living together at the end of the taxable year and file their separate returns for the taxable year on the combined form. Where only one spouse is required to file a North Carolina income tax return, such spouse may claim the credit allowed by this section.

(c) As used in this section, "renewable biomass resources" means organic matter produced by terrestrial and aquatic plants and animals such as standing vegetation, aquatic crops, forestry and agricultural residues and animal wastes that can be used for the production of energy. (1981, c. 921, s. 2.)

Editor's Note. — Session Laws 1981, c. 921, s. 7, makes the act effective for taxable years beginning on and after Jan. 1, 1981.

§ 105-151.11. Credit against personal income tax for child-care and certain employment-related expenses.

(a) Any person who maintains a household which includes as a member one or more qualifying individuals shall be allowed as a credit against the tax imposed by this Division an amount equal to seven percent (7%) of the employment-related expenses as defined in subdivision (b)(2) herein. The employment-related expenses on which the credit is computed shall not exceed four thousand dollars ($4,000) during any one taxable year.

In the case of such expenses for services outside the taxpayer's household incurred for the care of a qualifying individual described in (b)(1)a below, the amount on which the credit is computed during any one taxable year shall not exceed two thousand dollars ($2,000) per qualifying individual, subject, however, to the four thousand dollar ($4,000) limitation set out above.

(b) For the purposes of this section:

(1) The term "qualifying individual" means:

a. A dependent of the taxpayer who is under the age of 15 and with respect to whom the taxpayer is entitled to a deduction under G.S. 105-149(5) [105-149(a)(5)];

b. A dependent of the taxpayer who is physically or mentally incapable of caring for himself; or

c. The spouse of the taxpayer, if the spouse is physically or mentally incapable of caring for himself or herself.

(2) The term "employment-related expenses" means amounts paid for expenses for household service and for the care of a qualifying individual, but only if such expenses are incurred to enable the taxpayer to be gainfully employed.

(3) a. For the purposes of this section, an individual shall be treated as maintaining a household for any period only if over half of the cost of maintaining the household during such period is furnished by such individual.

b. In the case of a married person living with his or her spouse and such spouse is maintaining the household, the credit provided for herein shall be allowed with respect to employment-related expenses in connection with any qualifying individuals, except as limited herein, of the spouse not maintaining the household.

(4) If a child (as defined in G.S. 105-149(a)(5)) who is under the age of 15 or who is physically or mentally incapable of caring for himself receives over half of his support during the calendar year from his parents who are divorced or separated with the intent to remain separate and apart, and such child is in the custody of one or both of his parents for more than one half of the calendar year, in the case of any taxable year beginning in such calendar year such child shall be treated as being a qualifying individual described in subparagraph a or b of subdivision (b)(1), as the case may be, with respect to that parent who has custody for a longer period during such calendar year than the other parent, and shall not be treated as being a qualifying individual with respect to such other parent.

(c) (1) If the taxpayer is married and living with his spouse for any period during the taxable year, there shall be taken into account employment-related expenses incurred during any month of such period only if:

a. Both spouses are gainfully employed on a substantially full-time basis, or one spouse is gainfully employed on a substantially full-time basis and the other spouse is a full-time student, which

shall mean an individual who during each of five calendar months during the taxable year is a full-time student at an educational institution, or

b. The spouse is a qualifying individual described in subdivision (b)(1)c.

(2) No credit shall be allowed under this section with respect to any amount paid by the taxpayer to an individual with respect to whom a deduction is allowable under G.S. 105-149(5) [105-149(a)(5)] to the taxpayer or his spouse, or who is a child of the taxpayer (within the meaning of G.S. 105-149(a)(5)) who has not attained the age of 19 at the close of the taxable year.

(3) In the case of employment-related expenses incurred during any taxable year solely with respect to a qualifying individual (other than an individual who is also described in subdivision (b)(1)a), the amount of such expenses which may be taken into account for purposes of this section shall be reduced:

a. If such individual is described in subdivision (b)(1)b, by the amount by which the sum of:

1. Such individual's adjusted gross income for such taxable year, and

2. The disability payments received by such individual during such year, exceed one thousand dollars ($1,000), or

b. In the case of a qualifying individual described in subdivision (b)(1)c, by the amount of disability payments received by such individual during the taxable year.

For purposes of this paragraph, the term "disability payment" means a payment (other than a gift) which is made on account of the physical or mental condition of an individual and which is not included in gross income.

(d) If a husband and wife are living together at the end of the taxable year, no credit under this section shall be allowed unless they file a combined return for the year.

(e) No credit shall be allowed under this section unless the taxpayer completes and attaches to his return the necessary form or forms as may be required by the Secretary of Revenue, nor shall any deduction be allowed under G.S. 105-147(11) for amounts claimed under this subdivision.

(f) The credit allowed by this section shall not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except for payments of tax made by or on behalf of the taxpayer.

(g) No credit shall be allowed under this section with respect to employment-related expenses paid by a nonresident of this State. (1981, c. 899, s.1.)

Editor's Note. — Session Laws 1981, c. 899, s. 2, makes the act effective for income tax years beginning on and after Jan. 1, 1981.

§ 105-154. Information at the source.

CASE NOTES

Applied in Reddington v. Thomas, 45 N.C. App. 236, 262 S.E.2d 841 (1980).

Cited in Lowder v. All Star Mills, Inc., 301 N.C. 561, 273 S.E.2d 247 (1981).

§ 105-159.1. Designation of tax by individual to political party.

Effect of Amendments. — Session Laws 1981, c. 963, s. 1, amended Session Laws 1977, 2nd Sess., c. 1298, s. 3, as set out in the Editor's Note in the bound volume, so as to delete the expiration date of this section, which formerly was Dec. 31, 1981.

Division IV. Manufacturer's Income Tax.

§ 105-163.01. Short title.

Legal Periodicals. — For survey of 1978 law on taxation, see 57 N.C.L. Rev. 1142 (1979).

Division V. Poultry or Livestock Producer's Income Tax Credit.

§ 105-163.05. Credit for local property taxes paid by producer upon poultry and livestock.

(a) A credit against the income tax imposed in this Article may be claimed by any producer of poultry or livestock for that portion of annual property taxes due and paid on a timely basis during the income year by such producer to counties and municipalities in this State upon poultry and livestock.

(b) The poultry and livestock producer's income tax credit shall be applied against the income tax due from the producer for the taxable year in which the property tax which is the basis for the credit was actually paid. If such credit, when combined with all other credits allowed by this Article, exceeds the income tax due from, or if a loss is sustained by the producer for such taxable year, the excess credit may be carried forward for not more than five taxable years next succeeding the taxable year in which the credit first became available to the producer. In such case, the excess credit shall be applied against income tax due in the earliest taxable year possible and to its maximum extent before any excess credit may be carried forward to a latter taxable year.

(c) For purposes of this section, "property taxes" shall have the same meaning as in G.S. 105-163.02(8). (1979, 2nd Sess., c. 1179, s. 1.)

Editor's Note. — Session Laws 1979, 2nd Sess., c. 1179, s. 2, provides that the act shall apply to taxable years beginning on and after January 1, 1981.

ARTICLE 4A.

Withholding of Income Taxes from Wages and Filing of Declarations of Estimated Income and Payment of Income Tax by Individuals.

§ 105-163.2. Withholding.

(a) Every employer making payment of wages on or after January 1, 1960, shall deduct and withhold with respect to the wages of each employee for each payroll period an amount determined as follows:

Such amount which, if an equal amount was collected for each similar payroll period with respect to a similar amount of wages for each payroll period during an entire calendar year, would aggregate or approximate the income tax liability of such employee under Article 4 of this Chapter after making allowance for the personal exemptions to which such employee would be entitled on the basis of his status during such payroll period and after making allowance for withholding purposes for a deduction from wages of the amount of the standard deduction allowed under G.S. 105-147(22) and without making allowance for any other deductions.

(b) The Secretary of Revenue shall cause to be prepared and shall promulgate tables for computing amounts to be withheld with respect to different rates of wages for different payroll periods applicable to the various combinations of exemptions to which an employee may be entitled and taking into account the limited ten percent (10%) deduction above referred to. Such tables may provide for the same amount to be withheld within reasonable salary brackets or ranges so designed as to result in the withholding during a year of approximately the amount of an employee's indicated income tax liability with respect to said year. The withholding of wages pursuant to and in accordance with such tables shall be deemed as a matter of law to constitute compliance with the provisions of subsection (a) of this section, notwithstanding any other provisions of this Article.

(c) If wages are paid with respect to a period which is not a payroll period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days, excluding Sundays and holidays, equal to the number of days in the period with respect to which such wages are paid.

(d) In any case in which wages are paid by an employer without regard to any payroll period or other period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days equal to the number of days, excluding Sundays and holidays, which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the later.

(e) The Secretary may, by regulations, authorize employers:

(1) To estimate the wages which will be paid to any employee in any quarter of the calendar year;

(2) To determine the amount to be deducted and withheld upon each payment of wages to such employee during such quarter as if the appropriate average of the wages so estimated constituted the actual wages paid; and

(3) To deduct and withhold upon any payment of wages to such employee during such quarter such amount as may be necessary to adjust the

amount actually deducted and withheld upon the wages of such employee during such quarter to the amount that would be required to be deducted and withheld during such quarter if the payroll period of the employee was quarterly.

(f) The Secretary is authorized in unusual circumstances wherein he finds that the use of the prescribed tables is impracticable or constitutes an unreasonable requirement of the employer to authorize such employer to use some other method of determining the amounts to be withheld under this Article, provided the amounts withheld under such other method will reasonably approximate the indicated income tax liability of his employees. Further, the Secretary may authorize an employer to use another method for determining the amounts to be withheld under the provisions of this Article from the wages or salaries of groups of employees or individual employees if the circumstances are such that the use of the tables would produce substantially incorrect results. Any authorization of the use of a different method shall be subject to review and cancellation or alteration by the Secretary every twelfth month, and the Secretary may cancel such authorization or order an alteration of such method at any time upon a finding by him that such authorization is being abused or that such method is not resulting in the withholding of a sum reasonably approximating the indicated income tax liability of the employees, which finding may be made by the Secretary with or without notice or a hearing and shall be conclusive except as hereinafter provided. The Secretary shall notify the employer in writing of his finding and order thereon, and such notice shall be deemed to have been received by the employer on the third day after having been deposited in the mail and the employer shall thereafter abide by such order. Any employer feeling aggrieved by such order may thereafter apply for a hearing thereon before the Secretary, unless a hearing has been previously held, and upon such hearing the findings of the Secretary shall be deemed conclusive.

(g) The Secretary is authorized to provide by regulation, under such conditions and to such extent as he deems proper, for withholding in addition to that otherwise required under this section in cases in which the employer and the employee agree to such additional withholding. Such additional withholding shall for all purposes be treated as other withholding amounts required to be deducted and withheld under this Article.

(h) The act of compliance with any of the provisions of this Article by a nonresident employer shall not constitute an act in evidence of and shall not be deemed to be evidence that such nonresident is doing business in this State. (1959, c. 1259, s. 1; 1973, c. 476, s. 193; 1981, c. 13.)

Effect of Amendments. — The 1981 amendment, effective for taxable years beginning on or after Jan. 1, 1980, substituted "the amount of the standard deduction allowed under G.S. 105-147(22)" for "ten percent (10%) thereof, but not exceeding five hundred dollars ($500.00) per calendar year" near the end of the second paragraph of subsection (a).

ARTICLE 5.

Schedule E. Sales and Use Tax.

DIVISION I. TITLE, PURPOSE AND DEFINITIONS.

§ 105-164.2. Purpose.

CASE NOTES

Quoted in Rent-A-Car Co. v. Lynch, 298 N.C. 559, 259 S.E.2d 564 (1979).

Cited in Stam v. State, 47 N.C. App. 209, 267 S.E.2d 335 (1980).

§ 105-164.3. Definitions.

CASE NOTES

Applied in Young Roofing Co. v. North Carolina Dep't of Revenue, 42 N.C. App. 248, 256 S.E.2d 306 (1979).

Quoted in In re Proposed Assmt. of Additional Sales & Use Tax, 46 N.C. App. 631, 265 S.E.2d 461 (1980).

Cited in Rent-A-Car Co. v. Lynch, 298 N.C. 559, 259 S.E.2d 564 (1979).

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 aircraft, 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 aircraft, 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).

The separate sale of a new motor vehicle chassis and a new motor vehicle body to be installed thereon, whether by the same retailer or by different retailers shall be subject only to the tax herein prescribed with respect to a single motor vehicle. No tax shall be imposed upon a body mounted on 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 Division shall not apply to the sale of a motor vehicle by some person, firm or corporation who or which is not engaged in business as a retailer of motor vehicles if the tax levied under this Article has previously been paid with respect to said motor vehicle. Provided, however, persons who lease or rent motor vehicles

shall collect and remit the tax provided for in this Article on the separate retail sale of motor vehicles in addition to the tax imposed upon the receipts from the lease or rental of such motor vehicles.

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 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 corps, 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, and sales to contractors and subcontractors purchasing mill machinery or mill machinery

parts and accessories for use by them in the performance of contracts with manufacturing industries and plants, and sales to subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with general contractors who have contracts with 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.

n. Sales to farmers of commercially manufactured portable swine equipment or facilities and accessories thereto.

o. Sales to farmers of grain, feed or soybean storage facilities and accessories thereto, whether or not dryers are attached, and all similar apparatus and accessories thereto for the storage of grain, feed or soybeans.

p. Sales to farmers for installing on the farm of: all bulk feed handling equipment which has been designed and constructed, to be used for raising, feeding and the production of livestock and poultry products; and further including all cages used in the production of livestock and poultry products.

(2) At the rate of three percent (3%) of the gross proceeds derived from the lease or rental of tangible personal property as defined herein, where the lease or rental of such property is an established business, or the same is incidental or germane to said business; except that whenever a rate of less than three percent (3%) is applicable to a sale of property which is leased or rented, the lower rate of tax shall be due on such lease or rental proceeds.

(3) Operators of hotels, motels, tourist homes and tourist camps shall be considered "retailers" for the purposes of this Article. There is hereby levied upon every person, firm or corporation engaged in the business of operating hotels, and every person, firm or corporation engaged in the business of operating tourist homes, tourist camps and similar places of business, a tax of three percent (3%) of the gross receipts derived from the rental of any room or rooms, lodgings, or accommodations furnished to transients at any hotel, motel, inn, tourist camp, tourist cabin or any other place in which rooms, lodgings or accommodations are regularly furnished to transients for a consideration. The tax shall not apply, however, to any room, lodging or accommodation supplied to the same person for a period of 90 continuous days or more. Every person subject to the provisions of this section shall register and secure a license in the manner provided in subdivision (7) of this section, and, insofar as practicable, all other

provisions of this Article shall also be applicable with respect to the tax herein provided for. The tax shall not apply to rent derived from private residences or cottages designed for single family occupancy located in a resort area when the owner occupies the residence or cottage for part of the season. Persons owning more than one such single family dwelling in a single resort area and occupying each of them for a portion of the season may select one and only one of the residences so occupied to be exempt from this tax.

(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 aforenamed 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.

(5) The said tax shall be collected from the retailer as defined herein and paid by him at the time and in the manner as hereinafter provided. Provided, however, that any person engaging or continuing in business as a retailer shall pay the tax required on the net taxable sales of such business at the rates specified when proper books are kept showing separately the gross proceeds of taxable and nontaxable sales of tangible personal peoperty in such form as may be accurately and conveniently checked by the Secretary or his duly authorized agent. If such records are not kept separately the tax shall be paid as a retailer on the gross sales of business and the exemptions and exclusions provided by this Article shall not be allowed.

(6) The tax so levied is and shall be in addition to all other taxes whether levied in the form of excise, license or privilege or other taxes.

(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, 1979, apply for and obtain from the Secretary upon payment of the sum of five dollars ($5.00) 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. Except as hereinafter provided, a license issued under this subsection shall be a continuing license until

revoked for failure to comply with the provisions of this Article. However, any person who has heretofore applied for and obtained such license, and such license was in force and effect as of July 1, 1979, shall not be required to apply for and obtain a new license.

Any person who shall cease to be engaged in any business for which a privilege tax is imposed by this Article, and who shall remain continuously out of business for a period of five years shall apply for and obtain a new license from the Secretary upon the payment of a tax of five dollars ($5.00), and any license previously issued under this section shall be null, void and of no effect. The burden of proof after such period shall be upon the taxpayer to show that he did engage in such activity within the period, and that no new license is required. (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; 1975, c. 752; 1977, c. 903; 1977, 2nd Sess., c. 1218; 1979, c. 17, s. 1; c. 22; c. 48, s. 1; c. 527, s. 1; c. 801, s. 73; 1981, c. 984, ss. 1, 2.)

Effect of Amendments. — The 1981 amendment, applicable to all sales made on and after July 1, 1979, inserted "feed" in two places in paragraph o of subdivision (1), and substituted "livestock" for "swine" in two places in paragraph p of subdivision (1).

Legal Periodicals. — For survey of 1979 tax law, see 58 N.C.L. Rev. 1548 (1980).

CASE NOTES

Apartment Owners Must Pay Sales Tax on Laundry Machine Receipts. — The General Assembly did not intend by the 1975 amendment to § 105-85, exempting apartment owners from the privilege license tax on laundries, to exclude the payment of sales tax by apartment owners on the gross receipts from coin-operated washers and dryers. In re Proposed Assmt. of Additional Sales & Use Tax, 46 N.C. App. 631, 265 S.E.2d 461 (1980).

Applied in Young Roofing Co. v. North Carolina Dep't of Revenue, 42 N.C. App. 248, 256 S.E.2d 306 (1979); Development Assocs. v. Wake County Bd. of Adjustment, 48 N.C. App. 541, 269 S.E.2d 700 (1980).

Cited in Rent-A-Car Co. v. Lynch, 298 N.C. 559, 259 S.E.2d 564 (1979).

Part 3. Use Tax.

§ 105-164.6. Imposition of tax.

An excise tax is hereby levied and imposed on the storage, use or consumption in this State of tangible personal property purchased within and without this State for storage, use or consumption in this State, the same to be collected and the amount to be determined by the application of the following rates against the sales price, to wit:

(1) At the rate of three percent (3%) of the cost price of each item or article of tangible personal property when the same is not sold but used, consumed, distributed or stored for use or consumption in this State; except that, whenever a rate of less than three percent (3%) is applicable under the sales tax schedule set out in G.S. 105-164.4 to the sale at retail of an item or article of tangible personal property, the same rate, and maximum tax if any, shall be used in computing any use tax due under this subdivision. The separate sale of a new motor vehicle chassis and a new motor vehicle body to be installed thereon, whether by the same retailer or by different retailers, shall be subject only to the tax herein prescribed with respect to a single motor vehicle.

(2) At the rate of three percent (3%) of the monthly lease or rental price paid by the lessee or rentee, or contracted or agreed to be paid by the lessee or rentee, to the owner of the tangible personal property; except that, whenever a rate of less than three percent (3%) is applicable under the sales tax schedule set out in G.S. 105-164.4 to the sale at retail of an item or article of tangible personal property, then the same rate, and maximum tax if any, shall be used in computing any use tax due under this subdivision.

(3) There is hereby levied and there shall be collected from every person, firm, or corporation, an excise tax of three percent (3%) of the purchase price of all tangible personal property purchased or used which shall enter into or become a part of any building or other kind of structure in this State, including all materials, supplies, fixtures and equipment of every kind and description which shall be annexed thereto or in any manner become a part thereof. Said tax shall be levied against the purchaser of such property. Provided, that where the purchaser is a contractor, the contractor and owner shall be jointly and severally liable for said tax, but the liability of the owner shall be deemed satisfied if before final settlement between them the contractor furnishes to the owner an affidavit certifying that said tax has been paid. Provided further, that where the purchaser is a subcontractor, the contractor and subcontractor shall be jointly and severally liable for said tax, but the liability of the contractor shall be deemed satisfied if before final settlement between them the subcontractor furnishes to the contractor an affidavit certifying that said tax has been paid.

(3a) Every person, firm or corporation that purchases or acquires a motor vehicle for use on the streets and highways of this State shall pay the tax at the rate of two percent (2%) subject to a maximum tax of one hundred twenty dollars ($120.00) per vehicle, on the sales or purchase price of such motor vehicle and said tax shall be paid to the Secretary of Revenue at the time of applying for a certificate of title, or registration and license plate or plates for such vehicle. However, if such person shall furnish to the Secretary a certificate from a retailer of motor vehicles engaged in business in this State certifying that such person has paid the tax levied thereon by this Article to the retailer, the liability of such person for the tax shall be extinguished. No certificate of title, or registration and license plate or plates shall be issued for any motor vehicle purchased or acquired for use on the streets and highways of this State unless and until the tax provided for under this Article on motor vehicles has been paid. Nothing herein is intended to relieve any retailer of motor vehicles engaged in business in this State from his liability for collecting and remitting sales or use tax on his sales of motor vehicles for use by the purchasers thereof in this State and no retailer shall be absolved of this liability for his failure to collect the tax from such purchasers.

The tax levied under this Division shall not apply to the owner of a motor vehicle who has purchased or acquired said motor vehicle from some person, firm or corporation who or which is not engaged in business as a retailer of motor vehicles if the tax levied under this Article has previously been paid with respect to said motor vehicle. Provided, however, persons who lease or rent motor vehicles in this State shall collect and remit the tax provided for in this Article on the separate retail sale of motor vehicles in this State in addition to the tax imposed upon the receipts from the lease or rental of such motor vehicles.

(4) Where a retail sales tax has already been paid with respect to said tangible personal property in this State by the purchaser thereof, said

tax shall be credited upon the tax imposed by this Part. Where a retail sales and use tax is due and has been paid with respect to said tangible personal property in another state by the purchaser thereof for storage, use or consumption in this State, said tax shall be credited upon the tax imposed by this Part. If the amount of tax paid to another state is less than the amount of tax imposed by this Part, the purchaser shall pay to the Secretary an amount sufficient to make the tax paid to the other state and this State equal to the amount imposed by this Part. The Secretary of Revenue shall require such proof of payment of tax to another state as he deems to be necessary and proper. No credit shall be given under this subdivision for sales or use taxes paid in another state if that state does not grant similar credit for sales taxes paid in North Carolina.

(5) Every person storing, using or otherwise consuming in this State tangible personal property purchased or received at retail either within or without this State shall be liable for the tax imposed by this Article and the liability shall not be extinguished until the tax has been paid to this State. Provided, however, that a receipt from a registered retailer engaged in business in this State given to the purchaser in accordance with the provisions of this Article shall be prima facie sufficient to relieve the purchaser from liability for the tax to which such receipt may refer and the liability of the purchaser shall be extinguished upon payment of the tax by any retailer from whom he has purchased said property.

(6) Except as provided herein the tax so levied is and shall be in addition to all other taxes whether levied in the form of excise, license, privilege or other taxes.

(7) Every retailer engaged in business in this State selling or delivering tangible personal property for storage, use or consumption in this State shall immediately after July 1, 1979, apply for and obtain from the Secretary upon the payment of the sum of five dollars ($5.00) 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. Except as hereinafter provided, a license issued under this subsection shall be a continuing license until revoked for failure to comply with the provisions of this Article. However, any person who has heretofore applied for and obtained such license, and such license was in force and effect as of July 1, 1979, shall not be required to apply for and obtain a new license.

Any person who shall cease to be engaged in any business for which a tax is imposed by this Article, and who shall remain continuously out of business for a period of five years shall apply for and obtain a new license from the Secretary upon the payment of a tax of five dollars ($5.00), and any license previously issued under this section shall be null, void and of no effect. The burden of proof after such period shall be upon the taxpayer to show that he did engage in such activity within the period, and that no new license is required.

(8) Notwithstanding any other provisions of this Article, a use tax, at the applicable use tax rate, as hereinbefore provided, is hereby levied upon the storage or use in this State of any motor vehicles, machines, machinery, tools or other equipment brought, imported or caused to be brought into this State for use in constructing, building or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, railway system, reservoir or dam, hydraulic or power plant, transmission line, tower, dock,

wharf, excavation, grading or other improvement or structure, or any part thereof. The owner or, if the property is leased the lessee of any such motor vehicle, machine, machinery, tools or other equipment shall be liable for the tax provided for in this paragraph, to be computed as set out below. The useful life of such motor vehicles, machines, tools or other equipment shall be determined by the Secretary in accordance with the experience and practices of the building and construction trades. Said use tax shall be computed on the basis of such proportion of the original purchase price of such property as the duration of time of use in this State bears to the total useful life thereof. Such tax shall become due immediately upon such property being brought into this State, and in the absence of satisfactory evidence as to the period of use intended in this State, it shall be presumed that such property will remain in this State for the remainder of its useful life. All provisions of this Article not directly in conflict with the provisions of this paragraph shall be applicable with respect to the matters herein set forth. The provisions of this paragraph shall not be applicable with respect to sales of such property within this State or to the use, storage or consumption of such property when purchased for use in this State, and in such cases the full sales or use tax shall be paid as in all other cases, irrespective of the period of intended use in this State. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5; 1961, c. 826, s. 2; 1967, c. 1110, s. 6; 1973, c. 476, s. 193; 1979, c. 17, s. 2; c. 48, ss. 3, 4; c. 179, s. 3; c. 527, s. 2; 1979, 2nd Sess., c. 1100, s. 1; c. 1175; 1981, cc. 18, 65.)

Effect of Amendments. — The first 1979 2nd Sess., amendment, effective July 1, 1981, added the last sentence of subdivision (4).

The second 1979, 2nd Sess., amendment, effective October 1, 1980, rewrote all of subdivision (3) following the first sentence.

The first 1981 amendment, effective July 1, 1981, deleted "electric or steam" preceding "railway" near the middle of the first sentence of subdivision (8).

The second 1981 amendment, effective July 1, 1981, substituted "the same rate, and maximum tax if any, shall be used" for "the same rate shall be used" near the end of the first sentence of subdivision (1) and near the end of subdivision (2).

Legal Periodicals. — For survey of 1979 tax law, see 58 N.C.L. Rev. 1548 (1980).

CASE NOTES

Cited in Rent-A-Car Co. v. Lynch, 298 N.C. 559, 259 S.E.2d 564 (1979).

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:

Agricultural Group.

(1) Commercial fertilizer on which the inspection tax is paid and lime and land plaster used for agricultural purposes whether the inspection tax is paid or not.

(2) Seeds; remedies, vaccines, medications, litter materials, and feeds for livestock and poultry; rodenticides, insecticides, herbicides, fungicides, and pesticides for livestock, poultry, and agriculture; defoliants for use on cotton or other crops; plant growth inhibitors, regulators, or stimulators for agriculture including systemic and contact or other sucker control agents for tobacco and other crops.

(3) Products of farms, forests and mines in their original or unmanufactured state when such sales are made by the producer in the capacity of producer.

(4) Cotton, tobacco, peanuts or other farm products sold to manufacturers for further manufacturing or processing.

(4.1) Baby chicks and poults sold for commercial poultry or egg production.

Industrial Group.

(5) Manufactured products produced and sold by manufacturers or producers to other manufacturers, producers, or registered wholesale or retail merchants, for the purpose of resale except as modified by Division I, G.S. 105-164.3, subdivision (23). Provided, however, this exemption shall not extend to or include retail sales to users or consumers not for resale.

(6) Ice, whether sold by the manufacturer, producer, wholesale or retail merchant.

(7) Sales of products of waters in their original or unmanufactured state when such sales are made by the producer in the capacity of producer. Fish and seafoods are likewise exempt when sold by the fisherman in that capacity.

(8) Sales of tangible personal property to a manufacturer which enters into or becomes an ingredient or component part of tangible personal property which is manufactured.

(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 Resources and Community Development 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.

(10) Sales to commercial laundries or to pressing and dry cleaning establishments of articles or materials used for the identification of garments being laundered or dry cleaned, wrapping paper, bags, hangers, starch, soaps, detergents, cleaning fluids and other compounds or chemicals applied directly to the garments in the direct performance of the laundering or the pressing and cleaning service.

Motor Fuels Group.

(11) Gasoline or other motor fuel on which the tax levied in G.S. 105-434 and/or G.S. 105-435 of the General Statutes is due and has been paid, and the fact that a refund of the tax levied by either of said sections is made pursuant to the provisions of Subchapter V of Chapter 105 shall not make the sale or the seller of such fuels subject to the tax levied by this Article.

Medical Group.

(12) Crutches, artificial limbs, artificial eyes, hearing aids, false teeth, eyeglasses ground on prescription of physicians or optometrists, pulmonary respirators sold on prescription of physicians, whether worn on the person or not, and other orthopedic appliances when the same are designed to be worn on the person of the owner or user.

(13) Medicines sold on prescription of physicians and dentists.

Printed Materials Group.

(14) Holy Bibles; public school books on the adopted list, the selling price of which is fixed by State contract.

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.

(16) Sales of used articles taken in trade, or a series of trades, as a credit or part payment on the sale of a new article, provided the tax levied in this Article is paid on the gross sales price of the new article. In the interpretation of this subsection, new article shall be taken to mean the original stock in trade of the merchant, and shall not be limited to newly manufactured articles. The resale of articles repossessed by the vendor shall likewise be exempt from gross sales taxable under this Article.

Exempt Status Group.

(17) Sales which a state would be without power to tax under the limitations of the Constitution or laws of the United States or under the Constitution of this State.

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 subdivision shall apply to the total for both.

(19) Sales by concession stands operated by the State prison system within the confines of the prisons where such sales are made to prison inmates and guards therein while on duty.

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

(21) The lease or rental of motion picture films used for exhibition purposes where the lease or rental of such property is an established business or part of an established business or the same is incidental or germane to said business of the lessee.

(22) The lease or rental of films, motion picture films, transcriptions and recordings to radio stations and television stations operating under a certificate from the Federal Communications Commission.

(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.

(24) Sales of fuel and other items of tangible personal property for use or consumption by or on ocean-going vessels which 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 the use of such vessel; provided, however, that sales of fuel and other items of tangible personal property made to officers, agents, members of the crew or passengers of such vessels for their personal use shall not be exempted from payment of the sales tax.

(25) Sales by merchants on the Cherokee Indian Reservation when such merchants are authorized to do business on the Reservation and are paying the tribal gross receipts levy to the Tribal Council.

(26) Lunches to school children when such sales are made within school buildings and are not for profit.

(27) Meals and food products served to students in dining rooms regularly operated by State or private educational institutions or student organizations thereof.

(28) Sales of newspapers by newspaper street vendors and by newspaper carriers making door-to-door deliveries and sales of magazines by magazine vendors making door-to-door sales.

(29) Sales to the North Carolina Museum of Art of paintings and other objects or works of art for public display, the purchases of which are financed in whole or in part by gifts or donations.

(30) Sales from vending machines when sold by the owner or lessee of said machines at a price of one cent (1¢) per sale.

(31) Sales of meals not for profit to elderly and incapacitated persons by charitable or religious organizations not operated for profit which are entitled to the refunds provided by G.S. 105-164.14(b), when such meals are delivered to the purchasers at their places of abode.

(32) Sales of motor vehicles, as defined in G.S. 105-164.3(8a), to nonresident purchasers for immediate transportation to and use in another state in which such vehicles are required to be reigstered, provided the seller obtains from the purchaser and furnishes to the

Secretary of Revenue an affidavit stating the name and address of the purchaser, the state in which the vehicle will be registered and operated, the make, model, and serial number of the vehicle, and such other information as the Secretary may require, and provided further that no exemption shall be allowed unless the affidavit is filed with the seller's sales and use tax report for the month during which the sale is made and such report is timely filed.

(33) Tangible personal property purchased solely for the purpose of export to a foreign country for exclusive use or consumption in that or some other foreign country, either in the direct performance or rendition of professional or commercial services, or in the direct conduct or operation of a trade or business, all of which purposes are actually consummated, or purchased by the government of a foreign country for export which purpose is actually consummated. "Export" shall include the acts of possessing and marshalling such property, by either the seller or the purchaser, for transportation to a foreign country, but shall not include devoting such property to any other use in North Carolina or the United States. "Foreign country" shall not include any territory or possession of the United States.

In order to qualify for this exemption, an affidavit of export indicating compliance with the terms and conditions of this exemption, as prescribed by the Secretary of Revenue, must be submitted by the purchaser to the seller, and retained by the seller to evidence qualification for the exemption.

If the purposes qualifying the property for exemption are not consummated, the purchaser shall be liable for the tax which was avoided by the execution of the aforesaid affidavit as well as for applicable penalties and interest and the affidavit shall contain express provision that the purchaser has recognized and assumed such liability.

The principal purpose of this exemption is to encourage the flow of commerce through North Carolina ports that is now moving through out-of-state ports. However, it is not intended that property acquired for personal use or consumption by the purchaser, including gifts, shall be exempt hereunder.

(34) Sales of items by a nonprofit civic, charitable, educational, scientific or literary organization when the net proceeds of the sales will be given or contributed to the State of North Carolina or to one or more of its agencies or instrumentalities, or to one or more nonprofit charitable organizations, one of whose purposes is to serve as a conduit through which such net proceeds will flow to the State or to one or more of its agencies or instrumentalities.

(35) Sales by a nonprofit civic, charitable, educational, scientific, literary or fraternal organization continuously chartered or incorporated within North Carolina for at least two years when such sales are conducted only upon an annual basis for the purpose of raising funds for its activities, and when the proceeds thereof are actually used for such purposes; provided, however, that no such sale shall be exempt if not actually consummated within 60 days after the first solicitation of any sale made during said organization's annual sales period. (1957, c. 1340, s. 5; 1959, c. 670; c. 1259, s. 5; 1961, c. 826, s. 2; cc. 1103, 1163; 1963, c. 1169, ss. 7-9; 1965, c. 1041; 1967, c. 756; 1969, c. 907; 1971, c. 990; 1973, c. 476, s. 143; c. 708, s. 1; cc. 1064, 1076; c. 1287, s. 8; 1975, 2nd Sess., c. 982; 1977, c. 771, s. 4; 1977, 2nd Sess., c. 1219, s. 43.6; 1979, c. 46, ss. 1, 2; c. 156, s. 1; c. 201; c. 625, ss. 1, 2; c. 801, ss. 74, 75; 1979, 2nd Sess., c. 1099, s. 1; 1981, c. 14; c. 207; c. 982.)

Effect of Amendments. — The 1979, 2nd Sess., amendment rewrote subdivision (33).

Session Laws 1979, c. 1099, s. 2, provides: "This act shall become effective October 1, 1980, but shall not affect any transaction before such date."

The first 1981 amendment, effective July 1, 1981, deleted "resident" preceding "newspaper street vendors", substituted "newspaper carriers" for "newsboys", and substituted "door-to-door" for "house-to-house" in two places, all in subdivision (28).

The second 1981 amendment, effective July 1, 1981, inserted "litter materials" near the beginning of subdivision (2).

The third 1981 amendment substituted "literary or fraternal organization" for "or literary organization" and substituted "two years" for "five years" near the beginning of subdivision (35). The amendment also substituted "exempt" for "exempted," "60 days after" for "60 days of," and made minor changes in punctuation, all in the proviso at the end of subdivision (35).

§ 105-164.13A. Service charges on food, beverages, or meals.

When a service charge is imposed on food, beverages, or meals, so much of said service charge as does not exceed fifteen percent (15%) of the sales price is specifically exempted from the tax imposed by this Article when the service charge:

(1) Is separately stated in the price list, menu, or written proposal and also in the invoice or bill; and

(2) Is turned over to the personnel directly involved in the service of the food, beverages, or meals, in accordance with G.S. 95-25.6.

Such service charge shall be considered to be a tip. (1979, c. 801, s. 76; 1979, 2nd Sess., c. 1101.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective October 1, 1980, rewrote this section, which formerly exempted only the service charge imposed on prearranged group meals at approved facilities.

Division V. Records Required to Be Kept.

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

Every application for a license by a wholesale merchant or retailer shall be made upon a form prescribed by the Secretary and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the Secretary may require. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some other person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of his authority. Provided, however, that persons, firms, or corporations, whose business extends into more than one county shall be required to secure only one license under the provisions of this Article which license shall cover all operations of such company throughout the State of North Carolina.

When the required application has been made the Secretary shall grant and issue to each applicant such license. A license is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall be at all times conspicuously displayed at the place of which issued.

A retailer whose license has been previously suspended or revoked shall pay the Secretary the sum of five dollars ($5.00) for the reissuance or renewal of

such license. A wholesale merchant whose license has been previously suspended or revoked shall pay the Secretary the sum of ten dollars ($10.00) for the reissuance or renewal of such license for the year or fraction thereof for which said license is reissued or renewed.

Whenever any wholesale merchant or retailer fails to comply with any provision of this Article or any rule or regulation of the Secretary relating thereto, the Secretary, upon hearing, after giving the wholesale merchant or retailer 10 days' notice in writing, specifying the time and place of hearing and requiring him to show cause why his license should not be revoked, may revoke or suspend the license held by such wholesale merchant or retailer. The notice may be served personally or by registered mail directed to the last known address of the person. All provisions with respect to review and appeals of the Secretary's decisions as provided by G.S. 105-241.2, 105-241.3, and 105-241.4 of the General Statutes shall be applicable to this section.

Any wholesale merchant or retailer who engages in business as a seller in this State without a license or after his license has been suspended or revoked, and each officer of any corporation which so engages in business shall be guilty of a misdemeanor and subject to a fine of not exceeding five hundred dollars ($500.00) for each such offense. (1957, c. 1340, s. 5; 1973, c. 476, s. 193; 1979, 2nd Sess., c. 1084.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, increased the fee in the first sentence of the third paragraph from $1.00 to $5.00.

Division VIII. Administration and Enforcement.

§ 105-164.44A. Tax on motor vehicle parts, accessories, and lubricants; transfer to Highway Fund.

The sales and use tax collected on motor vehicle parts, accessories and lubricants for the fiscal year 1980-81 is estimated to be fifty-nine million dollars ($59,000,000), which amount may be used hereafter to determine the amount of sales and use taxes to be transferred under this section from the general fund to the Highway Fund.

Sales and use taxes collected on motor vehicle parts, accessories and lubricants may be transferred from the general fund to the Highway Fund in the following amounts and in the following manner:

(1) On a quarterly basis during the fiscal year ending June 30, 1982, the State Treasurer shall transfer from the general fund to the Highway Fund that portion of the sum of fifty-nine million dollars ($59,000,000) which equals the estimated amount of new general fund revenues enacted during the 1981-82 legislative session, not to exceed fifty-nine million dollars ($59,000,000).

(2) On a quarterly basis during the fiscal year ending June 30, 1983, the State Treasurer shall transfer from the general fund to the Highway Fund that portion of the sum of fifty-nine million dollars ($59,000,000) which equals the annualized amount transferred during the year ending June 30, 1982, plus any annualized estimated new revenues enacted by the 1981-82 legislative session and not previously transferred, plus or minus the percentage of this amount by which the total collections of sales and use tax increased or decreased over the previous year.

(3) On a quarterly basis during each fiscal year beginning on or after July 1, 1983, the State Treasurer shall transfer from the general fund to the Highway Fund the amount transferred during the year ending June 30, 1983, plus or minus the percentage of that amount by which the

total collection of sales or use taxes increased or decreased over the previous year.

(4) The quarterly transfers shall be made within 30 days after the end of each quarter. (1981, c. 690, s. 7.)

Editor's Note. — Session Laws 1981, c. 690, s. 37, makes this section effective July 1, 1981.

Article 6.

Schedule G. Gift Taxes.

§ 105-188. Gift taxes; classification of beneficiaries; exemptions; rates of tax.

Legal Periodicals. — For note comparing federal and North Carolina estate, inheritance, and gift taxation with respect to creation and termination of tenancies by the entirety, see 15 Wake Forest L. Rev. 307 (1979).

Article 7.

Schedule H. Intangible Personal Property.

§ 105-199. Money on deposit.

All money on deposit (including certificates of deposit and postal savings) with any bank or other corporation, firm or person doing a banking business, whether such money be actually in or out of this State, having a business, commercial or taxable situs in this State, shall be subject to an annual tax, which is hereby levied, of ten cents (10¢) on every one hundred dollars ($100.00) of the total amount of such deposit without deduction for any indebtedness or liabilities of the taxpayer.

For the purpose of determining the amount of deposits subject to this tax every such bank or other corporation, firm or person doing a banking business shall set up the credit balance of each depositor on the fifteenth day of each February, May, August, and November in the calendar year next preceding the due date of tax return, and the average of such quarterly credit balances shall constitute the amount of deposit of each depositor subject to the tax herein levied; for the purposes of this section accounts having an average quarterly balance for the year of less than one thousand dollars ($1,000) may be disregarded.

The tax levied in this section upon money on deposit shall be paid by the cashier, treasurer or other officer or officers of every such bank or other corporation, firm or person doing a banking business in this State by report and payment to the Secretary of Revenue on or before April 15 of each year; any taxes so paid as agent for the depositor shall be recovered from the owners thereof by the bank or other corporation, firm or person doing a banking business in this State by the deduction from the account of the depositor on November 16 of each year or on such date thereafter as in the ordinary course of business it becomes convenient to make such charge. The bank may immediately report and pay the tax due on any account closed out during any quarter in which the bank has withheld the amount of the tax. The tax on deposits represented by time certificates shall be chargeable to the original depositor unless such depositor has given notice to the depository bank of transfer of such

certificate of deposit. Accounts that have been closed during the year, leaving no credit balance against which the tax can be charged, may be reported separately to the Secretary of Revenue and the tax due on such accounts shall become a charge directly against the depositor, and such tax may be collected by the Secretary of Revenue from the depositor in the same manner as other taxes levied in this section; the bank or other corporation, firm or person doing a banking business in this State shall not be held liable for the payment of the tax due on accounts so reported. None of the provisions of this section shall be construed to relieve any taxpayer of liability for a full and complete return of postal savings and of all money on deposit outside this State having a business, commercial or taxable situs in this State.

The tax levied in this section shall not apply to deposits by one bank, in another bank nor to deposits of the United States, State of North Carolina, political subdivisions of this State or agencies of this State or agencies of such governmental units. Deposits representing the actual payment of benefits to World War veterans by the federal government, when not reinvested, shall not be subject to the tax levied in this section. Further deposits in North Carolina banks by nonresident individuals and foreign corporations, when such deposits are not related to business activities in this State, shall not be subject to the tax levied in this section. The tax levied in this section shall not apply to deposits of foreign and alien insurance companies which pay the two and one-half percent (2½%) gross premium tax levied by G.S. 105-228.5 (1939, c. 158, s. 701; 1945, c. 708, s. 8; 1947, c. 501, s. 7; 1949, c. 392, s. 5; 1955, c. 19, s. 1; 1973, c. 476, s. 193; 1977, 2nd Sess., c. 1220; 1979, c. 801, ss. 84, 85; 1981, c. 682, s. 18.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, inserted "a" preceding "business" near the end of the last sentence of the third paragraph.

§ 105-202. Bonds, notes, and other evidences of debt.

All bonds, notes, demands, claims, deposits or share accounts 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 an 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 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; 1979, c. 179, s. 4.)

Editor's Note. — This section is set out to correct an error near the end of the second paragraph of the section as it appears in the 1981 replacement volume.

Legal Periodicals. — For survey of 1979 tax law, see 58 N.C.L. Rev. 1548 (1980).

CASE NOTES

Applied in In re Alamance Mem. Park, 41 N.C. App. 278, 254 S.E.2d 671 (1979).

§ 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 State Budget Officer. 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. For the purpose of computing the distribution of the intangibles tax to any county and the municipalities located therein for any year with respect to which the property valuation of a public service company is the subject of an appeal pursuant to the provisions of the Machinery Act, or to applicable provisions of federal law, and the Department of Revenue is restrained by operation of law or by a court of competent jurisdiction from certifying such valuation to the county and municipalities therein, the Department shall use the last property valuation of such public service company which has been so certified in order to determine the ad valorem tax levies applicable to such public service company in the county and the municipalities therein.

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; 1979, 2nd Sess., c. 1137, s. 48; 1981, c. 4, s. 1.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, substituted "State Budget Officer" for "Secretary of the North Carolina Department of Administration" at the end of the first sentence in the fourth paragraph of subsection (a).

Session Laws 1979, 2nd Sess., c. 1137, s. 77, contains a severability clause.

The 1981 amendment, effective July 1, 1981, added the last sentence of the fourth paragraph of subsection (a).

§ 105-214. Minimum tax for requirement of filing returns.

When the combined tax of any taxpayer required to be paid under G.S. 105-200, 105-201, 105-202, 105-203, 105-204 and 105-205 does not exceed a tax of fifteen dollars ($15.00), no return shall be required to be filed. This section shall not be construed to affect the provisions of G.S. 105-199, and the minimum tax herein provided shall not apply to said section. (1963, c. 1010; 1979, 2nd Sess., c. 1131, s. 1.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective with respect to taxable years beginning on and after January 1, 1980, increased the tax in the first sentence from $5.00 to $15.00.

ARTICLE 8D.

Schedule I-D. Taxation of Building and Loan Associations and Savings and Loan Associations.

§ 105-228.22. To whom this Article shall apply.

The provisions of this Article shall apply to every building and loan association or savings and loan association organized under the laws of this State or organized under the laws of another state and which maintains one or more places of business in this State and to every savings and loan association organized and existing under the "Home Owners Loan Act of 1933" and which maintains one or more places of business in this State, all such associations hereinafter to be referred to as savings and loan associations. (1957, c. 1340, s. 9; 1981, c. 450, s. 1.)

Revision of Article. — This Article, formerly consisting of §§ 105-228.22 through 105-228.27 was revised and rewritten by Session Laws 1981, c. 450, effective Jan. 1, 1982. No attempt has been made to point out the changes effected by the revision, but, where appropriate, the historical citations to the sections in the former Article have been added to the corresponding sections in the Article as rewritten.

Session Laws 1981, c. 450, s. 3, provides: "The share and deposit tax levied under Article 8D of G.S. Chapter 105 prior to the effective date of this act shall not be collected for taxable years beginning on or after that date. This act shall apply for income tax purposes to taxable years beginning on or after January 1, 1982, and shall apply for franchise tax purposes as of December 31, 1982."

§ 105-228.23. Powers of the administrator of the savings and loan division.

All provisions of Subchapter I of this Chapter not inconsistent with this Article, relating to administration, auditing and making returns, the imposition and collection of tax and the lien thereof, assessments, refunds, penalties, and appeal and review, shall be applicable to the fees and taxes imposed by this Article; and with respect thereto, the administrator of the savings and loan division is hereby given the same power and authority as is given to the Secretary of Revenue under the provisions of this Chapter. The administrator of the savings and loan division may, from time to time, make, prescribe, and publish such rules and regulations, not inconsistent with law, as may be needful to enforce the provisions of this Article. The Secretary of Revenue shall render such assistance in the audit of returns and the collection of the taxes levied hereunder as the administrator of the savings and loan division shall request. (1957, c. 1340, s. 9; 1971, c. 864, s. 17; 1973, c. 476, s. 193; 1981, c. 450, s. 1.)

§ 105-228.24. Limitations.

The taxes levied under this Article shall be in lieu of all other taxes and fees except those imposed by Subchapter I of Chapter 54 and Chapter 54A of the General Statutes and amendments thereto, and except ad valorem taxes imposed upon real property and tangible personal property, and except sales and/or use taxes levied by this State, and except taxes levied on intangible property under G.S. 105-199, 105-200, 105-204 and 105-205.

Counties, cities and towns shall not, after the effective date of this Article, levy any license tax on the business of any savings and loan association subject to taxation under this Article. (1957, c. 1340, s. 9; 1981, c. 450, s. 1.)

§ 105-228.25. Filing of returns.

Every savings and loan association taxed under this Article shall file annually with the administrator of the savings and loan division an income tax return and a franchise tax return. Payment of taxes shall be made with the returns filed. The due dates of such returns and the forms of such returns shall be the same as prescribed for corporations in Article 3 and Article 4 of Subchapter I of this Chapter. (1957, c. 1340, s. 9; 1971, c. 864, s. 17; 1981, c. 450, s. 1.)

§ 105-228.26. Income tax.

Every savings and loan association doing business in this State shall pay annually an income tax equal to that which the savings and loan association would be required to pay under Article 4 of Subchapter I of this Chapter. (1981, c. 450, s. 1.)

§ 105-228.27. Franchise tax.

Every savings and loan association doing business in this State shall pay annually a franchise tax equal to that which the savings and loan association would be required to pay under Article 3 of Subchapter I of this Chapter if it were a corporation. For purposes of this tax, capital stock does not include any portion of the deposits in a savings and loan association. (1981, c. 450, s. 1.)

ARTICLE 9.

Schedule J. General Administration; Penalties and Remedies.

§ 105-236. Penalties.

Legal Periodicals. — For an article entitled, "Foreign Corporations in North Carolina: The 'Doing Business' Standards of Qualification, Taxation, and Jurisdiction," see 16 Wake Forest L. Rev. 711 (1980).

§ 105-241. Taxes payable in national currency; for what period, and when a lien; priorities.

Legal Periodicals. — For an article entitled, "Foreign Corporations in North Carolina: The 'Doing Business' Standards of Qualification, Taxation, and Jurisdiction," see 16 Wake Forest L. Rev. 711 (1980).

§ 105-241.2. Administrative review.

CASE NOTES

Cited in In re Alamance Mem. Park, 41 N.C. App. 278, 254 S.E.2d 671 (1979).

§ 105-242. Warrant for collection of taxes; certificate or judgment for taxes.

(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 if known his Social Security number or federal tax identification number and his address;

(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 or certified 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 or certified 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. 105-267.1, 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 fiscal 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.

(1979, 2nd Sess., c. 1085, s. 1.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective October 1, 1980, inserted "or certified" near the beginning of the first and second sentences in the second paragraph of subsection (b).

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only subsection (b) is set out.

§ 105-244. Additional remedies.

Legal Periodicals. — For a note on the rejection of the "public purpose" requirement for state tax exemption, see 17 Wake Forest L. Rev. 293 (1981).

§ 105-248. State taxes; purposes.

The taxes levied in this Subchapter are for the expenses of the State government, the appropriations to its educational, charitable, and penal institutions, pensions for Confederate soldiers and widows, the interest on the debt of the State, for public schools, and other specific appropriations made by law, and shall be collected and paid into the general fund of the State Treasurer.

Whenever in any law or act of incorporation, granted either under the general law or by special act, there is any limitation or exemption of taxation, the same is hereby repealed, and all the property and effects of all such corporations, other than the bonds of this State and of the United States government, shall be liable to taxation, except property belonging to the United States and to municipal corporations, and property of churches, religious societies, charitable, educational, literary, or benevolent institutions or orders, and also cemeteries: Provided, that no property whatever, held or used for investment, speculation, or rent, shall be exempt, other than bonds of this State and of the United States government, unless said rent or the interest on or income from such investment shall be used exclusively for religious, charitable, educational, or benevolent purposes, or the interest upon the bonded indebtedness of said religious, charitable, or benevolent institutions. (1939, c. 158, s. 919; 1981, c. 3.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, deleted the former second and third paragraphs, which provided for the collection of taxes levied under authority of § 492 of Chapter 427 of the Public Laws of 1931.

§ 105-260. Deputies and clerks.

The Secretary of Revenue may appoint such deputies, clerks and assistants under his direction as may be necessary to administer the laws relating to the assessment and collection of all taxes provided for in this Subchapter; may remove and discharge same at his discretion, and shall fix their compensation within the rules and regulations prescribed by law. (1939, c. 158, s. 929; 1973, c. 476, s. 193; 1981, c. 859, s. 79; c. 1127, s. 53.)

Effect of Amendments. — The first 1981 amendment, effective July 1, 1981, inserted "and any auditing function associated with the International Registration Plan for motor vehicles" following "this Subchapter."

The second 1981 amendment, effective November 15, 1981, repealed the first 1981 amendment.

Session Laws 1981, c. 1127, s. 89, contains a severability clause.

§ 105-262. Rules and regulations.

The Secretary of Revenue shall, from time to time, initiate and prepare such regulations, not inconsistent with law, as may be useful and necessary to implement the provisions of all the Articles of Subchapter I (except Article 8B) and Article 36 of Subchapter V, such regulations to become effective when approved by the Tax Review Board. All regulations and amendments thereto shall be published and made available by the Secretary of Revenue.

The Secretary of Revenue may, from time to time, make and prescribe such administrative rules, not inconsistent with law and the regulations approved by the Tax Review Board, as may be useful for the administration of his department and the discharge of his responsibilities.

References to rules and regulations of the Secretary of Revenue in this Chapter and in any subsequent amendments or additions thereto (unless

expressly provided to the contrary therein) shall be construed to mean those rules and regulations promulgated under the provisions of this section. (1939, c. 158, s. 931; 1955, c. 1350, s. 2; 1973, c. 476, s. 193; 1981, c. 859, s. 80; c. 1127, s. 53.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, added at the end of this section a sentence reading as follows: "The Secretary of Revenue may also adopt rules, and prescribe forms, as necessary for auditing associated with the International Registration Plan for motor vehicles."

The second 1981 amendment, effective November 15, 1981, repealed the first 1981 amendment.

Session Laws 1981, c. 1127, s. 89, contains a severability clause.

CASE NOTES

Interpretation of Secretary Prima Facie Correct. —

In accord with original. See In re Alamance Mem. Park, 41 N.C. App. 278, 254 S.E.2d 671 (1979).

§ 105-267. Taxes to be paid; suits for recovery of taxes.

CASE NOTES

Applied in Rent-A-Car Co. v. Lynch, 298 N.C. 559, 259 S.E.2d 564 (1979).

SUBCHAPTER II. LISTING, APPRAISAL, AND ASSESSMENT OF PROPERTY AND COLLECTION OF TAXES ON PROPERTY.

ARTICLE 12.

Property Subject to Taxation.

§ 105-274. Property subject to taxation.

Legal Periodicals. — For survey of 1978 law on taxation, see 57 N.C.L. Rev. 1142 (1979).

For survey of 1979 tax law, see 58 N.C.L. Rev. 1548 (1980).

§ 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 48 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 first tax listing date following 48 months of storage, 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 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 Resources and Community Development, 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) a. 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 Resources and Community Development] 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:

1. Has been or will be construed or installed;
2. 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;
3. 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
4. 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.

b. Real or personal property that is used or, if under construction, is to be used exclusively for recycling or resource recovering of or from solid waste, if the Department of Human Resources furnishes a certificate to the tax supervisor of the county in which the property is situated stating the Department of Human Resources has found that the described property has been or will be constructed or installed, complies or will comply with the regulations of the Department of Human Resources, and has, or will have as its primary purpose recycling or resource recovering of or from solid waste.

(9) All cotton while subject to transit privileges under Interstate Commerce Commission tariffs.

(10) Personal property shipped into this State and placed in a public warehouse as intermediate consignee for the purpose of transshipment in its original form or package to the owner's customers either inside or outside the State. 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. The purpose of this classification is to encourage the development of the State of North Carolina as a distribution center.

(11) Personal property shipped from a point within this State and placed in a public warehouse as intermediate consignee for the purpose of transshipment in its original form or package to the owner's customers outside the State. 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. The purpose of this classification is to encourage the development of the State of North Carolina as a distribution center.

(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 vehicles 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.

(21) The first thirty-four thousand dollars ($34,000) in assessed value of housing together with the necessary land therefor, owned and used as a residence by a disabled veteran who receives benefits under Title 38, section 801, United States Code Annotated. This exclusion shall be the total amount of the exclusion applicable to such property.

(22) All nursery stock, herbaceous and nonherbaceous (annual, biennial, or perennial plants including rooted cuttings) in the ground, pots, hothouses, greenhouses, raised beds, containers or otherwise held by the original producer. Provided, this exemption shall not apply to pots or similar containers in which said nursery stock is planted.

(23) Tangible personal property imported from outside the United States and held in a Foreign Trade Zone for the purpose of sale, manufacture, processing, assembly, grading, cleaning, mixing or display and tangible personal property produced in the United States and held in a Foreign Trade Zone for exportation, either in its original form or as altered by any of the above processes.

(24) Cargo containers and container chassis used for the transportation of cargo by vessels in ocean commerce.

The term "container" applies to those nondisposable receptacles of a permanent character and strong enough for repeated use and specially designed to facilitate the carriage of goods, by one or more modes of transport, one of which shall be by ocean vessels, without intermediate reloadings and fitted with devices permitting its ready handling particularly in the transfer from one transport mode to another.

(25) Tangible personal property shipped into this State for the purpose of repair, alteration, maintenance or servicing and reshipment to the owner outside this State. This classification shall not include raw materials, supplies, or goods in process of manufacture in this State.

(26) For the tax year immediately following transfer of title, tangible personal property manufactured in this State for the account of a nonresident customer and held by the manufacturer for shipment. For the purpose of this subdivision, the term "nonresident" means a taxpayer having no place of business in North Carolina. (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; 1975, cc. 566, 755; c. 764, s. 6; 1977, c. 771, s. 4; c. 782, s. 2; c. 1001, ss. 1, 2; 1977, 2nd Sess., c. 1200, s. 4; 1979, c. 200, s. 1; 1979, 2nd Sess., c. 1092; 1981, c. 86, s. 1.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective January 1, 1981, added subdivision (25).

The 1981 amendment, effective Jan. 1, 1982, added subdivision (26).

Legal Periodicals. — For survey of 1978 law on taxation, see 57 N.C.L. Rev. 1142 (1979).

OPINIONS OF ATTORNEY GENERAL

Property of a labor union is not classified out of the ad valorem tax base by subdivision (19) of this section. See opinion of Attorney General to J. Bourke Bilisoly, Wake County Tax Attorney, 50 N.C.A.G. 35 (1980).

§ 105-277.1. Property classified for taxation at reduced valuation.

(a) 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 shall not be assessed for taxation: The first eight thousand five hundred dollars ($8,500) in assessed value of property owned by a North Carolina resident and, if real property or a mobile home, occupied by the owner as his or her permanent residence and, if household personal property, used by the owner in connection with his or her permanent residence, provided that, as of January 1 of the year for which the benefit of this section is claimed:

(1) The owner is either (i) 65 years of age or older or (ii) totally and permanently disabled, and

(2) The owner's disposable income for the immediately preceding calendar year did not exceed nine thousand dollars ($9,000), and

(3) The owner makes application as herein provided.

For married applicants residing with their spouses, the disposable income of both spouses must be included, whether or not the property is in both names.

(b) Definitions. — When used in this section, the following definitions shall apply:

(1) An "owner" of property means a person who holds legal or equitable title to the property, either individually or as a tenant by the entirety, a joint tenant, a tenant in common, a life estate or an estate for the life of another. Property owned and occupied by husband and wife as tenants by the entirety shall be entitled to the full benefit of this classification notwithstanding that only one of them meets the age or disability requirements herein provided. If the residence is a mobile home and is jointly owned by husband and wife, it shall be treated as property held by the entirety. When property is owned by two or more persons other than husband and wife and one or more of such owners qualifies for this classification, each qualifying owner shall be entitled to the full amount of the exclusion not to exceed his or her proportionate share of the valuation of the property. No part of an exclusion available to one co-owner may be claimed by any other co-owner and in no event shall the total exclusion allowed to a qualifying residence (including the household personal property therein) exceed eight thousand five hundred dollars ($8,500).

(2) "Disposable income" means adjusted gross income as defined for North Carolina income tax purposes in G.S. 105-141.3 plus all other moneys received from every source other than gifts or inheritances received from a spouse, lineal ancestors, or lineal descendants.

(2a) "Household personal property" includes furniture, appliances, furnishings, cooking and eating utensils, lawn equipment and tools, clothing and other personal effects but not motor vehicles, boats or airplanes.

(3) "Permanent residence" means legal residence. It includes the dwelling, the dwelling site, not to exceed one acre, and related improvements. The dwelling may be a single family residence, a unit in a multi-family residential complex or a mobile home. Notwithstanding the occupancy requirements of this classification, an otherwise qualified applicant shall not lose the benefit of the exclusion because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the applicant's spouse or other dependent.

(4) A "totally and permanently disabled person" means one who has a physical or mental impairment which substantially precludes him from obtaining gainful employment and such impairment appears reasonably certain to continue without substantial improvement throughout his lifetime.

(c) Application. — Applications for the exclusions provided by this section are to be filed during the regular listing period, but, shall be accepted at any time up to and through April 15 of the calendar year for which they are to be effective. When property is owned by two or more persons other than husband and wife and one or more of them qualifies for this exclusion, each such owner shall apply separately for his or her proportionate share of the exclusion.

(1) Elderly Applicants. — Persons 65 years of age or older may apply for this exclusion by entering the appropriate information on a form made available by the tax supervisor under G.S. 105-282.1.

(2) Disabled Applicants. — Persons who are totally and permanently disabled may apply for this exclusion by (i) entering the appropriate information on a form made available by the tax supervisor under G.S. 105-282.1 and (ii) furnishing acceptable proof of their disability. Such proof shall be in the form of a certificate from a physician licensed to practice medicine in North Carolina or from a governmental agency authorized to determine qualification for disability benefits. After a disabled applicant has qualified for this classification, he or she shall not be required to furnish an additional certificate unless the applicant's disability is reduced to the extent that the applicant could no longer be certified for the taxation at reduced valuation. (1971, c. 932, s. 1; 1973, c. 448, s. 1; 1975, c. 881, s. 2; 1977, c. 666, s. 1; 1979, c. 356, s. 1; c. 846, s. 1; 1981, c. 54, s. 1; c. 1052, s. 1.)

Cross References. — As to the 1981 application by any taxpayer under G.S. 105-309(f) for the exemption provided by this section, see the note to § 105-282.1. As to levy of penalties for failure of a taxpayer to give notice where the taxpayer has received an exemption for one taxable year but is not eligible for the exemption the next year, see § 105-309(g).

Effect of Amendments. — Session Laws 1979, c. 356, s. 2, as amended by Session Laws 1981, c. 28, provides: "This act is effective with respect to taxable years beginning on and after January 1, 1980. Notwithstanding the amendment made to G.S. 105-277.1(c) by the first section of this act, applications for the exclusion provided by G.S. 105-277.1 for calendar year 1980 shall also be accepted as timely filed if filed at any time from April 16, 1980 through April 15, 1981. A properly completed application for calendar year 1980 received on or after April 16, 1980, but before April 16, 1981, shall constitute a request for release or refund, as provided in G.S. 105-381."

The first 1981 amendment, effective Jan. 1, 1982, substituted "on a form made available by the tax supervisor under G.S. 105-282.1" for "on the abstract on which they list their property for taxation" at the end of subdivision (1) of subsection (c) and near the end of clause (i) of subdivision (2) of subsection (c).

The second 1981 amendment, effective Jan. 1, 1982, substituted "eight thousand five hundred dollars ($8,500)" for "seven thousand five hundred dollars ($7,500)" in the introductory paragraph of subsection (a) and at the end of subdivision (1) of subsection (b).

§ 105-277.1A. Property classified for taxation at reduced valuation; duties of tax collectors; reimbursement of localities for portion of tax lost.

(a) On September 1 of each year, the tax collector of each county and the tax collector of each city shall furnish to the Secretary of Revenue a list containing the name and address of each person who has qualified in that year for the exemption provided in G.S. 105-277.1. The list shall also contain for each name the total amount of property exempted, the tax rate the property is subject to, and the product obtained by multiplying those two numbers by each other. The lists shall be accompanied by an affidavit attesting to the accuracy of the list, and shall all be on a form prescribed by the Secretary of Revenue.

(b) In addition to the list required by subsection (a) of this section, the county or city may provide a supplemental list on December 1.

(c) The Secretary of Revenue may, for cause, grant an extension for the submission of the list required by this section.

(d) After receiving a certified list under subsections (a) through (c) of this section, the Secretary of Revenue shall, within 60 days, pay to the county or city fifteen percent (15%) of the total for the entire list of the product obtained by multiplying the tax exemption for each taxpayer times the applicable tax rate.

(e) Any funds received by any county or city pursuant to this section because the county or city was collecting taxes for another unit of government or special district shall be credited to the funds of that other unit or district in accordance with regulations issued by the Local Government Commission. (1981, c. 1052, ss. 2-4.)

Editor's Note. — Session Laws 1981, c. 1052, s. 5, makes the act effective Jan. 1, 1982.

§ 105-277.2. Agricultural, horticultural and forestland — definitions.

CASE NOTES

Principal Business of a Corporation. — Factors which should be looked at in determining the principal business of a corporation for present use valuation other than gross income are net income or profit and its source, annual receipts and disbursement, the purpose of the corporation as stated in its corporate charter and the actual corporate function in relation to its stated corporate purpose. W.R. Co. v. North Carolina Property Tax Comm'n, 48 N.C. App. 245, 269 S.E.2d 636 (1980).

Applied in Development Assocs. v. Wake County Bd. of Adjustment, 48 N.C. App. 541, 269 S.E.2d 700 (1980).

§ 105-277.3. Agricultural, horticultural and forestland — classifications.

Cross References. — As to taxation of lessees and users of tax-exempt cropland or forestland, see § 105-282.7.

CASE NOTES

This section expressly indicates the constitutional base found in N.C. Const., Art. V, § 2(2) upon which special classification is made and permitted. W.R. Co. v. North Carolina Property Tax Comm'n, 48 N.C. App. 245, 269 S.E.2d 636 (1980).

§ 105-277.4. Agricultural, horticultural and forestland — 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 to properly appraise the property at its present-use value. In nonrevaluation years, the applications shall be filed during the regular or extended listing period, unless there is a change in the true value in money appraisal of a given property under G.S. 105-287. In such cases, the application may be filed within 30 days of the mailing of the notice of the new valuation. Unless a change in the use-value appraisal is required because of a change in use, acreage or ownership of a qualifying property, no additional application shall be required until the county's next general reappraisal under G.S. 105-286, at which time new applications shall be filed for all properties.

(b) Upon receipt of a properly executed application, the tax supervisor shall appraise the property at its present-use value as established in the schedule prepared pursuant to G.S. 105-277.6(c). In appraising the property at its present-use value, the tax supervisor shall appraise the improvements located on qualifying land according to the schedules and standards used in appraising other similar improvements in the county. 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 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.

(b1) Decisions of the tax supervisor regarding the qualification or appraisal of property under this section 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.

(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, together with any interest, penalties or costs that may accrue thereon, shall be a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes shall be carried forward in the records of the taxing unit or units as deferred taxes, but shall not be payable, unless and until (i) the owner conveys the property to anyone other than a spouse, child or sibling of the owner, or (ii) ownership of the property passes to anyone other than such an enumerated family member by will or intestacy, or (iii) ownership of the property passes to a corporation as defined in G.S. 105-277.2(4)b from anyone other than its principal shareholders or from such a corporation to anyone other than its principal shareholders, or (iv) 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 three 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 the 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. Upon the payment of any taxes deferred in accordance with this section for the three years immediately preceding a disqualification, all liens arising under this subsection shall be extinguished. (1973, c. 709, s. 1; c. 905; c. 906, ss. 1, 2; 1975, c. 62; c. 746, ss. 3-7; 1981, c. 835.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "three years" for "five years" near the middle of the last sentence of subsection (c).

CASE NOTES

Quoted in W.R. Co. v. North Carolina Property Tax Comm'n, 48 N.C. App. 245, 269 S.E.2d 636 (1980).

§ 105-277.5. Agricultural, horticultural and forestland — notice of change in use.

CASE NOTES

Stated in W.R. Co. v. North Carolina Property Tax Comm'n, 48 N.C. App. 245, 269 S.E.2d 636 (1980).

§ 105-277.8. Taxation of homeowners association properties.

Legal Periodicals. — For survey of 1979 tax law, see 58 N.C.L. Rev. 1548 (1980).

§ 105-278. Historic properties.

(a) Real property designated as a historic structure or site by a local ordinance adopted pursuant to G.S. 160A-399.4 is hereby designated a special class of property under authority of Article V, sec. 2(2) of the North Carolina Constitution. Property so classified shall be taxed uniformly as a class in each local taxing unit on the basis of fifty percent (50%) of the true value of the property as determined pursuant to G.S. 105-285 and 105-286, or 105-287.

(b) The difference between the taxes due on the basis of fifty percent (50%) of the true value of the property and the taxes that would have been payable in the absence of the classification provided for in subsection (a) shall be a lien on the property of the taxpayer as provided in G.S. 105-355(a) and shall be carried forward in the records of the taxing unit or units as deferred taxes, but shall not be payable until the property loses its eligibility for the benefit of this

classification because of a change in an ordinance designating a historic property or a change in the property, except by fire or other natural disaster, which causes its historical significance to be lost or substantially impaired. The tax for the fiscal year that opens in the calendar year in which a disqualification occurs shall be computed as if the property had not been classified for that year, and taxes for the preceding three fiscal years that have been deferred as provided herein shall be payable immediately, together with interest thereon as provided in G.S. 105-360 for unpaid taxes, which shall accrue on the deferred taxes as if they had been payable on the dates on which they originally became due. If only a part of the historic property loses its eligibility for the classification, a determination shall be made of the amount of deferred taxes applicable to that part, and the amount shall be payable with interest as provided above. (1977, c. 869, s. 2; 1981, c. 501.)

Effect of Amendments. — The 1981 amendment, effective Jan. 1, 1982, deleted "upon annual application of the property owner" following "property so classified" near the beginning of the second sentence of subsection (a).

Legal Periodicals. — For an article entitled, "A Decade of Preservation and Preservation Law," see 11 N.C. Cent. L.J. 214 (1980).

§ 105-278.1. Exemption of real and personal property owned by units of government.

Legal Periodicals. — For survey of 1978 law on taxation, see 57 N.C.L. Rev. 1142 (1979).

For a note on the rejection of the "public purpose" requirement for state tax exemption, see 17 Wake Forest L. Rev. 293 (1981).

CASE NOTES

Section Is Unconstitutional. — Property owned by State is exempt from ad valorem taxation by Art. V, § 2(3) of the Constitution of North Carolina solely by reason of State ownership, and the statute requiring property owned by the State to be held exclusively for a public purpose in order to be exempt from taxation, this section, is unconstitutional. Therefore, the Towns of Chapel Hill and Carrboro and the County of Orange may not assess ad valorem taxes against any property owned by the University of North Carolina, an agency of the State, regardless of the purpose for which the property is held. In re University of N.C., 300 N.C. 563, 268 S.E.2d 472 (1980).

The holdings of cases misapplying the holding of Atlantic & N.C.R.R. v. Board of Comm'rs, 75 N.C. 474 (1876), as mandating a "public purpose" requirement for exemption of state-owned property under the North Carolina Constitution: Board of Fin. Control v. County of Henderson, 208 N.C. 569, 181 S.E. 636 (1935); Town of Benson v. County of Johnston, 209 N.C. 751, 185 S.E. 6 (1936); Town of Warrenton v. Warren County, 215 N.C. 342, 2 S.E.2d 463 (1939); and City of Winston-Salem v. Forsyth County, 217 N.C. 704, 9 S.E.2d 381 (1940), must be considered not in keeping with the rationale expressed in the present case and in other opinions of the Court of Appeals. In re University of N.C., 300 N.C. 563, 268 S.E.2d 472 (1980).

§ 105-278.7. Real and personal property used for educational, scientific, literary, or charitable purposes.

CASE NOTES

Property Occupied Gratuitously for Charitable Purpose. — Where a religious association made a loan to respondent nursing home, with which the association was

affiliated, to expand its facilities, the nursing home's payment of an amount equivalent to the interest on the loan and the depreciation on the property did not prevent the nursing home from occupying the property gratuitously, and the property in question was exempt from ad valorem taxation in that it was being used for a charitable purpose by a charitable institution within the meaning of subsections (f)(4), (a)(2) and (c)(1) of this section. In re Taxable Status of Property, 45 N.C. App. 632, 263 S.E.2d 838 (1980).

OPINIONS OF ATTORNEY GENERAL

Property of a labor union is not exempt from ad valorem taxation pursuant to this section. See opinion of Attorney General to J. Bourke Bilisoly, Wake County Tax Attorney, 50 N.C.A.G. 35 (1980).

§ 105-279: Repealed by Session Laws 1981, c. 819, s. 2, effective January 1, 1982.

§ 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), (15) and (26) 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. 105-277.1, 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) or G.S. 105-278 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 or the qualifications or eligibility of the taxpayer 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; 1981, c. 54, ss. 2, 3; c. 86, s. 2; c. 915.)

Effect of Amendments. — The first 1981 amendment, effective Jan. 1, 1982, inserted "105-277.1" near the beginning of the introductory paragraph of subdivision (3) of subsection (a), and inserted "or the qualifications or eligibility of the taxpayer" in paragraph b of subdivision (3) of subsection (a).

Session Laws 1981, c. 54, s. 7, provides: "The 1981 application by any taxpayer under G.S. 105-309(f) for the exemption provided by G.S. 105-277.1 shall be considered the application required by G.S. 105-282.1(a)(3)."

The second 1981 amendment, effective Jan. 1, 1982, substituted "G.S. 105-275(5), (13), (15) and (26)" for "G.S. 105-275(5), (13) and (15)" in subdivision (2).

The third 1981 amendment, effective Jan. 1, 1982, inserted "or G.S. 105-278" near the middle of the introductory paragraph of subdivision (3) of subsection (a).

§§ 105-282.2 to 105-282.6: Reserved for future codification purposes.

ARTICLE 12A.

Taxation of Lessees and Users of Tax-Exempt Cropland or Forestland.

§ 105-282.7. Taxation of lessees and users of tax-exempt cropland or forestland.

(a) When any cropland or forestland owned by the United States, the State, a county or a municipal corporation is leased, loaned or otherwise made available to and used by a person, as defined in G.S. 105-273(12), in connection with a business conducted for profit, the lessee or user of the property is subject to taxation to the same extent as if the lessee or user owned the property. As used in this section, "forestland" has the same meaning as in G.S. 105-277.2(2), and "cropland" means agricultural land and horticultural land as defined in G.S. 105-277.2(1) and (3) respectively.

(b) This section does not apply to cropland or forestland for which payments in lieu of taxes are made in amounts equivalent to the amount of tax that could otherwise be lawfully assessed.

(c) Taxes levied pursuant to this Article are levied on the privilege of leasing or otherwise using tax-exempt cropland or forestland in connection with a business conducted for profit. The purpose of these taxes is to eliminate the competitive advantage accruing to profit-making enterprises from the use of tax-exempt property. (1981, c. 819, s. 1.)

Editor's Note. — Session Laws 1981, c. 819, s. 3, makes the act effective for taxable years beginning on and after Jan. 1, 1982.

§ 105-282.8. Assessment and collection.

The taxes levied under this Article shall be assessed to the lessee or user of the exempt property and shall be collected in the same manner and to the extent as if the lessee or user owned the property. The taxes are a debt due from the lessee or user to the taxing unit in which the property is located and are recoverable as other actions to collect a debt. (1981, c. 819, s. 1.)

ARTICLE 13.

Standards for Appraisal and Assessment.

§ 105-283. Uniform appraisal standards.

Legal Periodicals. — For survey of 1978 law on taxation, see 57 N.C.L. Rev. 1142 (1979). For survey of 1979 tax law, see 58 N.C.L. Rev. 1548 (1980).

CASE NOTES

The actual value of a note, bond, or other evidence of debt 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; it is synonymous with the "market value," or the "true value." In re Alamance Mem. Park, 41 N.C. App. 278, 254 S.E.2d 671 (1979).

County tax assessment valuation method held not arbitrary. See In re Wagstaff, 42 N.C. App. 47, 255 S.E.2d 754 (1979).

Quoted in In re Land & Mineral Co., 49 N.C. App. 605, 272 S.E.2d 878 (1980).

Article 14.

Time for Listing and Appraising Property for Taxation.

§ 105-286. Time for general reappraisal of real property.

CASE NOTES

Cited in In re Wagstaff, 42 N.C. App. 47, 255 S.E.2d 754 (1979).

Article 15.

Duties of Department and Property Tax Commission as to Assessments.

§ 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 may make available to local tax authorities any information contained in any report to it or to any other State department, or any other information that the Department may have in its possession that may assist local tax authorities in securing complete tax listings, appraising taxable property, collecting taxes, and presenting information in administrative and judicial proceedings involving the listing, appraisal and taxation of property.

(1) Information furnished to local tax authorities under the provisions of this subsection (e) shall be used only for the purposes hereinabove set forth. Such information shall not be divulged or made public except as required in administrative or judicial proceedings under this Subchapter. Any local tax authority making improper use or disclosure of information obtained under this provision shall be subject to the provisions of G.S. 105-259, including the penalties set forth therein.

(2) Except as provided in this subsection (e), and except to the Governor and his authorized agent, and except to a district attorney or the authorized agent of a district attorney 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.)

(3) For the purpose of this subsection, "local tax authorities" shall include county tax supervisors, assistant tax supervisors, members of county boards of commissioners, tax commissions, boards of equalization and review, county tax collectors, and the municipal equivalents of such officials. The Department of Revenue may furnish information to local tax authorities only under the following conditions and subject to the following restrictions:

a. The local tax authorities must submit their request in writing, giving the name of the taxpayer and any other pertinent identifying information, describing the specific information sought, and stating the reason for seeking the information; and

b. In responding to the request of local tax authorities, the Department of Revenue shall furnish only the information described in the collector's written request and no other information concerning the taxpayer involved.

(f) To confer with and advise county and municipal tax authorities as to their duties under this Subchapter and other laws with respect to the listing, appraisal, and assessment of property and the levying and collection of property taxes.

(g) To see that proper proceedings are brought to enforce the statutes pertaining to taxation and the collection of penalties and liabilities imposed by law upon public officers, officers of corporations, and individuals who fail, refuse, or neglect to comply with the provisions of this Subchapter and other laws with respect to the taxation of property, and to call upon the Attorney General of

this State or any prosecuting attorney of this State to assist in the execution of the powers conferred by the laws of this State with respect to the taxation of property.

(h) To make continuing studies of the ratio of appraised value of real and personal property to its true value in each county and to publish the results of the studies at least every two years.

(i) To maintain a register of appraisal firms, mapping firms and other persons or firms having expertise in one or more of the duties of the tax supervisor; to review the qualifications and work of such persons or firms; and to advise county officials as to the professional and financial capabilities of such persons or firms to assist the tax supervisor in carrying out his duties under this Subchapter. To be registered with the Department of Revenue, such persons or firms shall annually file a report with the Department setting forth the following information:

(1) A statement of the firm's ownership,
(2) A statement of the firm's financial condition,
(3) A list of the firm's principal officers with a statement of their qualifications and experience,
(4) A list of the firm's employees with a statement of their education, training and experience, and
(5) A full and complete resume of each employee which the firm proposes to place in a supervisory position in any mapping or revaluation project for a county in this State. (1939, c. 310, s. 202; 1955, c. 1350, s. 10; 1967, c. 1196, s. 3; 1969, c. 7, s. 1; 1971, c. 806, s. 1; 1973, c. 47, s. 2; c. 476, s. 193; 1975, c. 275, s. 9; c. 508, s. 1; 1981, c. 387, ss. 1, 2.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, inserted "collecting taxes" following "appraising taxable property" near the end of the introductory paragraph of subsection (e), and rewrote subdivision (3) of subsection (e).

ARTICLE 17.

Administration of Listing.

§ 105-302. In whose name personal property is to be listed.

Legal Periodicals. — For article, "Future Advances and Title Insurance Coverage," see 15 Wake Forest L. Rev. 329 (1979).

§ 105-309. What the abstract shall contain.

(a) Each person whose duty it is to list property for taxation shall file each year with the tax supervisor or proper list taker a tax list or abstract showing, as of the date prescribed by G.S. 105-285(b), the information required by this section. Subject to the provisions of subdivisions (a)(1) and (a)(2), below, each person whose duty it is to list property for taxation shall file a separate abstract.

(1) Tenants by the entirety shall file a single abstract listing the real property so held, together with all personal property they own jointly.
(2) Tenants in common shall file a single abstract listing the real property so held, together with all personal property that they own jointly, unless, as provided in G.S. 105-302(c)(9), the tax supervisor allows them to list their undivided interests in the real property on separate abstracts.

(b) Each abstract shall show the taxpayer's name; residence address; and, if required by the tax supervisor or list taker, business address.

(1) An individual trading under a firm name shall show his name and address and also the name and address of his business firm.

(2) An unincorporated association shall show both the name and address of the association and the names and addresses of its principal officers.

(3) A partnership shall show both the name and address of the partnership and the names and addresses of its full partners.

(c) Each tract, parcel, or lot of real property owned or controlled in the county shall be listed in accordance with the following instructions:

(1) Real property not divided into lots shall be described by giving:

a. The township in which located.

b. The total number of acres in the tract, or, if smaller than one acre, the dimensions of the parcel.

c. The tract name (if any), the names of at least two adjoining landowners, a reference to the tract's designation on any map maintained in the office of the tax supervisor or on file in the office of the register of deeds, or some other description sufficient to identify and locate the property by parol testimony.

d. If applicable, the number of acres of:

1. Cleared land;

2. Woods and timberland;

3. Land containing mineral or quarry deposits;

4. Land susceptible of development for waterpower;

5. Wasteland.

e. The portion of the tract or parcel located within the boundaries of any municipality.

(2) Real property divided into lots shall be described by giving:

a. The township in which located.

b. The dimensions of the lot.

c. The location of the lot, including its street number (if any).

d. The lot's designation on any map maintained in the office of the tax supervisor or on file in the office of the register of deeds, or some description sufficient to identify and locate the property by parol testimony.

e. The portion of the lot located within the boundaries of any municipality.

(3) In conjunction with the listing of any real property under subdivisions (c)(1) and (c)(2), above, there shall be given a short description of any buildings and other improvements thereon that belong to the owner of the land.

(4) Buildings and other improvements having a value in excess of one hundred dollars ($100.00) that have been acquired, begun, erected, damaged, or destroyed since the time of the last appraisal of property shall be described.

(5) If some person other than the owner of a tract, parcel, or lot shall own any buildings or other improvements thereon or separate rights (such as mineral, quarry, timber, waterpower, or other rights) therein, that fact shall be specified on the abstract on which the land is listed, together with the name and address of the owner of the buildings, other improvements, or rights.

a. Buildings, other improvements, and separate rights owned by a taxpayer with respect to the lands of another shall be listed separately and identified so as to indicate the name of the owner thereof and the tract, parcel, or lot on which the buildings or other improvements are situated or to which the separate rights appertain.

b. In accordance with the provisions of G.S. 105-302(c)(11), buildings or other improvements or separate rights-owned by a taxpayer with respect to the lands of another may be listed either in the name of the owner of the buildings, other improvements, or rights, or in the name of the owner of the land.

(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.

(e) At the end of the abstract each person whose duty it is to list property for taxation shall sign the affirmation required by G.S. 105-310.

(f) The following information shall appear on each abstract, or on an information sheet distributed with the abstract. (The abstract or sheet must include the address and telephone number of the tax supervisor below the notice required by this subsection):

"PROPERTY TAX RELIEF FOR ELDERLY AND PERMANENTLY DISABLED PERSONS.

North Carolina excludes from property taxes the first eight thousand five hundred dollars ($8,500) in assessed value of certain property owned by North Carolina residents aged 65 or older or totally and permanently disabled whose disposable income does not exceed nine thousand dollars ($9,000). The exclusion covers real property (or a mobile home) occupied by the owner as his or her permanent residence and/or household personal property used by the owner in connection with his or her permanent residence. Disposable income includes all moneys received other than gifts or inheritances received from a spouse, lineal ancestors, or lineal descendants.

If you received this exclusion in (tax supervisor insert previous year), you do not need to apply again unless you have changed your permanent residence. If you received the exclusion in (tax supervisor insert previous year) and your disposable income in (tax supervisor insert previous year) was above nine thousand dollars ($9,000), you must notify the tax supervisor. If you received the exclusion in (tax supervisor insert previous year) because you were totally and permanently disabled and you are no longer totally and permanently disabled, you must notify the tax supervisor. If the person receiving the exemption in (tax supervisor insert previous year) has died, the person required by law to list the property must notify the tax supervisor. Failure to make any of the notices required by this paragraph before April 15 will result in penalties and interest.

If you did not receive the exclusion in (tax supervisor insert previous year) but are now eligible, you may obtain a copy of an application from the tax supervisor. It must be filed by April 15."

(g) Any person who fails to give the notice required by G.S. 105-309(f) shall not only be subject to loss of the exemption, but also to the penalties provided by G.S. 105-312, and also if willful to the penalty provided in G.S. 105-310. For the purpose of determining whether a penalty is levied, whenever a taxpayer has received an exemption under G.S. 105-227.1 for one taxable year but the property of taxpayer is not eligible for the exemption the next year, notice

given of that fact to the tax supervisor on or before April 15 shall be considered as timely filed. (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; 1975, c. 881, s. 3; 1977, c. 666, s. 2; 1979, c. 846, s. 2; 1981, c. 54, ss. 4-6; c. 1052, s. 1.)

Effect of Amendments. — The first 1981 amendment, effective Jan. 1, 1982, rewrote subsection (f), and added subsection (g).

Session Laws 1981, c. 54, s. 7, provides: "The 1981 application by any taxpayer under G.S. 105-309(f) for the exemption provided by G.S. 105-277.1 shall be considered the application required by G.S. 105-282.1(a)(3)."

The second 1981 amendment, effective Jan. 1, 1982, substituted "eight thousand five hundred dollars ($8,500)" for "seven thousand five hundred dollars ($7,500)" near the beginning of the first paragraph of the form set out in subsection (f).

§ 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 tax supervisor, subject to the taxpayer's right to review of the determination by the county board of equalization and review or board of commissioners and appeal to the Property Tax Commission.

(b) Duty to Discover and Assess Unlisted Property. — It shall be the duty of the tax supervisor to see that all property not properly listed during the regular listing period be listed, assessed and taxed as provided in this Subchapter. The tax supervisor shall file reports of such discoveries with the board of commissioners in such manner as the board may require.

(c) Carrying Forward Real Property. — At the close of the regular listing period each year, the tax supervisor shall compare the tax lists submitted during the listing period just ended with the lists for the preceding year, and he shall carry forward to the lists of the current year all real property that was listed in the preceding year but that was not listed for the current year. When carried forward, the real property shall be listed in the name of the taxpayer who listed it in the preceding year unless, under the provisions of G.S. 105-302, it must be listed in the name of another taxpayer. Real property carried forward in this manner shall be deemed to be discovered property, and the procedures prescribed in subsection (d), below, shall be followed unless the property discovered is listed in the name of the taxpayer who listed it for the preceding year and the property is not subject to appraisal under either G.S. 105-286 or 105-287 in which case no notice of the listing and valuation need be sent to the taxpayer.

(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 by the tax supervisor in the name of the person required by G.S. 105-302 or 105-306. The discovery shall be deemed to be made on the date that the abstract is made or corrected pursuant to subsection (e) of this section. The tax supervisor shall also make a tentative appraisal of the discovered property in accordance with the best information available to him.

When a discovery is made, the tax supervisor shall mail a notice to the person in whose name the discovered property has been listed. The notice shall contain the following information:

(1) The name and address of the person in whose name the property is listed;
(2) A brief description of the property;
(3) A tentative appraisal of the property;
(4) A statement to the effect that the listing and appraisal will become final unless written exception thereto is filed with the tax supervisor within 30 days from date of the notice.

Upon receipt of a timely exception to the notice of discovery, the tax supervisor shall arrange a conference with the taxpayer to afford him the opportunity to present any evidence or argument he may have regarding the discovery. Within 15 days after the conference, the tax supervisor shall give written notice to the taxpayer of his final decision. Written notice shall not be required, however, if the taxpayer signs an agreement accepting the listing and appraisal. In cases in which agreement is not reached, the taxpayer shall have 15 days from the date of the notice to request review of the decision of the tax supervisor by the board of equalization and review or, if that board is not in session, by the board of commissioners. Unless the request for review by the county board is given at the conference, it shall be made in writing to the tax supervisor. Upon receipt of a timely request for review, the provisions of G.S. 105-322 or 105-325, as appropriate, shall be followed.

(e) Record of Discovered Property. — When property is discovered, the taxpayer's original abstract (if one was submitted) may be corrected or a new abstract may be prepared to reflect the discovery. If a new abstract is prepared, it may be filed with the abstracts that were submitted during the regular listing period, or it may be filed separately with abstracts designated "Late Listings." Regardless of how filed, the listing shall have the same force and effect as if it had been submitted during the regular listing period.

(f) Presumptions. — When property is discovered and listed to a taxpayer in any year, it shall be presumed that it should have been listed by the same taxpayer for the preceding five years unless the taxpayer shall produce satisfactory evidence that the property was not in existence, that it was actually listed for taxation, or that it was not his duty to list the property during those years or some of them under the provisions of G.S. 105-302 and 105-306. If it is shown that the property should have been listed by some other taxpayer during some or all of the preceding years, the property shall be listed in the name of the appropriate taxpayer for the proper years, but the discovery shall still be deemed to have been made as of the date that the tax supervisor first listed it.

(g) Taxation of Discovered Property. — When property is discovered, it shall be taxed for the year in which discovered and for any of the preceding five years during which it escaped taxation in accordance with the assessed value it should have been assigned in each of the years for which it is to be taxed and the rate of tax imposed in each such year. The penalties prescribed by subsection (h), below, shall be computed and imposed regardless of the name in which the discovered property is listed. If the discovery is based upon an understatement of value, quantity, or other measurement rather than an omission from the tax list, the tax shall be computed on the additional valuation

fixed upon the property, and the penalties prescribed by subsection (h), below, shall be computed on the basis of the additional tax.

(h) Computation of Penalties. — Having computed each year's taxes separately as provided in subsection (g), above, there shall be added a penalty of ten percent (10%) of the amount of the tax for the earliest year in which the property was not listed, plus an additional ten percent (10%) of the same amount for each subsequent listing period that elapsed before the property was discovered. This penalty shall be computed separately for each year in which a failure to list occurred; and the year, the amount of the tax for that year, and the total of penalties for failure to list in that year shall be shown separately on the tax records; but the taxes and penalties for all years in which there was a failure to list shall be then totalled on a single tax receipt.

(i) Collection. — For purposes of tax collection and foreclosure, the total figure obtained and recorded as provided in subsection (h), above, shall be deemed to be a tax for the fiscal year beginning on July 1 of the calendar year in which the property was discovered. The schedule of discounts for prepayment and interest for late payment applicable to taxes for the fiscal year referred to in the preceding sentence shall apply when the total figure on the single tax receipt is paid. Notwithstanding the time limitations contained in G.S. 105-381, any property owner who is required to pay taxes on discovered property as herein provided shall be entitled to a refund of any taxes erroneously paid on the same property to other taxing jurisdictions in North Carolina. Claim for refund shall be filed in the county where such tax was erroneously paid as provided by G.S. 105-381.

(j) Tax Receipts Charged to Collector. — Tax receipts prepared as required by subsections (h) and (i), above, for the taxes and penalties imposed upon discovered property shall be delivered to the tax collector, and he shall be charged with their collection. Such receipts shall have the same force and effect as if they had been delivered to the collector at the time of the delivery of the regular tax receipts for the current year, and the taxes charged in the receipts shall be a lien upon the property in accordance with the provisions of G.S. 105-355.

(k) Power to Compromise. — After a tax receipt computed and prepared as required by subsections (g) and (h), above, has been delivered and charged to the tax collector as prescribed in subsection (j), above, the board of county commissioners, upon the petition of the taxpayer, may compromise, settle, or adjust the county's claim for taxes arising therefrom. The board of commissioners may, by resolution, delegate the authority granted by this subsection to the board of equalization and review, including any board created by resolution pursuant to G.S 105-322(a) and any special board established by local act.

(l) Application to Municipal Corporations. — The provisions of this section shall apply to all cities, towns, and other municipal corporations having the power to tax property. Such governmental units shall designate an appropriate municipal officer to exercise the powers and duties assigned by this section to the tax supervisor, and the powers and duties assigned to the board of county commissioners shall be exercised by the governing body of the unit. When the tax supervisor discovers property having a taxable situs in a municipal corporation, he shall send a copy of the notice of discovery required by subsection (d) to the governing body of the municipality together with such other information as may be necessary to enable the municipality to proceed. The governing board of a municipality may, by resolution, delegate the power to compromise, settle, or adjust tax claims granted by this subsection and by subsection (k) of this section to the county board of equalization and review, including any board created by resolution pursuant to G.S. 105-322(a) and any special board established by local act. (1939, c. 310, s. 1109; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 787; 1977, c. 864; 1981, c. 623, ss. 1, 2.)

Effect of Amendments. — The 1981 amendment added the second sentence of subsection (k), and added the last sentence of subsection (l).

Session Laws 1981, c. 623, s. 3, provides: "All laws and clauses of laws in conflict with this act, whether public or local, are repealed."

Legal Periodicals. — For article, "Future Advances and Title Insurance Coverage," see 15 Wake Forest L. Rev. 329 (1979).

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. Acreage or poundage allotments for any farm commodity shall not be listed as a separate element for taxation in the appraisal and assessment of real property for ad valorem taxes, but may be considered as a factor in determining true value.

(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.

(b) In preparation for each revaluation of real property required by G.S. 105-286, it shall be the duty of the tax supervisor to see that:

(1) There be developed and compiled uniform schedules of values, standards, and rules to be used in appraising real property in the county. (The schedules of values, standards, and rules shall be prepared in sufficient detail to enable those making appraisals to adhere to them in appraising the kinds of real property commonly found in the county; they shall be:

a. Prepared prior to each revaluation required by G.S. 105-286;

b. In written or printed form; and

c. Available for public inspection upon request.)

(2) Repealed by Session Laws 1981, c. 678, s. 1.

(3) A separate property record be prepared for each tract, parcel, lot, or group of contiguous lots, which record shall show the information required for compliance with the provisions of G.S. 105-309 insofar as they deal with real property, as well as that required by this section. (The purpose of this subdivision is to require that individual property records be maintained in sufficient detail to enable property owners to ascertain the method, rules, and standards of value by which property is appraised.)

(4) The property characteristics considered in appraising each lot, parcel, tract, building, structure and improvement, in accordance with the

schedules of values, standards, and rules adopted pursuant to subsection (b), be accurately recorded on the appropriate property record.

(5) Upon the request of the owner, the board of equalization and review, or the board of county commissioners, any particular lot, parcel, tract, building, structure or improvement be actually visited and observed to verify the accuracy of property characteristics on record for that property.

(6) Each lot, parcel, tract, building, structure and improvement be separately appraised by a competent appraiser, either one appointed under the provisions of G.S. 105-296 or one employed under the provisions of G.S. 105-299.

(7) Notice is given in writing to the owner that he is entitled to have an actual visitation and observation of his property to verify the accuracy of property characteristics on record for that property.

(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; 1981, c. 224; c. 678, s. 1.)

Effect of Amendments. — The first 1981 amendment, effective July 1, 1981, added the second sentence of subdivision (1) of subsection (a).

The second 1981 amendment deleted subdivision (2) of subsection (b), which read: "Every lot, parcel, tract, building, structure, and improvement being appraised be actually visited, observed, and appraised by a competent appraiser, either one appointed under the provisions of G.S. 105-296 or one employed under the provisions of G.S. 105-299." The amendment also deleted "(b)(3)" following "subdivision" in the second sentence of subdivision (3) of subsection (b), and added subdivisions (4), (5), (6), and (7).

CASE NOTES

County tax assessment valuation method held not arbitrary. See In re Wagstaff, 42 N.C. App. 47, 255 S.E.2d 754 (1979).

Where county appraisers considered soil quality and whether the land was cropland, pasture, or woodland, and set varying land values on this basis, and also took into consideration that part of the land was swampland, the potential uses and income of the land were adequately considered. In re Wagstaff, 42 N.C. App. 47, 255 S.E.2d 754 (1979).

County Tax Assessment Valuation Method Held Arbitrary. — Where there was no evidence that the county considered the advantages or disadvantages of the location; availability of water; or the nature of the mineral, quarry or other valuable deposits, consideration of which, among other facts, is required by this section, and where there was no evidence that any county representative ever visited or observed any portion of the tract in question as required by this section, the county's valuation method was held to be arbitrary. In re Land & Mineral Co., 49 N.C. App. 605, 272 S.E.2d 878 (1980).

Applied in In re Land & Mineral Co., 49 N.C. App. 529, — S.E.2d — (1980).

ARTICLE 21.

Review and Appeals of Listings and Valuations.

§ 105-322. County board of equalization and review.

Local Modification. — Mecklenburg: 1981, c. 509.

ARTICLE 23.

Public Service Companies.

§ 105-335. Appraisal of property of public service companies.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 105-338. Allocation of appraised valuation of system property among local taxing units.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 105-339. Certification of appraised valuations of nonsystem property and locally assigned rolling stock.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 105-342. Notice, hearing, and appeal.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

Article 24.

Review and Enforcement of Orders.

§ 105-345. Right of appeal; filing of exceptions.

Legal Periodicals. — For survey of 1979 tax law, see 58 N.C.L. Rev. 1548 (1980).

§ 105-345.1. No evidence admitted on appeal; remission for future evidence.

Legal Periodicals. — For survey of 1979 tax law, see 58 N.C.L. Rev. 1548 (1980).

§ 105-345.2. Record on appeal; extent of review.

Legal Periodicals. — For survey of 1979 tax law, see 58 N.C.L. Rev. 1548 (1980).

§ 105-345.3. Relief pending review on appeal.

Legal Periodicals. — For survey of 1979 tax law, see 58 N.C.L. Rev. 1548 (1980).

§ 105-345.4. Appeal to Supreme Court.

Legal Periodicals. — For survey of 1979 tax law, see 58 N.C.L. Rev. 1548 (1980).

§ 105-345.5. Judgment on appeal enforced by mandamus.

Legal Periodicals. — For survey of 1979 tax law, see 58 N.C.L. Rev. 1548 (1980).

§ 105-346. Peremptory mandamus to enforce order when no appeal.

Legal Periodicals. — For survey of 1979 tax law, see 58 N.C.L. Rev. 1548 (1980).

ARTICLE 26.

Collection and Foreclosure of Taxes.

§ 105-349. Appointment, term, qualifications, and bond of tax collectors and deputies.

CASE NOTES

Cited in Town of Scotland Neck v. Western Sur. Co., 46 N.C. App. 124, 264 S.E.2d 917 (1980).

§ 105-350. General duties of tax collectors.

CASE NOTES

Cited in Town of Scotland Neck v. Western Sur. Co., 46 N.C. App. 124, 264 S.E.2d 917 (1980).

§ 105-355. Creation of tax lien; date as of which lien attaches.

Legal Periodicals. — For article, "Future Advances and Title Insurance Coverage," see 15 Wake Forest L. Rev. 329 (1979).

CASE NOTES

Cited in W.R. Co. v. North Carolina Property Tax Comm'n, 48 N.C. App. 245, 269 S.E.2d 636 (1980).

§ 105-356. Priority of tax liens.

Legal Periodicals. — For article, "Future Advances and Title Insurance Coverage," see 15 Wake Forest L. Rev. 329 (1979).

§ 105-360. Due date; interest for nonpayment of taxes; discounts for prepayment.

CASE NOTES

Applied in In re Foreclosure of Deed of Trust, 41 N.C. App. 563, 255 S.E.2d 260 (1979).

Cited in W.R. Co. v. North Carolina Property Tax Comm'n, 48 N.C. App. 245, 269 S.E.2d 636 (1980).

§ 105-368. Procedure for attachment and garnishment.

(a) Subject to the provisions of G.S. 105-356 governing the priority of the lien acquired, the tax collector may attach wages and other compensation, rents, bank deposits, the proceeds of property subject to levy, or any other intangible personal property in the circumstances and to the extent prescribed in G.S. 105-366(b), (c), and (d).

In the case of property due the taxpayer or to become due to him within the current calendar year, the person owing the property to the taxpayer or having the property in his possession shall be liable for the taxes to the extent of the amount he owes or has in his possession. However, when wages or other compensation for personal services is attached, the garnishee shall not pay to the tax collector more than ten percent (10%) of such compensation for any one pay period.

(b) To proceed under this section, the tax collector shall serve or cause to be served upon the taxpayer and the person owing or having in his possession the wages, rents, debts or other property sought to be attached a notice as provided by this subsection. The notice may be personally served by any deputy or employee of the tax collector or by any officer having authority to serve summonses, or may be served in any manner provided in Rule 4 of the North Carolina Rules of Civil Procedure. The notice shall contain:

(1) The name of the taxpayer, and if known his Social Security number or federal tax identification number and his address.
(2) The amount of the taxes, penalties, interest, and costs (including the fees allowed by this section) and the year or years for which the taxes were imposed.
(3) The name of the taxing unit or units by which the taxes were levied.
(4) A brief description of the property sought to be attached.
(5) A copy of the applicable law, that is, G.S. 105-366 and 105-368. Notices concerning two or more taxpayers may be combined if they are to be served upon the same garnishee, but the taxes, penalties, interest, and costs charged against each taxpayer must be set forth separately.

(c) If the garnishee has no defense to offer or no setoff against the taxpayer, he shall within 10 days after service of the notice answer it by sending to the tax collector by registered or certified mail a statement to that effect, and if the amount demanded by the tax collector is then due to the taxpayer or subject to his demand, the garnishee shall remit it to the tax collector with his statement; but if the amount due to the taxpayer or subject to his demand is to mature in the future, the garnishee's statement shall set forth that fact, and the demand shall be paid to the tax collector upon maturity. Any payment by the garnishee under the provisions of this subsection (c) shall completely satisfy any liability therefor on his part to the taxpayer.

(d) If the garnishee has a defense or setoff against the taxpayer, he shall state it in writing under oath, and, within 10 days after service of the garnishment notice, he shall send two copies of his statement to the tax collector by registered or certified mail. If the tax collector admits the defense or setoff, he shall so advise the garnishee in writing within 10 days after receipt of the garnishee's statement, and the attachment or garnishment shall thereupon be discharged to the amount required by the defense or setoff, and any amount attached or garnished which is not affected by the defense or setoff shall be remitted to the tax collector as provided in subsection (c), above.

If the tax collector does not admit the defense or setoff, he shall set forth in writing his objections thereto and 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 the tax collector shall file a copy of the notice of garnishment, a copy of the garnishee's statement, and a copy of the tax collector's objections thereto in the appropriate

division of the General Court of Justice of the county in which the garnishee resides or does business, where the issues made shall be tried as in civil actions.

(e) If the garnishee has not responded to the notice of garnishment as required by subsections (c) and (d), above, within 15 days after service of the notice, the tax collector may file in the appropriate division of the General Court of Justice of the county in which the garnishee resides a copy of the notice of garnishment, accompanied by a written statement that the garnishee has not responded thereto and a request for judgment, and the issues shall be tried as in civil actions.

(f) The taxpayer may raise any defenses to the attachment or garnishment that he may have in the manner provided in subsection (d), above, for the garnishee.

(g) The fee for serving a notice of garnishment shall be the same as that charged in a civil action. If judgment is entered in favor of the taxing unit by default or after hearing, the garnishee shall become liable for the taxes, penalties, and interest due by the taxpayer, plus the fees and costs of the action, but payment shall not be required from amounts which are not to become due to the taxpayer until they actually come due. The garnishee may satisfy the judgment upon paying the amount thereof, and if he fails to do so, execution may issue as provided by law. From any judgment or order entered, either the taxing unit or the garnishee may appeal as provided by law. If, before or after judgment, adequate security is filed for the payment of the taxes, penalties, interest, and costs, the tax collector may release the attachment or garnishment, or execution may be stayed at the request of the tax collector pending appeal, but the final judgment shall be paid or enforced as above provided. If judgment is rendered against the taxing unit, it shall pay the fees and costs of the action. All fees collected by officers shall be disposed of in the same manner as other fees collected by such officers.

(h) Tax collectors may proceed against the wages, salary, or other compensation of officials and employees of this State and its agencies, instrumentalities, and political subdivisions in the manner provided in this section. If the taxpayer is an employee of the State, the notice of attachment shall be served upon him and upon the head or chief fiscal officer of the department, agency, instrumentality, or institution by which he is employed. If the taxpayer is an employee of a political subdivision of the State (county, municipality, etc.), the notice of attachment shall be served upon him and upon the officer charged with making up the payrolls of the political subdivision by which he is employed. All deductions from the wages or salary of a taxpayer made pursuant to this subsection (h) and remitted to the tax collector shall, pro tanto, constitute a satisfaction of the salary or wages due the taxpayer.

(i) (1) Any person who, after written demand therefor, refuses to give the tax collector or tax supervisor a list of the names and addresses of all of his employees who may be liable for taxes, shall be guilty of a misdemeanor.

(2) Any tax collector or tax supervisor who receives, upon his written demand, any list of employees may not release or furnish that list or any copy thereof, or disclose any name or information thereon, to any other person, and may not use that list in any manner or for any purpose not directly related to and in furtherance of the collection and foreclosure of taxes. Any tax collector or tax supervisor who violates or allows the violation of this subdivision (i)(2) shall be guilty of a misdemeanor. (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; 1979, c. 103, ss. 3, 4; 1979, 2nd Sess., c. 1085, s. 2; 1981, c. 76, s. 1.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective October 1, 1980, inserted "or certified" near the beginning of the first sentence in subsection (c) and near the end of the first sentence in subsection (d).

The 1981 amendment rewrote the first two sentences of subsection (b).

Session Laws 1981, c. 76, s. 2, provides that the act is effective upon ratification and applies to all attachments and garnishments commenced on or after that date. The act was ratified March 9, 1981.

§ 105-374. Foreclosure of tax lien by action in nature of action to foreclose a mortgage.

(a) General Nature of Action. — The foreclosure action authorized by this section shall be instituted in the appropriate division of the General Court of Justice in the county in which the real property is situated and shall be an action in the nature of an action to foreclose a mortgage.

(b) Availability of Procedure. —

(1) Taxing Units. — Taxing units may proceed under this section, either on the original tax lien created by G.S. 105-355(a) or on the lien acquired at the tax lien sale held under G.S. 105-369, with or without a lien sale certificate; and the amount of recovery in either case shall be the same. To this end, it is hereby declared that the original attachment of the tax lien under G.S. 105-355(a) is sufficient to support a tax foreclosure action by a taxing unit, that the issuance of tax lien sale certificates to a taxing unit is a matter of convenience in record keeping within the discretion of the governing body of the taxing unit, and that issuance of such certificates is not a prerequisite to perfection of the tax lien.

(2) Private Purchasers. — Foreclosure under this section shall be the sole remedy of holders of tax lien certificates other than taxing units, and actions for the foreclosure of tax liens under this section by such persons shall be brought no earlier than six months after the lien sale provided for in G.S. 105-369.

(c) Parties; Summonses. — The listing taxpayer and spouse (if any), the current owner, all other taxing units having tax liens, all other lienholders of record, and all persons who would be entitled to be made parties to a court action (in which no deficiency judgment is sought) to foreclose a mortgage on such property, shall be made parties and served with summonses in the manner provided by G.S. 1A-1, Rule 4.

The fact that the listing taxpayer or any other defendant is a minor, is incompetent, or is under any other disability shall not prevent or delay the tax lien sale or the foreclosure of the tax lien; and all such persons shall be made parties and served with summons in the same manner as in other civil actions.

Persons who have disappeared or who cannot be located and persons whose names and whereabouts are unknown, and all possible heirs or assignees of such persons, may be served by publication; and such persons, their heirs, and assignees may be designated by general description or by fictitious names in such an action.

(c1) Lienholders Separately Designated. — The word "lienholder" shall appear immediately after the name of each lienholder (including trustees and beneficiaries in deeds of trust, and holders of judgment liens) whose name appears in the caption of any action instituted under the provisions of this section. Such designation is intended to make clear to the public the capacity of such persons which necessitated their having been made parties to such action. Failure to add such designation to captions shall not constitute grounds for attacking the validity of actions brought under this section, or titles to real property derived from such actions.

(d) Complaint as Lis Pendens. — The complaint in an action brought under this section shall, from the time it is filed in the office of the clerk of superior court, serve as notice of the pendency of the foreclosure action, and every person whose interest in the real property is subsequently acquired or whose interest therein is subsequently registered or recorded shall be bound by all proceedings taken in the foreclosure action after the filing of the complaint in the same manner as if those persons had been made parties to the action. It shall not be necessary to have the complaint cross-indexed as a notice of action pending to have the effect prescribed by this subsection (d).

(e) Subsequent Taxes. — The complaint in a tax foreclosure action brought under this section by a taxing unit shall, in addition to alleging the tax lien on which the action is based, include a general allegation of subsequent taxes which are or may become a lien on the same real property in favor of the plaintiff unit. Thereafter it shall not be necessary to amend the complaint to incorporate the subsequent taxes by specific allegation. In case of redemption before confirmation of the foreclosure sale, the person redeeming shall be required to pay, before the foreclosure action is discontinued, at least all taxes on the real property which have at the time of discontinuance become due to the plaintiff unit, plus penalties, interest, and costs thereon. Immediately prior to judgment ordering sale in a foreclosure action (if there has been no redemption prior to that time), the tax collector or the attorney for the plaintiff unit shall file in the action a certificate setting forth all taxes which are a lien on the real property in favor of the plaintiff unit (other than taxes the amount of which has not been definitely determined).

Any plaintiff in a tax foreclosure action (other than a taxing unit) may include in his complaint, originally or by amendment, all other taxes and special assessments paid by him which were liens on the same real property.

(f) Joinder of Parcels. — All real property within the taxing unit subject to liens for taxes levied against the same taxpayer for the first year involved in the foreclosure action may be joined in one action. However, if real property is transferred by the listing taxpayer subsequent to the first year involved in the foreclosure action, all subsequent taxes, penalties, interest, and costs (for which the property is ordered sold under the terms of this Subchapter) shall be prorated to such property in the same manner as if payments were being made to release such property from the tax lien under the provisions of G.S. 105-356(b).

(g) Special Benefit Assessments. — A cause of action for the foreclosure of the lien of any special benefit assessments may be included in any complaint filed under this section.

(h) Joint Foreclosure by Two or More Taxing Units. — Liens of different taxing units on the same parcel of real property, representing taxes in the hands of the same tax collector, shall be foreclosed in one action. Liens of different taxing units on the same parcel of real property, representing taxes in the hands of different tax collectors, may be foreclosed in one action in the discretion of the governing bodies of the taxing units.

The lien of any taxing unit made a party defendant in any foreclosure action shall be alleged in an answer filed by the taxing unit, and the tax collector of each answering unit shall, prior to judgment ordering sale, file a certificate of subsequent taxes similar to that filed by the tax collector of the plaintiff unit, and the taxes of each answering unit shall be of equal dignity with the taxes of the plaintiff unit. Any answering unit may, in case of payment of the plaintiff unit's taxes, continue the foreclosure action until all taxes due to it have been paid, and it shall not be necessary for any answering unit to file a separate foreclosure action or to proceed under G.S. 105-375 with respect to any such taxes.

If a taxing unit properly served as a party defendant in a foreclosure action fails to answer and file the certificate provided for in the preceding paragraph,

all of its taxes shall be barred by the judgment of sale except to the extent that the purchase price at the foreclosure sale (after payment of costs and of the liens of all taxing units whose liens are properly alleged by complaint or answer and certificates) may be sufficient to pay such taxes. However, if a defendant taxing unit is plaintiff in another foreclosure action pending against the same property, or if it has begun a proceeding under G.S. 105-375, its answer may allege that fact in lieu of alleging its liens, and the court, in its discretion, may order consolidation of such actions or such other disposition thereof (and such disposition of the costs therein) as it may deem advisable. Any such order may be made by the clerk of the superior court subject to appeal in the same manner as appeals are taken from other orders of the clerk.

(i) Costs. — Subject to the provisions of this subsection (i), costs may be taxed in any foreclosure action brought under this section in the same manner as in other civil actions. When costs are collected, either by payment prior to the sale or upon payment of the purchase price at the foreclosure sale, the fees allowed officers shall be paid to those entitled to receive them. In foreclosure actions in which the plaintiff is a taxing unit, no prosecution bonds shall be required.

The word "costs," as used in this subsection (i), shall be construed to include one reasonable attorney's fee for the plaintiff in such amount as the court shall, in its discretion, determine and allow. When a taxing unit is made a party defendant in a tax foreclosure action and files answer therein, there may be included in the costs an attorney's fee for the defendant unit in such amount as the court shall, in its discretion, determine and allow. The governing body of any taxing unit may, in its discretion, pay a smaller or greater sum than that allowed as costs to its attorney as a suit fee, and the governing body may allow a reasonable commission to its attorney on taxes collected by him after they have been placed in his hands; or the governing body may arrange with its attorney for the handling of tax foreclosure suits on a salary basis or may make any other reasonable agreement with its attorney or attorneys. Any arrangement made between a taxing unit and its attorney may provide that attorneys' fees collected as costs in foreclosure actions be collected for the use of the taxing unit.

In any foreclosure action in which real property is actually sold after judgment, costs shall include a commissioner's fee to be fixed by the court, not exceeding five percent (5%) of the purchase price; and in case of redemption between the date of sale and the order of confirmation, the fee shall be added to the amount otherwise necessary for redemption. In case more than one sale is made of the same property in any action, the commissioner's fee may be based on the highest amount bid, but the commissioner shall not be allowed a separate fee for each such sale. The governing body of any plaintiff unit may request the court to appoint as commissioner a salaried official, attorney, or employee of the unit and, when the requested appointment is made, may require that the commissioner's fees, when collected, be paid to the plaintiff unit for its use.

(j) Contested Actions. — Any action brought under this section in which an answer raising an issue requiring trial is filed within the time allowed by law shall be entitled to a preference as to time of trial over all other civil actions.

(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.

(l) Advertisement of Sale. — The sale shall be advertised, and all necessary resales shall be advertised, in the manner provided by Article 29A of Chapter 1 of the General Statutes or by any statute enacted in substitution therefor.

(m) Sale. — The sale shall be by public auction to the highest bidder and shall, in accordance with the judgment, be held at the courthouse door on any day of the week except a Sunday or legal holiday. (In actions brought by a municipality that is not a county seat, the court may, in its discretion, direct that the sale be held at the city or town hall door.) The commissioner conducting the sale may, in his discretion, require from any successful bidder a deposit equal to not more than twenty percent (20%) of his bid, which deposit, in the event that the bidder refuses to take title and a resale becomes necessary, shall be applied to pay the costs of sale and any loss resulting. (However, this provision shall not deprive the commissioner of his right to sue for specific performance of the contract.) No deposit shall be required of a taxing unit that has made the highest bid at the foreclosure sale.

(n) Report of Sale. — Within three days following the foreclosure sale the commissioner shall report the sale to the court giving full particulars thereof.

(o) Exceptions and Increased Bids. — At any time within 10 days after the commissioner files his report of the foreclosure sale, any person having an interest in the real property may file exceptions to the report, and at any time within that 10-day period an increased bid may be filed in the amount specified by and subject to the provisions (other than provisions in conflict herewith) of Article 29A of Chapter 1 of the General Statutes or the provisions (other than provisions in conflict herewith) of any law enacted in substitution therefor. In the absence of exceptions or increased bids, the court may, whenever it deems such action necessary for the best interests of the parties, order resale of the property.

(p) Judgment of Confirmation. — At any time after the expiration of 10 days from the time the commissioner files his report, if no exception or increased bid has been filed, the commissioner may apply for judgment of confirmation, and in like manner he may apply for such a judgment after the court has passed upon exceptions filed, or after any necessary resales have been held and reported and 10 days have elapsed. The judgment of confirmation shall direct the commissioner to deliver the deed upon payment of the purchase price. This judgment may be rendered by the clerk of superior court subject to appeal in the same manner as appeals are taken from other judgments of the clerk.

(q) Application of Proceeds; Commissioner's Final Report. — After delivery of the deed and collection of the purchase price, the commissioner shall apply the proceeds as follows:

(1) First, to payment of all costs of the action, including the commissioner's fee and the attorney's fee, which costs shall be paid to the officials or funds entitled thereto;

(2) Then to the payment of taxes, penalties, and interest for which the real property was ordered to be sold, and in case the funds remaining are insufficient for this purpose, they shall be distributed pro rata to the various taxing units for whose taxes the property was ordered sold;

(3) Then pro rata to the payment of any special benefit assessments for which the property was ordered sold, together with interest and costs thereon;
(4) Then pro rata to payment of taxes, penalties, interest, and costs of taxing units that were parties to the foreclosure action but which filed no answers therein;
(5) Then pro rata to payment of special benefit assessments of taxing units that were parties to the foreclosure action but which filed no answers therein, together with interest and costs thereon;
(6) And any balance then remaining shall be paid in accordance with any directions given by the court and, in the absence of such directions, shall be paid into court for the benefit of the persons entitled thereto. (If the clerk is in doubt as to who is entitled to the surplus or if any adverse claims are asserted thereto, the clerk shall hold the surplus until rights thereto are established in a special proceeding pursuant to G.S. 1-339.71.)

Within five days after delivering the deed, the commissioner shall make a full report to the court showing delivery of the deed, receipt of the purchase price, and the disbursement of the proceeds, accompanied by receipts evidencing all such disbursements.

(r) Purchase and Resale by Taxing Unit. — The rights of a taxing unit to purchase real property at a foreclosure sale and resell it are governed by G.S. 105-376. (1939, c. 310, s. 1719; 1945, c. 635; 1947, c. 484, ss. 3, 4; 1951, c. 300, s. 1; c. 1036, s. 1; 1953, c. 176, s. 2; 1955, c. 908; 1967, c. 705, s. 1; 1971, c. 806, s. 1; 1973, c. 788, s. 1; 1981, c. 580.)

Effect of Amendments. — The 1981 amendment added subsection (c1).

CASE NOTES

Construed together, § 160A-233(c) and subsection (i) of this section, provide for an award of one reasonable attorney's fee, in the court's discretion, in a foreclosure of an assessment lien by action in nature of action to foreclose a mortgage. Guilford County v. Boyan, 42 N.C. App. 627, 257 S.E.2d 463 (1979).

A study of subsection (e) of this section shows that its benefits apply only to taxing units, not private citizens. Keener v. Korn, 46 N.C. App. 214, 264 S.E.2d 829 (1980).

Applied in Keener v. Korn, 46 N.C. App. 214, 264 S.E.2d 829 (1980); Guilford County v. Boyan, 49 N.C. App. 430, — S.E.2d — (1980).

ARTICLE 27.

Refunds and Remedies.

§ 105-381. Taxpayer's remedies.

Legal Periodicals. — For survey of 1979 tax law, see 58 N.C.L. Rev. 1548 (1980).

CASE NOTES

Applied in Town of Bladenboro v. McKeithan, 44 N.C. App. 459, 261 S.E.2d 260 (1980).

Stated in Raintree Corp. v. City of Charlotte, 49 N.C. App. 391, — S.E.2d — (1980).

SUBCHAPTER V. GASOLINE TAX.

ARTICLE 36.

Gasoline Tax.

§ 105-434. Gallon tax.

There is hereby levied and imposed a tax of twelve cents (12¢) per gallon on all motor fuels sold, distributed, or used within this State. The tax hereby imposed and levied shall be collected and paid by the distributor producing, refining, manufacturing, or compounding within this State, or holding in possession within this State motor fuels for the purpose of sale, distribution, or use within the State, and shall be paid by such distributor to the Secretary of Revenue in the manner and at the times hereinafter specified. No county, city, or town, or political subdivision shall levy or collect any tax upon the sale or distribution of motor fuels herein defined. For the purpose of determining the amount of the tax, it shall be the duty of every distributor to transmit to the Secretary of Revenue not later than the twentieth day of each month, upon forms prescribed and furnished by such Secretary, a report under oath or affirmation showing the quantity of motor fuel sold, distributed, or used by such distributor within this State during the preceding calendar month, and such other information as the said Secretary may require: Provided, that any distributor may, if he elects to do so, use as the measure of the tax levied and assessed against him by this section the gross quantity of motor fuel purchased, produced, refined, manufactured, and/or compounded by such distributor, plus the amount of motor fuel on hand at the beginning of the period when such method of computation is used, less a tare of two percent (2%) on gross monthly receipts of motor fuels not exceeding 150,000 gallons, and less a tare of one and one-half percent ($1^1/_2$%) on gross monthly receipts of such fuel in excess of 150,000 gallons and not exceeding 250,000 gallons, and less a tare of one percent (1%) on gross monthly receipts of such fuels in excess of 250,000 gallons. Provided, that if any licensed distributor who has elected to pay the tax levied herein on the amount of motor fuel purchased, produced, refined, manufactured, or compounded, in lieu of the amount sold, distributed, or used, shall lose any such fuel by reason of fire, lightning, flood, windstorm, wrecking of transportation conveyance, acts of war, or any accidental or providential cause, and such loss is clearly proved to the satisfaction of the Secretary of Revenue, the amount of motor fuel lost shall be excluded from the measure of his tax. Provided, further, that the Secretary of Revenue shall have power under such rules and regulations as he may adopt for the purpose to refund to any nonlicensed distributor the tax on any motor fuel purchased by and delivered to him tax paid that is lost by fire, lightning, flood, windstorm, acts of war, or any accidental or providential cause, after it is delivered to him and before it is sold, but such loss must be clearly proved to the satisfaction of the Secretary. (1927, c. 93, s. 4; 1929, c. 40, s. 1; 1931, c. 145, s. 24; 1941, cc. 16, 146; 1943, c. 113; 1949, c. 1250, s. 13; 1969, c. 600, s. 20; 1973, c. 476, s. 193; 1981, c. 690, s. 1.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, increased the rate of the tax in the first sentence from nine cents to twelve cents per gallon.

§ 105-435. Tax on fuels not within definition; manner of collection; from whom collected.

(a) Every person who owns or operates over the highways of this State, any motor vehicle propelled by a motor which uses any product not included within the definition of "motor fuels" hereinbefore set out to generate power for the propulsion of said vehicle, shall pay to the Secretary of Revenue, for the use of the highways of this State, a tax of twelve cents (12¢) per gallon on the fuel used in such vehicle upon the highways of this State.

(b) Notwithstanding any provisions of subsection (a) to the contrary, the tax levied with respect to the special fuels therein described shall be collected in the manner and from the persons as set out in Article 36A of Chapter 105 of the General Statutes. (1941, c. 376, s. 2; 1949, c. 1250, s. 13; 1951, c. 838; 1955, c. 822, s. 2; 1969, c. 600, s. 20; 1973, c. 476, s. 193; 1981, c. 690, s. 1.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, increased the rate of the tax in subsection (a) from nine cents to twelve cents per gallon.

CASE NOTES

Cited in Stam v. State, 47 N.C. App. 209, 267 S.E.2d 335 (1980).

§ 105-436.1. Taxation of alcohol fuels.

(a) Sale, distribution, or use of a blend of motor fuel and a minimum of ten percent (10%) anhydrous ethanol is subject to the tax described in G.S. 105-434 except:

(1) From July 1, 1981, through June 30, 1982, the tax is nine cents (9¢);

(2) From July 1, 1982, through June 30, 1983, the tax is ten cents (10¢);

(3) From July 1, 1983, through June 30, 1984, the tax is eleven cents (11¢).

Quarterly refunds and rebates allowed under this Article for the purchase of such a blend shall not exceed the motor fuels tax on that blend reduced by one cent (1¢). Annual refunds and rebates allowed under this Article for the purchase of such a blend shall be at the following rates: for the year ending December 31, 1981, six cents (6¢) per gallon; for the year ending December 31, 1982, eight and one-half cents ($8^1/_2$¢) per gallon; for the year ending December 31, 1983, nine and one-half cents ($9^1/_2$¢) per gallon; for the year ending December 31, 1984, ten and one-half cents ($10^1/_2$¢) per gallon; for subsequent years ending December 31, eleven cents (11¢) per gallon.

(b) Nonanhydrous ethanol is exempt from the tax described in this section and in G.S. 105-434 if that ethanol is not for sale or distribution. (1979, 2nd Sess., c. 1187, s. 1; 1981, c. 690, s. 1.)

Editor's Note. — Session Laws 1979, 2nd Sess., c. 1187, s. 6, provides: "This act shall become effective on January 1, 1981, and shall cease to be effective on July 1, 1984."

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, eliminated former subdivision (1) of subsection (a), providing the tax from January 1, 1981 through June 30, 1981, redesignated former subdivisions (2) through (4) as (1) through (3) of subsection (a), increasing the taxes from six cents to nine cents, seven cents to ten cents and eight cents to eleven cents respectively, and substituted the present last two sentences of subsection (a) for the former last sentence, which read: "No refund or rebate allowed under this Article for the purchase of such a blend shall exceed the motor fuels tax on that blend, reduced by one cent (1¢)."

§ 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 nine and one-half cents ($9\frac{1}{2}¢$) per gallon for the year ending December 31, 1981, and at the rate of eleven cents (11¢) 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; 1981, c. 690, s. 1.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "nine and one-half cents ($9^1/_2$¢) per gallon for the year ending December 31, 1981, and at the rate of eleven cents (11¢)" for "seven cents (7¢) per gallon for the year ending December 31, 1969, and at the rate of eight cents (8¢)" in the introductory paragraph.

§ 105-446.1. Refunds of taxes paid by counties and municipalities.

The following entities shall be entitled to be reimbursed at the rate of eleven cents (11¢) per gallon of the tax levied by G.S. 105-434 upon filing a statement in writing with the Secretary of Revenue, which statement shall be made upon the oath or affirmation of the chief executive officer of said entity, showing the number of gallons of fuel purchased and used by said entity on which the tax levied by G.S. 105-434 has been paid: the Board of Transportation, counties, municipal corporations, volunteer fire departments, county fire departments, and "sheltered workshop" organizations recognized and approved by the Department of Human Resources. "Chief executive officer" shall mean the Director of Highways, the mayor, city manager or other municipal officer designated by the governing body of the municipality, 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 a volunteer fire department, county fire department or "sheltered workshop" organization. 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; 1975, c. 845; 1981, c. 690, s. 1.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, increased the rate of the refund provided for in the first sentence from eight cents to eleven cents per gallon.

§ 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, in operation of a taxicab transporting fare-paying passengers, and in operation of private nonprofit transportation services.

(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 or in the operation of a taxicab transporting fare-paying passengers, both as hereinafter defined in subsection (b) of this section, or in the operation, by private nonprofit organizations, of motor vehicles transporting passengers under contract with or at the express designation of units of local government (such transportation above and hereinafter referred to as private nonprofit transportation services) shall be entitled to be reimbursed at the rate of eleven cents (11¢) 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.

(b) For the purposes of this section the term "city transit system" means a system of mass public transportation authorized to operate within any municipality or within contiguous municipalities and within a zone adjacent to and commercially a part of such municipality or contiguous municipalities as defined by the North Carolina Utilities Commission under the provisions of G.S. 62-260. Any person, association, firm or corporation, who, in addition to the operation of a city transit system as herein defined, holds a certificate from the North Carolina Utilities Commission for operations outside of the municipal limits and adjacent commercial zones or who conducts exempt operations outside of the municipal limits or adjacent commercial zones shall be entitled to the refund provided by this section only on taxes levied upon motor fuels actually used in the operation of the city transit system. For the purposes of this section the term "taxicab" shall mean a taxicab as defined in G.S. 20-87(3); provided, however, that a city transit system as defined herein shall not include limousine operations.

(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 or for the operation of a taxicab transporting fare-paying passengers or for private nonprofit transportation services, 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 or in the operation of a taxicab transporting fare-paying passengers or for private nonprofit transportation services, 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 or in the operation of a taxicab transporting fare-paying passengers or for private nonprofit transportation services, 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, 105-241.3 and 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.

(h) 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. (1971, c. 1221, s. 1; 1973, c. 476, s. 193; c. 1287, s. 14; 1977, 2nd Sess., c. 1215; 1981, c. 690, s. 1.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, increased the rate of the tax in subsection (a) from eight cents to eleven cents per gallon.

§ 105-446.3:1. Refund of taxes paid on gasohol.

(a) Any person, association, firm, or corporation not licensed as a distributor with the North Carolina Department of Revenue who purchases motor fuel and blends it with a minimum of ten percent (10%) anhydrous ethanol and who pays more tax thereon than is required by G.S. 105-436.1 is entitled to

reimbursement for the overpayment upon the following conditions and in the following manner:

(1) All claims for refunds under this section shall be filed with the Secretary of Revenue on forms prescribed by him on or before the last day of January, April, July, and October of each year, covering motor fuel purchased during the quarterly period immediately preceding the month in which the application is filed. In all applications for reimbursement, the applicant shall state whether or not he has filed a North Carolina income tax return with the Secretary of Revenue, and all applications shall be made upon oath or affirmation. Each application shall show on its face that the purchase price has been secured to the seller's satisfaction. Refunds made pursuant to claims filed after the dates specified above are subject to the following late filing penalties: applications filed within 30 days after those dates, twenty-five percent (25%); applications filed after 30 days but within six months, fifty percent (50%); but refunds applied for after six months following those dates are barred.

(2) The Secretary of Revenue has authority to issue rules as to how claims are filed and the information that is submitted with the claims and the records required to support the claims.

(3) If, upon the filing of an application, the Secretary of Revenue is satisfied that it is made in good faith and the motor fuel upon which the tax refund is requested has been or is to be used exclusively for purposes set forth in the application, he shall issue to the applicant a warrant upon the State Treasurer for the tax refund.

(4) If the Secretary of Revenue is satisfied that the applicant for any refund authorized by this section has collected or sought to collect any refund of tax on motor fuel which has not been blended with a minimum of ten percent (10%) anhydrous ethanol, he shall issue to the applicant notice to show cause why the application should not be disallowed. The notice shall state a time and place of hearing upon the notice. If, at the hearing, the Secretary finds as a fact that the applicant has collected or sought to collect any refund on motor fuel not so blended, he shall disallow the application in its entirety and the applicant shall be required to pay all tax which has been refunded to him on the 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, G.S. 105-241.3, and G.S. 105-241.4.

(6) If at any time in the opinion of the Secretary there is reason to doubt the accuracy of the facts set forth in any application for a tax refund, he may refer the matter to any agent of the Department of Revenue, and that agent shall make a careful investigation of all the facts and circumstances relating to the 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 fuels 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 holds that the provisions for refund in this section render the levying and collecting of the tax under this Article invalid, it is the intention of the General Assembly that these provisions for refund shall be annulled and the tax shall be levied without any provisions for refund and that this Article shall be so construed.

(b) 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 is guilty of a misdemeanor and upon conviction thereof shall be fined not

exceeding five hundred dollars ($500.00) or imprisoned not exceeding two years. (1979, 2nd Sess., c. 1187, s. 2.)

Editor's Note. — Session Laws 1979, 2nd Sess., c. 1187, s. 6, provides: "This act shall become effective on January 1, 1981, and shall cease to be effective on July 1, 1984."

§ 105-446.5. Refund of taxes paid on motor fuels used by concrete mixing vehicles.

(a) Any person, association, firm, or corporation, who shall purchase motor fuels, as defined in this Article, for the purpose of use, and the same is actually used to load a concrete mixing vehicle, to maintain and transport the concrete mixture until ready for unloading, and to complete the unloading process as distinguished from propelling such vehicle, shall be entitled to reimbursement of the tax levied under this Article. For the year ending December 31, 1981, reimbursement shall be at the rate of thirty-three and one-third percent ($33^1/_3\%$) of nine and one-half cents ($9^1/_2¢$) per gallon. For subsequent years ending December 31 reimbursement shall be at the rate of thirty-three and one-third percent ($33^1/_3\%$) of eleven cents (11¢) per gallon. Reimbursement shall be made only upon the following conditions and in the following manner:

(1) On or before April 15, 1981, and on or before April 15 of succeeding years, application for reimbursement for each immediately preceding calendar year shall be filed with the Secretary of Revenue. Such application shall be made upon such forms as the Secretary of Revenue shall prescribe. In all 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, and all such applications shall be sworn before an officer authorized to administer oaths; 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 the applicant or that the payment of such purchase price has been secured to the seller's satisfaction. Refunds made pursuant to applications filed after April 15 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 such date, twenty-five percent (25%); applications filed after 30 days but within six months, fifty percent (50%); but refunds applied for after six months following such 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 the motor fuels upon which such tax refund is requested have been or are to be used exclusively for purposes set forth in the application and for purposes other than the propulsion of a motor vehicle upon the public highways, 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 for the purpose of propelling a concrete mixer on the highways as distinguished from mixing concrete, he shall issue to such applicant notice to show 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 to propel a vehicle on the highways, he shall disallow the application in its entirety and the applicant shall be required to pay 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 shall authorize and direct, 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, 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.

(b) 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. (1979, c. 801, s. 92; 1981, c. 690, s. 1.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted, at the end of the present first sentence of the introductory paragraph, "entitled to reimbursement of the tax levied under this Article" for "reimbursed at the rate of thirty-three and one-third percent (33 1/3%) of eight cents (8¢) per gallon of the tax levied under this Article on all motor fuels used in the operation of the truck and concrete mixer upon the following conditions and in the following manner:" and added the second, third and fourth sentences of the introductory paragraph.

§ 105-449. Exemption of gasoline used in public school transportation; false returns, etc.

(a) Any person, firm or corporation holding a North Carolina State contract for the sale of gasoline to be used in public school transportation in North Carolina shall invoice gasoline so sold and delivered to the county or city boards of education at the prevailing contract price, less the State tax on gasoline. A copy of such invoice showing the board of education to whom the gasoline is delivered, the kind of gasoline sold, the gallons sold, and the contract price per gallon, shall be submitted to the North Carolina Department of Revenue each month, supported with an official purchase order from the board or boards of education, which invoice or invoices and supporting purchase order shall exempt the gasoline purchased by said board or boards of education for use in North Carolina public school transportation from the twelve cents (12¢) tax per gallon State gasoline tax.

(b) The Secretary of Revenue of North Carolina is hereby authorized and directed to accept such invoices and supporting purchase orders, duly notarized, in lieu of the twelve cents (12¢) per gallon tax imposed by the laws

of North Carolina upon said gasoline: Provided, when any authorized dealer has already paid the State gasoline gallon tax and furnishes the Secretary of Revenue with proper invoices and supporting purchase orders as required in subsection (a) of this section, then such dealer shall be entitled to a refund by the Secretary of Revenue of twelve cents (12¢) per gallon from the gasoline fund for each gallon so sold and delivered to the county and city boards of education for use in public school transportation in school buses, service trucks, and gasoline delivery wagons used only for school purposes.

(c) It is the intent and purpose of this section to relieve gasoline used in the public school system of North Carolina from the twelve cents (12¢) gasoline tax now imposed by the State and thereby to that extent reduce the cost of public school transportation.

(d) The gasoline tax exemption provided by this section shall include gasoline sold for use in automobiles owned by the school boards and furnished to school superintendents to be used only on official business, in public school activities buses, driver training vehicles, bookmobiles belonging to or operated by county libraries and in public school trucks, vehicles and implements used in public school buildings and grounds maintenance and repair as well as gasoline sold for use in school service trucks used to service school buses.

(e) Any person making a false return 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. (1941, c. 119; 1949, c. 1250, s. 13; 1959, c. 155; 1969, c. 600, s. 20; 1973, c. 476, s. 193; 1981, c. 690, s. 1.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "twelve cents (12¢)" for "nine cents (9¢)" in the last sentence in subsection (a), in two places in subsection (b), and in subsection (c).

§ 105-449.01. July 1, 1981, inventory.

Every distributor of gasoline, both at wholesale and at retail, who shall have on hand or in his possession gasoline on which the nine cents (9¢) per gallon State tax has been paid or accrued shall take a true inventory of all such gasoline on hand or in his possession as of 12:01 A.M., July 1, 1981, and shall on or before July 20, 1981, report to the Secretary of Revenue the amount of such gasoline and shall remit to the Secretary an additional tax of three cents (3¢) per gallon. The report required shall be in such form as may be prescribed by the Secretary.

Every distributor of a blend of motor fuel and a minimum of ten percent (10%) anhydrous ethanol, both at wholesale and at retail, who shall have on hand or in his possession such blend of fuel and ethanol on which the five cents (5¢) per gallon State tax has been paid or accrued, shall take a true inventory of all such blend of fuel and ethanol on hand or in his possession as of 12:01 A.M., July 1, 1981, and shall on or before July 20, 1981, report to the Secretary of Revenue the amount of such blend of fuel and ethanol and shall remit to the Secretary an additional tax of three cents (3¢) per gallon. The report required shall be in such form as may be prescribed by the Secretary. (1969, c. 600, s. 20; 1973, c. 476, s. 193; 1981, c. 690, s. 1.)

Effect of Amendments. — The 1981 amendment substituted "nine cents (9¢) per gallon State tax" for "seven cents (7¢) tax per gallon State gasoline tax," substituted "1981" for "1969" in two places, and substituted "gasoline" for "fuels on hand," "remit" for "pay" and "three cents (3¢)" for "two cents (2¢)," all in the first sentence in the first paragraph, and added the second paragraph.

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.

(2) "Motor vehicles" shall mean and include all vehicles, engines, machines or mechanical contrivances which are propelled by internal combustion engines or motors upon which or by which any person or property is or may be transported or drawn upon a public highway.

(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 (CH_3OH) 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.

(4) "Highway" shall mean and include every way or place of whatever nature open to the use of the public for purposes of vehicular travel in this State, including the streets and alleys in towns and cities.

(5) "Person" shall mean and include natural persons and partnerships, firms, associations and corporations.

(6) "Use" shall mean and include, in addition to its original meaning, the receipt of fuel by any person into the fuel supply tank of a motor vehicle or into a receptacle for which fuel is supplied by any person to his own or other motor vehicles.

(7) "User" shall mean and include any person who owns or operates any diesel propelled motor vehicle or vehicles licensed under the motor vehicle laws of this State and who does not maintain storage facilities for fueling such vehicles. All such users shall be licensed hereunder. The licenses provision of this subdivision shall not apply to users whose use of diesel fuel is limited to private passenger vehicles and other vehicles licensed under the motor vehicle laws at 6,000 pounds or less.

(8) a. "User-seller" shall mean a bulk user or reseller as defined in this subdivision:

b. "Bulk user" means any person who maintains storage facilities in excess of 100 gallons and stores fuel therein, and who dispenses such fuel into the fuel tanks of, or attached to, motor vehicles owned, leased or operated by him.

c. "Reseller" means any person who maintains storage facilities in excess of 100 gallons and stores fuel therein, and who sells and/or dispenses such fuel to others into the fuel tanks of, or attached to, motor vehicles.

(9) "Supplier" means any person who sells or delivers fuel to a user-seller as herein defined for resale or use; and any person who imports fuel into the State other than in the usual tank or receptacle connected with the engine of the motor vehicle in the operation of which the fuel is to be consumed, and uses the same in a motor vehicle owned or operated by such person.

(10) "Peddler" means any person who neither owns nor operates stationary storage facilities, and who transports fuel from place to place in any vehicle having thereon any tank or other container of more than 100 gallons capacity, and sells or offers to sell fuel and deliver the

same from such vehicle to any user-seller or user as herein defined, and such peddler shall be deemed a supplier and as such be subject to all applicable provisions of this Article.

(11) "Liquid" means any substance which is liquid at temperature in excess of 60 degrees F. and a pressure of 14.7 pounds per square inch absolute. (1955, c. 822, s. 1; 1965, c. 1120, s. 1; 1973, c. 476, s. 193; c. 1431; 1979, c. 13, s. 1; 1981, c. 105, s. 1.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, rewrote subdivision (8).

§ 105-449.10. Records and reports required of user-seller or user.

(a) Each user-seller or user licensed under this Article shall keep such records and make such reports to the Secretary as shall be prescribed under regulations promulgated by the Secretary. Such records and reports shall be such as are adequate to show all purchases, sales, deliveries and use of fuel by such seller or user, provided that persons licensed as users shall file such reports quarterly on or before the last day of the month immediately following the end of the quarter.

(b) Each user at the time of rendering such statement, and each user otherwise exempted from filing, shall pay to the Secretary the tax or taxes for the preceding calendar quarter which may be due because of fuel acquired tax-free in any manner whatsoever. The provisions of this section shall not apply to users whose use of diesel fuel is limited to private passenger vehicles and other vehicles licensed under the motor vehicle laws at 6,000 pounds or less, unless such fuel is acquired tax-free. (1955, c. 822, s. 1; 1965, c. 1120, s. 2; 1973, c. 476, s. 193; 1979, c. 13, s. 2; 1979, 2nd Sess., c. 1086, s. 1; 1981, c. 105, s. 2.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective October 1, 1980, substituted "last day" for "twenty-fifth day" near the end of the second sentence of subsection (a).

The 1981 amendment, effective July 1, 1981, designated the first two sentences of this section as subsection (a), designated the former third sentence of the section as the second sentence of subsection (b), and added the first sentence of subsection (b). The amendment also substituted "provisions" for "provision" near the beginning of the second sentence of subsection (b), and added "unless such fuel is acquired tax-free" at the end of the second sentence of subsection (b).

§ 105-449.16. Levy of tax; purposes; special provisions for gasohol and nonanhydrous ethanol.

(a) A tax at the rate of twelve cents (12¢) per gallon is hereby imposed upon all fuel sold or delivered by any supplier to any licensed user-seller, or used by any such supplier in any motor vehicle owned, leased or operated by him, or delivered by such supplier directly into the fuel supply tank of a motor vehicle, or imported by a user-seller into, or acquired tax free by a user-seller or user in this State for resale or use for the propulsion of a motor vehicle. For the purpose of this section, "imported" shall not include fuels brought into this State in the usual tank or receptacle connected with the engine of a motor vehicle. The primary purposes of this levy and this Article are to provide a more efficient and effective method of collecting the tax now imposed and collected pursuant to G.S. 105-435, by providing for the collection of said tax from the supplier instead of the user. The tax herein provided for is levied for

the same purposes as the tax provided for in G.S. 105-435. It is not intended that the tax collected pursuant to this Article shall be in addition to that provided in G.S. 105-435, but the payment of the tax as provided by this Article shall be deemed conclusively to constitute a compliance with the provisions of G.S. 105-435. The twelve cents (12¢) per gallon tax, hereinabove provided for, shall be subject to the provisions of section 13 of Chapter 1250 of the Session Laws of 1949, relating to G.S. 105-435, in that one cent (1¢) out of every said twelve cents (12¢) tax per gallon shall be applied exclusively to the payment of the principal of and the interest on the two hundred million dollars ($200,000,000) State of North Carolina Secondary Road Bonds therein provided for and as further provided in said Chapter 1250 of the Session Laws of 1949.

(b) Sale, distribution, or use of a blend of gasoline or fuel and a minimum of ten percent (10%) anhydrous ethanol, which is not subject to taxation under Article 36 of this Subchapter is subject to the tax described in subsection (a) of this section except:

(1) From July 1, 1981, through June 30, 1982, the tax is nine cents (9¢);

(2) From July 1, 1982, through June 30, 1983, the tax is ten cents (10¢);

(3) From July 1, 1983, through June 30, 1984, the tax is eleven cents (11¢).

(c) Nonanhydrous ethanol is exempt from the tax described in this section if that ethanol not for sale or distribution. (1955, c. 822, s. 1; 1969, c. 600, s. 21; 1979, 2nd Sess., c. 1187, s. 3; 1981, c. 690, s. 2.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, designated the former provisions of this section as subsection (a) and added subsections (b) and (c). Session Laws 1979, 2nd Sess., c. 1187, s. 6, provides: "This act shall become effective January 1, 1981, and shall cease to be effective on July 1, 1984."

The 1981 amendment, effective July 1, 1981, substituted "twelve cents (12¢)" for "nine cents (9¢)" in the first sentence and in two places in the last sentence of subsection (a). In subsection (b), the amendment deleted former subdivision (1), relating to the tax from January 1, 1981 through June 30, 1981, redesignated former subdivisions (2) through (4) as (1) through (3) and increased the taxes in those subdivisions from six cents to nine cents, seven cents to ten cents, and eight cents to eleven cents, respectively.

§ 105-449.19. Tax reports; computation and payment of tax.

On or before the twenty-fifth day of each calendar month, each supplier of liquid fuel shall render to the Secretary a statement on forms prepared and furnished by the Secretary, which shall show the quantity of fuel on hand on the first and last days of the preceding calendar month, the quantity received during the month and the quantity sold to user-sellers; and each supplier of fuels which are not liquid shall keep such records and make such reports of inventory as the Secretary shall by regulation prescribe in order to show accurately the quantity of such fuel used by such supplier or sold to user-sellers and pay a tax thereon which as calculated by the Secretary, would be equivalent to the twelve cents (12¢) per gallon tax levied on liquid fuels. Each such supplier shall at the time of rendering such report pay to the Secretary the tax or taxes herein levied during the preceding calendar month. (1955, c. 822, s. 1; 1969, c. 600, s. 21; 1973, c. 476, s. 193; 1981, c. 690, s. 2.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "twelve cents (12¢)" for "nine cents (9¢)" near the end of the first sentence.

§ 105-449.21. Report of purchases and payment of tax by user-seller.

On or before the last day of the month immediately following the end of the quarter, each user-seller not otherwise licensed as a supplier shall render to the Secretary a statement on forms furnished by the Secretary which shall be signed by the user-seller. The statement shall show the quantity of fuel on hand at the beginning of the quarter, quantity on hand at the end of the quarter, the quantity sold or used and each and every purchase made by the user-seller during the preceding calendar quarter. Each purchase shall be specifically noted on the statement and the statement shall show the name and address of the supplier and the quantity and date of each purchase. Each user-seller at the time of rendering such statement shall pay to the Secretary the tax or taxes for the preceding calendar quarter which may be due because of fuel imported or acquired tax-free in any manner whatsoever. (1955, c. 822, s. 1; 1967, c. 1110, s. 14; 1973, c. 476, s. 193; 1981, c. 105, s. 3.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "last day of the month immediately following the end of the quarter" for "twenty-fifth day of each calendar month" near the beginning of the first sentence, substituted "quarter" for "month" in three places in the second sentence and near the middle of the fourth sentence, and substituted "at the time of rendering such statement shall pay" for "shall at the time of rendering such statement pay" near the beginning of the fourth sentence.

§ 105-449.24. Exemptions, rebates and refunds.

The provisions of G.S. 105-439, 105-446.1, 105-446.3, 105-446.3:1, 105-446.5 and 105-449 relating to exemption from, and rebates and refunds of tax levied on gasoline shall also apply to the taxes levied by this Article on special fuels. Quarterly refunds and rebates allowed under this Article for the purchase of a blend of gasoline or fuel and a minimum of ten percent (10%) anhydrous ethanol shall not exceed the motor fuels tax on that blend reduced by one cent (1¢). Annual refunds and rebates allowed under this Article for the purchase of such a blend shall be at the following rates: for the year ending December 31, 1981, six cents (6¢) per gallon; for the year ending December 31, 1982, eight and one-half cents (8½¢) per gallon; for the year ending December 31, 1983, nine and one-half cents (9½¢) per gallon; for the year ending December 31, 1984, ten and one-half cents (10½¢) per gallon; for subsequent years ending December 31, eleven cents (11¢) per gallon. (1967, c. 1110, s. 15; 1971, c. 1221, s. 2; 1979, c. 801, s. 93; 1979, 2nd Sess., c. 1187, ss. 4, 5; 1981, c. 690, s. 2.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective January 1, 1981, inserted the reference to § 105-446.3:1 in the first sentence and added the former second sentence. Session Laws 1979, 2nd Sess., c. 1187, s. 6, provides: "This act shall become effective on January 1, 1981, and shall cease to be effective on July 1, 1984."

The 1981 amendment, effective July 1, 1981, substituted the present second and third sentences for the former second sentence, which read: "No refund or rebate allowed under this Article for the purchase of a blend of gasoline or fuel and a minimum of ten percent (10%) anhydrous ethanol shall exceed the special fuels tax on that blend, reduced by one cent (1¢)."

§ 105-449.28: Repealed by Session Laws 1981, c. 105, s. 4, effective July 1, 1982.

Cross References. — For this section as in effect until July 1, 1982, see the bound volume.

§ 105-449.30. Refund for nonhighway use.

Any person who shall purchase fuel and pay the tax thereon pursuant to this Article and use the same for purposes other than to propel vehicles operated or intended to be operated on the highway irrespective of whether originally purchased for such nonhighway use or not, shall, upon making application therefor as herein provided, be reimbursed at the rate of nine and one-half cents (9½¢) per gallon for the year ending December 31, 1981, and at the rate of eleven cents (11¢) per gallon for subsequent years ending December 31. Such refund shall be paid only to persons who secure refund permits and otherwise comply insofar as practicable with the provisions of G.S. 105-446, relating to refunds, as modified by regulations of the Secretary. (1955, c. 822, s. 1; 1963, c. 1169, s. 5; 1969, c. 600, s. 21; 1973, c. 476, s. 193; 1981, c. 690, s. 2.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted, near the middle of the section, "nine and one-half cents (9½¢) per gallon for the year ending December 31, 1981, and the rate of eleven cents (11¢)" for "seven cents (7¢) per gallon for the year ending December 31, 1969, and at the rate of eight cents (8¢)."

§ 105-449.36. July 1, 1981, inventory.

Every supplier of special fuels and every user-seller who is a retail distributor of special fuels who shall have on hand or in his possession special fuels on which the nine cents (9¢) tax has been paid or accrued shall take a true inventory of all such special fuels on hand or in his possession as of 12:01 A.M., July 1, 1981, and shall on or before July 20, 1981, report to the Secretary of Revenue the amount of such fuels and shall remit to the Secretary an additional tax of three cents (3¢) per gallon. The report required shall be in such form as may be prescribed by the Secretary. (1955, c. 822, s. 1; 1969, c. 600, s. 21; 1973, c. 476, s. 193; 1981, c. 690, s. 2.)

Effect of Amendments. — The 1981 amendment, in the first sentence, substituted "nine cents (9¢)" for "seven cents (7¢)," "1981" for "1969" in two places, deleted "on hand" following "such fuels" and substituted "remit" for "pay" and "three cents (3¢)" for "two cents (2¢)" near the end of the sentence.

ARTICLE 36B.

Tax on Carriers Using Fuel Purchased outside State.

§ 105-449.38. Tax levied.

A road tax for the privilege of using the streets and highways of this State is hereby imposed upon every motor carrier on the amount of gasoline or other motor fuel used by such motor carrier in its operations within this State. The tax shall be at the rate of nine cents (9¢) per gallon with respect to fuel used prior to July 1, 1981, and at the rate of twelve cents (12¢) per gallon with respect to fuel used on or after July 1, 1981. Except as credit for certain taxes as hereinafter provided for in this Article, taxes imposed on motor carriers by this Article are in addition to any taxes imposed on such carriers by any other provisions of law. The tax herein levied is for the same purposes as the tax imposed under the provisions of G.S. 105-434. (1955, c. 823, s. 2; 1969, c. 600, s. 22; 1981, c. 690, s. 3.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, deleted "which tax shall be equivalent to nine cents (9¢) per gallon calculated" following "motor carrier" in the first sentence and added the second sentence.

§ 105-449.39. Credit for payment of motor fuel tax.

Every motor carrier subject to the tax hereby imposed shall be entitled to a credit on such tax equivalent to twelve cents (12¢) per gallon on all gasoline or other motor fuels purchased on or after July 1, 1981, by such carrier in this State for use in its operations either within or without this State and upon which gasoline or other motor fuels the tax imposed by the laws of this State has been paid by such carrier. Carriers who have on hand inventory as of 12:01 A.M., July 1, 1981, on which the nine cents (9¢) tax has been paid shall take credit for nine cents (9¢) per gallon on all such gasoline and other motor fuels when filing the report required under G.S. 105-449.45. Evidence of the payment of such tax in such form as may be required by, or is satisfactory to, the Secretary shall be furnished by each such carrier claiming the credit herein allowed. When the amount of the credit herein provided to which any motor carrier is entitled for any quarter exceeds the amount of the tax for which such carrier is liable for the same quarter, such excess may under regulations of the Secretary be allowed as a credit on the tax for which such carrier would be otherwise liable for another quarter or quarters; or upon application within 180 days from the end of any quarter, duly verified and presented, in accordance with regulations promulgated by the Secretary and supported by such evidence as may be satisfactory to the Secretary, such excess may be refunded to said motor carrier.

Unless the Secretary of Revenue exercises his discretion as hereinafter provided, or as provided in G.S. 105-449.40, he shall allow such refund only after an audit of the applicant's records. However, he may, in his sole discretion, make refunds without prior audit or without having been furnished a bond pursuant to G.S. 105-449.40 if the motor carrier has complied with the provisions of this Subchapter and rules and regulations promulgated thereunder for a period of one full prior registration year. (1955, c. 823, s. 3; 1969, c. 600, s. 22; c. 1098; 1973, c. 476, s. 193; 1979, 2nd Sess., c. 1098; 1981, c. 690, s. 3.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, rewrote the second paragraph, which formerly read: "The Secretary shall not allow such refund except after an audit of the applicant's records and shall audit the records of an applicant at least once a year."

The 1981 amendment, effective July 1, 1981, substituted "twelve cents (12¢)" for "nine cents (9¢)," "1981" for "1969" and "its" for "their" preceding "operations" in the first sentence of the first paragraph, substituted "on hand inventory" for "inventory on hand," "1981" for "1969," "nine cents (9¢)" for "seven cents (7¢)" in two places and "the" for "tax" preceding "report" in the second sentence of the first paragraph.

§ 105-449.42. Payment of tax.

For the purposes of making payment of taxes pursuant to this Article and making reports pursuant to this Article, the year is divided into four quarters of three consecutive months each, and the first quarter shall consist of the months of January, February and March. The tax herein imposed shall be paid by each motor carrier to the Secretary on or before the last day of the month immediately following the quarter with respect to which tax liability hereunder accrues and shall be calculated upon the amount of gasoline or other motor fuel used in its operations within this State by each such carrier during the quarter ending with the last day of the preceding month. A lessee of a motor vehicle, and not the lessor thereof, shall make such reports and be liable for and pay such taxes as may become due under this Article with respect to all operations by a lessee pursuant to any lease of a motor vehicle. (1955, c. 823, s. 6; 1973, c. 476, s. 193; 1979, 2nd Sess., c. 1086, s. 2.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective October 1, 1980, substituted "last day" for "twentieth day" near the middle of the second sentence.

§ 105-449.45. Reports of carriers.

Every motor carrier subject to the tax imposed by this Article shall on or before the last day of April, July, October and January of every year make to the Secretary such reports of its operations during the quarter of the year ending the last day of the preceding month as the Secretary may require and such other reports from time to time as the Secretary may deem necessary. When any person required to file a report as provided by this Article fails to file such report within the time prescribed by this Article, he shall be subject to a penalty of not more than fifty dollars ($50.00) for the first failure, and not more than one hundred dollars ($100.00) for any subsequent failure, and any penalty pursuant to this section shall be assessed and collected by the Secretary in the same manner as is provided in this Article with respect to any tax deficiency, and shall be subject to all other applicable provisions relating to the assessment and collection of taxes pursuant to this Article. However, motor carriers are not required to make any reports with respect to vehicles used exclusively in intrastate operations in this State except as the Secretary may specifically from time to time require, but this is not to be construed to eliminate the requirements as to registration and identification markers with respect to all such vehicles as provided in G.S. 105-449.47. (1955, c. 823, s. 9; 1973, c. 476, s. 193; 1979, 2nd Sess., c. 1086, s. 2.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective October 1, 1980, substituted "last day" for "twentieth day" preceding "of April" near the beginning of the first sentence.

§ 105-449.52. Violators to pay penalty and furnish bond.

When any person is discovered in this State operating a vehicle in violation of the provisions of this Article, it shall be unlawful for anyone thereafter to operate said vehicle on the streets or highways of this State, except to remove it from the street or highway for purposes of parking or storing said vehicle, until he shall pay to the Department of Revenue a penalty of seventy-five dollars ($75.00). Such penalty may be paid to an agent of the Division of Motor Vehicles. All penalties received by the Department of Revenue under this section shall be paid into the Highway Fund. Any person denying his liability for such penalty may pay the same under protest. He may apply to the Department of Revenue for a hearing, and said hearing shall be granted before a duly designated employee or agent of the Department within 30 days after receipt of the request for such hearing. If after said hearing the Department determines that the person was not liable for the penalty, the amount collected shall be refunded to him. If after said hearing the Department determines that the person was liable for said penalty, the person paying the penalty may bring an action in the Superior Court of Wake County against the Secretary of Revenue for refund of the penalty. No restraining order or injunction shall issue from any court of the State to restrain or enjoin the collection of the penalty or to permit the operation of said vehicle without payment of the penalty prescribed herein.

In addition, the Secretary may, if he deems it desirable or necessary to secure compliance with the provisions of this Article, require the furnishing of a bond to the Secretary in the amount of two hundred dollars ($200.00), in such form and with such surety or sureties as he may prescribe, conditioned on a proper registration card and identification marker being applied for within 10 days

and conditioned on the payment of any taxes found to be due pursuant to this Article. In cases where the Secretary shall require such bond, it shall be unlawful for anyone thereafter to operate said vehicle on the streets or highways of this State, except to remove it from the street or highway for purposes of parking or storing said vehicle, unless and until said bond is furnished.

Whenever the Secretary is required to exercise his discretion under the provisions of this section, such discretion may be exercised by him or by a duly designated agent or employee of the Division of Motor Vehicles or the Department of Revenue. (1955, c. 823, s. 16; 1957, c. 948; 1973, c. 476, s. 193; 1975, c. 716, s. 5; 1981, c. 690, s. 18.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "seventy-five dollars ($75.00)" for "twenty-five dollars ($25.00)" at the end of the first sentence of the first paragraph.

SUBCHAPTER VIII. LOCAL GOVERNMENT SALES AND USE TAX.

ARTICLE 39.

Local Government Sales and Use Tax.

§ 105-465. County election as to adoption of local sales and use tax.

The board of elections of any county, upon the written request of the board of county commissioners thereof, or upon receipt of a petition signed by qualified voters of the county equal in number to at least fifteen percent (15%) of the total number of votes cast in the county, at the last preceding election for the office of Governor, shall call a special election for the purpose of submitting to the voters of the county the question of whether a one percent (1%) sales and use tax as hereinafter provided will be levied.

The special election shall be held under the same rules and regulations applicable to the election of members of the General Assembly. No new registration of voters shall be required. All qualified voters in the county who are properly registered not later than 21 days (excluding Saturdays and Sundays) prior to the election shall be entitled to vote at said election. The county board of elections shall give at least 20 days' public notice prior to the closing of the registration books for the special election.

The county board of election shall prepare ballots for the special election which shall contain the words, "FOR the one percent (1%) local sales and use tax only on those items presently covered by the three percent (3%) sales and use tax," and the words, "AGAINST the one percent (1%) local sales and use tax only on those items presently covered by the three percent (3%) sales and use tax," with appropriate squares so that each voter may designate his vote by his cross (X) mark.

The county board of elections shall fix the date of the special election; provided, however, that the special election shall not be held on the date of any biennial election for county officers, nor within 60 days thereof, nor within one year from the date of the last preceding special election under this section. (1971, c. 77, s. 2; 1981, c. 560, s. 2.)

Effect of Amendments. — The 1981 amendment, effective with respect to elections held on and after Sept. 1, 1981, deleted "except that no absentee ballots may be used" from the end of the first sentence of the second paragraph.

§ 105-467. Sales tax imposed; limited to items on which the State now imposes a three percent sales tax.

Legal Periodicals. — For survey of 1978 law on taxation, see 57 N.C.L. Rev. 1142 (1979).

§ 105-468. Use tax imposed; limited to items upon which the State now imposes a three percent use tax.

The use tax which may be imposed under this Article shall be at the rate of one percent (1%) of the cost price of each item or article of tangible personal property when the same is not sold but used, consumed or stored for use or consumption in the taxing county, except that no tax shall be imposed upon such tangible personal property when, if the property were subject to the use tax imposed by G.S. 105-164.6, such property would be taxed by the State of North Carolina at a rate less than three percent (3%).

Every retailer engaged in business in this State and in the taxing county and required to collect the use tax levied by G.S. 105-164.6 shall also collect the one percent (1%) use tax when such property is to be used, consumed or stored in the taxing county, said one percent (1%) use tax to be collected concurrently with the State's use tax; but no retailer not required to collect the use tax levied by G.S. 105-164.6 shall be required to collect the one percent (1%) use tax. The use tax contemplated by this section shall be levied against the purchaser, and his liability for such use tax shall be extinguished only upon his payment of the use tax to the retailer, where the retailer is required to collect the tax, or to the Secretary of Revenue, or to the taxing county, as appropriate, where the retailer is not required to collect the tax.

Where a local sales or use tax has been paid with respect to said tangible personal property by the purchaser thereof, either in another taxing county within the State, or in a taxing jurisdiction outside the State where the purpose of the tax is similar in purpose and intent to the tax which may be imposed pursuant to this Article, said tax may be credited against the tax imposed under this section by a taxing county upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due the taxing county under this section, the purchaser shall pay to the Secretary of Revenue or to the taxing county, as appropriate, an amount equal to the difference between the amount so paid in the other taxing county or jurisdiction and the amount due in the taxing county hereunder. The Secretary of Revenue or the taxing county, as appropriate, may require such proof of payment in another taxing county or jurisdiction as is deemed to be necessary and proper. The use tax levied hereunder shall not be subject to credit for payment of any State sales or use tax not imposed for the benefit and use of counties and municipalities. No credit shall be given under this section for sales or use taxes paid in a taxing jurisdiction outside this State if that taxing jurisdiction does not grant similar credit for sales taxes paid under this Article. (1971, c. 77, s. 2; 1973, c. 476, s. 193; 1979, 2nd Sess., c. 1100, s. 2.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1981, added the last sentence of the third paragraph.

§ 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 State Budget Officer. 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 State Budget Officer, and each respective product shall be the amount to be distributed to each taxing county and to each municipality therein. The State Budget Officer 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. Any county or municipality which fails to provide the Department of Revenue with information concerning ad valorem taxes levied by that county or municipality adequate to permit a timely determination of the appropriate share of that county or municipality of tax proceeds collected under this Article may be excluded by the Secretary from each quarterly distribution with respect to which such information was not provided in a timely manner, and such tax proceeds shall then be distributed only to the governmental unit or units whose information was provided in a timely manner. For the purpose of computing the distribution of the tax under this subsection to any county and the municipalities located therein for any quarter with respect to which the property valuation of a public service company is the subject of an appeal pursuant to the provisions of the Machinery Act, or to applicable provisions of federal law, and the Department of Revenue is restrained by operation of law or by a court of competent jurisdiction from certifying such valuation to the county and the municipalities therein, the Department shall use the last property valuation of such public service company which has been so certified in order to determine the ad valorem tax levies applicable to such public service company in the county and the municipalities therein.

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; 1979, c. 12, s. 1; 1979, 2nd Sess., c. 1134, s. 49; 1981, c. 4, s. 2.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, substituted "State Budget Officer" for "Director of the North Carolina Department of Administration" in three places in subdivision (1).

Session Laws 1979, 2nd Sess., c. 1137, s. 77, contains a severability clause.

The 1981 amendment, effective July 1, 1981, added the last sentence of subdivision (2).

§ 105-473. Repeal of levy.

(a) The board of elections of any county, upon the written request of the board of county commissioners thereof, or upon receipt of a petition signed by qualified voters of the county equal in number to at least fifteen percent (15%) of the total number of votes cast in the county at the last preceding election for the office of Governor, shall call a special election for the purpose of submitting

to the voters of the county the question of whether the levy of a one percent (1%) sales and use tax theretofore levied should be repealed.

The special election shall be held under the same rules and regulations applicable to the election of members of the General Assembly. No new registration of voters shall be required. All qualified voters in the county who are properly registered not later than 21 days (excluding Saturdays and Sundays) prior to the election shall be entitled to vote at said election. The county board of elections shall give at least 20 days' public notice prior to the closing of the registration books for the special election.

The county board of elections shall prepare ballots for the special election which shall contain the words "FOR repeal of the one percent (1%) local sales and use tax levy," and the words "AGAINST repeal of the one percent (1%) local sales and use tax levy," with appropriate squares so that each voter may designate his vote by his cross (X) mark.

The county board of elections shall fix the date of the special election; provided, however, that the special election shall not be held on the day of any biennial election for county officers, nor within 60 days thereof, nor within one year from the date of the last preceding special election held under this section.

(b) In the event a majority of those voting in a special election held pursuant to this section shall approve the repeal of the levy, the board of county commissioners shall, by resolution, proceed to terminate the levy and the imposition of the tax in the taxing county unless and until the tax is levied again as provided in G.S. 105-466(a).

(c) In addition, the board of county commissioners may, by resolution and without the necessity of an election proceed to terminate the levy and the imposition of the tax in the taxing county if the tax was levied under the provisions of G.S. 105-466(b).

(d) No termination of taxes levied and imposed under this Article shall be effective until the end of the fiscal year in which the repeal election was held.

(e) If the Secretary of Revenue collects and administers the tax in a taxing county, 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 repeal of the tax in the county.

(f) No liability for any tax levied under this Article which shall have attached prior to the effective date on which a levy is terminated shall be discharged as a result of such termination, and no right to a refund of tax or otherwise, which shall have accrued prior to the effective date on which a levy is terminated shall be denied as a result of such termination. (1971, c. 77, s. 2; 1973, c. 476, s. 193; 1981, c. 560, s. 2.)

Effect of Amendments. — The 1981 amendment, effective with respect to elections held on and after Sept. 1, 1981, deleted "except that no absentee ballots may be used" from the end of the first sentence of the second paragraph of subsection (a).

§ 105-474. Definitions; construction of Article; remedies and penalties.

Legal Periodicals. — For survey of 1978 law on taxation, see 57 N.C.L. Rev. 1142 (1979).

Chapter 105A.

Setoff Debt Collection Act.

Article 1.

In General.

Article 1.

In General.

§ 105A-2. Definitions.

As used in this Article:

(1) "Claimant agency" means and includes:

a. The State Education Assistance Authority as enabled by Article 23 of Chapter 116 of the General Statutes;

b. The North Carolina Department of Human Resources when in the exercise of its authority to collect health profession student loans made pursuant to G.S. 131-121;

c. The North Carolina Department of Human Resources when in the performance of its duties under the Medical Assistance Program enabled by Chapter 108, Article 2, Part 5, and any county operating the same Program at the local level, when and only to the extent such a county is in the performance of Medical Assistance Program collection functions;

d. The North Carolina Department of Human Resources when in the performance of its duties under the Child Support Enforcement Program (as enabled by Chapter 110, Article 9) to obtain indemnification for the State for past public assistance paid and any county operating the same Program at the local level, when and only to the extent such a county is engaged in the performance of those same program duties;

e. The University of North Carolina, including its constituent institutions as specified by G.S. 116-2(4);

f. The North Carolina Memorial Hospital in the conduct of its financial affairs and operations pursuant to G.S. 116-37;

g. The Board of Governors of the University of North Carolina and the State Board of Education through the College Scholarship Loan Committee when in the performance of its duties of administering the Scholarship Loan Fund for Prospective College Teachers enabled by Chapter 116, Article 5;

h. The Office of the North Carolina Attorney General on behalf of any State agency when the claim has been reduced to a judgment;

i. The State Board of Education through community colleges, technical institutes, and industrial education centers as enabled by Chapter 115D in the conduct of their financial affairs and operations;

j. Broughton Hospital, Cherry Hospital, Dorothea Dix Hospital, John Umstead Hospital, Caswell School at Kinston, Murdoch School, O'Berry School, Western Carolina Center, Black Mountain Alcoholic Rehabilitation Center, Butner Alcoholic Rehabilitation Center, Walter B. Jones Alcoholic Rehabilitation Center, School for the Deaf at Morganton, North Carolina Sanatorium at

McCain, Western Carolina Sanatorium at Black Mountain, Eastern North Carolina Sanatorium at Wilson, and Gravely Sanatorium at Chapel Hill under Chapter 143, Article 7; Governor Morehead School under Chapter 115, Article 40; Central North Carolina School for the Deaf under Chapter 115, Article 41; Wright School for Treatment and Education of Emotionally Disturbed Children under Chapter 122, Article 12A; the Lenox Baker Children's Hospital under Chapter 131, Article 14; and these same institutions by any other names by which they may be known in the future;

k. The North Carolina Department of Revenue; and

l. The Administrative Office of the Courts;

m. The Division of Forest Resources of the Department of Natural Resources and Community Development.

(2) "Debtor" means any individual owing money to or having a delinquent account with any claimant agency which obligation has not been adjudicated satisfied by court order, set aside by court order, or discharged in bankruptcy.

(3) "Debt" means any liquidated sum due and owing any claimant agency which has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum.

(4) "Department" means the North Carolina Department of Revenue.

(5) "Refund" means any individual's North Carolina income tax refund.

(6) "Net proceeds collected" means gross proceeds collected through final setoff against a debtor's refund minus any collection assistance fee charged by the Department. (1979, c. 801, s. 94; 1981, c. 724.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, and applicable to refunds due on and after Jan. 1, 1982, added paragraph m of subdivision (1).

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

October 15, 1981

I, Rufus L. Edmisten, Attorney General of North Carolina, do hereby certify that the foregoing 1981 Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

Rufus L. Edmisten
Attorney General of North Carolina