THE GENERAL STATUTES OF NORTH CAROLINA

1987 CUMULATIVE 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

Chapters 98 to 105A

Annotated through 356 S.E.2d 26. For complete scope of annotations, see scope of volume page.

Place Behind Supplement Tab in Binder Volume.

THE MICHIE COMPANY
Law Publishers
CHARLOTTESVILLE, VIRGINIA
1987

Preface

This Cumulative Supplement to Replacement Volume 2D contains the general laws of a permanent nature enacted by the General Assembly through the 1987 Regular Session, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purpose of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

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.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is 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 Cumulative 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 through the 1987 Regular Session affecting Chapters 98 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 319, p. 464.
North Carolina Court of Appeals Reports through Volume 85, p. 173.
South Eastern Reporter 2nd Series through Volume 356, p. 26.
Federal Reporter 2nd Series through Volume 817, p. 761.
Federal Supplement through Volume 658, p. 304.
Federal Rules Decisions through Volume 115, p. 78.
Bankruptcy Reports through Volume 72, p. 618.
Supreme Court Reporter through Volume 107, p. 2210.
North Carolina Law Review through Volume 65, p. 847.
Wake Forest Law Review through Volume 22, p. 424.
Campbell Law Review through Volume 9, p. 206.
Duke Law Journal through 1987, p. 190.
North Carolina Central Law Journal through Volume 16, p. 222.
Opinions of the Attorney General.

User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included herein. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See Volume 1A, Part I for the complete User's Guide.

The General Statutes of North Carolina
1987 Cumulative Supplement

VOLUME 2D

Chapter 99B.
Products Liability.

§ 99B-1. Definitions.

Legal Periodicals. —

For note on the six year statutory bar to products liability actions, in light of Tetterton v. Long Manufacturing Co., 314 N.C. 44, 332 S.E.2d 67 (1985), see 64 N.C.L. Rev. 1155 (1986).

For note discussing Products Liability—Sufficiency of Causation Evidence to Warrant Submission of the Case to the Jury, in Light of Owens ex rel. Owens v. Bourns, Inc., 766 F.2d 145 (4th Cir.), reh'g denied, 106 S. Ct. 608 (1985), see 21 Wake Forest L. Rev. 1155 (1986).

CASE NOTES

The imprinting of retailer's trademark in shoe was insufficient to bring retailer within the definition of manufacturer in subdivision (2) of this section. Morrison v. Sears, Roebuck & Co., 80 N.C. App. 224, 341 S.E.2d 40, cert. granted on limited issues, 317 N.C. 705, 347 S.E.2d 437 (1986).

Action of Breach of Implied Warranty of Merchantability. — The implied warranty of merchantability arises under the UCC upon the sale of goods when the seller is a merchant with respect to goods of the kind sold. The term "product liability action" as used in the Products Liability Act includes "any action brought for or on account of personal injury, death or property damage caused by or resulting from . . . the selling . . . of any product." Therefore, an action of breach of implied warranty of merchantability under the UCC is a "product liability action" within the meaning of the Products Liability Act if the action is for injury to person or property resulting from a sale of a product. Morrison v. Sears, Roebuck & Co., — N.C. —, 354 S.E.2d 495 (1987).

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

Legal Periodicals. —

For note discussing Products Liability—Sufficiency of Causation Evidence to Warrant Submission of the Case to the Jury, in Light of Owens ex rel. Owens v. Bourns, Inc., 766 F.2d 145 (4th Cir.), reh'g denied, 106 S. Ct. 608 (1985), see 21 Wake Forest L. Rev. 1155 (1986).

CASE NOTES

Subsection (a) as Defense under UCC. — The legislature intended that subsection (a) be available as a defense to actions for breach of an implied warranty of merchantability brought under the UCC. Morrison v. Sears, Roebuck &

Co., — N.C. —, 354 S.E.2d 495 (1987).

Subsection (a) as Defense in Breach of Implied Warranty Actions. — In products liability actions arising from breaches of implied warranties, unlike those arising from breaches of express warranties, the defenses provided by subsection (a) are available to defendants. Morrison v. Sears, Roebuck & Co., — N.C. —, 354 S.E.2d 495 (1987).

Applied in Tetterton v. Long Mfg. Co., 314 N.C. 44, 332 S.E.2d 67 (1985).

Cited in Martin v. Worth Chem. Corp., 620 F. Supp. 64 (W.D.N.C. 1985).

Chapter 102.

Official Survey Base.

Sec.

§ 102-1.1. Name and description in relation to 1983 North American Datum.

From and after the date and time the North Carolina Geodetic Survey Section in the Land Resources Division of the Department of Natural Resources and Community Development receives from the National Geodetic Survey, official notice of a complete, published definition of the North American Datum of 1983 including the State plane coordinate constants applicable to North Carolina, the official survey base for North Carolina shall be a system of plane coordinates to be known as the "North Carolina Coordinate System of 1983," said system being defined as a Lambert conformal projection of the "Geodetic Reference System (GRS 80 Ellipsoid)" having a central meridian of 79° — 00′ west from Greenwich and standard parallels of latitude of 34° — 20′ and 36° — 10′ north of the equator, along which parallels the scale shall be exact. All coordinates of the system are expressed in metres, the x coordinate being measured easterly along the grid and the y coordinate being measured northerly along the grid. The U.S. Survey Foot, 1 meter = 39.37 inches or 3.2808333333 feet, shall be used as a conversion factor. The origin of the coordinates is hereby established on the meridian 79° — 00′ west from Greenwich at the intersection of the parallels 33° — 45′ north latitude, such origin being given the coordinates x = 609,601.22 metres, y = 0 metres. The precise position of said system shall be as marked on the ground by triangulation or traverse stations or monuments established in conformity with the standards adopted by the National Geodetic Survey for first- and second-order work, whose geodetic positions have been rigidly adjusted on the North American Datum of 1983, and whose plane coordinates have been computed on the system defined. Whenever plane coordinates are used in the description or identification of surface area or location within this State, the coordinates shall be identified as "NAD 83", indicating North American Datum of 1983, or as "NAD 27", indicating North American Datum of 1927. (1979, c. 4; 1987, c. 148.)

Effect of Amendments. — The 1987 amendment, effective May 7, 1987, substituted "Geodetic Reference System (GRS 80 Ellipsoid)" for "World Reference Ellipsoid" in the first sentence, inserted the present third sentence, substituted "609,601.22" for "600,000" in the present fourth sentence, and added the final sentence.

Chapter 103.

Sundays, Holidays and Special Days.

Sec.
103-4. Dates of public holidays.

§ 103-4. Dates of public holidays.

(a) The following are declared to be legal public holidays:
(1) New Year's Day, January 1.
(1a) Martin Luther King, Jr.'s, Birthday, the third Monday in January.
(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) Good Friday.
(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.

(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; 1983, c. 1; 1987, c. 25, s. 1; c. 851, ss. 1, 2; c. 853, s. 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. — Session Laws 1987, c. 25, s. 1, effective March 25, 1987, substituted "the third Monday in January" for "January 15" in subdivision (a)(1a).

Session Laws 1987, c. 851, ss. 1, 2, effective August 14, 1987, substituted "Good Friday" for "Easter Monday" in subdivision (a)(8), and in the former last sentence of subsection (a), as it read prior to being deleted by Session Laws 1987, c. 853.

Session Laws 1987, c. 853, s. 2, effective August 14, 1987, deleted the former last sentence of subsection (a), relating to holidays for state and national banks only.

Chapter 104A.

Degrees of Kinship.

§ 104A-1. Degrees of kinship; how computed.

Cross References. — As to meaning of "next of kin," see § 41-6.1.

Editor's Note. — The case of In re Will of Cobb, 271 N.C. 307, 156 S.E.2d 285 (1967), cited under this section in the main volume, has been abrogated by statute. See § 41-6.1.

Chapter 104E.

Editor's Note. — The legislation and annotations affecting Chapter 104E have been included in a recently published replacement chapter.

Chapter 104F.

Southeast Interstate Low-Level Radioactive Waste Management Compact.

§ 104F-1. (See note) Compact entered into; form of Compact.

The Southeast Interstate Low-Level Radioactive Waste Management Compact is enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

Southeast Interstate Low-Level Radioactive
Waste Management Compact

ARTICLE V. Development and operation of facilities

(a) Any party state which becomes a host state in which a regional facility is operated, shall not be designated by the Compact Commission as a host state for an additional regional facility until each party state has fulfilled its obligation, as determined by the Commission, to have a regional facility operated within its borders.

(b) A host state desiring to close a regional facility located within its borders may do so only after notifying the Commission in writing of its intention to do so and the reasons therefor. Such notification shall be given to the Commission at least four years prior to the intended date of closure. Notwithstanding the four year notice requirement herein provided, a host state is not prevented from closing its facility or establishing conditions of use and operations as necessary for the protection of the health and safety of its citizens. A host state may terminate or limit access to its regional facility if it determines Congress has materially altered the conditions of this compact.

(c) Each party state designated as a host state for a regional facility shall take appropriate steps to ensure that an application for a license to construct and operate a facility of the designated type is filed with and issued by the appropriate authority.

(d) No party state shall have any form of arbitrary prohibition on the treatment, storage or disposal of low-level radioactive waste within its borders.

(e) No party state shall be required to operate a regional facility for longer than a 20-year period, or to dispose of more than 32,000,000 cubic feet of low-level radioactive waste, whichever first occurs.

ARTICLE VII. Eligible parties, withdrawal, revocation, entry into force, termination

(a) This compact shall have as initially eligible parties the States of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee and Virginia.

(b) Any state not expressly declared eligible to become a party state to this compact in section (a) of this Article may petition the Commission, once constituted, to be declared eligible. The Commission may establish such conditions as it deems necessary and appro-

priate to be met by a state wishing to become eligible to become a party state to this compact pursuant to the provisions of this section. Upon satisfactorily meeting such conditions and upon the affirmative vote of two-thirds of the Commission, including the affirmative vote of both representatives of a host state in which any affected regional facility is located, the petitioning state shall be eligible to become a party state to this compact and may become a party state in the same manner as those states declared eligible in section (a) of this Article.

(c) Each state eligible to become a party state to this compact is declared a party state upon enactment of this compact into law by that state and upon payment of the fees required by Article IV (h)(1). The Commission shall be the judge of the qualifications of the party states and of its members and of their compliance with the conditions and requirements of this compact and the laws of the party states relating to the enactment of this compact.

(d) (1) The first three states eligible to become party states to this compact which enact this compact into law and appropriate the fees required by Article IV (h)(1) shall immediately, upon the appointment of their Commission members, constitute themselves as the Southeast Low-Level Radioactive Waste Management Commission, shall cause legislation to be introduced in the Congress which grants the consent of the Congress to this compact, and shall do those things necessary to organize the Commission and implement the provisions of this compact.

(2) All succeeding states eligible to become party states to this compact shall be declared party states pursuant to the provisions of section (c) of this Article.

(3) The consent of the Congress shall be required for full implementation of this compact. The provisions of Article V, section (d) shall not become effective until the effective date of the import ban authorized by Article IV, section (1) as approved by Congress. The Congress may by law withdraw its consent only every five years.

(e) No state which holds membership in any other regional compact for the management of low-level radioactive waste may be considered by the Compact Commission for eligible state status or party state status.

(f) Any party state which fails to comply with the provisions of this compact or to fulfill the obligations incurred by becoming a party state to this compact may be subject to sanctions by the Commission, including suspension of its rights under this compact and revocation of its status as a party state. Any sanction shall be imposed only on the affirmative vote of at least two-thirds of the Commission members. Revocation of party state status may take effect on the date of the meeting at which the Commission approves the resolution imposing such sanction, but in no event shall revocation take effect later than 90 days from the date of such meeting. Rights and obligations incurred by being declared a party state to this compact shall continue until the effective date of the sanction imposed or as provided in the resolution of the Commission imposing the sanction.

The Commission shall, as soon as practicable after the meeting at which a resolution revoking status as a party state is approved, provide written notice of the action along with a copy of the resolu-

tion to the governors, the Presidents of the Senates, and the Speakers of the Houses of Representatives of the party states, as well as chairmen of the appropriate committees of the Congress.

(g) Subject to the provisions of Article VII section (h), any party state may withdraw from this compact by enacting a law repealing the compact, provided that if a regional facility is located within such state, such regional facility shall remain available to the region for four years after the date the Commission receives verification in writing from the 4overnor of such party state of the recission of the compact. The Commission, upon receipt of the notification, shall as soon as practicable provide copies of such notification to the governors, the Presidents of the Senates, and the Speakers of the Houses of Representatives of the party states as well as the chairmen of the appropriate committees of the Congress.

(h) The right of a party state to withdraw pursuant to Article VII section (g) shall terminate thirty days following the commencement of operation of the second host state disposal facility. Thereafter a party state may withdraw only with the unanimous approval of the Commission and with the consent of Congress. For purposes of this section, the low-level radioactive waste disposal facility located in Barnwell County, South Carolina shall be considered the first host state disposal facility.

(i) This compact may be terminated only by the affirmative action of the Congress or by the rescission of all laws enacting the compact in each party state.

(1983, c. 714, s. 1; 1987, c. 850, s. 25.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Contingent Delayed Repeal of Chapter 104E. — Session Laws 1987, c. 850, s. 26, provides: "Unless every party state to the Southeast Interstate Low-Level Radioactive Waste Management Compact (Compact) has enacted legislation to amend the Compact Law in force in that state in substantially the manner set out in section 25 of this act by 31 December 1988; and unless the Congress of the United States has amended the Low-Level Radioactive Waste Policy Amendments Act of 1985, Pub. L. No. 99-240, 99 Stat. 1842 (1986), so as to consent to the amendments to the Compact required to be made by this section on or before 31 December 1992; North Carolina shall withdraw from the Compact. The North Carolina Compact Commissioners shall certify to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Attorney General, and the Secretary of State that the requirements of this section have, or have not, been met. In the event that the party states to the Compact have not enacted legislation to amend the Compact as required by this section by 31 December 1988, Chapter 104F of the General Statutes is repealed as of that date. In the event that the Congress has not amended the Low-Level Radioactive Waste Policy Amendments Act so as to consent to the amendments required to be made by this section by 31 December 1992, Chapter 104F of the General Statutes is repealed as of that date."

Session Laws 1987, c. 850, s. 27(a) provides: "Notwithstanding any other provision of this act, this act shall not be construed as a revenue bill within the meaning of Section 23 of Article II of the Constitution of North Carolina. Any provision of this act contrary to this section is void."

Session Laws 1987, c. 850, s. 27(b) is a severability clause.

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, added subsection (e) to Article V, rewrote the first sentence of subsection (g) of Article VII, added present subsection (h) of Article VII, and redesignated former subsection (h) of Article VII as subsection (i) thereof.

Chapter 104F has a contingent delayed repeal date. See notes for date.

§ 104F-2. (See note) Appointment of members to the Southeast Interstate Low-Level Radioactive Waste Management Commission.

Contingent Delayed Repeal of Chapter 104E. — Session Laws 1987, c. 850, s. 26, provides: "Unless every party state to the Southeast Interstate Low-Level Radioactive Waste Management Compact (Compact) has enacted legislation to amend the Compact Law in force in that state in substantially the manner set out in section 25 of this act by 31 December 1988; and unless the Congress of the United States has amended the Low-Level Radioactive Waste Policy Amendments Act of 1985, Pub. L. No. 99-240, 99 Stat. 1842 (1986), so as to consent to the amendments to the Compact required to be made by this section on or before 31 December 1992; North Carolina shall withdraw from the Compact. The North Carolina Compact Commissioners shall certify to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Attorney General, and the Secretary of State that the requirements of this section have, or have not, been met. In the event that the party states to the Compact have not enacted legislation to amend the Compact as required by this section by 31 December 1988, Chapter 104F of the General Statutes is repealed as of that date. In the event that the Congress has not amended the Low-Level Radioactive Waste Policy Amendments Act so as to consent to the amendments required to be made by this section by 31 December 1992, Chapter 104F of the General Statutes is repealed as of that date."

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Session Laws 1987, c. 850, s. 27(b) is a severability clause.

§ 104F-3. (See note) Violation a misdemeanor.

Contingent Delayed Repeal of Chapter 104E. — Session Laws 1987, c. 850, s. 26, provides: "Unless every party state to the Southeast Interstate Low-Level Radioactive Waste Management Compact (Compact) has enacted legislation to amend the Compact Law in force in that state in substantially the manner set out in section 25 of this act by 31 December 1988; and unless the Congress of the United States has amended the Low-Level Radioactive Waste Policy Amendments Act of 1985, Pub. L. No. 99-240, 99 Stat. 1842 (1986), so as to consent to the amendments to the Compact required to be made by this section on or before 31 December 1992; North Carolina shall withdraw from the Compact. The North Carolina Compact Commissioners shall certify to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Attorney General, and the Secretary of State that the requirements of this section have, or have not, been met. In the event that the party states to the Compact have not enacted legislation to amend the Compact as required by this section by 31 December 1988, Chapter 104F of the General Statutes is repealed as of that date. In the event that the Congress has not amended the Low-Level Radioactive Waste Policy Amendments Act so as to consent to the amendments required to be made by this section by 31 December 1992, Chapter 104F of the General Statutes is repealed as of that date."

Session Laws 1987, c. 850, s. 27(a) provides: "Notwithstanding any other provision of this act, this act shall not be construed as a revenue bill within the meaning of Section 23 of Article II of the Constitution of North Carolina. Any provision of this act contrary to this section is void."

Session Laws 1987, c. 850, s. 27(b) is a severability clause.

§ 104F-4. (See note) Advisory Committee.

Contingent Delayed Repeal of Chapter 104E. — Session Laws 1987, c. 850, s. 26, provides: "Unless every party state to the Southeast Interstate Low-Level Radioactive Waste Management Compact (Compact) has enacted legislation to amend the Compact Law in force in that state in substantially the manner set out in section 25 of this act by 31 December 1988; and unless the Congress of the United States has amended the Low-Level Radioactive Waste Policy Amendments Act of 1985, Pub. L. No. 99-240, 99 Stat. 1842 (1986), so as to consent to the amendments to the Compact required to be made by this section on or before 31 December 1992; North Carolina shall withdraw from the Compact. The North Carolina Compact Commissioners shall certify to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Attorney General, and the Secretary of State that the requirements of this section have, or have not, been met. In the event that the party states to the Compact have not enacted legislation to amend the Compact as required by this section by 31 December 1988, Chapter 104F of the General Statutes is repealed as of that date. In the event that the Congress has not amended the Low-Level Radioactive Waste Policy Amendments Act so as to consent to the amendments required to be made by this section by 31 December 1992, Chapter 104F of the General Statutes is repealed as of that date."

Session Laws 1987, c. 850, s. 27(a) provides: "Notwithstanding any other provision of this act, this act shall not be construed as a revenue bill within the meaning of Section 23 of Article II of the Constitution of North Carolina. Any provision of this act contrary to this section is void."

Session Laws 1987, c. 850, s. 27(b) is a severability clause.

§ 104F-5. (See note) Withdrawal from Compact.

Contingent Delayed Repeal of Chapter 104E. — Session Laws 1987, c. 850, s. 26, provides: "Unless every party state to the Southeast Interstate Low-Level Radioactive Waste Management Compact (Compact) has enacted legislation to amend the Compact Law in force in that state in substantially the manner set out in section 25 of this act by 31 December 1988; and unless the Congress of the United States has amended the Low-Level Radioactive Waste Policy Amendments Act of 1985, Pub. L. No. 99-240, 99 Stat. 1842 (1986), so as to consent to the amendments to the Compact required to be made by this section on or before 31 December 1992; North Carolina shall withdraw from the Compact. The North Carolina Compact Commissioners shall certify to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Attorney General, and the Secretary of State that the requirements of this section have, or have not, been met. In the event that the party states to the Compact have not enacted legislation to amend the Compact as required by this section by 31 December 1988, Chapter 104F of the General Statutes is repealed as of that date. In the event that the Congress has not amended the Low-Level Radioactive Waste Policy Amendments Act so as to consent to the amendments required to be made by this section by 31 December 1992, Chapter 104F of the General Statutes is repealed as of that date."

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Chapter 104G.

Editor's Note. — The legislation and annotations affecting Chapter 104G have been included in a recently published replacement chapter.

Chapter 105.

Taxation.

SUBCHAPTER I. LEVY OF TAXES.

Article 1.

Schedule A. Inheritance Tax.

Sec.

Article 2.

Schedule B. License Taxes.

Administrative Provisions of Schedule B.

Article 2C.

Schedule B-C. Alcoholic Beverage License and Excise Taxes.

Part 4. Excise Taxes, Distribution of Tax Revenue.

Sec.

Part 5. Administration.

Article 3.

Schedule C. Franchise Tax.

Article 4.

Schedule D. Income Tax.

Division I. Corporation Income Tax.

SUBCHAPTER I. LEVY OF TAXES.

§ 105-1. Title and purpose of Subchapter.

Legal Periodicals. — For note surveying tax relief enacted by the 1985 General Assembly, see 64 N.C.L. Rev. 1508 (1986).

Article 1.

Schedule A. Inheritance Tax.

§ 105-2. General provisions.

Legal Periodicals. —

For 1984 survey, "North Carolina's Shift to the Minority Rule Regarding Inheritance Taxation and Will Compromise Agreements," see 63 N.C.L. Rev. 1286 (1985).

§ 105-2.1. Internal Revenue Code definition.

As used in this Article, the term "Code" means the Internal Revenue Code as enacted as of January 1, 1987, and includes any provisions enacted as of that date which become effective either before or after that date. (1983, c. 713, s. 62; 1985, c. 656, s. 7; 1985 (Reg. Sess., 1986), c. 853, s. 1; 1987, c. 778, s. 1.)

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment, effective for taxable years beginning on or after January 1, 1986, substituted "January 1, 1986" for "December 31, 1984."

The 1987 amendment, effective August 12, 1987, substituted "January 1, 1987, and includes any provisions enacted as of that date which become effective either before or after that date" for "January 1, 1986, and includes any provisions enacted as of that date which become effective after that date."

§ 105-6. Rate of tax — Class C.

Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of relationship or collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the person who died possessed as aforesaid, or shall be a body politic or corporate, at the following rates of tax (for each one hundred dollars ($100.00) or fraction thereof) of the value of such interest:

First $ 10,000	8 percent
Over $ 10,000 and to $ 25,000	9 percent
Over $ 25,000 and to $ 50,000	10 percent
Over $ 50,000 and to $ 100,000	11 percent
Over $ 100,000 and to $ 250,000	12 percent
Over $ 250,000 and to $ 500,000	13 percent
Over $ 500,000 and to $ 1,000,000	14 percent
Over $1,000,000 and to $1,500,000	15 percent
Over $1,500,000 and to $2,500,000	16 percent
Over $2,500,000	17 percent

(1939, c. 158, s. 5.)

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

§ 105-14. Recurring taxes.

(c) For the purposes of this section, the personal representative shall conclusively presume that the property involved in the prior transfer or its equivalent value is a part of the present decedent's

estate. The personal representative shall identify the property or its equivalent value and its taxable value in the prior transfer in a manner prescribed by the Secretary of Revenue; however, the personal representative shall not be required to verify to the Secretary of Revenue that the subject property or its proceeds constitute part of the present decedent's estate. (1939, c. 158, s. 12; 1957, c. 1340, s. 1; 1979, c. 801, s. 22; 1987, c. 544.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective July 3, 1987, added "however, the personal representative shall not be required to verify to the Secretary of Revenue that the subject property or its proceeds constitute part of the present decedent's estate" at the end of the second sentence of subsection (c).

§ 105-16. Interest and penalty.

All taxes imposed by this Article shall be due and payable at the death of the testator, intestate, grantor, donor or vendor; if not paid within nine months from date of death of the testator, intestate, grantor, donor or vendor, such tax shall bear interest at the rate established pursuant to G.S. 105-241.1(i), to be computed from the expiration of nine months from the date of the death of such testator, intestate, grantor, donor or vendor until paid: Provided, that if the taxes herein levied shall not be paid in full within nine months from the later of the date of death of the testator, intestate, grantor, donor or vendor, or from the qualification of the executor or administrator, then and in such case a penalty of ten per centum (10%) upon the amount of taxes remaining due and unpaid shall be added: Provided further, that the penalty of ten per centum (10%) herein imposed may be remitted by the Secretary of Revenue in case of unavoidable delay in settlement of estate or of pending litigation, and the Secretary of Revenue is further authorized, in case of protracted litigation or other delay in settlement not attributable to laches of the party liable for the tax, to remit all or any portion of the interest charges accruing under this schedule, with respect to so much of the estate as was involved in such litigation or other unavoidable cause of delay. Provided, that the time for payment and collection of such tax may be extended by the Secretary of Revenue for reasonable cause shown. (1939, c. 158, s. 14; 1947, c. 501, s. 1; 1953, c. 1302, s. 1; 1971, c. 1054, s. 2; 1973, c. 476, s. 193; 1977, c. 1114, s. 3; 1979, c. 51; 1987, c. 615.)

Effect of Amendments. — The 1987 amendment, effective October 1, 1987, and applicable to the estates of decedents dying on or after that date, rewrote this section.

§ 105-20. Legacy charged upon real estate; heir or devisee to deduct and pay tax; limitation; Inheritance or Estate Tax Waiver.

Whenever such legacy shall be charged upon or payable out of real estate, the heir or devisee of such real estate, before paying the same to such legatee, shall deduct the tax therefrom at the rates aforesaid, and pay the amount so deducted to the executor or administrator or the Secretary of Revenue, and the same shall remain

a charge upon such real estate until paid, and in default thereof the same shall be enforced by the decrees of the court in the same manner as the payment of such legacy may be enforced: Provided, that all taxes imposed by this Article shall be a lien upon the real and personal property of the estate on which the tax is imposed or upon the proceeds arising from the sale of such property from the time said tax is due and payable, and shall continue a lien until said tax is paid and receipted for by the proper officer of the State: Provided further, that no lien for inheritance or estate taxes shall attach or affect the land after 10 years from the date of death of the decedent: Provided further, that no taxes imposed by this Article shall be a lien upon real property that is released by an Inheritance or Estate Tax Waiver issued by the Secretary of Revenue. An Inheritance or Estate Tax Waiver issued by the Secretary of Revenue and bearing the signature or official facsimile signature of the Secretary of Revenue covering real property may be registered in the office of the Register of Deeds of the county or counties where the real estate described in the waiver is located. No formalities as to acknowledgement, probate, or approval by any officer shall be required as a condition to such registration. An Inheritance or Estate Tax Waiver so registered shall be conclusive evidence that the real property described in such waiver is not subject to the lien of any taxes imposed by this Article. (1939, c. 158, s. 18; 1951, c. 643, s. 1; 1957, c. 1340, s. 1; 1973, c. 476, s. 193; 1987, c. 548, s. 1.)

Effect of Amendments. — The 1987 amendment, effective July 3, 1987, added the final proviso of the first sentence and added the last three sentences.

§ 105-22. Duties of clerks of superior court.

It shall be the duty of the clerk of the superior court to obtain from any executor or administrator, at the time of the qualification of such executor or administrator, the address of the personal representative qualifying, the names and addresses of the heirs-at-law, legatees, distributees, devisees, etc., as far as practical, the approximate value and character of the property or estate, both real and personal, the relationship of the heirs-at-law, legatees, devisees, etc., to the decedents, and forward the same to the Secretary of Revenue on or before the tenth day of each month. The clerk shall make no report of a death if no inheritance tax return is required to be filed for the decedent's estate under G.S. 105-23 because the estate meets the requirements of subsection (b) of that section. Any clerk of the superior court who shall fail, neglect, or refuse to file such monthly reports as required by this section shall be liable to a penalty in the sum of one hundred dollars ($100.00) to be recovered by the Secretary of Revenue in an action to be brought by the Secretary of Revenue. (1939, c. 158, s. 20; 1943, c. 400, s. 1; 1953, c. 1302, s. 1; 1973, c. 108, s. 49; c. 476, s. 193; c. 1287, s. 2; 1979, c. 801, s. 23; 1981 (Reg. Sess., 1982), c. 1221, s. 1; 1985, c. 82, s. 1; c. 656, s. 3.1; 1985 (Reg. Sess., 1986), c. 822, s. 1.)

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment, effective July 1, 1986, and applicable to the estates of decedents dying on or after that date, rewrote the second sentence of this section.

§ 105-23. Information by administrator and executor.

(a) Return Required. — Every administrator shall prepare a statement showing as far as can be ascertained the names of all the heirs-at-large and their relationship to decedent, and every executor shall prepare a like statement, accompanied by a copy of the will, showing the relationship to the decedent of all legatees, distributees, and devisees named in the will, and the age at the time of the death of the decedent of all legatees, distributees, devisees, to whom property is bequeathed or devised for life or for a term of years, and the names of those, if any, who have died before the decedent, together with the post-office address of executor, administrator, or trustee. If any of the heirs-at-law, distributees, and devisees are minor children of the decedent, such statement shall also show the age of each of such minor children. The statement shall also contain a complete inventory of all the real property of the decedent located in and outside the State, and of all personal property, wherever situate, of the estate, of all insurance policies upon the life of the decedent, together with an appraisal under oath or affirmation of the value of each class of property embraced in the inventory, and the value of the whole, together with any deductions permitted by this statute, so far as they may be ascertained at the time of filing such statement; and also the full statement of all gifts or advancements made by deed, grant, or sale to any person or corporation, in trust or otherwise, within three years prior to the death of the decedent. The statement herein provided for shall be filed with the Secretary of Revenue at Raleigh, North Carolina, within nine months after the qualification of the executor or administrator, upon blank forms to be prepared by the Secretary of Revenue. If any administrator or executor fails or refuses to comply with any of the requirements of this section, he shall be liable to a penalty in the sum of five hundred dollars ($500.00), to be recovered by the Secretary of Revenue in an action to be brought by the Secretary of Revenue to collect such sum in the Superior Court of Wake County against such administrator or executor. The Secretary of Revenue, for good cause shown, may remit all or any portion of the penalty imposed under the provisions of this section. Every executor or administrator may make a tentative settlement of the inheritance tax with the Secretary of Revenue, based on the inventory supported by oath or affirmation provided in this section. If any executor, administrator, collector, committee, trustee or any other fiduciary within or without this State holding or having control of any funds, property, trust or estate, the transfer of which becomes taxable under the provisions of this Article, shall fail to file the statement herein required, within the times herein required, the Secretary of Revenue is authorized and shall be required to secure the information herein required from the best sources available, and therefrom assess the taxes levied hereunder, together with the penalties herein and otherwise provided.

(b) Exception. — An inheritance tax return is not required to be filed for an estate (i) whose beneficiaries are all either Class A beneficiaries, as described in G.S. 105-4(a), or the surviving spouse, and (ii) whose gross value, including the value of transfers over which the decedent retained an interest and the value of gifts made

within three years before the decedent's death, as provided in G.S. 105-2(3), is less than the amount specified in the following table:

Estates of Decedents Dying On or After	*Gross Value of Estates*
July 1, 1985	$100,000
August 1, 1985	75,000
July 1, 1986	150,000
January 1, 1987	250,000.

(1939, c. 158, s. 21; 1947, c. 501, s. 1; 1951, c. 643, s. 1; 1971, c. 1054, s. 4; 1973, c. 476, s. 193; 1979, c. 801, s. 24; 1981 (Reg. Sess., 1982), c. 1221, s. 2; 1985, c. 82, s. 2; c. 656, s. 3.1; 1985 (Reg. Sess., 1986), c. 822, s. 2.)

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 1, 1986, and applicable to the estates of decedents dying on or after that date, designated the first paragraph of this section as subsection (a), deleted a former second paragraph, relating to when a return was not required, and added subsection (b).

§ 105-24. Access to safe deposits of decedents; withdrawal of bank deposit, etc., payable to either husband or wife or survivor.

No safe deposit company, trust company, corporation, bank, or other institution, person or persons having in possession or control or custody, in whole or in part, securities, deposits, assets, or property belonging to or standing in the name of a decedent, or belonging to or standing in the joint names of a decedent and one or more persons, shall deliver or transfer the same to any person whatsoever, whether in a representative capacity or not, or to the survivor or to the survivors when held in the joint names of a decedent and one or more persons, without retaining a sufficient portion or amount thereof to pay taxes or interest assessed under this Article on property transferred by the decedent; but the Secretary of Revenue may consent in writing to such delivery or transfer, and such consent shall relieve said safe deposit company, trust company, corporation, bank or other institution, person or persons from the obligation herein imposed. Securities whose declaration date is after the decedent's death, or interest that accrues after the decedent's death on money on deposit at a bank, savings and loan association, credit union, or other corporation, however, may be transferred or delivered without retaining a portion of the property for the payment of taxes or interest and without obtaining the written consent of the Secretary to the delivery or transfer. Provided: The clerk of superior court of the resident county of a decedent may authorize in writing any bank, safe deposit company, trust company, or any other institution to transfer to the properly qualified representative of the estate any funds on deposit in the name of the decedent or the decedent and one or more persons when the total amount of such deposit or deposits is three hundred dollars ($300.00) or less, and when such deposit or deposits compose the total cash assets of the estate. Such authorization shall have the same force and effect as when issued in writing by the Secretary of

Revenue. Every safe deposit company, trust company, corporation, bank or other institution, person, or persons engaged in the business of renting lock boxes for the safekeeping of valuable papers and personal effects, or having in their possession or supervision in such lock boxes such valuable papers or personal effects shall, upon the death of any person using or having access to such lock box, as a condition precedent to the opening of such lock box by the executor, administrator, personal representative lessee or cotenant of such deceased person, require the presence of the clerk of the superior court of the county in which such lock box is located. It shall be the duty of the clerk of the superior court, or his representative, in the presence of an officer or representative of the safe deposit company, trust company, corporation, bank, or other institution, person or persons, to make an inventory of the contents of such lock box and to furnish a copy of such inventory to the Secretary of Revenue, to the executor, administrator, personal representative, or cotenant of the decedent, and a copy to the safe deposit company, trust company, corporation, bank, or other institution, person, or persons having possession of such lock box; provided, that for lock boxes to which decedent merely had access the inventory shall include only assets in which the decedent has or had an interest. Immediately after the clerk of superior court has made an inventory of the contents of the lock box, the safe deposit company, trust company, corporation, bank or other institution, or person shall, upon request, release to the lessee or cotenant of the lock box any life insurance policy stored in the lock box for delivery to the beneficiary named in the policy. Notwithstanding any of the provisions of this section any life insurance company may pay the proceeds of any policy upon the life of a decedent to the person entitled thereto as soon as it shall have mailed to the Secretary of Revenue a notice, in such form as the Secretary of Revenue may prescribe, setting forth the fact of such payment; but if such notice be not mailed, all of the provisions of this section shall apply.

Notwithstanding any of the provisions of this section, in any case where a bank deposit has been heretofore made or is hereafter made, or where savings and loan stock has heretofore been issued or is hereafter issued, in the names of two or more persons and payable to either or the survivor or survivors of them, such bank or savings and loan association may, upon the death of either of such persons, allow the person or persons entitled thereto to withdraw as much as fifty percent (50%) of such deposit or stock, and the balance thereof shall be retained by the bank or savings and loan association to cover any taxes that may thereafter be assessed under this Article. When it is ascertained that there is no liability of such deposit or stock for taxes under this Article, the Secretary of Revenue shall furnish the bank or savings and loan association his written consent for the payment of the retained percentage to the person or persons entitled thereto by law; and the Secretary of Revenue may furnish such written consent to the bank or savings and loan association upon the qualification of a personal representative of the deceased. If the person entitled to funds in an account is the surviving spouse and the account is a joint account of the surviving spouse and the decedent with right of survivorship, no tax waiver is required from the Secretary of Revenue to release the funds in the account.

Failure to comply with the provisions of this section shall render such safe deposit company, trust company, corporation, bank or other institution, person or persons liable for the amount of the taxes and interest due under this Article on property transferred by the decedent. In any action brought under this provision it shall be a sufficient defense that the delivery or transfer of securities, deposits, assets, or property was made in good faith without knowledge of the death of the decedent and without knowledge of circumstances sufficient to place the defendant on inquiry. (1939, c. 158, s. 21½; 1943, c. 400, s. 1; 1959, c. 1192; 1973, c. 108, s. 50; c. 476, s. 193; c. 1287, s. 2; 1983, c. 198; 1985, c. 87; c. 106; 1985 (Reg. Sess., 1986), c. 822, s. 4; 1987, c. 804, s. 1.)

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment, effective July 1, 1986, and applicable to the estates of decedents dying on or after that date, deleted a former second sentence of the second paragraph, relating to release of the balance of certain accounts to the personal representative without the requirements of a tax waiver, and added the last sentence of the second paragraph.

The 1987 amendment, effective August 13, 1987, substituted "except under this article on property transferred by the deceased" in the first sentence of the first paragraph, deleted "under the provisions of G.S. 41-2.1" preceding "to withdraw as much as fifty percent" and deleted "against such deposit or stock" preceding "under this Article" in the first sentence of the second paragraph, deleted "such taxes as may be due on such deposit or stock are paid, or when" following "When" at the beginning of the second sentence of the second paragraph, divided the former single sentence of the third paragraph into the present first and second sentences, and deleted "the succession to such securities, deposits, assets, or property, but" at the end of the present first sentence of that paragraph.

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

In addition to all other remedies which may now exist under the law, or may hereafter be established, for the collection of the taxes imposed by the preceding sections of this Article, the tax so imposed shall be a lien upon all of the property and upon all of the estate, with respect to which the taxes are levied, as well as collectible out of any other property, resort to which may be had for their payment; and the said taxes shall constitute a debt, which may be recovered in an action brought by the Secretary of Revenue in any court of competent jurisdiction in this State, and/or in any court having jurisdiction of actions of debt in any state of the United States, and/or in any court of the United States against an administrator, executor, trustee, or personal representative, and/or any person, corporation, or concern having in hand any property, funds, or assets of any nature, with respect to which such tax has been imposed. No title or interest to such estate, funds, assets, or property shall pass, and no disposition thereof shall be made by any person claiming an interest therein until said taxes have been fully paid or until the Secretary of Revenue has released such property by the issuance of an Inheritance or Estate Tax Waiver. (1939, c. 158, s. 28; 1973, c. 476, s. 193; 1987, c. 548, s. 2.)

Effect of Amendments. — The 1987 amendment, effective July 3, 1987, deleted "the" preceding "said taxes" in the final sentence and added the language "or until the Secretary of Revenue has released such property by the issuance of an Inheritance or Estate Tax Waiver" at the end of that sentence.

Article 2.

Schedule B. License Taxes.

§ 105-33. Taxes under this Article.

(d) The State license issued under G.S. 105-41, 105-42, 105-45, 105-53, 105-54, 105-55, 105-57, 105-58, 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. For the purpose of this subsection, a municipality does not include an incorporated municipality unless it is a city as defined by G.S. 153A-1(1), but such lack of status as a city does not prevent it from being an "unincorporated place or town" as defined by this subsection.

(i) The tax collector of a county or city shall issue licenses required under this Article by the governing body of the county or city and shall collect the taxes due for these licenses.

(k) Repealed by Session Laws 1987, c. 190, effective June 1, 1987.

(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; 1985, c. 114, s. 10; 1985 (Reg. Sess., 1986), c. 826, ss. 1, 2; c. 934, s. 3; 1987, c. 190.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. —

Session Laws 1985 (Reg. Sess., 1986), c. 826, ss. 1, 2, effective June 30, 1986, deleted references to §§ 105-56 and 105-59 from the first sentence of subsection (d) and rewrote subsection (i).

Session Laws 1985 (Reg. Sess., 1986), c. 934, s. 3, effective September 1, 1986, added the last sentence of subsection (e).

The 1987 amendment, effective June 1, 1987, deleted subsection (k), relating to a license for seasonal business at summer or winter resorts.

§ 105-37. Amusements — Moving pictures — Admission.

(e1) Motion picture shows promoted and managed by a qualifying corporation that operates a center for the performing and visual arts are exempt from the license tax imposed under this section if the motion pictures are shown at the center and if the showing of motion pictures is not the primary purpose of the center. As used in this subsection, "qualifying corporation" and "center for the performing and visual arts" have the same meaning as in G.S. 105-37.1(a).

(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. Cities and towns may not levy a license tax on a business described in subsection (e1). (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; 1985 (Reg. Sess., 1986), c. 819, ss. 1, 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 1, 1986, added subsection (e1) and added the last sentence of subsection (f).

§ 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 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.

The license and gross receipts taxes imposed by this section do not apply to a person, firm, or corporation that is exempt from income tax under Article 4 of this Chapter and is engaged in the business of operating a teen center. A "teen center" is a fixed facility whose primary purpose is to provide recreational activities, dramatic performances, dances, and other amusements exclusively for teenagers.

(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; 1985, c. 376; 1985 (Reg. Sess., 1986), c. 819, s. 3.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 1, 1986, deleted "as defined in G.S. 105-130.2(1)" following "means a corporation" in the second sentence of the next-to-last paragraph of subsection (a).

§ 105-53. (Effective until July 1, 1988) Peddlers, itinerant merchants, and flea market operators.

(a) Peddler. — Every person engaged in business or employed as a peddler shall obtain a license from the Secretary of Revenue for the privilege of peddling goods and shall pay a tax for the license in the amount specified in this section. A "peddler" is a person who travels from place to place with an inventory of goods, who sells the goods at retail or offers the goods for sale at retail, and who delivers the identical goods he carries with him. A peddler of only farm products shall pay a tax of twenty-five dollars ($25.00) regardless of the number of counties in which he peddles goods. A peddler who travels from place to place on foot, selling goods other than or in addition to farm products, shall pay a tax of ten dollars ($10.00) for each county in which he peddles goods. A peddler who travels from place to place by vehicle, selling goods other than or in addition to farm products, shall pay a tax of twenty-five dollars ($25.00) for each county in which he peddles goods.

(b) Itinerant Merchant. — Every person engaged in business as an itinerant merchant shall obtain a license from the Secretary of Revenue for the privilege of engaging in business and shall pay a

§ 105-53 is set out twice. See headings for effective dates.

tax for the license of one hundred dollars ($100.00) for each county in which he is engaged in business. An "itinerant merchant" is a merchant, other than a merchant with an established retail store in the county, who transports an inventory of goods to a building, vacant lot, or other location in a county and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail. An itinerant merchant is not required to purchase a license under this subsection to sell goods or offer goods for sale at a flea market for which the operator has obtained a license under subsection (c). A merchant who sells goods, other than farm products, in a county for less than six consecutive months is considered an itinerant merchant unless he stopped selling goods in that county because of his death or disablement, the insolvency of his business, or destruction of his inventory by fire or other catastrophe.

(c) Flea Market Operator. — Every person engaged in business as a flea market operator shall obtain a license from the Secretary of Revenue for the privilege of engaging in business and shall pay a tax for the license of one hundred dollars ($100.00) for each county in which he is engaged in business. A "flea market operator" is a person who rents space, at a location other than a permanent retail store, to others for the purpose of selling goods at retail or offering goods for sale at retail.

(d) Exemptions. — This section does not apply to the following:

(1) Sales of farm and nursery products raised on premises owned or occupied by the seller of the products;

(2) Sales of printed material, wood for fuel, ice, seafood, meat, poultry, livestock, eggs, dairy products, bread, cakes, or pies;

(3) Sales of goods made by the seller of the goods; and

(4) Sales by a person who maintains a fixed, permanent location from which he makes at least ninety percent (90%) of his sales, but who sells some goods in the county of his fixed location by peddling the goods.

(e) 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 veterans of World War I, World War II, Korean Conflict, and Vietnam Era, who have been bona fide residents of this State for 12 or more months continuously, and 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 the county without payment of any license tax to the State.

(f) Person Defined. — As used in this section, "person" has the same meaning as in G.S. 105-164.3(11).

(g) Local License. — Counties and cities may levy a license tax on a business taxed under this section in an amount that does not exceed the State tax. (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; 1987, c. 213, s. 1.)

Section Set Out Twice. — The section above is effective until July 1, 1988. For this section as amended effective July 1, 1988, see the following section, also numbered § 105-53.

Editor's Note. — By virtue of Session Laws 1987, c. 213, s. 2, the local modification note under this section in the main volume should be deleted.

Effect of Amendments. — The 1987

§ 105-53 is set out twice. See headings for effective dates.

amendment, effective July 1, 1987, rewrote this section.

OPINIONS OF ATTORNEY GENERAL

Applicability to Traveling Auctioneers. — If an auctioneer travels into a city or county in which he does not maintain a regular place of business and sells or auctions property owned by him, he must obtain an itinerant merchant license pursuant to this section, as well as comply with any ordinances of the particular city or county governing itinerant merchants. See Opinion of Attorney General to Mr. DeWitt S. McCarley, City Attorney, Greenville, North Carolina, 55 N.C.A.G. 38 (1985).

An auctioneer is not deemed to be an itinerant merchant if he travels into a city or county in which he does not maintain a regular place of business and auctions merchandise belonging to another person, whether or not that person maintains a regular place of business in the particular city or county. Therefore, such an auctioneer would not be required to comply with § 105-53(d) or any local ordinances of the particular city or county governing itinerant merchants. However, if the owner of the goods to be auctioned off does not maintain a regular place of business in the particular city or county, that person would be required to comply with § 105-53(d) and any local ordinances governing itinerant merchants. See opinion of Attorney General to Mr. DeWitt S. McCarley, City Attorney, Greenville, North Carolina, 55 N.C.A.G. 38 (1985).

§ 105-53. (Effective July 1, 1988) Peddlers, itinerant merchants, flea market vendors and flea market operators.

(a) Peddler. — Every person engaged in business or employed as a peddler shall obtain a license from the Secretary of Revenue for the privilege of peddling goods and shall pay a tax for the license in the amount specified in this section. A "peddler" is a person who travels from place to place with an inventory of goods, who sells the goods at retail or offers the goods for sale at retail, and who delivers the identical goods he carries with him. A peddler of only farm products shall pay a tax of twenty-five dollars ($25.00) regardless of the number of counties in which he peddles goods. A peddler who travels from place to place on foot, selling goods other than or in addition to farm products, shall pay a tax of ten dollars ($10.00) for each county in which he peddles goods. A peddler who travels from place to place by vehicle, selling goods other than or in addition to farm products, shall pay a tax of twenty-five dollars ($25.00) for each county in which he peddles goods.

(b) Itinerant Merchant. — Every person engaged in business as an itinerant merchant shall obtain a license from the Secretary of Revenue for the privilege of engaging in business and shall pay a tax for the license of one hundred dollars ($100.00) for each county in which he is engaged in business. An "itinerant merchant" is a merchant, other than a merchant with an established retail store in the county, who transports an inventory of goods to a building, vacant lot, or other location in a county and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail. An itinerant merchant's license is not required to engage in the business of a flea market vendor at a location licensed as a flea market under subsection (c) of this section. A merchant who sells goods, other than farm products, in a county for

§ 105-53 is set out twice. See headings for effective dates.

less than six consecutive months is considered an itinerant merchant unless he stopped selling goods in that county because of his death or disablement, the insolvency of his business, or destruction of his inventory by fire or other catastrophe.

(c) Flea Market Operator. — Every person engaged in business as a flea market operator shall obtain a license from the Secretary of Revenue for the privilege of engaging in business and shall pay a tax for the license of one hundred dollars ($100.00) for each county in which he is engaged in business. A "flea market operator" is a person who rents space, at a location other than a permanent retail store, to others for the purpose of selling goods at retail or offering goods for sale at retail.

(d) Flea Market Vendor. — Every person engaged in business as a flea market vendor shall obtain a license from the Secretary of Revenue for the privilege of engaging in such business and shall pay an annual tax of twenty-five dollars ($25.00) for a statewide license. A "flea market vendor" is a merchant, other than a merchant with an established retail store in the county, who transports an inventory of goods to a flea market licensed under subsection (c) of this section and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail. A "flea market" is a location, other than a permanent retail store or the enclosed area of a mall or shopping center, where space is rented to others for the purpose of selling goods at retail or offering goods for sale at retail.

(e) Exemptions. — This section does not apply to the following:

(1) A peddler, itinerant merchant, or flea market vendor:
   a. Who sells farm or nursery products produced by him;
   b. Who sells crafts or goods made by him or his own household personal property;
   c. Who is a nonprofit charitable, educational, religious, scientific, or civic organization;
   d. Who sells printed material, wood for fuel, ice, seafood, meat, poultry, livestock, eggs, dairy products, bread, cakes, or pies; or
   e. Who is an authorized automobile dealer licensed pursuant to Chapter 20 of the General Statutes.

(2) A peddler who maintains a fixed permanent location from which he makes at least ninety percent (90%) of his sales, but who sells some goods in the county of his fixed location by peddling.

(3) An itinerant merchant:
   a. Who locates at a farmer's market;
   b. Who is part of the State Fair or an agriculture fair which is licensed by the Commissioner of Agriculture pursuant to G.S. 106-520.3; or
   c. Who sells goods at an auction conducted by an auctioneer licensed pursuant to Chapter 85B of the General Statutes.

(4) A peddler who complies with the requirements of G.S. 25A-38 through G.S. 25A-42, or who complies with the requirements of G.S. 14-401.13.

(f) Person Defined. — As used in this section, "person" has the same meaning as in G.S. 105-164.3(11).

(g) County Exemption. — The board of county commissioners of any county in this State, upon proper application, may exempt from

§ 105-53 is set out twice. See headings for effective dates.

the annual license tax levied upon peddlers, itinerant merchants and flea market vendors in this section disabled veterans of World War I, World War II, Korean Conflict, and Vietnam Era, who have been bona fide residents of this State for 12 or more months continuously, and 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 sell within the limits of the county without payment of any license tax to the State.

(h) Information to Department of Revenue. — When a peddler, itinerant merchant, flea market vendor or flea market operator applies to the Department of Revenue for a license, he shall provide the name and permanent address of the peddler, itinerant merchant, flea market vendor or flea market operator. In providing this information, if the peddler, itinerant merchant, flea market vendor or flea market operator is not a corporation, he must provide a copy of a valid driver's license, a special identification card issued under G.S. 20-37.7, military identification or a passport bearing a physical description of the person named reasonably describing the peddler, itinerant merchant, flea market vendor or flea market operator. If the peddler, itinerant merchant, flea market vendor or flea market operator is incorporated, he shall give the name and the registered agent of the corporation and the address of the registered office of the corporation, as filed with the North Carolina Secretary of State.

(i) Display and Possession of Licenses. — An itinerant merchant or flea market vendor shall keep both the license required by this section and the retail sales tax license conspicuously and prominently displayed, so as to be visible for inspection by patrons of the itinerant merchant or flea market vendor, at the places or locations at which the goods are to be sold or offered for sale. A peddler shall have the license required by this section and the retail sales tax license with him at all times he offers goods for sale and must produce them upon the request of any person. A flea market operator shall have the license required by this section available for inspection during all times that the flea market is open and must produce it upon the request of any person.

(j) Permission of Property Owner. — An itinerant merchant or a peddler who travels from place to place by vehicle, in addition to other requirements of this section, shall obtain a written statement signed by the owner or lessee of any property upon which the itinerant merchant or peddler offers goods for sale giving the owner's or lessee's permission to offer goods for sale upon the property of the owner or lessee. Such statement shall clearly state the name of the owner or lessee, the location of the premises for which the permission is granted, and the dates during which the permission is valid. Further, such statement shall be conspicuously and prominently displayed, so as to be visible for inspection by patrons of the itinerant merchant or peddler, at the places or locations at which the goods are to be sold or offered for sale.

(k) Flea Market Registration List. — A flea market operator shall maintain a daily registration list of all flea market vendors selling or offering goods for sale at the flea market. This registration list shall clearly and legibly show the flea market vendor's name, permanent address and the flea market vendor's statewide flea market vendor's license number. If the flea market vendor is

§ 105-53 is set out twice. See headings for effective dates.

exempt from licensing under subsections (e) or (g), the list shall show the reason for exemption and be signed by the flea market vendor and the flea market operator. At the time of registration, the flea market operator must require the flea market vendor to exhibit a valid flea market vendor's license or county exemption certificate and retail sales tax license for visual inspection by the flea market operator. Each daily registration list maintained pursuant to this subsection shall be retained by the flea market operator for no less than two years and shall at any time be made available upon request to any law enforcement officer.

(*l*) Penalty. — It shall be a misdemeanor, punishable by imprisonment of up to 30 days, a fine of up to two hundred dollars ($200.00), or both, for a person to:

(1) Fail to obtain a license as required by this section;

(2) Knowingly give false information in the application process for a license or when registering pursuant to subsection (k);

(3) If the person is an itinerant merchant or flea market vendor, fail to display the license as required by subsection (i) or if the person is a peddler or flea market operator, fail to produce the license as required by subsection (i) or if the person is required to do so, fail to comply with subsection (j). Whenever satisfactory evidence shall be presented in any court of the fact that a license was required by this section and such license was not displayed or produced as required by subsection (i), or that permission was required by subsection (j) of this section and was not displayed, the peddler, itinerant merchant, flea market vendor or flea market operator shall be found not guilty of that violation provided he produces in court a valid license or valid permission which had been issued prior to the time he was charged with such violation; or

(4) If the person is a flea market operator, fail to comply with subsection (k) or knowingly allow a flea market vendor to falsely register as exempt under subsection (k).

(m) Local License. — Counties and cities may levy a license tax on a business taxed under this section in an amount that does not exceed the State tax. Further, this section does not affect the authority of a county or city to impose additional requirements on peddlers, itinerant merchants, flea market vendors or flea market operators by an ordinance adopted under G.S. 153A-125 or G.S. 160A-178. (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; 1987, c. 213, s. 1; c. 708, ss. 1-6.)

Section Set Out Twice. — The section above is effective July 1, 1988. For this section as in effect until July 1, 1988, see the preceding section, also numbered § 105-53.

Effect of Amendments. —

Session Laws 1987, c. 213, s. 1, effective July 1, 1987, rewrote this section.

Session Laws 1987, c. 708, effective July 1, 1988, inserted "flea market vendors" in the catchline, rewrote the third sentence of subsection (b), which read "An itinerant merchant is not required to purchase a license under this subsection to sell goods or offer goods for sale at a flea market for which the operator has obtained a license under subsection (c)," inserted present subsection (d), redesignated former subsection (d) as subsection (e) and rewrote that subsection, redesignated former subsection (e) as subsection (g) and in that subsection added the subsection catchline "County Exemption," inserted "upon peddlers, itinerant merchants and flea market vendors," and substituted "sell" for "ped-

§ 105-53 is set out twice. See headings for effective dates.

dle," deleted former subsection (g), relating to a local license, and added subsections (h) through (m).

§ 105-80. Firearms dealers and dealers in other weapons.

(a) Firearms. — Every person, firm, or corporation who is engaged in the business of selling or offering for sale firearms, other than antique firearms or firearms that are weapons of mass death and destruction, shall obtain a license from the Secretary of Revenue for the privilege of engaging in business and shall pay a tax of fifty dollars ($50.00) for the license. As used in this subsection, the terms "antique firearm" and "weapons of mass death and destruction" have the same meanings as in G.S. 14-409.11 and G.S. 14-288.8, respectively. As used in this subsection, the term "engaged in the business of" shall mean devoting time, attention, and labor to selling or offering for sale firearms as a regular course of trade or business with the principal objective of profit through the repetitive purchase and sale, or the manufacture for sale, of firearms. Such term shall not include the making of occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection, or the sale of all or part of a personal collection of firearms.

A license issued under this subsection authorizes the licensee to engage in business at the location for which the license is issued and at a gun show held in the State. A "gun show" is an event sponsored either by an organization devoted to the collection, competitive use, or other sporting use of firearms or by an organization that sponsors events devoted to the collection, competitive use, or other sporting use of firearms in the community.

(b) Other Weapons. — Every person, firm, or corporation who is engaged in the business of selling or offering for sale bowie knives, dirks, daggers, leaded canes, iron or metallic knuckles, or similar weapons shall obtain a statewide license from the Secretary of Revenue for the privilege of engaging in business and shall pay a tax of two hundred dollars ($200.00) for the license.

(c) Local Licenses. — Counties and cities may levy a license tax on a business taxed under this section at an amount that does not exceed the State tax. (1939, c. 158, s. 145; 1941, c. 50, s. 3; 1959, c. 1205; 1973, c. 476, s. 193; 1985, c. 45; 1987, c. 554.)

Effect of Amendments. —
The 1987 amendment, effective October 1, 1987, rewrote this section.

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

(a) Automotive Service Stations. —

(1) Every person, firm, or corporation engaged in the business of servicing, storing, painting, repairing, welding, or upholstering motor vehicles, trailers, semitrailers, or engaged in the business of retail selling and/or delivering of any tires, tools, batteries, electrical equipment, automotive

accessories, including radios designed for exclusive use in automobiles, or supplies, motor fuels and/or lubricants, or any of such commodities, in this state, shall apply for and obtain from the Secretary of Revenue a State license for the privilege of engaging in such business in this State, and shall pay for such license an annual tax for each location where such business is carried on, as follows. The tax shall be the greater of the amount equal to five dollars ($5.00) multiplied by the number of motor fuel pumps, if any, operated at the location for which the license is sought and the applicable amount in the table below based on population.

In unincorporated communities and in cities or towns of less than 2,500 population	$10.00
In cities or towns of 2,500 and less than 5,000 population	15.00
In cities or towns of 5,000 and less than 10,000 population	20.00
In cities or towns of 10,000 and less than 20,000 population	30.00
In cities or towns of 20,000 and less than 30,000 population	40.00
In cities or towns of 30,000 or more	50.00

In computing the tax, the number of motor fuel pumps operated at a location is considered the number of dispensing nozzles at the location from which motor fuel can be dispensed simultaneously.

(2),(3) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 985, s. 1.

(4) No additional license tax under this subsection shall be levied upon or collected from any employee, agent, or salesman whose employer or principal has paid the tax for each location levied in this subsection.

(5) The tax imposed in G.S. 105-53 shall not apply to the sale of gasoline to dealers for resale.

(6) Counties, cities, and towns may levy a license tax upon each place of business located therein under this subsection not in excess of one fourth of that levied by the State.

(c) Motor Vehicle Dealers. —

(1) Every person, firm, or corporation engaged in the business of buying, selling, distributing, servicing, storing and/or exchanging motor vehicles, trailers, semitrailers, tires, tools, batteries, electrical equipment, lubricants, and/or automotive equipment, including radios designed for exclusive use in automobiles, and supplies in this State shall apply for and obtain from the Secretary of Revenue a State license for the privilege of engaging in such business in this State, and shall pay for such license an annual tax for each location where such business is carried on, as follows:

In unincorporated communities and in cities or towns of less than 1,000 population	$ 25.00
In cities or towns of 1,000 and less than 2,500 population	50.00
In cities or towns of 2,500 and less than 5,000 population	75.00
In cities or towns of 5,000 and less than 10,000 population	110.00

In cities or towns of 10,000 and less than 20,000 population $140.00
In cities or towns of 20,000 and less than 30,000 population 175.00
In cities or towns of 30,000 or more..... 200.00

Provided, that persons, firms, or corporations dealing in secondhand or used motor vehicles exclusively shall be liable for the tax as set out in the foregoing schedule unless such business is of a seasonal, temporary, transient, or itinerant nature, in which event the tax shall be three hundred dollars ($300.00) for each location where such business is carried on.

(2) Any person, firm, or corporation who or which deals exclusively in motor fuels and lubricants, and has paid the license tax levied under subsection (a) of this section, shall not be subject to any license tax under subsections (b) and (c) of this section. A person, firm, or corporation licensed under this subsection is not required to be licensed under subsections (a) or (b) of this section.

(3) No additional license tax under this subsection shall be levied upon or collected from any employee or salesman whose employer had paid the tax levied in this subsection; nor shall the tax apply to dealers in semitrailers weighing not more than five hundred pounds and carrying not more than one-thousand-pound load, and to be towed by passenger cars, nor to dealers in four-wheel, farm-type wagons equipped with rubber tires and designed to be pulled or towed by passenger cars or farm tractors.

(4) Premises on which cars are stored or sold when owned or operated by a licensed car dealer under the same name shall not be deemed as a separate place of business when conducted within the corporate limits of any city or town in which such car business is conducted.

(5) Counties, cities, and towns may levy a license tax on each place of business located therein, taxed under this subsection, not in excess of one fourth of that levied by the State, with the exception that the minimum tax may be as much as twenty dollars ($20.00): Provided, if such business is of a seasonal, temporary, transient, or itinerant nature, counties, cities, and towns may levy a tax of three hundred dollars ($300.00) for each location where such business is carried on. (1939, c. 158, s. 153; 1945, c. 708, s. 2; 1947, c. 501, s. 2; 1949, c. 392, s. 1; 1953, c. 1302, s. 2; 1959, c. 1259, ss. 9C-9E; 1973, c. 476, s. 193; 1985 (Reg. Sess., 1986), c. 826, s. 3; c. 985, ss. 1, 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Section 5 of Session Laws 1985 (Reg. Sess., 1986), c. 985, provides that the act does not affect pending litigation.

Effect of Amendments. —

Session Laws 1985 (Reg. Sess., 1986), c. 826, s. 3, effective June 30, 1986, substituted "dealers in four-wheel" for "dealers to four-wheel" near the end of subdivision (c)(3).

The 1985 (Reg. Sess., 1986) amendment by c. 985, s. 1, effective July 11, 1986, and applicable to licenses issued on or after July 1, 1986, added the last sentence of the introductory language of subdivision (a)(1), added the last sentence of subdivision (a)(1), and deleted subdivisions (a)(2) and (a)(3), which related to the tax rate in rural sections and the minimum tax per pump.

The amendment by c. 985, s. 2, effective July 11, 1986, added the last sentence of subdivision (c)(2).

§ 105-99. Wholesale distributors of motor fuels.

Every person, firm, or corporation engaged in the business of distributing or selling at wholesale any motor fuels in this State shall apply to the Secretary for an additional annual license to engage in such business, and shall pay for such privilege an additional annual license tax determined and measured by the number of pumps owned or leased by the distributor or wholesaler through which such motor fuels are sold, at retail, according to the following schedule:

For the first 50 pumps	$ 2.00 per pump
For 51 additional pumps and not more than 100 pumps	4.00 per pump
For 101 additional pumps and not more than 200 pumps	5.00 per pump
For 201 additional pumps and not more than 300 pumps	6.00 per pump
For 301 additional pumps and not more than 400 pumps	7.00 per pump
For 401 additional pumps and not more than 500 pumps	8.00 per pump
For 501 additional pumps and not more than 600 pumps	9.00 per pump
For all over 600 pumps	10.00 per pump

In computing the tax, the number of pumps owned or leased by a distributor or wholesaler is considered the number of dispensing nozzles from which motor fuel can be dispensed simultaneously.

Any contract or agreement, oral or written, express or implied by the terms or the effects of which the tax herein imposed shall be passed on directly or indirectly to any person, firm, or corporation not engaged in the business hereby taxed is hereby declared to be against the public policy of this State and null and void, and any person, firm, or corporation negotiating such an agreement, or receiving the benefits thereof, shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court.

The tax herein imposed shall be in addition to all other taxes imposed by this Chapter or under any other laws.

Counties, cities and towns shall not levy any tax by reason of the additional tax imposed by this section, but this section shall in no way affect the right given to counties, cities, and towns to levy taxes under G.S. 105-89.

The business taxed under this section shall not be taxed under G.S. 105-98. (1939, c. 158, s. 162½; 1963, c. 1169, s. 12; 1973, c. 476, s. 193; 1985 (Reg. Sess., 1986), c. 985, s. 3.)

Editor's Note. — Section 5 of Session Laws 1985 (Reg. Sess., 1986), c. 985, provides that the act does not affect pending litigation.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 11, 1986, added the last sentence of the first paragraph.

§ 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 created other than under Chapter 54B of the General Statutes or the Home Owners' Loan Act of 1933 (12 U.S.C. §§ 1461-68), 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; (1985 (Reg. Sess., 1986), c. 985, s. 4.)

Editor's Note. — Section 5 of Session Laws 1985 (Reg. Sess., 1986), c. 985, provides that the act does not affect pending litigation.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 11, 1986, inserted "created other than under Chapter 54B of the General Statutes or the Home Owners' Loan Act of 1933 (12 U.S.C. §§ 1461-68)" in the first sentence.

Administrative Provisions of Schedule B.

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

(d) (Effective July 1, 1988) The provisions of this section notwithstanding, violations of G.S. 105-53 shall be punished as provided for in that section. (1939, c. 158, s. 190; 1963, c. 294, s. 6; 1973, c. 476, s. 193; 1987, c. 708, s. 9.)

§ 105-112(d) has a delayed effective date. See notes for date.

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective July 1, 1988, added subsection (d).

Article 2C.

Schedule B-C. Alcoholic Beverage License and Excise Taxes.

Part 1. General Provisions.

§ 105-113.70. Issuance, duration, transfer of license.

CASE NOTES

Commission Decision Granting Permit Preempts Zoning Ordinance. — In case in which petitioner, without objection by respondent board, argued that the decision of the ABC Commission to grant him a permit preempted respondent's denial of his special exception use permit request since the zoning ordinance, upon which respondent's denial was based, attempted to regulate the sale of alcoholic beverages, which is a violation of State law, the trial court did not err in concluding that petitioner, as the holder of a valid ABC permit issued by the State Alcoholic Beverage Control Commission, was entitled to be issued a city beer license, and in ordering the tax collector of the city to issue any city license. In re Melkonian, — N.C. App. —, 355 S.E.2d 503 (1987).

Part 4. Excise Taxes, Distribution of Tax Revenue.

§ 105-113.80. Excise taxes on beer, wine, and liquor.

(c) Liquor. — An excise tax of twenty-eight percent (28%) is levied on liquor sold in ABC stores. Pursuant to G.S. 18B-804(b), the price of liquor on which this tax is computed is the distiller's price plus (i) the State ABC warehouse freight and bailment charges, and (ii) a markup for local ABC boards. This tax is in lieu of sales and use taxes; accordingly, liquor is exempt from those taxes as provided in G.S. 105-164.13(37). (1985, c. 114, s. 1; 1987, c. 832, s. 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. —

Session Laws 1987, c. 832, ss. 9 to 13 provide: "The board of commissioners of any county may, by resolution, after 10 days' public notice and a public hearing held pursuant thereto, adopt the expansion of the local sales tax levy provided in this act. Upon adoption of such a resolution, the board of commissioners shall forward a copy of the resolution to the Secretary of Revenue. Pursuant to the provisions of G.S. 105-483, 105-490, and 105-498, adoption of the expansion of the Local Government Sales and Use Act provided in Section 4 of this act constitutes adoption of an equivalent expansion of the local sales taxes levied under Articles 40, 41, and 42 of Chapter 105 of the General Statutes.

"If a county fails to adopt the expansion of the Local Government Sales and Use Tax Act provided in Section 4 of this act on or before February 1, 1988, the sales and use taxes levied by the county pursuant to Articles 39, 40, 41, and 42

are repealed effective March 1, 1988, because they will be inconsistent with the scope of the levies authorized by those Articles as amended effective March 1, 1988. If Mecklenburg County fails to adopt the expansion of Section 4 of Chapter 1096 of the 1967 Session Laws provided in Section 5 of this act on or before February 1, 1988, the sales and use tax levied by Mecklenburg County pursuant to Chapter 1096 of the 1967 Session Laws is repealed effective March 1, 1988, because it will be inconsistent with the scope of the levy authorized by that Chapter as amended effective March 1, 1988, and the sales and use taxes levied by Mecklenburg County pursuant to Articles 40, 41, and 42 are repealed effective March 1, 1988, because those Articles will no longer apply to Mecklenburg County, as provided in G.S. 105-482, 105-489, and 105-497. If the sales and use taxes levied by a county are repealed as provided in this section because the county failed to adopt the expansion of the local sales tax levy, the county may, on or after March 1, 1988, levy local sales and use taxes in accordance with the provisions of Articles 39, 40, 41, and 42 of Chapter 105 of the General Statutes and Chapter 1096 of the 1967 Session Laws, as applicable.

"This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"It is the intent of the General Assembly that a Select Committee composed of members of the General Assembly shall be appointed to study the impact on local sales and use tax revenue and the administrative cost savings to the State of consolidating the local sales and use taxes levied under Articles 39, 40, 41, and 42 of Chapter 105 of the General Statutes and under Chapter 1096 of the 1967 Session Laws, as amended, with the State sales and use tax levied under Article 5 of Chapter 105 of the General Statutes. It is further intended that the Select Committee shall report to the 1987 General Assembly on the first day of the 1988 Regular Session.

"It is the intent of the General Assembly that if the local sales and use taxes levied under Articles 39, 40, 41, and 42 of Chapter 105 of the General Statutes and under Chapter 1096 of the 1967 Session Laws, as amended, are at a later date consolidated with the State sales and use taxes levied under Article 5 of Chapter 105 of the General Statutes, then the legislation enacting the consolidation shall also change the method of distributing the proceeds of the excise tax on liquor levied under G.S. 105-113.80(c) from the current formulation to a new method that would distribute one-eighth (1/8) of the total proceeds of that excise tax to local governments in the same manner as the State sales and use tax proceeds that are distributed to local governments under the legislation that consolidates the local sales taxes with the State sales tax."

Effect of Amendments. —

The 1987 amendment, effective October 1, 1987, rewrote subsection (c).

§ 105-113.81A. Distribution of part of wine taxes attributable to North Carolina wine.

The Secretary shall on a quarterly basis credit to the Department of Agriculture ninety-four percent (94%) of the net proceeds of the excise tax collected on unfortified wine bottled in North Carolina during the previous quarter and ninety-five percent (95%) of the net proceeds of the excise tax collected on fortified wine bottled in North Carolina during the previous quarter, provided that the amount credited to the Department of Agriculture under this section shall not exceed ninety thousand dollars ($90,000) per fiscal year. The Department of Agriculture shall allocate the funds received under this section to the North Carolina Grape Growers Council to be used to promote the North Carolina grape and wine industry and to contract for research and development services to improve viticultural and enological practices in North Carolina. (1987, c. 836, s. 1.)

Editor's Note. — Session Laws 1987, c. 836, s. 3 makes this section effective August 1, 1987, and provides that it shall terminate June 30, 1997.

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

(a) Amount, Method. — The Secretary shall annually distribute the following percentages of the net amount of excise taxes collected on the sale of malt beverages and wine, less the amount of the net proceeds distributed under G.S. 105-113.81A, to the counties and cities in which the retail sale of these beverages is authorized:

(1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty-three and three-fourths percent (23¾%);

(2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), sixty-two percent (62%); and

(3) Of the tax on fortified wine levied under G.S. 105-113.80(b), twenty-two percent (22%).

If malt beverages, unfortified wine, or fortified wine may be licensed to be sold at retail in both a county and a city located in the county, both the county and city shall receive a portion of the amount of excise tax to be distributed, that portion to be determined on the basis of population. If one of these beverages may be licensed to be sold at retail in a city located in a county in which the sale of the beverage is otherwise prohibited, only the city shall receive a portion of the amount of excise tax to be distributed, that portion to be determined on the basis of population. The amounts to be distributed under subdivisions (1), (2), and (3) shall be computed separately.

(1985, c. 114, s. 1; 1987, c. 836, s. 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. —

Session Laws 1987, c. 836, which amended the first sentence of subsection (a), provides in s. 3 that the act shall terminate June 30, 1997.

Effect of Amendments. —

The 1987 amendment, effective August 1, 1987, inserted "less the amount of the net proceeds distributed under G.S. 105-113.81A" in the first sentence of subsection (a).

Part 5. Administration.

§ 105-113.86. Bonds.

(a) Wholesalers and Importers. — Each holder of a malt beverage wholesaler license, a wine wholesaler license, or an importer license shall furnish a bond in an amount of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000) to cover his tax liability. The bond shall be conditioned on compliance with this Article, shall be payable to the State, shall be in a form acceptable to the Secretary, and shall be secured by a corporate surety or by a pledge of obligations of the federal government, the State, or a political subdivision of the State. The Secretary shall proportion the bond amount to the anticipated tax liability of the

wholesaler or importer. The Secretary shall periodically review the sufficiency of bonds furnished by wholesalers and importers, and shall increase the amount of a bond required of a wholesaler or importer when the amount of the bond furnished no longer covers the wholesaler's or importer's anticipated tax liability.

(b) Nonresident Vendors. — The Secretary may require the holder of a nonresident vendor license to furnish a bond in an amount not to exceed two thousand dollars ($2,000). The bond shall be conditioned on compliance with this Article, shall be payable to the State, shall be in a form acceptable to the Secretary, and shall be secured by a corporate surety or by a pledge of obligations of the federal government, the State, or a political subdivision of the State. (1985, c. 114, s. 1; 1987, c. 18.)

Effect of Amendments. — The 1987 amendment, effective March 18, 1987, deleted "secured by a corporate surety" following "furnish a bond" in the first sentences of subsections (a) and (b), and in the second sentences of subsections (a) and (b) deleted "and" preceding "shall be in a form" and inserted "and shall be secured by a corporate surety or by a pledge of obligations of the federal government, the State, or a political subdivision of the State" at the end thereof.

Article 3.

Schedule C. Franchise Tax.

§ 105-114. Nature of taxes; definitions.

The taxes levied in this Article upon persons and partnerships are for the privilege of engaging in business or doing the act named. The taxes levied in this Article upon corporations are privilege or excise taxes levied upon:

(1) Corporations organized under the laws of this State for the existence of the corporate rights and privileges granted by their charters, and the enjoyment, under the protection of the laws of this State, of the powers, rights, privileges and immunities derived from the State by the form of such existence; and

(2) Corporations not organized under the laws of this State for doing business in this State and for the benefit and protection which such corporations receive from the government and laws of this State in doing business in this State.

As used in this Article, the term "Code" means the Internal Revenue Code as enacted as of January 1, 1987, and includes any provisions enacted as of that date which become effective either before or after that date.

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

whether or not organized under the laws of this State, doing business within the State.

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

If the corporation is organized under the laws of this State, the payment of the taxes levied by this Article shall be a condition precedent to the right to continue in such form of organization; and if the corporation is not organized under the laws of this State, payment of said taxes shall be a condition precedent to the right to continue to engage in doing business in this State. The taxes levied in this Article or schedule shall be for the fiscal year of the State in which said taxes become due; except, that the taxes levied in G.S. 105-122 and 105-123 shall be for the income year of the corporation in which such taxes become due. For purposes of this Article, the words "income year" shall mean an income year as defined in G.S. 105-130.2(5). (1939, c. 158, s. 201; 1943, c. 400, s. 3; 1945, c. 708, s. 3; 1965, c. 287, s. 16; 1967, c. 286; 1969, c. 541, s. 6; 1973, c. 1287, s. 3; 1983, c. 713, s. 66; 1985, c. 656, s. 7; 1985 (Reg. Sess., 1986), c. 853, s. 1; 1987, c. 778, s. 1.)

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment, effective for taxable years beginning on or after January 1, 1986, substituted "January 1, 1986" for "December 31, 1984" in the second paragraph.

The 1987 amendment, effective August 12, 1987, substituted "January 1, 1987, and includes any provisions enacted as of that date which become effective either before or after that date" for "January 1, 1986, and includes any provisions enacted as of that date which become effective after that date" in the second undesignated paragraph of this section.

CASE NOTES

Constitutionality. — Assessment of tax under this section against a business trust did not violate the uniformity requirement of N.C. Const., Art. V, § 2, on grounds that it was similar to a limited partnership, which is not subject to the franchise tax. First Carolina Investors v. Lynch, 78 N.C. App. 583, 337 S.E.2d 691 (1985).

What Organizations Are Taxable under this Section. — This section levies a franchise tax only upon organizations which are (1) corporations as defined within that section, and (2) doing business within North Carolina. First Carolina Investors v. Lynch, 78 N.C. App. 583, 337 S.E.2d 691 (1985).

Corporation. — Under the terms of this section, an organization is properly classified as a corporation for franchise tax purposes when it satisfies three criteria: (1) It is a corporation, association, joint-stock company or any other form of organization for pecuniary gain; (2) it has capital stock represented by shares; and (3) it has privileges not possessed by individuals or partnerships. First Carolina Investors v. Lynch, 78 N.C. App. 583, 337 S.E.2d 691 (1985).

"Capital stock" must be read to encompass ownership interests in all the different types of business organizations potentially subject to the franchise tax. First Carolina Investors v. Lynch, 78 N.C. App. 583, 337 S.E.2d 691 (1985).

Despite the fact that plaintiff was organized as a business trust rather than as an ordinary business corporation, and that its shares of capital stock were designated as "shares of beneficial interest," plaintiff's shares were the functional equivalent of capital stock for purposes of this section. First Carolina Investors v. Lynch, 78 N.C. App. 583, 337 S.E.2d 691 (1985).

Privileges Not Possessed by Indi-

viduals or Partnerships. — By establishing for its trustees and shareholders limited liability for trust obligations, the plaintiff obtained a privilege not possessed by individuals or partnerships for purposes of this section. First Carolina Investors v. Lynch, 78 N.C. App. 583, 337 S.E.2d 691 (1985).

Cited in Secretary of Revenue v. Carolina Tel. & Tel. Co., 81 N.C. App. 240, 344 S.E.2d 46 (1986).

§ 105-120. (Effective January 1, 1989) Franchise or privilege tax on telephone companies.

(a) Every person, firm, or corporation, domestic or foreign, owning and/or operating a business entity for the provision of local telecommunications service, shall within 30 days after the first day of January, April, July and October of each year, make and deliver to the Secretary of Revenue a quarterly return, verified by the affirmation of the officer or authorized agent making such return, showing the total amount of gross receipts of such business entity for the three months ending the last day of the month immediately preceding such return, and pay, at the time of making such return, the franchise, license or privilege tax herein imposed. Gross receipts shall be reported on an accrual basis.

For purposes of this section:

(1) "Local telecommunications service" means telecommunications service provided wholly within a LATA entitling the user to access to a local telephone exchange for the privilege of telephonic quality communication with substantially all persons in the local telephone exchange. Provided, however, local telecommunications service does not include intraLATA or interLATA toll telecommunications services, or private telecommunications services;

(2) "LATA" is a Local Access and Transport Area representing a geographical area comprising one or more telephone exchange areas;

(3) "InterLATA telecommunications" is telecommunications service provided between two or more LATAs;

(4) "Toll communications service" means:

a. A telephonic quality communication for which:

1. There is a toll charge which varies in amount with the distance and elapsed transmission time of each individual communication; and

2. The charge is paid within the United States; and

b. A service which entitles the subscriber, upon payment of a periodic charge (determined as flat amount or upon the basis of total elapsed transmission time), to the privilege of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radiotelephone stations in a specified area which is outside the local telephone exchange;

(5) "Private telecommunications service" means a service furnished to a subscriber that entitles the subscriber to exclusive or priority use of a communications channel or group of channels between exchanges.

(b) An annual franchise or privilege tax of three and twenty-two hundredths percent (3.22%), payable quarterly, on the gross receipts of such business entity, is herein imposed for the privilege of

§ 105-120 has a delayed effective date. See notes for date.

engaging in such business within this State. Provided, however, gross receipts from local telephone service shall not include telecommunications access charges. Such gross receipts shall include all rentals and other similar charges; Provided, where any city or town in the State has heretofore sold at public auction to the highest bidder the right, license and/or privilege of engaging in such business in such city or town, based upon a percentage of gross revenue of such business entity, and is now collecting and receiving therefor a revenue tax not exceeding one percent of such revenues, the amount so paid by such business entity, upon being certified by the treasurer of such municipality to the Secretary of Revenue, shall be from time to time credited by the Secretary of Revenue to such business entity upon the tax imposed by the State under this section of this Chapter. Telecommunications access charges are those charges paid to a provider of local telephone service for access to an interconnection with the local telephone exchange.

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

(d) The Secretary of Revenue shall ascertain the total gross receipts derived from local business conducted within each municipality in this State by persons, firms or corporations taxed under this section, and out of the tax levied by this section, an amount equal to a tax of three and nine hundredths percent (3.09%) of the gross receipts from local business conducted within any municipality shall be distributed to such municipality. When a person, firm or corporation taxed under this section properly receives a credit on said taxes under the proviso in subsection (b) because of payments made to a municipality, such municipality's distributive share of the taxes levied by this section shall be reduced by the amount of the credit properly received by said person, firm or corporation. If the credit received under the proviso is greater than the municipality's distributive share of the taxes levied under this section, no distribution to such municipality shall be made.

As soon as practicable under the date on which each quarterly payment of taxes is due under this section, the Secretary of Revenue shall certify to the State Disbursing Officer and to the State Treasurer the amount distributable to each municipality under this section. The State Disbursing Officer shall thereupon issue a warrant on the State Treasurer to each municipality in the amount so certified.

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

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

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

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

(f) Counties, cities and town shall not levy any franchise, license or privilege tax on the business taxed under this section or under

§ 105-120 has a delayed effective date. See notes for date.

G.S. 105-164.4(4c). (1939, c. 158, s. 207; 1949, c. 392, s. 2; 1959, c. 1259, s. 3; 1967, c. 1272, ss. 2, 4; 1971, c. 298, s. 2; 1973, c. 476, s. 193; c. 1287, s. 3; 1983 (Reg. Sess., 1984), c. 1097, ss. 3, 16; 1987, c. 557, ss. 1-3.)

For this section as in effect until January 1, 1989, see the main volume.

Effect of Amendments. —

The 1987 amendment, effective January 1, 1989, rewrote subsection (a), rewrote subsection (b), and added "or under G.S. 105-164.4(4c)" at the end of subsection (f).

CASE NOTES

Word "rentals", etc. —

"Rentals" are the amounts paid by telephone customers for local exchange rentals. Secretary of Revenue v. Carolina Tel. & Tel. Co., 81 N.C. App. 240, 344 S.E.2d 46, cert. denied, 318 N.C. 283, 347 S.E.2d 465 (1986).

"Tolls received from business" are the charges paid to telephone company by its customers for the privilege of using the company's message transmission and communication equipment. Secretary of Revenue v. Carolina Tel. & Tel. Co., 81 N.C. App. 240, 344 S.E.2d 46, cert. denied, 318 N.C. 283, 347 S.E.2d 465 (1986).

The phrase "other similar charges" means charges of the same kind and character as rentals. Secretary of Revenue v. Carolina Tel. & Tel. Co., 81 N.C. App. 240, 344 S.E.2d 46, cert. denied, 318 N.C. 283, 347 S.E.2d 465 (1986).

Revenues received by telephone company from sale of advertisements to appear in the "yellow page" classified directory are not includable as "gross receipts" of a telephone company for franchise tax purposes as defined in this section. Secretary of Revenue v. Carolina Tel. & Tel. Co., 81 N.C. App. 240, 344 S.E.2d 46, cert. denied, 318 N.C. 283, 347 S.E.2d 465 (1986).

§ 105-120.2. Franchise or privilege tax on holding companies.

(a) Every corporation, domestic and foreign, incorporated or, by an act, domesticated under the laws of this State or doing business in this State which, at the close of its taxable year is a holding company as defined in subsection (c) of this section, shall, pursuant to the provisions of G.S. 105-122:

(1) Make a report and statement, and

(2) Determine the total amount of its issued and outstanding capital stock, surplus and undivided profits, and

(3) Apportion such outstanding capital stock, surplus and undivided profits to this State.

(b) (1) Every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the report and statement are 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 amount determined under subsection (a) of this section, but in no case shall the tax be more than seventy-five thousand dollars ($75,000) nor less than twenty-five dollars ($25.00).

(2) Notwithstanding the provisions of subdivision (1) of this subsection, if the tax produced pursuant to application of this paragraph (2) exceeds the tax produced pursuant to application of subdivision (1), then the tax shall be levied at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) on the greater of the amounts of

a. Fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each such corporation plus the total appraised value of intangible property returned for taxation of intangible personal property as computed under G.S. 105-122(d); or

b. The total actual investment in tangible property in this State of such corporation as computed under G.S. 105-122(d).

(c) For purposes of this section, a "holding company" is any corporation which receives during its taxable year more than eighty percent (80%) of its gross income from corporations in which it owns directly or indirectly more than fifty percent (50%) of the outstanding voting stock.

(d) Repealed by Session Laws 1985, c. 656, s. 39, effective for taxable years beginning on or after January 1, 1985.

(e) Counties, cities and towns shall not levy a franchise tax on corporations taxed under this section. The tax imposed under the provisions of G.S. 105-122 shall not apply to businesses taxed under the provisions of this section. (1975, c. 130, s. 1; 1985, c. 656, s. 39; 1985 (Reg. Sess., 1986), c. 854, s. 1.)

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective for franchise taxes due on or after March 15, 1987, substituted "twenty-five dollars ($25.00)" for "ten dollars ($10.00)" in subdivision (b)(1).

§ 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 twenty-five dollars ($25.00) and shall be for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each such corporation in this State. Appraised value of tangible property including real estate shall be the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. Appraised value of intangible property shall be the total gross valuation required to be reported for intangible tax purposes on April 15 coincident with or next preceding the due date of the franchise tax return. The term "total actual investment in tangible property" as used in this section shall be construed to mean 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 abate-

ment plants or equipment constructed or installed on or after January 1, 1955.

(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) Repealed by Session Laws 1981 (Reg. Sess., 1982), c. 1211, s. 5. (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; 1981 (Reg. Sess., 1982), c. 1211, s. 5; 1985, c. 656, s. 40; 1985 (Reg. Sess., 1986), c. 826, s. 6; c. 854, s. 1.)

Effect of Amendments. —

Session Laws 1985 (Reg. Sess., 1986), c. 826, s. 6, effective June 30, 1986, deleted a proviso reading "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" at the end of the second sentence of subsection (d).

Session Laws 1985 (Reg. Sess., 1986), c. 854, s. 1, effective for franchise taxes due on or after March 15, 1987, substituted "twenty-five dollars ($25.00)" for "ten dollars ($10.00)" in the second sentence of subsection (d).

§ 105-123. New corporations.

(a) No corporation shall be permitted to do business in this State without paying the franchise tax levied in this Article. When a corporation is incorporated, domesticated or commences business in this State, it shall on or before the sixtieth day following the date of its incorporation, domestication or commencement of business in this State make and deliver to the Secretary of Revenue in such form as he may prescribe a full, accurate and complete return 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 in the administration of the tax levied under this Article. There shall be annexed to the return the affirmation of the officer signing the same, which shall be in the form prescribed in G.S. 105-122.

Every corporation subject to the provisions of this section shall pay a franchise tax of twenty-five dollars ($25.00) which shall be

due at the time the return is due and which shall be for the period from date of incorporation, domestication or commencement of business in this State through the last day of the then current income year. In no case shall such period exceed 53 weeks.

(1939, c. 158, s. 211; 1945, c. 708, s. 3; 1967, c. 286; c. 1110, s. 2; 1973, c. 476, s. 193; 1985 (Reg. Sess., 1986), c. 854, s. 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective January 1, 1987, and applicable to franchise tax returns of corporations that file articles of incorporation or applications for certificates of authority on or after that date, substituted "twenty-five dollars ($25.00)" for "ten dollars ($10.00)" in the second paragraph of subsection (a).

§ 105-125. Corporations not mentioned.

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

to the contrary, the taxes levied in this Article do not apply to any organization that is exempt from federal income tax under the Code.

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

Provided, that any corporation doing business in North Carolina which in the opinion of the Secretary of Revenue of North Carolina, qualifies as a "regulated investment company" under section 851 of the Code or as a "real estate investment trust" under the provisions of section 856 of the Code and which files with the North Carolina Department of Revenue its election to be treated as a "regulated investment company" or as a "real estate investment trust," shall in determining its basis for franchise tax be allowed to deduct the aggregate market value of its investments in the stocks, bonds, debentures, or other securities or evidences of debt of other corporations, partnerships, individuals, municipalities, governmental agencies or governments. (1939, c. 158, s. 213; 1951, c. 937, s. 3; 1955, c. 1313, s. 1; 1957, c. 1340, s. 3; 1963, c. 601, s. 3; c. 1169, s. 1; 1967, c. 1110, s. 2; 1971, c. 820, s. 3; c. 833, s. 1; 1973, c. 476, s. 193; c. 1053, s. 2; c. 1287, s. 3; 1975, c. 591, s. 1; 1983, c. 28, s. 2; c. 713, s. 67; 1985 (Reg. Sess., 1986), c. 826, s. 4.)

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective June 30, 1986, substituted "Code" for "Internal Revenue Code referred to in G.S. 105-130.3" at the end of the last sentence of the first paragraph.

Article 4.

Schedule D. Income Tax.

Division I. Corporation Income Tax.

§ 105-130.2. Definitions.

For the purpose of this Division, and unless otherwise required by the context:

(1) "Code" means the Internal Revenue Code as enacted as of January 1, 1987, and includes any provisions enacted as of that date which become effective either before or after that date.

(1939, c. 158, s. 302; 1941, c. 50, s. 5; 1955, c. 1331, s. 2; 1957, c. 1340, s. 4; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; 1983, c. 713, ss. 68, 82; 1985, c. 656, s. 7; 1985 (Reg. Sess., 1986), c. 853, s. 1; 1987, c. 778, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment, effective for taxable years beginning on or after January 1, 1986, substituted "January 1, 1986" for "December 31, 1984" in subdivision (1).

The 1987 amendment, effective August 12, 1987, substituted "January 1, 1987, and includes any provisions enacted as of that date which become effective either before or after that date" for "January 1, 1986, and includes any provisions enacted as of that date which become effective after that date" in subdivision (1).

§ 105-130.3. Corporations.

Every corporation doing business in this State shall pay annually an income tax equivalent to seven percent (7%) 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 Code 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; 1983, c. 713, s. 69; 1987, c. 622, s. 8.)

Editor's Note. — Session Laws 1987, c. 622, s. 1, provides that the act shall be known as the "School Facilities Finance Act of 1987."

Session Laws 1987, c. 622, s. 16 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — The 1987 amendment, effective for taxable years beginning on or after January 1, 1987, substituted "seven percent (7%)" for "six percent (6%)" in the first paragraph.

§ 105-130.4. Allocation and apportionment of income for corporations.

(s) All business income of an air or water transportation corporation shall be apportioned by a fraction, the numerator of which is the corporation's revenue ton miles in this State and the denominator of which is the corporation's revenue ton miles everywhere. The term "revenue ton mile" means one ton of passengers, freight, mail, or other cargo carried one mile. In making this computation, a passenger is considered to weigh two hundred pounds.

(t) (1) If any corporation believes that the method of allocation or apportionment as administered by the Secretary of Revenue has operated or will so operate as to subject it to taxa-

tion on a greater portion of its income than is reasonably attributable to business or earnings within the State, it shall be entitled to file with the Tax Review Board a petition setting forth the facts upon which its belief is based and its argument with respect to the application of the allocation formula. This petition shall be filed in such form and within such time as the Tax Review Board may prescribe. The Board shall grant a hearing thereon. At least three members of the Tax Review Board shall attend any hearing pursuant to such petition. In such cases, the Tax Review Board's membership shall be augmented by the addition of the Secretary of Revenue who shall sit as a member of said Board with full power to participate in its deliberations and decisions with respect to petitions filed under the provisions of this section. An informal record containing in substance the evidence, contentions and arguments presented at the hearing shall be made. All members of the augmented Tax Review Board shall consider such evidence, contentions and arguments and the decisions thereon shall be made by a majority vote of the augmented Board.

(2) If the corporation shall employ in its books of account a detailed allocation of receipts and expenditures which reflects more clearly than the applicable allocation formula prescribed by this section the income attributable to the business within this State, application for permission to base the return upon the taxpayer's books of account shall be considered by the Tax Review Board. The Board shall be authorized to permit such separate accounting method in lieu of applying the applicable allocation formula if the Board deems such method proper as best reflecting the income and earnings attributable to this State.

(3) If the corporation shall show that any other method of allocation than the applicable allocation formula prescribed by this section reflects more clearly the income attributable to the business within this State, application for permission to base the return upon such other method shall be considered by the Tax Review Board. The application shall be accompanied by a statement setting forth in detail, with full explanations, the method the corporation believes will more nearly reflect its income from business within this State. If the Board shall conclude that the allocation formula prescribed by this section allocates to this State a greater portion of the net income of the corporation than is reasonably attributable to business or earnings within this State, it shall determine the allocable net income by such other method as it shall find best calculated to assign to this State for taxation the portion of the corporation's net income reasonably attributable to its business or earnings within this State.

(4) There shall be a presumption that the appropriate allocation formula reasonably attributes to this State the portion of the corporation's income earned in this State, and the burden shall rest upon the corporation to show the contrary. The relief herein authorized shall be granted by the Board only in cases of clear, cogent and convincing proof

that the petitioning corporation is entitled thereto. No corporation shall use any alternative formula or method other than the applicable allocation formula provided by statute in making a report or return of its income to this State except upon order in writing of the Board, and any return in which any alternative formula or other method, other than the applicable allocation formula prescribed by statute, is used without permission of the Board shall not be a lawful return.

When the Board determines, pursuant to the provisions of this subsection, that an alternative formula or other method more accurately reflects the income allocable to North Carolina and renders its decision with regard thereto, the corporation shall allocate its net income for future years in accordance with such determination and decision of the Board so long as the conditions constituting the basis upon which the decision was made remain unchanged or until such time as the business method of operation of the corporation changes. Provided, however, that the Secretary of Revenue may, in his discretion, with respect to any subsequent year, require the corporation to furnish information relating to its property, operations, and activities.

(5) A corporation which proposes to do business in this State may file a petition with the Board setting forth the facts upon which it contends that the applicable allocation formula will allocate a greater portion of the corporation's future income to North Carolina than will be reasonably attributable to its proposed business or contemplated earnings within the State. Upon a proper showing in accordance with the procedure described above for determinations by the Board, the Board may authorize such corporation to allocate income from its future business to North Carolina on the basis prescribed by the Board under the provisions of this section for such future years if the conditions constituting the basis upon which the Board's decision is made remain unchanged and the business operations of the corporation continue to conform to the statement of proposed methods of business operation presented by the corporation to the Board.

(6) When the Secretary of Revenue asserts liability under the formula adjustment decision of the Tax Review Board, an aggrieved corporation may pay the tax and bring a civil action for recovery under the provisions of Article 9. (1939, c. 158, s. 311; 1941, c. 50, s. 5; 1943, c. 400, s. 4; 1945, c. 752, s. 3; 1953, c. 1302, s. 4; 1955, c. 1350, s. 18; 1957, c. 1340, s. 4; 1959, c. 1259, s. 4; 1963, c. 1169, s. 2; c. 1186; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 1287, s. 4; 1981 (Reg. Sess., 1982), c. 1212; 1987, c. 804, s. 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, added subsection (s), and redesignated former subsection (s) as subsection (t).

§ 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 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 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 Code; and

(7) Special deductions allowable under sections 241 to 247, inclusive, of the Code.

(8) Repealed by Session Laws 1987, c. 778, s. 2, effective August 12, 1987.

(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 total amounts allowed under this Article during the taxable year as a credit against the taxpayer's income tax. A corporation that apportions part of its income to this State shall make the addition required by this subdivision after it determines the amount of its income that is apportioned and allocated to this State and shall not apply to a credit taken under this Article the apportionment factor used by it in determining the amount of its apportioned income.

(11) The amount by which the percentage depletion allowance allowed by sections 613 and 613A of the Code for mines, oil and gas wells, and other natural deposits exceeds the cost depletion allowance for these items under the Code, except as otherwise provided herein. This subdivision does not apply to depletion deductions for clay, gravel, phosphate rock, lime, shells, stone, sand, feldspar, gemstones, mica, talc, lithium compounds, tungsten, coal, peat, olivine, pyrophyllite, and other solid minerals or rare earths extracted from the soil or waters of this State. Corporations required to apportion income to North Carolina shall first add to federal taxable income the amount of all percentage depletion in excess of cost depletion that was subtracted from the corporation's gross income in computing its federal income taxes and shall then subtract from the taxable income apportioned to North Carolina the amount by which the percentage depletion allowance allowed by sections 613 and 613A of the Code for solid minerals or rare

earths extracted from the soil or waters of this State exceeds the cost depletion allowance for these items.

(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 under the Code 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 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 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 Code.

(10) Repealed Session Laws 1987, c. 778, s. 2, effective August 12, 1987.

(11) The amount by which a deduction for an ordinary and necessary business expense was required to be reduced un-

der the Code for federal tax purposes or the amount of such a deduction that was not allowed under the Code because the corporation claimed a federal tax credit against its federal income tax liability for the income year in lieu of a deduction.

(12) Reasonable expenses, in excess of deductions allowed under the Code, paid for reforestation and cultivation of commercially grown trees; provided, that this deduction shall be allowed only to those corporations in which the real owners 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 Code, 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 Code.

(14) The amount by which the basis of a depreciable asset is required to be reduced under the Code for federal tax purposes because of a tax credit allowed against the corporation's federal income tax liability. This deduction may be claimed only in the year in which the Code requires that the asset's basis be reduced. In computing gain or loss on the asset's disposition, this deduction shall be considered as depreciation.

(15) The amount paid during the income year, pursuant to 7 U.S.C. § 1445-2, as marketing assessments on tobacco grown by the corporation in North Carolina.

(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 is allowed for any direct or indirect expenses related to income not taxed under this Division; provided, no adjustment shall be made under this subsection for adjustments addressed in G.S. 105-130.5(a) and (b).

(d) Repealed by Session Laws 1987, c. 778, s. 3, effective August 12, 1987.

(f) The exempt foreign trade income, as defined in Section 923 of the Code, of a foreign sales corporation shall not be included in the net income of the foreign sales corporation under this Division. Any expenses and commissions paid by a shareholder to a foreign sales corporation that are deductible under the Code shall be deductible from the shareholder's income under this Article. As used in this section, the term "foreign sales corporation" means a corporation that qualifies as a foreign sales corporation under the provisions of Subchapter N of Chapter 1 of the Code and has in effect for the entire taxable year a valid election under the Code to be treated as a foreign sales corporation. (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; 1983, c. 61; c. 713, ss. 70-73, 82, 83; 1985, c.

720, s. 1; c. 791, s. 43; 1985 (Reg. Sess., 1986), c. 825; 1987, c. 89; c. 637, s. 1; c. 778, ss. 2, 3; c. 804, s. 3.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. —

Session Laws 1987, c. 637, s. 3 provides that the act, which added subsection (f), shall expire December 30, 1991.

Session Laws 1987, c. 637, s. 2 provides: "The Department of Revenue shall report to the General Assembly on or before May 1 of each year the estimated revenue loss for that year attributable to the exemption of part of the foreign trade income of foreign sales corporations, as provided in G.S. 106-130.5(f)."

Effect of Amendments. —

The 1985 (Reg. Sess., 1986), amendment, effective for taxable years beginning on or after January 1, 1986, added the second sentence of subdivision (a)(10).

Session Laws 1987, c. 89, effective for taxable years beginning on or after January 1, 1987, substituted "total amounts allowed under this Article" for "amount of property taxes allowed under Division IV of this Article" in the first sentence of subdivision (a)(10), and substituted "a credit taken under this Article" for "this credit" in the second sentence of that subdivision.

Session Laws 1987, c. 637, s. 1, effective January 1, 1988, and applicable to taxable years beginning on or after that date, added subsection (f).

Session Laws 1987, c. 778, ss. 2, 3, effective August 12, 1987, deleted subdivision (a)(8), relating to depreciation or amortization claimed under the Code in connection with facilities for the handicapped, deleted subdivision (b)(10), relating to the cost of renovation of an existing building or facility in order to permit physically handicapped persons to enter and leave such building or facility or have effective use of the accommodations and facilities therein, and deleted subsection (d), which read "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 under section 337 of the Code."

Session Laws 1987, c. 804, s. 3, effective August 13, 1987, rewrote subdivision (c)(3).

§ 105-130.7. Deductible portion of dividends.

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

(5) Notwithstanding any other provisions of this Division, a corporation which is a shareholder in a holding company shall be allowed as a deduction an amount equal to those dividends received by it from such holding company, multiplied by a fraction, the numerator of which shall be the dividends received by such holding company attributable to North Carolina, and the denominator of which shall be the gross dividends received by such holding company; provided, however, that no deduction shall be allowed where the fraction is smaller than one-third (1/3). For purposes of this section, "dividends attributable to North Carolina" shall be the amount of dividend income received by the holding company on stock owned in other corporations equal to the total of the proportion of each of such corporation's dividends as shall be determined deductible by the Secretary under subdivisions (1) through (3a) of this section; provided that a holding company which owns more than fifty percent (50%) of the outstanding voting stock of one or more holding companies as defined in this subdivision shall be permitted a deduction for all dividends re-

ceived from such holding companies and all other corporations in which it owns more than fifty percent (50%) of the outstanding voting stock except that no deduction shall be allowed if less than one-third (1/3) of the dividends received by the holding company are attributable to North Carolina. A shareholder of such a holding company shall determine the deductible portion of its dividends received from such holding company as hereinabove provided except that the amounts received from a subsidiary holding company as "dividends attributable to North Carolina" shall be determined as though the subsidiary corporation of the subsidiary holding company had paid the dividends directly to the parent holding company. For the purposes of this section and unless the context clearly requires a different meaning, "holding company" shall mean any corporation subject to the tax imposed by G.S. 105-130.3 whose ordinary gross income consists of fifty percent (50%) or more of dividend income received from corporations in which it owns more than fifty percent (50%) of the outstanding voting stock, and "subsidiary" shall mean any corporation, more than fifty percent (50%) of whose outstanding voting stock is owned by another corporation. For the purposes of this subsection, the term "dividend" includes, in addition to corporate dividends, distributions received from a partnership by a corporation owning more than a fifty percent (50%) interest in the partnership.

(1939, c. 158, s. 322; 1941, c. 50, s. 5; 1943, c. 400, s. 4; c. 668; 1945, c. 708, s. 4; c. 752, s. 3; 1947, c. 501, s. 4; c. 894; 1949, c. 392, s. 3; 1951, c. 643, s. 4; c. 937, s. 4; 1953, c. 1031, s. 1; c. 1302, s. 4; 1955, c. 1100, s. 1; c. 1331, s. 1; cc. 1332, 1342; c. 1343, s. 1; 1957, c. 1340, ss. 4, 8; 1959, c. 1259, s. 4; 1961, c. 201, s. 1; c. 1148; 1963, c. 1169, s. 2; 1965, c. 1048; 1967, c. 1110, s. 3; 1969, c. 1124; 1973, c. 476, s. 193; c. 1053, s. 3; 1975, c. 661, s. 2; 1979, c. 801, s. 33; 1987, c. 804, s. 10.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective for taxable years beginning on or after January 1, 1987, rewrote subdivision (5).

§ 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. (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; 1987, c. 804, s. 4.)

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, deleted a former final sentence of this section, which read "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."

§ 105-130.11. Conditional and other exemptions.

(a) Except as provided in subsections (b) and (c), the following organizations and any organization that is exempt from federal income tax under the Code are exempt from the tax imposed under this Division.

(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 does not apply to interest, royalties, dividends or rents unless this income is determined to be "unrelated business taxable income" under the Code; 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.

(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; 1983, c. 28, s. 1; c. 31; 1985 (Reg. Sess., 1986), c. 826, s. 5.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective June 30, 1986, substituted "Code" for "Internal Revenue Code referred to in G.S. 105-130.3" in the introductory language of subsection (a) and in the second paragraph of subsection (b).

§ 105-130.27. Credit against corporate income tax for construction of a fuel ethanol distillery.

(a) Credit Allowed. — Any corporation which constructs in North Carolina a distillery to make ethanol from agricultural or forestry products for qualified uses shall be allowed a credit against the tax imposed by this Division. Subject to the limitation provided in subsection (d) of this section, the amount of the credit shall be equal to twenty percent (20%) of the installation and construction costs of the distillery, and an additional ten percent (10%) of those costs if the distillery is to be powered by use of an alternative fuel source. No credit is allowed, however, for the costs of purchasing the land or site work, which includes rock, paving, and excavation. In order to secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction, and payment for the installation and construction must be made by the taxpayer during the year preceding the year for which the credit is claimed. The amount of the credit allowed for any one taxable year shall be limited to twenty percent (20%) of the installation and construction costs paid during such year, or thirty percent (30%) if the distillery is to be powered by 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) Definitions. — For purposes of this section:

(1) "Alternative fuel source" includes agricultural and forestry products, waste petroleum products, and peat, but does not include other petroleum products, coal, or natural gas.

(2) "Qualified uses" of the ethanol made by the distillery are limited to use as a fuel by motor vehicles or airplanes, use as a de-icer, and use in processes associated with the removal of pollutants from coal and other sources of fuel. More than eighty percent (80%) of the ethanol made by the distillery must be intended for qualified uses in order to be eligible for the credit allowed by this section.

(3) A "distillery" includes only equipment associated with making, storing, and distributing ethanol and the related and necessary support facilities all of which are located and regularly used on the same premises.

(c) Application. — The credit may not be taken for the year in which the payments for construction and installation are made but shall be taken for the taxable year beginning during the calendar year following the calendar year in which the payments were made. To be eligible for the credit, a taxpayer must file an application for the credit with the Secretary of Revenue on or before April 15 following the calendar year in which the payments were made. The application shall be on a form prescribed by the Secretary and shall include any supporting documentation the Secretary may require.

(d) Ceiling. — The total amount of all tax credits allowed to taxpayers under this section for payments for construction and installation made in a calendar year may not exceed two million five hundred thousand dollars ($2,500,000). The Secretary of Revenue shall calculate the total amount of tax credits claimed from the applications filed pursuant to subsection (c). If the total amount of tax credits claimed for payments made in a calendar year exceeds two million five hundred thousand dollars ($2,500,000), the Secretary shall allow a portion of the credits claimed by allocating the total allowable amount among all taxpayers claiming the credits in proportion to the size of the credit claimed by each taxpayer. Provided, however, if the total amount of tax credits claimed under G.S. 105-151.6 for payments made in the calendar year is less than two million five hundred thousand dollars ($2,500,000), the Secretary shall allow an additional amount of credit under this subsection, allocated proportionally among applicants, until the total amount of all tax credits allowed equals five million dollars ($5,000,000). In no case may the total amount of all tax credits allowed under G.S. 105-151.6 and this section for payments made in a calendar year exceed five million dollars ($5,000,000).

If a credit claimed under this section is reduced as provided in this subsection, the Secretary shall notify the taxpayer of the amount of the reduction of the credit on or before December 31 of the year the taxpayer applied for the credit. The amount of the reduction of the credit may be carried forward and claimed for the next succeeding ten years if the taxpayer reapplies for a credit for the amount of the reduction, as provided in subsection (c). In such a reapplication, the payments for which a credit is claimed shall be considered as if they had been made in the year preceding the reapplication. The Secretary's allocations based on applications filed pursuant to subsection (c) are final and shall not be adjusted to account for credits applied for but not claimed.

(e) Carry-forward. — The amount of the credit allowed under this section may be carried forward for the next succeeding ten taxable years.

(f) Special Corporations. — If the corporation is a "Special Corporation" as described by G.S. 105-130.13, the corporation may elect to pass-through the credit allowed by this section to its shareholders in the same manner in which a partnership passes credits through to its partners. If this election is made, the credit may not be claimed by the corporation. Once made, this election may not be revoked and it applies for all subsequent years.

(g) Expiration. — This section applies only to costs incurred during taxable years beginning prior to January 1, 1993. (1979, 2nd Sess., c. 1265, s. 1; 1987, c. 872, s. 1.)

Effect of Amendments. — The 1987 amendment, effective for taxable years beginning on or after January 1, 1988, rewrote this section.

§ 105-130.37. Credit for gleaned crop.

(a) Any corporation that grows a crop and permits the gleaning of the crop shall be allowed a credit against the tax imposed by this Division equal to ten percent (10%) of the market price of the quantity of the gleaned crop. This credit may 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 tax payments made by or on behalf of the taxpayer. No deduction is allowed under G.S. 105-130.5(b)(5) for the items for which a credit is claimed under this section. Any unused portion of the credit may be carried forward for the succeeding five years.

(1983 (Reg. Sess., 1984), c. 1018, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected, it is not set out.

Editor's Note. — Subsection (a) of this section is set out above to correct a misspelling in the main volume.

§ 105-130.40. Credit for creating jobs in severely distressed county.

(a) Credit. — A corporation that (i) for at least 40 weeks during the year has at least nine employees, (ii) is located, for part or all of its taxable year, in a severely distressed county, and (iii) is eligible as provided in subsection (b), may qualify for a credit against the tax imposed by this Division by creating new full-time jobs with the corporation in the severely distressed county during that year. A corporation that hires an additional full-time employee during that year to fill a position located in a severely distressed county is allowed a credit of two thousand eight hundred dollars ($2,800) for the additional employee. A position is located in a county if (i) at least fifty percent (50%) of the employee's duties are performed in the county, or (ii) the employee is a resident of the county. The credit may not be taken in the income year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the income year in which the additional employee was hired and shall be conditioned on the continued employment by the corporation of the number of full-time employees the corporation had upon hiring the employee that caused the corporation to qualify for the credit. If, in one of the four years in which the installment of a credit accrues, the number of

the corporation's full-time employees falls below the number of full-time employees the company had in the year in which the corporation qualified for the credit or the position filled by the employee is moved to another county, the credit expires and the corporation may not take any remaining installment of the credit. The corporation may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under subsection (e) of this section.

The North Carolina Employment Security Commission shall determine the number of new full-time jobs eligible for the credit allowed by this section by comparing the average number of full-time employees reported by the corporation on the quarterly wage reports submitted to the Commission during the year with the number reported the previous year, and shall provide that information to the Secretary of Revenue annually for each employer eligible under subsection (b) of this section.

For the purposes of this section, a full-time job is a position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(b) Eligibility. — A corporation is eligible for the credit allowed by this section only if it engages in manufacturing, agribusiness, processing, warehousing, wholesaling, retailing, research and development, or a service-related industry, as determined by the Employment Security Commission.

(c) County Designation. — A severely distressed county is a county designated as such by the Secretary of the Department of Commerce. Each year, on or before December 31, the Secretary of the Department of Commerce shall designate which counties are considered severely distressed, and shall provide that information to the Secretary of Revenue. A county is considered severely distressed if its distress factor is one of the twenty highest in the State and it has an unemployment rate of seven percent (7%) or more. The Secretary shall assign to each county in the State a distress factor which is the sum of (1) the county's rank in a ranking of counties by rate of unemployment from lowest to highest and (2) the county's rank in a ranking of counties by per capita income from highest to lowest. In measuring rates of unemployment and per capita income, the Secretary shall use data from the North Carolina Employment Security Commission and the United States Department of Commerce for the most recent thirty-six month period for which data is available. A designation as a severely distressed county is effective only for the calendar year following the designation.

(d) Planned Expansion. — A corporation that, during the year in which a county is designated as a severely distressed county, signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in that distressed county within two years of the date the letter is signed qualifies for the credit allowed by this section even though the employees are not hired that year. The credit shall be available in the income year after at least twenty employees have been hired if such hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the county is no longer designated a severely distressed county after the year the letter of commitment was signed, the credit is

still available. If the corporation does not hire the employees within the two-year period, the corporation does not qualify for the credit. However, if the corporation qualifies for a credit under subsection (a) in the year any new employees are hired, it may take the credit under that subsection.

(e) Limitations. — The sale, merger, acquisition, or bankruptcy of a business, or any other transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to jobs for which the predecessor was not eligible under this section. A successor corporation may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had taxable income. Jobs transferred from one county in the State to another county in the State shall not be considered new jobs for purposes of this section. A credit taken under this section may not exceed fifty percent (50%) of the tax imposed by this Division for the taxable year, reduced by the sum of all other credits allowed under this Division, except tax payments made by or on behalf of the corporation. Any unused portion of the credit may be carried forward for the succeeding five years. (1987, c. 568, s. 1.)

Editor's Note. — Session Laws 1987, c. 568, s. 3 makes this section effective for taxable years beginning on or after January 1, 1988, and provides that it shall expire for taxable years beginning on or after January 1, 1993. Section 3 further provides that notwithstanding the expiration of the credit, an installment of a credit and any unused portion of a credit for which the taxpayer qualified before the act expired shall remain available to the taxpayer, to be taken in accordance with the provisions that applied to the repealed credit.

Division II. Individual Income Tax.

§ 105-134. Purpose.

CASE NOTES

Provisions of § 105-147 Contravene Legislative Intent. — Interpretation of § 105-147(9)d 2 and 3 whereby non-North Carolina income is used to reduce a nonresident taxpayer's carryover losses is an indirect attempt to tax income not taxable by this State, in violation of the due process clause of the Fourteenth Amendment and the Law of the Land Clause of the North Carolina Constitution, and in contravention of legislative intent to tax only the North Carolina income of nonresident taxpayers, as stated in this section. Aronov v. Secretary of Revenue, — N.C. App. —, 355 S.E.2d 854 (1987).

§ 105-135. Definitions.

For the purpose of this Division, and unless otherwise required by the context:

(15) The word "Code" means the Internal Revenue Code as enacted as of January 1, 1987, and includes any provisions enacted as of that date which become effective either before or after that date. (1939, c. 158, s. 302; 1941, c. 50, s. 5; 1955, c. 1331, s. 2; 1957, c. 1340, s. 4; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1969, c. 1075, s. 4; 1973, c. 476, s. 193; 1977, c. 657, s. 5; c. 900, s. 5; 1979, c. 801, s. 36; 1983, c.

195; c. 713, ss. 75, 82; 1985, c. 656, s. 7; 1985 (Reg. Sess., 1986), c. 853, s. 1; 1987, c. 778, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment, effective for taxable years beginning on or after January 1, 1986, substituted "January 1, 1986" for "December 31, 1984" in subdivision (15).

The 1987 amendment, effective August 12, 1987, substituted "January 1, 1987, and includes any provisions enacted as of that date which become effective either before or after that date" for "January 1, 1986, and includes any provisions enacted as of that date which become effective after that date" in subdivision (15).

§ 105-141. "Gross income" defined.

Legal Periodicals. —

For note, "Stone v. Lynch: North Carolina Takes a Different Approach to Defining Gift," see 64 N.C.L. Rev. 677 (1986).

CASE NOTES

Cited in Lawing v. Lawing, 81 N.C. App. 159, 344 S.E.2d 100 (1986).

§ 105-141.2. Gross income — Alimony payments.

Gross income includes amounts received by a wife from her husband or by a husband from his wife as payments under a decree of divorce or separate maintenance, under a written separation agreement, or under a decree requiring support and maintenance to the extent includable in gross income for federal income tax purposes under the provisions of Section 71 of the Code. Provided, however, any amounts determined to be "excess amounts" under the provisions of Section 71 of the Code, shall be included in the gross income of the payor spouse, in the payor spouse's taxable year beginning in the "computation year" as defined in Section 71 of the Code. (1957, c. 1340, s. 4; 1967, c. 1110, s. 3; 1983, c. 713, s. 82; 1985, c. 444, s. 1; 1987, c. 778, s. 4.)

Effect of Amendments. —

The 1987 amendment, effective August 12, 1987, substituted "Code" for "Internal Revenue Code of 1954, as amended" in three places.

CASE NOTES

Cited in Lawing v. Lawing, 81 N.C. App. 159, 344 S.E.2d 100 (1986).

§ 105-144.1. Involuntary conversions; recognition of gain.

CASE NOTES

Cited in Lawing v. Lawing, 81 N.C. App. 159, 344 S.E.2d 100 (1986).

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

(i) Individual Whose Tax Home is Outside of United States. — The running of any period of time specified in subsection (a) or (c) of this section (other than the two years referred to in paragraph (4) of subsection (c)) shall be suspended during the time the taxpayer (or his spouse if the old residence and new residence are each used by the taxpayer and his spouse as their principal residence) has a tax home (as defined in section 911 (d)(3) of the Code) outside of the United States after the date of the sale of the old residence; except that any such period of time as so suspended shall not extend beyond the date four years after the date of the sale of the old residence.

(1957, c. 1340, s. 4; 1973, c. 1287, s. 5; 1975, c. 551, s. 1; 1977, c. 657, s. 5; 1979, c. 179, s. 2; 1981 (Reg. Sess., 1982), c. 1208, ss. 1-3; 1983, c. 713, s. 82; 1985, c. 85; 1985 (Reg. Sess., 1986), c. 826, s. 7.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective June 30, 1986, substituted "911 (d)(3)" for "913 (j)(1)(B)" near the middle of subsection (i).

§ 105-145. Exchanges of property.

CASE NOTES

Cited in Lawing v. Lawing, 81 N.C. App. 159, 344 S.E.2d 100 (1986).

§ 105-147. Deductions.

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

(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 deduc-

tion 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.

c. Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 826, s. 8, effective June 30, 1986.

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.

(21) a. 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.

b. In case of a spouse to whom payments have been made by a divorced or estranged spouse, and as a result of a change in such payments the payor spouse is required to include an "excess amount" under G.S. 105-141.2, the payee spouse shall be entitled to a deduction equal to the total of such "excess amount" in the payee spouse's taxable year beginning in the "computation year" as defined in Section 71 of the Code.

(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; 1981 (Reg. Sess., 1982), c. 1177, s. 2; c. 1205, ss. 2, 3; c. 1211, s. 4; 1983, c. 155, s. 1; c. 303, s. 1; c. 706, s. 1; c. 713, ss. 77, 78, 82, 84; c. 793, s. 4; 1983 (Reg. Sess., 1984), c. 1072; 1985, c. 88; c. 444, s. 2; c. 720, s. 2; 1985 (Reg. Sess., 1986), c. 826, s. 8; 1987, c. 778, s. 4; c. 804, s. 5.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment, effective June 30, 1986, deleted paragraph (13)c, which read "Rehabilitating certain certified historic structures, but only to the extent allowed by section 191 of the Code."

Session Laws 1987, c. 778, s. 4, effective August 12, 1987, substituted "Code" for "Internal Revenue Code of 1954, as amended" in paragraph (21)b.

Session Laws 1987, c. 804, s. 5, effective August 13, 1987, deleted a sentence immediately preceding paragraph (13)c, which read "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."

CASE NOTES

Constitutionality. — Interpretation of subsections (9)d 2 and 3 whereby non-North Carolina income is used to reduce a nonresident taxpayer's carryover losses is an indirect attempt to tax income not taxable by this State, in violation of the due process clause of the Fourteenth Amendment and the Law of the Land Clause of the North Carolina Constitution, and in contravention of legislative intent to tax only the North Carolina income of nonresident taxpayers, as stated in § 105-134. Aronov v. Secretary of Revenue, — N.C. App. —, 355 S.E.2d 854 (1987).

§ 105-149. Exemptions.

(a) There shall be deducted from the net income the following exemptions:

(1) In the case of a single individual who is not a head of household as defined in G.S. 105-135(8), a personal exemption of one thousand one hundred dollars ($1,100). In the case of a single individual who is a head of household, as defined in G.S. 105-135(8), a personal exemption of two thousand two hundred dollars ($2,200).

(2) In the case of a married couple living together, two thousand two hundred dollar ($2,200) exemption to the spouse having the larger adjusted gross income and one thousand one hundred dollar ($1,100) exemption to the other spouse; provided that the spouse having the larger income may by agreement with the other spouse allow that spouse to claim the two thousand two hundred dollar ($2,200) exemption in which case the spouse having the larger adjusted gross income must file a return and claim only the one thousand one hundred dollar ($1,100) exemption.

(2a) In the case of an individual who qualifies as "head of household" as defined in subdivision (8) of G.S. 105-135, two thousand two hundred dollars ($2,200), but the "head of household" exemption shall not be allowable to a married individual living with his or her spouse except as provided in subsection (c)(2) of this section. The "head of household" exemption shall be in lieu of and not in addition to the exemptions established in subdivisions (1), (2), (4), (6) and (7) of subsection (a). Only one "head of household" exemption shall be allowable with respect to any one household, as the term "household" is defined in subdivision (8) of G.S. 105-135, and no individual shall be entitled to more than one "head of household" exemption.

(3) In the case of a married couple living together, the spouse who does not claim the two thousand two hundred dollar ($2,200) exemption as provided in (a)(2), one thousand one hundred dollars ($1,100).

(4) In the case of a widow or widower having minor child or children, natural or adopted, two thousand two hundred dollars ($2,200).

(5) For taxable years, beginning on or between January 1, 1980, and December 31, 1980, seven hundred dollars ($700.00) for each dependent (as defined below) whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than one thousand dollars ($1,000), or who is a child of the taxpayer either under 19 years of age or a student regularly enrolled for full-time study in a school, college, or other institution of learning. For taxable years beginning on and after January 1, 1981, eight hundred dollars ($800.00) for each dependent (as defined below) whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than one thousand dollars ($1,000), or who is a child of the taxpayer either under 19 years of age or a student regularly enrolled for full-time study in a school, college, or other institution of learning. For the purpose of the preceding

sentence, the term "child" means an individual who is a son or daughter (natural or adopted), or a stepson or stepdaughter of the taxpayer.

An additional exemption of six hundred sixty dollars ($660.00) for a dependent (as defined in this subdivision) who is a full-time student at an accredited college or university or other institution of higher learning under such rules or regulations as may be prescribed by the Secretary of Revenue. For the purposes of this paragraph, the words "full-time student" shall mean a dependent enrolled in full-time study on the last day of the income year or enrolled for full-time study for a period of at least five months (whether or not consecutive) during the income year.

For the purposes of this subsection, the term "dependent" means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer:

a. A son or daughter (or a descendant of either), a stepson, or stepdaughter, a brother or sister (including a brother or sister of the half blood), a stepbrother, stepsister, father or mother (or an ancestor of either), a stepfather, a stepmother, a son or daughter of a brother or sister, a brother or sister of the father or mother, a son-in-law, a daughter-in-law, a father-in-law, a mother-in-law, a brother-in-law, or a sister-in-law of the taxpayer;
b. An individual who was a member of the same household as the taxpayer;
c. A former member of the same household as the taxpayer or an individual who otherwise qualifies as a dependent of the taxpayer, who for the taxable year of such taxpayer receives institutional care required by reason of a physical or mental disability.

The exemption provided in this subdivision for children of taxpayers shall be allowed only to the person claiming the two thousand two hundred dollar ($2,200) exemption provided in subdivision (2) of this subsection except, however, that where husband and wife are divorced and have children of their marriage for which they would otherwise be entitled to an exemption hereunder, the parent furnishing the chief support of his (or her) child during the income year shall be entitled to said exemption, irrespective of whether said parent has custody of said child or children or is head of the household during said year.

For the purpose of determining the chief support of an individual other than a son or daughter (natural or adopted) or a stepson or stepdaughter of the taxpayer, over one half of the support of the individual for the calendar year shall be treated as received from the taxpayer if:

a. No one individual contributed over half of such support;
b. Over half of such support was received from individuals each of whom, but for the fact that he did not contribute over half of such support, would have been entitled to claim such individual as a dependent for a taxable year beginning in such calendar year;

c. The taxpayer contributed over ten percent (10%) of such support; and

d. Each individual in paragraph b (other than the taxpayer) who contributed over ten percent (10%) of such support files a written declaration (in such manner and form as the Secretary of Revenue may prescribe) that he will not claim such individual as a dependent for any taxable year beginning in such calendar year.

Nothing in this subdivision shall be construed to allow one spouse to claim an exemption for the other spouse under this subdivision.

(6) In the case of an individual who has died during the income year, the same exemptions which would have been allowable to such individual under this subsection had the individual lived the entire income year.

(7) In the case of a divorced person having the sole custody of a minor child or children and receiving no alimony for the support of himself or herself, nor support for a child, or children, two thousand two hundred dollars ($2,200).

(8) In the case of any person who is blind, such person shall be entitled to an additional exemption of one thousand one hundred dollars ($1,100) in addition to all other exemptions allowed by law. Provided, such person shall submit to the Department of Revenue a certificate from a physician, an optometrist or from the Department of Human Resources certifying that such condition exists.

(8a) In the case of hemophiliacs meeting the criteria herein contained, such persons shall be entitled to an additional exemption of one thousand one hundred dollars ($1,100) in addition to all other exemptions provided by law. Eligible hemophiliacs shall be those who submit to the Division of Health Services of the Department of Human Resources a certificate from a physician or local health department, certifying that their condition is medically characterized as moderate or severe in the case of deficiencies of Factor VII or Factor IX, or in the case of deficiencies in Factors I — VIII or Factors X — XIII certifying that their condition causes physical or financial conditions similar to those resulting from Factor VIII or Factor IX deficiencies; and who attach a supporting statement to their North Carolina income tax return, including verification that said certificate has been obtained and submitted to the Division of Health Services of the Department of Human Resources.

An additional exemption of one thousand one hundred dollars ($1,100) is allowed in addition to all other exemptions provided by law, for each dependent (as defined in subdivision (a)(5) above), who is a hemophiliac meeting the criteria set out in the above paragraph. The Division of Health Services of the Department of Human Resources is directed to develop said certificate and inform physicians and local health departments of its availability.

(8b) In the case of any person who is deaf, such person shall be entitled to an additional exemption of one thousand one hundred dollars ($1,100) in addition to all other exemptions provided by law. For purposes of this subdivision, an individual is deaf only if his average loss in the speech

frequencies (500 to 2000 Hertz) in the better ear is 86 decibels (I.S.O.) or worse. Provided, such person shall submit to the Department of Revenue a certificate from a physician certifying that such condition exists.

(8c) In the case of persons suffering from chronic irreversible renal disease, whose condition requires that they utilize dialysis in connection with the amelioration of that condition, such persons shall be entitled to an additional exemption of one thousand one hundred dollars ($1,100) in addition to all other exemptions provided by law. Persons eligible for this exemption shall be those who submit to the Division of Health Services of the Department of Human Resources a certificate from a physician or local health department certifying that their condition is such that dialysis is required, as above provided, and who attach a supporting statement to their North Carolina income tax return, including verification that said certificate has been obtained and submitted to the Division of Health Services of the Department of Human Resources.

An additional exemption of one thousand one hundred dollars ($1,100) is allowed in addition to all other exemptions provided by law, for each dependent (as defined in subdivision (a) above) who suffers from chronic irreversible renal disease and who meets the criteria set out in the above paragraph. The Division of Health Services of the Department of Human Resources is directed to develop said certificate and inform physicians and local health departments of its availability.

(8d) An exemption of one thousand one hundred dollars ($1,100) for an individual who has one of the following conditions or whose dependent has one of these conditions:

a. Paraplegia;
b. Amputation of both legs above the knee; or
c. A disability that requires the person to use a wheelchair to move about and to function effectively.

This exemption is in addition to all other exemptions allowed by this subsection. To claim this exemption, a taxpayer must attach to his tax return on which he claims the exemption a statement from a physician certifying that the individual or dependent for whom the exemption is claimed has one of the conditions listed above.

(8e) In the case of persons with cystic fibrosis meeting the criteria herein contained, such persons shall be entitled to an additional exemption of one thousand one hundred dollars ($1,100) in addition to all other exemptions provided by law. Eligible persons with cystic fibrosis shall be those who submit to the Division of Health Services of the Department of Human Resources a certificate from a physician or local health department certifying that such condition exists.

An additional exemption of one thousand one hundred dollars ($1,100) is allowed in addition to all other exemptions provided by law for each dependent as defined above, who has cystic fibrosis and meets the criteria as set out above.

(8f) In the case of an individual who has an open neural tube defect or whose dependent has an open neural tube defect, an additional exemption of one thousand one hundred dollars ($1,100) for that individual or dependent. This exemption is in addition to all other exemptions allowed by this subsection. To claim this exemption, a taxpayer must submit to the Division of Health Services of the Department of Human Resources a certificate from a physician or local health department certifying that the individual or dependent for whom the exemption is claimed has an open neural tube defect. Upon receipt of a valid certificate, the Division will send the taxpayer a verification form which the taxpayer must attach to the tax return on which the exemption is claimed. The Division shall develop the certificate and verification form and shall inform physicians and local health departments of the availability of the certificate.

(8g) In the case of an individual who has multiple sclerosis or whose dependent has multiple sclerosis, an additional exemption of one thousand one hundred dollars ($1,100) for that individual or dependent. This exemption is in addition to all other exemptions allowed by this subsection. To claim this exemption, a taxpayer must attach to his tax return on which he claims the exemption a statement from a physician or local health department certifying that the individual or dependent for whom the exemption is claimed has multiple sclerosis.

(8h) In the case of an individual whose dependent has a severe head injury and is in either a persistent vegetative state or in a severely disabled condition as assessed by the Glasgow Outcome Scale, an exemption on one thousand one hundred dollars ($1,100) for that dependent. This exemption is in addition to all other exemptions allowed by this subsection. To claim this exemption, the taxpayer must attach to his tax return on which he claims the exemption a statement from a physician certifying that the dependent for whom the exemption is claimed has a severe head injury and is in either a persistent vegetative state or in a severely disabled condition as assessed by the Glasgow Outcome Scale.

(9) In the case of an individual who has reached the age of 65 years on or before the last day of the taxable year, an exemption of one thousand one hundred dollars ($1,100) in addition to all other exemptions allowed by this section.

(10) In the case of each severely retarded person over half of whose support for the taxable year has been provided by a parent or guardian, there shall be allowed an exemption of two thousand two hundred dollars ($2,200) in addition to all other exemptions allowed by this subsection. For the purposes of this subdivision, "severely retarded" shall mean a person whose intelligence quotient falls below 40.

In order to qualify for such exemption the parents or guardian of said persons shall provide the Department of Revenue with a statement verifying the condition of said persons from any medical doctor licensed to practice in North Carolina or any medical doctor who has graduated

from a medical college approved by the Board of Medical Examiners of the State of North Carolina and holds a license granted by any state of the United States or the District of Columbia or practicing psychologist or psychological examiner licensed to practice in North Carolina or any practicing psychologist or psychological examiner licensed or certified as a psychologist or psychological examiner by another state of the United States or the District of Columbia.

(1939, c. 158, s. 324; 1941, c. 50, s. 5; 1943, c. 400, s. 4; 1945, c. 708, s. 4; 1947, c. 501, s. 4; 1949, c. 392, s. 3; c. 1173; 1951, c. 643, s. 4; 1957, c. 1340, s. 4; 1959, c. 1259, s. 4; 1963, c. 1169, s. 2; 1967, c. 716, s. 2; c. 1110, s. 3; 1969, c. 1075, s. 4; 1971, c. 1087, s. 1; 1973, c. 468, ss. 1, 2; c. 476, ss. 143, 193; c. 1287, s. 5; 1975, c. 489, ss. 1, 2; c. 739, s. 1; 1977, c. 309, ss. 1-4; cc. 898, 1101; 1979, c. 801, ss. 48-66; 1983 (Reg. Sess., 1984), c. 1075, s. 1; 1985, cc. 174, 513, 568; 1985 (Reg. Sess., 1986), c. 909; 1987, c. 282, s. 32.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment, effective for taxable years beginning on or after January 1, 1986, rewrote subdivision (a)(8d).

The 1987 amendment, effective June 4, 1987, rewrote Session Laws 1985, c. 462, s. 12, as referenced in the Editor's note in the main volume, to read: "G.S. 105-149 is amended by deleting the phrase 'county health department' wherever it appears and substituting in lieu thereof the phrase 'local health department'; and G.S. 105-149 is further amended by deleting the phrase 'county health departments' wherever it appears and substituting in lieu thereof the phrase 'local health departments'." The directed substitutions have been made throughout subsection (a).

§ 105-151. Tax credits for income taxes paid to other states by individuals.

Legal Periodicals. —

For note, "Stone v. Lynch: North Carolina Takes a Different Approach to Defining Gift," see 64 N.C.L. Rev. 677 (1986).

§ 105-151.6. Credit against personal income tax for construction of a fuel ethanol distillery.

(a) Credit Allowed. — Any person who constructs in North Carolina a distillery to make ethanol from agricultural or forestry products for qualified uses shall be allowed a credit against the tax imposed by this Division. Subject to the limitation provided in subsection (d) of this section, the amount of the credit shall be equal to twenty percent (20%) of the installation and construction costs of the distillery, and an additional ten percent (10%) of those costs if the distillery is to be powered by use of an alternative fuel source. No credit is allowed, however, for the costs of purchasing the land or site work, which includes rock, paving, and excavation. In order to secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction, and payment for the installation and construction must be made by the taxpayer during the year preceding the year for which the credit is claimed. The amount of the credit allowed for any one taxable year shall be

limited to twenty percent (20%) of the installation and construction costs paid during such year, or thirty percent (30%) if the distillery is to be powered by 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) Definitions. — For purposes of this section:

(1) "Alternative fuel source" includes agricultural and forestry products, waste petroleum products, and peat, but does not include other petroleum products, coal, or natural gas.

(2) "Qualified uses" of the ethanol made by the distillery are limited to use as a fuel by motor vehicles or airplanes, use as a de-icer, and use in processes associated with the removal of pollutants from coal and other sources of fuel. More than eighty percent (80%) of the ethanol made by the distiller must be intended for qualified uses in order to be eligible for the credit allowed by this section.

(3) A "distillery" includes only equipment associated with making, storing, and distributing ethanol and the related and necessary support facilities all of which are located and regularly used on the same premises.

(c) Application. — The credit may not be taken for the year in which the payments for construction and installation are made but shall be taken for the taxable year beginning during the calendar year following the calendar year in which the payments were made. To be eligible for the credit, a taxpayer must file an application for the credit with the Secretary of Revenue on or before April 15 following the calendar year in which the payments were made. The application shall be on a form prescribed by the Secretary and shall include any supporting documentation the Secretary may require.

(d) Ceiling. — The total amount of all tax credits allowed to taxpayers under this section for payments for construction and installation made in a calendar year may not exceed two million five hundred thousand dollars ($2,500,000). The Secretary of Revenue shall calculate the total amount of tax credits claimed from the applications filed pursuant to subsection (c). If the total amount of tax credits claimed for payments made in a calendar year exceeds two million five hundred thousand dollars ($2,500,000), the Secretary shall allow a portion of the credits claimed by allocating the total allowable amount among all taxpayers claiming the credits in proportion to the size of the credit claimed by each taxpayer. Provided, however, if the total amount of tax credits claimed under G.S. 105-130.27 for payments made in the calendar year is less than two million five hundred thousand dollars ($2,500,000), the Secretary shall allow an additional amount of credit under this subsection, allocated proportionally among applicants, until the total amount of all tax credits allowed equals five million dollars ($5,000,000).

In no case may the total amount of all tax credits allowed under G.S. 105-130.27 and this section for payments made in a calendar year exceed five million dollars ($5,000,000).

If a credit claimed under this section is reduced as provided in this subsection, the Secretary shall notify the taxpayer of the

amount of the reduction of the credit on or before December 31 of the year the taxpayer applied for the credit. The amount of the reduction of the credit may be carried forward and claimed for the next succeeding ten years if the taxpayer reapplies for a credit for the amount of the reduction, as provided in subsection (c). In such a reapplication, the payments for which a credit is claimed shall be considered as if they had been made in the year preceding the reapplication. The Secretary's allocations based on applications filed pursuant to subsection (c) are final and shall not be adjusted to account for credits applied for but not claimed.

(e) Carry-forward. — The amount of the credit allowed under this section may be carried forward for the next succeeding ten taxable years.

(f) Special Corporations. — The credit allowed under this section includes the credit passed through from a partnership and the credit passed through an electing special corporation as described in G.S. 105-130.27. The investment in the distillery made by the partnership or the special corporation will be considered to have been made by the taxpayer for purposes of this section.

(g) Expiration. — This section applies only to costs incurred during taxable years beginning prior to January 1, 1994. (1979, 2nd Sess., c. 1265, s. 3; 1987, c. 872, s. 2.)

Effect of Amendments. — The 1987 amendment, effective for taxable years beginning on or after January 1, 1988, rewrote this section.

§ 105-151.12. Credit for certain real property donations.

Legal Periodicals. — For article, "The battle to Preserve North Carolina's Estuarine Marshes: The 1985 Legislations, Private Claims to Estuarine Marshes, Denial of Permits to Fill, and the Public Trust," see 64 N.C.L. Rev. 565 (1986).

§ 105-151.17. Credit for creating jobs in severely distressed county.

(a) Credit. — A person who (i) for at least 40 weeks during the year has at least nine employees, (ii) whose business is located, for part or all of his taxable year, in a severely distressed county, and (iii) who is eligible as provided in subsection (b) may qualify for a credit against the tax imposed by this Division by creating new full-time jobs with the business in the severely distressed county during that year. A person who hires an additional full-time employee during that year to fill a position located in a severely distressed county is allowed a credit of two thousand eight hundred dollars ($2,800) for the additional employee. A position is located in a county if (i) at least fifty percent (50%) of the employee's duties are performed in the county, or (ii) the employee is a resident of the county. The credit may not be taken in the income year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the income year in which the additional employee was hired and shall be conditioned on the continued employment by the taxpayer of the number of full-time employees the taxpayer had upon hiring the employee

that caused the taxpayer to qualify for the credit. If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the number of full-time employees the taxpayer had in the year in which the taxpayer qualified for the credit or the position filled by the employee is moved to another county, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under subsection (e) of this section.

The North Carolina Employment Security Commission shall determine the number of new full-time jobs eligible for the credit allowed by this section by comparing the average number of full-time employees reported by the taxpayer on the quarterly wage reports submitted to the Commission during the year with the number reported the previous year, and shall provide that information to the Secretary of Revenue annually for each employer eligible under subsection (b) of this section.

For the purposes of this section, a full-time job is a position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(b) Eligibility. — A taxpayer is eligible for the credit allowed by this subsection only if he owns a business that engages in manufacturing, agribusiness, processing, warehousing, wholesaling, retailing, research and development, or a service-related industry, as determined by the Employment Security Commission.

(c) County Designation. — A severely distressed county is a county designated as such by the Secretary of the Department of Commerce. Each year, on or before December 31, the Secretary of the Department of Commerce shall designate which counties are considered severely distressed, and shall provide that information to the Secretary of Revenue. A county is considered severely distressed if its distress factor is one of the twenty highest in the State and it has an unemployment rate of seven percent (7%) or more. The Secretary shall assign to each county in the State a distress factor which is the sum of (1) the county's rank in a ranking of counties by rate of unemployment from lowest to highest and (2) the county's rank in a ranking of counties by per capita income from highest to lowest. In measuring rates of unemployment and per capita income, the Secretary shall use data from the North Carolina Employment Security Commission and the United States Department of Commerce for the most recent thirty-six month period for which data is available. A designation as a severely distressed county is effective only for the calendar year following the designation.

(d) Planned Expansion. — A person who, during the year in which a county is designated as a severely distressed county, signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in that distressed county within two years of the date the letter is signed qualifies for the credit allowed by this section even though the employees are not hired that year. The credit shall be available in the income year after at least twenty employees have been hired if such hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection, except that if

the county is no longer designated a severely distressed county after the year the letter of commitment was signed, the credit is still available. If the taxpayer does not hire the employees within the two-year period, he does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, he may take the credit under that subsection.

(e) Limitations. — The sale, merger, acquisition, or bankruptcy of a business, or any other transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to jobs for which the predecessor was not eligible under this section. A taxpayer may, however, take any installment of or carried-over portion of a credit that his predecessor could have taken if he had taxable income. Jobs transferred from one county in the State to another county in the State shall not be considered new jobs for purposes of this section. A credit taken under this section may not exceed fifty percent (50%) of the tax imposed by this Division for the taxable year, reduced by the sum of all other credits allowed under this Division, except tax payments made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding five years. (1987, c. 568, s. 2.)

Editor's Note. — Session Laws 1987, c. 568, s. 3 makes this section effective for taxable years beginning on or after January 1, 1988, and provides that it shall expire for taxable years beginning on or after January 1, 1993. Section 3 further provides that notwithstanding the expiration of the credit, an installment of a credit and any unused portion of a credit for which the taxpayer qualified before the act expired shall remain available to the taxpayer, to be taken in accordance with the provisions that applied to the repealed credit.

Division III. Income Tax—Estates, Trusts, and Beneficiaries.

§ 105-163. Grantor trusts.

The grantor of a trust or another person who is treated as the owner of the trust under §§ 671 through 678 of the Code shall, if allowed under Division II of this Article, include in the computation of the amount of tax owed by him under that Division those items of income, deductions, and credits against the tax of the trust that are attributable to the portion of the trust he is considered to own. (1967, c. 1110, s. 3, 1973, c. 1287, s. 6; 1983, c. 713, s. 82; 1987, c. 778, s. 5.)

Effect of Amendments. — The 1987 amendment, effective August 12, 1987, rewrote this section.

Division IV. Income Tax Credits for Property Taxes.

§ 105-163.02. Definitions.

For the purposes of this Division and unless otherwise required by the context:

(1) to (7) Repealed by Session Laws 1987, c. 622, s. 4, effective for taxable years beginning on or after January 1, 1988.

(9), (10) Repealed by Session Laws 1987, c. 622, s. 4, effective for taxable years beginning on or after January 1, 1988.

(1977, 2nd Sess., c. 1200, s. 3; 1985, c. 656, ss. 15, 19; 1985 (Reg. Sess., 1986), c. 947, s. 2; 1987, c. 622, s. 4.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. —

Session Laws 1987, c. 622, s. 1, provides that the act shall be known as the "School Facilities Finance Act of 1987."

Session Laws 1987, c. 622, s. 16 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment, effective for taxable years beginning on or after January 1, 1986, rewrote former subdivision (7).

The 1987 amendment, effective for taxable years beginning on or after January 1, 1988, deleted subdivisions (1) through (7), (9) and (10), defining the terms "book value", "cost of manufacturing", "establishment", "finished goods", "goods in process of manufacture", "inventories", "manufacturer", "qualifying inventories", and "raw materials."

§ 105-163.03: Repealed by Session Laws 1987, c. 622, s. 3, effective for taxable years beginning on or after January 1, 1988.

Editor's Note. — Session Laws 1987, c. 622, s. 1, provides that the act shall be known as the "School Facilities Finance Act of 1987."

Session Laws 1987, c. 622, s. 16 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

§ 105-163.06: Repealed by Session Laws 1987, c. 622, s. 3, effective for taxable years beginning on or after January 1, 1988.

Editor's Note. — Session Laws 1987, c. 622, s. 1, provides that the act shall be known as the "School Facilities Finance Act of 1987."

Session Laws 1987, c. 622, s. 16 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Repealed § 105-163.06 was enacted by Session Laws 1985, c. 656, s. 13(3) and amended by Session Laws 1985, c. 656,

s. 23.1 and by Session Laws 1985 (Reg. Sess., 1986), c. 947, s. 1.

§ 105-163.07. Income tax credit for property taxes paid on farm machinery by individuals and certain corporations.

(1985, c. 656, s. 13(3); 1987, c. 804, s. 6.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, only the catchline is set out.

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, deleted "Individual" at the beginning of the catchline.

Division V. Income Tax Credits for Qualified Business Investments.

§ 105-163.010. Definitions.

The following definitions apply in this Division:

(1) Affiliate. — An individual or business that controls, is controlled by, or is under common control with another individual or business.

(2) Business. — A corporation, partnership, association, or sole proprietorship operated for profit.

(3) Control. — To have the power directly or indirectly to direct or cause the direction of the management or policies of a business, whether by ownership of voting securities, by contract, or otherwise. As used in this subdivision, the term "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote. A general partnership interest is a voting security.

(4) Equity security. — Common stock, preferred stock, or an interest in a partnership, or subordinated debt that is convertible into, or entitles the holder to receive upon its exercise, common stock, preferred stock, or an interest in a partnership.

(5) Financial institution. — A business that is (i) a bank holding company, as defined in the Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841 et seq., or its wholly-owned subsidiary, (ii) registered as a broker-dealer under the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a et seq., or its wholly-owned subsidiary, (iii) an investment company as defined in the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq., whether or not it is required to register under that act, (iv) a small business investment company as defined in the Small Business Investment Act of 1958, 15 U.S.C. §§ 661 et seq., (v) a pension or profit-sharing fund or trust, or (vi) a bank, savings institution, trust company, financial services company, or insurance

company; provided, however, that a business, other than a small business investment company, is not a financial institution if its net worth, when added to the net worth of all of its affiliates, is less than ten million dollars ($10,000,000); provided further, however, that a business is not a financial institution if it does not generally market its services to the public and it is controlled by a business that is not a financial institution.

(6) North Carolina Capital Resource Corporation. — A corporation established in accordance with Article 2 of Chapter 53A of the General Statutes.

(7) Qualified business venture. — A North Carolina business that (i) engages primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry, and (ii) is registered with the Secretary of State under G.S. 105-163.013.

(8) Qualified grantee business. — A North Carolina business that (i) has received during the preceding three years a grant or other funding from the North Carolina Technological Development Authority, the North Carolina Biotechnology Center, the Microelectronics Center of North Carolina, or the Federal Small Business Innovation Research Program, and (ii) is registered with the Secretary of State under G.S. 105-163.013.

(9) Qualified investment organization. — A business that (i) has as its primary business activity the investment in equity securities or subordinated debt of qualified business ventures or qualified grantee businesses and (ii) is registered with the Secretary of State under G.S. 105-163.013.

(10) Security. — A security as defined in Section 2(1) of the Securities Act of 1933, 15 U.S.C. § 77b(1).

(11) Subordinated debt. — Indebtedness that (i) by its terms matures five or more years after its issuance, (ii) is not secured, and (iii) is subordinated to all other indebtedness of the issuer issued or to be issued to a financial institution other than a financial institution described in subdivisions (5)(ii) through (5)(v) of this section. Any portion of indebtedness that matures earlier than five years after its issuance is not subordinated debt. (1987, c. 852, s. 1.)

Editor's Note. — Session Laws 1987, c. 852, s. 3 makes Division V, §§ 105-163.010 to 105-163.014, effective for taxable years beginning on or after January 1, 1988.

§ 105-163.011. Income tax credit allowed.

(a) Corporations. — Subject to the limitations contained in G.S. 105-163.012, a corporation that invests in the equity securities of a North Carolina Capital Resource Corporation or a qualified investment organization is allowed as a credit against the tax imposed by Division I of this Article for the taxable year an amount equal to twenty-five percent (25%) of the amount invested or seven hundred fifty thousand dollars ($750,000), whichever is less. The credit may not be taken for the year in which the investment is made but shall be taken for the taxable year beginning during the calendar year following the calendar year in which the investment was made.

(b) Individuals. — Subject to the limitations contained in G.S. 105-163.012, an individual who invests in the equity securities or subordinated debt of (i) a North Carolina Capital Resource Corporation, (ii) a qualified investment organization, (iii) a qualified business venture, or (iv) a qualified grantee business is allowed as a credit against the tax imposed by Division II of this Article for the taxable year an amount equal to twenty-five percent (25%) of the amount invested or one hundred thousand dollars ($100,000), whichever is less. The credit may not be taken for the year in which the investment is made but shall be taken for the taxable year beginning during the calendar year following the calendar year in which the investment was made.

(c) Application. — To be eligible for the income tax credit provided in this section, the taxpayer must file an application for the credit with the Secretary of Revenue on or before April 15 of the year following the calendar year in which the investment was made. The application shall be on a form prescribed by the Secretary and shall include any supporting documentation that the Secretary may require.

(d) Penalties. — The penalties provided in G.S. 105-236 apply in this Division. (1987, c. 852, s. 1.)

§ 105-163.012. Limit; carry-over; ceiling.

(a) The credit allowed a taxpayer under G.S. 105-163.011 may not exceed the amount of tax imposed by Division I or II of this Article for the taxable year reduced by the sum of all other credits allowable except tax payments made by or on behalf of the taxpayer. The amount of unused credit allowed under G.S. 105-163.011 may be carried forward for the next five succeeding years.

(b) The total amount of all tax credits allowed to taxpayers under G.S. 105-163.011 for investments made in a calendar year may not exceed twelve million dollars ($12,000,000). The Secretary of Revenue shall calculate the total amount of tax credits claimed from the applications filed pursuant to G.S. 105-163.011(c). If the total amount of tax credits claimed for investments made in a calendar year exceeds twelve million dollars ($12,000,000), the Secretary shall allow a portion of the credits claimed on the following basis:

(1) A total of six million dollars ($6,000,000) in tax credits for investments in North Carolina Capital Resource Corporations shall be allocated among all taxpayers claiming the credits in proportion to the size of the credit claimed by each taxpayer.

(2) A total of six million dollars ($6,000,000) in tax credits for investments in qualified investment organizations, qualified business ventures, and qualified grantee businesses shall be allocated among all taxpayers claiming the credits in proportion to the size of the credit claimed by each taxpayer.

(3) If the total amount of the credits claimed by taxpayers for the investments described in either subdivision (1) or (2) is less than six million dollars ($6,000,000), the Secretary shall allow additional credits for the investments described in the other subdivision until the total amount of all tax credits allowed equals twelve million dollars ($12,000,000).

(c) If a credit claimed under G.S. 105-163.011 is reduced as provided in this section, the Secretary shall notify the taxpayer of the amount of the reduction of the credit on or before December 31 of the year following the calendar year in which the investment was made. The Secretary's allocations based on applications filed pursuant to G.S. 105-163.011(c) are final and shall not be adjusted to account for credits applied for but not claimed. (1987, c. 852, s. 1.)

§ 105-163.013. Registration.

(a) Qualified Investment Organizations. — In order to qualify as a qualified investment organization under this Division, a business must be registered with the Securities Division of the Department of the Secretary of State. To register, the business must file with the Secretary of State an application in which the business certifies the following facts:

(1) It intends to invest at least seventy percent (70%) of its capital in equity securities or subordinated debt of qualified business ventures or qualified grantee businesses;

(2) It has an initial capitalization of at least five million dollars ($5,000,000), of which no more than two million dollars ($2,000,000) is to be contributed pursuant to binding commitments;

(3) It does not own the securities of any business for the purpose of operating the business or for any purpose other than as an investment for future sale;

(4) It is controlled by a financial institution or is not controlled by another business; and

(5) It was not organized to invest in only one business or one group of businesses that conduct the same or a similar type of business activity.

To remain qualified as a qualified investment organization under this Division, the business must renew its registration annually by filing an application for renewal in which the business certifies the facts required in the original application and describes its investments in qualified business ventures and qualified grantee businesses. Upon termination of the qualified investment organization, it shall file a final report describing its investments in qualified business ventures and qualified grantee businesses and certifying that it invested at least seventy percent (70%) of its capital in equity securities or subordinated debt of such businesses.

If a qualified business venture in which the qualified investment organization has invested fails to file an application for renewal of registration under subsection (b) of this section or if the registration of the qualified business venture is revoked by the Secretary of State, any investment by the qualified investment organization in the business venture within five years after the qualified investment organization's initial investment in the business venture is, for the purpose of this Division, an investment in a qualified business venture.

(b) Qualified Business Ventures. — In order to qualify as a qualified business venture under this Division, a business must be registered with the Securities Division of the Department of the Secretary of State. To register, the business must file with the Secretary of State a financial statement certified by an independent certified public accountant for its most recent fiscal year showing revenues,

as determined in accordance with generally accepted accounting procedures, of five million dollars ($5,000,000) or less on a consolidated basis and an application in which it certifies the following facts:

(1) Its headquarters and principal business operations are in North Carolina or it has, as a condition of an investment eligible for a credit under this Division, agreed to establish its headquarters and principal business operations in North Carolina within three months after the investment is made;

(2) It has, as a condition of an investment eligible for a credit under this Division, agreed to retain its headquarters and principal business operations in North Carolina for at least three years after the investment is made;

(3) It is organized to engage primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry; and

(4) It does not engage as a substantial part of its business in construction, contracting, selling goods at retail, or the purchase, sale, development, or holding for investment of commercial paper, financial instruments, securities, or real property, or otherwise make investments.

To remain qualified as a qualified business venture, the business must renew its registration annually by filing a financial statement for the most recent fiscal year and an application for renewal in which the business certifies the facts required in the original application and that it has not moved its headquarters or principal business operations out of North Carolina.

(c) Qualified Grantee Businesses. — In order to qualify as a qualified grantee business under this Division, a business must be registered with the Securities Division of the Department of the Secretary of State. To register, the business must file with the Secretary of State an application in which the business certifies the following facts:

(1) Its headquarters and principal business operations are in North Carolina or it has, as a condition of an investment eligible for a credit under this Division, agreed to establish its headquarters and principal business operations in North Carolina within three months after the investment is made;

(2) It has, as a condition of an investment eligible for a credit under this Division, agreed to retain its headquarters and principal business operations in North Carolina for at least three years after the investment is made; and

(3) It has received during the preceding three years a grant or other funding from the North Carolina Technological Development Authority, the North Carolina Biotechnology Center, the Microelectronics Center of North Carolina, or the Federal Small Business Innovation Research Program.

To remain qualified as a qualified grantee business, the business must renew its registration annually by filing an application for renewal in which the business certifies the facts required in the original application and that it has not moved its headquarters or principal business operations out of North Carolina.

(d) Application Forms; Fees. — Applications for registration and for renewal of registration under this section shall be in such form

as the Secretary of State may prescribe. The Secretary may, by rule, require applicants to furnish supporting information in addition to the information required by subsections (a), (b), and (c) of this section. The Secretary shall prepare blank forms for the applications and shall distribute them throughout the State and furnish them on request. Each application shall be signed by the owners of the business or, in the case of a corporation, by its president, vice-president, treasurer, or secretary. There shall be annexed to the application the affirmation of the person making the application in the following form: "Under penalties prescribed by law, I certify and affirm that to the best of my knowledge and belief this application is true and complete."

The fee for filing an application for registration under this section shall be one hundred dollars ($100.00). The fee for filing an application for renewal of registration under this section shall be fifty dollars ($50.00).

(e) Revocation of Registration. — If the Securities Division of the Department of the Secretary of State finds that any of the information contained in an application of a business registered under this section is false, it shall revoke the registration of the business. (1987, c. 852, s. 1.)

§ 105-163.014. Forfeiture of credit.

If the Commissioner of Banks certifies that a North Carolina Capital Resource Corporation has failed to comply with the requirements of Article 2 of Chapter 53A of the General Statutes, every taxpayer who has received a tax credit under this Division for an investment in the corporation made during the preceding five years forfeits the credit. If a qualified investment organization fails to file an application for renewal of registration under G.S. 105-163.013 or if its registration is revoked by the Secretary of State, every taxpayer who has received a tax credit under this Division for an investment in the organization made during the preceding five years forfeits the credit.

A taxpayer who has received a tax credit under this Division for an investment in a qualified business venture or qualified grantee business forfeits the credit if, within three years after the investment was made, (i) he participates in the operation of the qualified business venture or qualified grantee business, (ii) the qualified business venture or qualified grantee business fails to file an application for renewal of registration under G.S. 105-163.013, or (iii) the registration of the qualified business venture or qualified grantee business is revoked by the Secretary of State. For the purpose of this section, a taxpayer participates in the operation of a qualified business if the taxpayer, his spouse, parent, or child, or an employee of any of these individuals or of a business controlled by any of these individuals, provides services of any nature to the qualified business for compensation, whether as an employee, a contractor, or otherwise. However, a person who serves as a member of the board of directors of a business does not participate in its operation if he performs only the functions ordinarily performed by directors and receives as compensation only reasonable reimbursement of expenses incurred in serving as a director. A person who owns stock in a business does not participate in its operation if he performs only the functions ordinarily performed by shareholders.

A taxpayer who forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer who fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. (1987, c. 852, s. 1.)

Article 4A.

Withholding of Income Taxes from Wages and Filing of Declarations of Estimated Income and Payment of Income Tax by Individuals.

§ 105-163.1. Definitions.

As used in this Article,

(11) "Code" means the Internal Revenue Code as enacted as of January 1, 1987, and includes any provisions enacted as of that date which become effective either before or after that date.

(1959, c. 1259, s. 1; 1967, c. 716, s. 3; 1973, c. 476, s. 193; 1977, c. 657, s. 5; 1979, c. 801, s. 70; 1983, c. 713, ss. 79, 82; 1985, c. 394, s. 1; c. 656, s. 7; 1985 (Reg. Sess., 1986), c. 853, s. 1; 1987, c. 778, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment, effective for taxable years beginning on or after January 1, 1986, substituted "January 1, 1986" for "December 31, 1984" in subdivision (11).

The 1987 amendment, effective August 12, 1987, substituted "January 1, 1987, and includes any provisions enacted as of that date which become effective either before or after that date" for "January 1, 1986, and includes any provision enacted as of that date which become effective after that date" in subdivision (11).

§ 105-163.1A. Ordained or licensed clergyman may elect to be considered self-employed.

An ordained or licensed clergyman who performs services for a church of any religious denomination may file an election with the Secretary and the church he serves to be considered self-employed instead of an employee of the church. Wages paid by a church to a clergyman who elects to be considered self-employed are not subject to withholding. A church shall withhold taxes from a clergyman's wages until the clergyman files an election with it under this section. (1985, c. 394, s. 2; 1985 (Reg. Sess., 1986), c. 826, s. 9.)

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective June 30, 1986, substituted "Secretary" for "secretary" in the first sentence.

§ 105-163.6. Payment of amounts withheld; personal liability for failure to withhold; limitation of recovery.

(c1) Notwithstanding any of the other provisions of this section, every employer required to deduct and withhold under the provisions of G.S. 105-163.2 an average of five hundred dollars ($500.00) or more per month during the preceding calendar year (or during so much of such year as he paid wages) and every employer who begins paying wages during a calendar year and whose liability to deduct and withhold under G.S. 105-163.2 can reasonably be expected to average five hundred dollars ($500.00) or more per month in that calendar year, shall make returns and pay over to the Secretary each month the amounts required to be withheld under G.S. 105-163.2. Returns and payments to the Secretary by such employers shall be made on or before the fifteenth day of the month following the month for which such amounts were required to be withheld from the wages of employees; except that the returns and payments for the month of December shall be made on or before the 31st day of the following month.

When an employer has become subject to the requirements of this subsection, he shall continue to make returns and payments to the Secretary on that basis. However, an employer required under the provisions of this subsection to file monthly returns who, in a later calendar year, is required to deduct and withhold under G.S. 105-163.2 an average of less than five hundred dollars ($500.00) per month may make application to the Secretary for authority to use the quarterly basis for filing and making payments. Such authority, when granted, shall be in writing, shall commence on a date set by the Secretary, and shall continue until the Secretary, in the exercise of his discretion, shall revoke it in writing, effective on a date set by him.

(1959, c. 1259, s. 1; 1973, c. 476, s. 193; c. 1287, s. 7; 1975, 2nd Sess., c. 979, s. 1; 1977, c. 488; 1987, c. 622, s. 9.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1987, c. 622, s. 1, provides that the act shall be known as the "School Facilities Finance Act of 1987."

Session Laws 1987, c. 622, s. 16 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Session Laws 1987, c. 813, s. 25 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — Session Laws 1987, c. 622, s. 9, made effective by Session Laws 1987, c. 813, s. 24 on January 1, 1988, and applicable to amounts withheld from an employee's wages on or after that date, substituted "five hundred dollars ($500.00)" for "three thousand dollars ($3,000)" in three places in subsection (c1).

Article 4C.

Filing of Declarations of Estimated Income Tax and Installment Payments of Estimated Income Tax by Corporations.

§ 105-163.42: Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 820, effective June 27, 1986.

Article 5.

Schedule E. Sales and Use Tax.

Division I. Title, Purpose and Definitions.

§ 105-164.1. Short title.

Editor's Note. — Session Laws 1987, c. 622, s. 15.1, as rewritten by Session Laws 1987, c. 813, s. 23, provides:

"There is created in the Department of Revenue the Inventory Tax Reimbursement Fund to partially fund the 1989 reimbursement to taxing units under G.S. 105-277A. Notwithstanding any other provision of law, for distributions of local sales and use taxes made on or after October 1, 1987, and before March 31, 1988, the Secretary of Revenue shall withhold from the net proceeds, as defined in G.S. 105-472, to be distributed to the taxing counties pursuant to G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws, an amount equal to three and one-half percent (3.5%) of such net proceeds. For distributions of local sales and use taxes made on or after April 1, 1988, and before June 30, 1988, the Secretary shall withhold from such net proceeds an amount equal to twenty million four hundred thousand dollars ($20,400,000) minus the amounts withheld between October 1, 1987, and March 31, 1988, under this section. This amount shall be deducted proportionally from such net proceeds to be distributed pursuant to G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws. The amounts withheld shall be deposited in the Inventory Tax Reimbursement Fund to be distributed in accordance with G.S. 105-277A. Notwithstanding the provisions of G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws, the Secretary of Revenue shall reduce each taxing county's net proceeds to be distributed under those provisions by the amounts withheld therefrom under this section.

"In addition, as soon as practicable after November 1, 1988, the Secretary of Revenue shall deposit in the Inventory Tax Reimbursement Fund the sum of seven million one hundred thousand dollars ($7,100,000), which shall be drawn from State sales and use tax collections received by the Department during October of 1988 under Article 5 of Chapter 105 of the General Statutes. These funds shall be distributed in 1989 as provided in G.S. 105-277A."

Session Laws 1987, c. 622, s. 16 and c. 813, s. 25, provide: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Session Laws 1987, c. 832, ss. 9 to 13, provide: "The board of commissioners of any county may, by resolution, after 10 days' public notice and a public hearing held pursuant thereto, adopt the expansion of the local sales tax levy provided in this act. Upon adoption of such a resolution, the board of commissioners shall forward a copy of the resolution to the Secretary of Revenue. Pursuant to the provisions of G.S. 105-483, 105-490, and

105-498, adoption of the expansion of the Local Government Sales and Use Act provided in Section 4 of this act constitutes adoption of an equivalent expansion of the local sales taxes levied under Articles 40, 41, and 42 of Chapter 105 of the General Statutes.

"If a county fails to adopt the expansion of the Local Government Sales and Use Tax Act provided in Section 4 of this act on or before February 1, 1988, the sales and use taxes levied by the county pursuant to Articles 39, 40, 41, and 42 are repealed effective March 1, 1988, because they will be inconsistent with the scope of the levies authorized by those Articles as amended effective March 1, 1988. If Mecklenburg County fails to adopt the expansion of Section 4 of Chapter 1096 of the 1967 Session Laws provided in Section 5 of this act on or before February 1, 1988, the sales and use tax levied by Mecklenburg County pursuant to Chapter 1096 of the 1967 Session Laws is repealed effective March 1, 1988, because it will be inconsistent with the scope of the levy authorized by that Chapter as amended effective March 1, 1988, and the sales and use taxes levied by Mecklenburg County pursuant to Articles 40, 41, and 42 are repealed effective March 1, 1988, because those Articles will no longer apply to Mecklenburg County, as provided in G.S. 105-482, 105-489, and 105-497. If the sales and use taxes levied by a county are repealed as provided in this section because the county failed to adopt the expansion of the local sales tax levy, the county may, on or after March 1, 1988, levy local sales and use taxes in accordance with the provisions of Articles 39, 40, 41, and 42 of Chapter 105 of the General Statutes and Chapter 1096 of the 1967 Session Laws, as applicable.

"This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"It is the intent of the General Assembly that a Select Committee composed of members of the General Assembly shall be appointed to study the impact on local sales and use tax revenue and the administrative cost savings to the State of consolidating the local sales and use taxes levied under Articles 39, 40, 41, and 42 of Chapter 105 of the General Statutes and under Chapter 1096 of the 1967 Session Laws, as amended, with the State sales and use tax levied under Article 5 of Chapter 105 of the General Statutes. It is further intended that the Select Committee shall report to the 1987 General Assembly on the first day of the 1988 Regular Session.

"It is the intent of the General Assembly that if the local sales and use taxes levied under Articles 39, 40, 41, and 42 of Chapter 105 of the General Statutes and under Chapter 1096 of the 1967 Session Laws, as amended, are at a later date consolidated with the State sales and use taxes levied under Article 5 of Chapter 105 of the General Statutes, then the legislation enacting the consolidation shall also change the method of distributing the proceeds of the excise tax on liquor levied under G.S. 105-113.80(c) from the current formulation to a new method that would distribute one-eighth (1/8) of the total proceeds of that excise tax to local governments in the same manner as the State sales and use tax proceeds that are distributed to local governments under the legislation that consolidates the local sales taxes with the State sales tax."

§ 105-164.3. (Effective until January 1, 1989) Definitions.

The words, terms and phrases when used in this Article shall have the meanings ascribed to them in this section except when the context clearly indicates a different meaning:

(1) "Business" shall include any activity engaged in by any person or caused to be engaged in by him with the object of gain, profit, benefit or advantage, either direct or indirect. The term "business" shall not be construed in this Article to include occasional and isolated sales or transactions by a

§ 105-164.3 is set out three times. See headings for effective dates.

person who does not hold himself out as engaged in business.

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

(3) "Consumer" shall mean and include every person storing, using or otherwise consuming in this State tangible personal property purchased or received from a retailer either within or without this State.

(4) "Cost price" means the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, cash discounts, labor or service costs, transportation charges or any expenses whatsoever.

(5) "Engaged in business" shall mean maintaining, occupying or using permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business, for the selling or delivering of tangible personal property for storage, use or consumption in this State, or permanently or temporarily, directly or through a subsidiary, having any representative, agent, salesman, canvasser or solicitor operating in this State in such selling or delivering, and the fact that any corporate retailer, agent or subsidiary engaged in business in this State may not be legally domesticated or qualified to do business in this State shall be immaterial. It shall also mean the maintaining in this State, either permanently or temporarily, directly or through a subsidiary, tangible personal property for the purpose of lease or rental.

(6) "Gross sales" means the sum total of all retail sales of tangible personal property as defined herein, whether for cash or credit without allowance for cash discount and without any deduction on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or any other expenses whatsoever and without any deductions of any kind or character except as provided in this Article.

(7) "In this (the) State" means within the exterior limits of the State of North Carolina and includes all territory within such limits owned by or ceded to the United States of America.

(8) "Lease or rental" means the leasing or renting of tangible personal property and the possession or use thereof by the lessee or rentee for a consideration without transfer of the title of such property.

(8a) "Motor vehicle" means any vehicle which is self-propelled and designed primarily for use upon the highways, any vehicle which is propelled by electric power obtained from trolley wires but not operated upon rails, and any vehicle designed to run upon the highways which is propelled by a self-propelled vehicle, but shall not include any implement of husbandry, farm tractor, road construction or maintenance machinery or equipment, special mobile equipment as definined in G.S. 20-4.01, or any vehicle designed primarily for use in work off the highway.

§ 105-164.3 is set out three times. See headings for effective dates.

(9) "Net taxable sales" shall mean and include the gross retail sales of the business of the retailer taxed under this Article after deducting therefrom exempt sales and nontaxable sales.

(10) "Nonresident retail or wholesale merchant" means a person who does not have a place of business in this State, is engaged in the business of acquiring, by purchase, consignment, or otherwise, tangible personal property and selling the property outside the State, and is registered for sales and use tax purposes in a taxing jurisdiction outside the State.

(11) "Person" includes any individual, firm, copartnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate or other group, or combination acting as a unit, body politic, or political subdivision, whether public or private or quasi-public and the plural as well as the singular number.

(12) "Purchase" means acquired for a consideration whether

a. Such acquisition was effected by a transfer of title or possession, or both, or a license to use or consume;

b. Such transfer shall have been absolute or conditional and by whatever means it shall have been effected; and

c. Such consideration be a price or rental in money or by way of exchange or barter.

It shall also include the procuring of a retailer to errect, install or apply tangible personal property for use in this State.

(13) "Retail" shall mean the sale of any tangible personal property in any quantity or quantities for any use or purpose on the part of the purchaser other than for resale.

(14) "Retailer" means and includes every person engaged in the business of making sales of tangible personal property at retail, either within or without this State, or peddling the same or soliciting or taking orders for sales, whether for immediate or future delivery, for storage, use or consumption in this State and every manufacturer, producer or contractor engaged in business in this State and selling, delivering, erecting, installing or applying tangible personal property for use in this State notwithstanding that said property may be permanently affixed to a building or realty or other tangible personal property. Provided, however, that when in the opinion of the Secretary it is necessary for the efficient administration of this Article to regard any salesmen, solicitors, representatives, consignees, peddlers, truckers or canvassers as agents of the dealers, distributors, consignors, supervisors, employers or persons under whom they operate or from whom they obtain the tangible personal property sold by them regardless of whether they are making sales on their own behalf or on behalf of such dealers, distributors, consignors, supervisors, employers or persons, the Secretary may so regard them and may regard the dealers, distributors, consignors, supervisors, employers or persons as "retailers" for the purpose of this Article.

§ 105-164.3 is set out three times. See headings for effective dates.

(15) "Sale" or "selling" shall mean any transfer of title or possession, or both, exchange, barter, lease, license to use or consume, or rental of tangible personal property, conditional or otherwise, in any manner or by any means whatsoever, however effected and by whatever name called, for a consideration paid or to be paid, and includes the fabrication of tangible personal property for consumers by persons engaged in business who furnish either directly or indirectly the materials used in the fabrication work, and the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property or consumed at the place at which such property is prepared, served or sold. A transaction whereby the possession of the property is transferred but the seller retains title or security for the payment of the price shall be deemed a sale.

(16) "Sales price" means the total amount for which tangible personal property is sold including charges for any services that go into the fabrication, manufacture or delivery of such tangible personal property and that are a part of the sale valued in money whether paid in money or otherwise and includes any amount for which credit is given to the purchaser by the seller without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest charged, losses or any other expenses whatsoever. Provided, however, that where a manufacturer, producer or contractor erects, installs or affixes tangible personal property upon real property pursuant to a construction or performance-type contract with or for the benefit of the owner of such real property, the sales price shall be the cost of such property to the manufacturer, producer or contractor performing the contract. Provided, further:

a. The cost for labor or services rendered in erecting, installing or applying property sold when separately charged shall not be included as a part of the "sales price";

b. Finance charges, service charges or interest from credit extended under conditional sales contracts or other conditional contracts providing for deferred payments of the purchase price shall not be considered a part of the "sales price" when separately charged;

c. "Sales price" shall not include the amount of any tax imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or consumer except that any manufacturers' or importers' excise tax shall be included in the term.

d. "Sales price" shall not include any amounts charged as deposits on beverage containers which are returnable to vendors for reuse and which amounts are refundable or creditable to vendees, whether or not said deposits are separately charged.

e. "Sales price" shall not include amounts charged as deposits on automotive, industrial, marine and farm replacement parts which are returnable to vendors for

§ 105-164.3 is set out three times. See headings for effective dates.

rebuilding or remanufacturing and which amounts are refundable or creditable to vendees, whether or not such deposits are separately charged. This subsection shall not be construed to include tires and batteries.

(17) "Storage" means and includes any keeping or retention in this State for any purpose by the purchaser thereof, except sale in the regular course of business, of tangible personal property purchased from a retailer.

(18) "Use" means and includes the exercise of any right or power or dominion whatsoever over tangible personal property by a purchaser thereof and includes, but is not limited to, any withdrawal from storage, installation, affixation to real or personal property, exhaustion or consumption of tangible personal property by the owner or purchaser thereof, but shall not include the sale of tangible personal property in the regular course of business.

(19) "Storage" and "Use"; Exclusion. — "Storage" and "use" do not include the keeping, retaining or exercising of any right or power over tangible personal property by the purchaser thereof for the original purpose of subsequently transporting it outside the State for use by said purchaser thereafter solely outside the State and which purpose is consummated, or for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the State and thereafter used by the purchaser thereof solely outside the State.

(20) "Tangible personal property" means and includes personal property which may be seen, weighed, measured, felt or touched or is in any other manner perceptible to the senses. The term "tangible personal property" shall not include stocks, bonds, notes, insurance or other obligations or securities, nor shall it include water delivered by or through main lines or pipes either for commercial or domestic use or consumption. The term includes all "canned" or prewritten computer programs, either in the form of written procedures or in the form of storage media on which or in which the program is recorded, held, or existing for general or repeated sale, lease, or license to use or consume. The term does not include the design, development, writing, translation, fabrication, lease, license to use or consume, or transfer for a consideration of title or possession of a custom computer program, other than a basic operational program, either in the form of written procedures or in the form of storage media on which or in which the program is recorded, or any required documentation or manuals designed to facilitate the use of the custom computer program.

As used in this subdivision:

a. "Basic operational program" or "control program" means a computer program that is fundamental and necessary to the functioning of a computer. A basic operational program is that part of an operating system, including supervisors, monitors, executives, and control or master programs, which consists of the control program elements of that system. A control or

§ 105-164.3 is set out three times. See headings for effective dates.

master program, as opposed to a processing program, controls the operation of a computer by managing the allocation of all system resources, including the central processing unit, main storage, input/output devices, and processing programs. A processing program is used to develop and implement the specific applications the computer is to perform.

b. "Computer program" means the complete plan for the solution of a problem, such as the complete sequence of automatic data-processing equipment instructions necessary to solve a problem, and includes both systems and application programs and subdivisions, such as assemblers, compliers, routines, generators, and utility programs.

c. "Custom computer program" means a computer program prepared to the special order of the customer. Custom computer programs include one of the following elements:

1. Preparation or selection of the programs for the customer's use requires an analysis of the customer's requirements by the vendor; or
2. The program requires adaptation by the vendor to be used in a particular make and model of computer utilizing a specified output device.

d. "Storage media" means punched cards, tapes, disks, diskettes, or drums.

(21) "Taxpayer" means any person liable for taxes under this Article.

(22) "Use tax" means and includes the tax imposed by Part 3 in Division II of this Article.

(23) "Wholesale merchant" shall mean every person who engages in the business of buying or manufacturing any tangible personal property and selling same to registered retailers, wholesalers and nonresident retail or wholesale merchants for resale. It shall also include persons making sales of tangible personal property which are defined herein as wholesale sales. For the purposes of this Article any person, firm, corporation, estate or trust engaged in the business of manufacturing, producing, processing or blending any articles of commerce and maintaining a store or stores, warehouse or warehouses, or any other place or places, separate and apart from the place of manufacture or production, for the sale or distribution of its products (other than bakery products) to other manufacturers or producers, wholesale or retail merchants, for the purpose of resale shall be deemed a "wholesale merchant."

(24) "Wholesale sale" shall mean a sale of tangible personal property by a wholesale merchant to a manufacturer, or registered jobber or dealer, or registered wholesale or retail merchant, for the purpose of resale but does not include a sale to users or consumers not for resale.

(25) "Utility" means an electric power company, a gas company, or a telephone company that is subject to a privilege tax based on gross receipts under G.S. 105-116 or 105-120, or a municipality that sells electric power, other than a municipality whose only wholesale supplier of electric

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power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5; 1961, c. 1213, s. 1; 1967, c. 1110, s. 6; 1973, c. 476, s. 193; c. 1287, s. 8; 1975, c. 104; c. 275, s. 6; 1979, c. 48, s. 2; c. 71; c. 801, s. 72; 1983, c. 713, ss. 87, 88; 1983 (Reg. Sess., 1984), c. 1097, ss. 4, 5; 1985, c. 23; 1987, c. 27.)

Section Set Out Three Times. — The section above is effective until January 1, 1989. For this section as amended effective January 1, 1989 to July 1, 1989, see the following section, also numbered § 105-164.3. For this section as amended effective July 1, 1989, see the section thereafter, also numbered § 105-164.3.

Effect of Amendments. — The 1987 amendment, effective March 26, 1987, rewrote subdivision (10), defining "Nonresident retail or wholesale merchant", eliminating a requirement that such merchant obtained from the Secretary a certificate of registration.

§ 105-164.3. (Effective January 1, 1989 to July 1, 1989) Definitions.

The words, terms and phrases when used in this Article shall have the meanings ascribed to them in this section except when the context clearly indicates a different meaning:

(1) "Business" shall include any activity engaged in by any person or caused to be engaged in by him with the object of gain, profit, benefit or advantage, either direct or indirect. The term "business" shall not be construed in this Article to include occasional and isolated sales or transactions by a person who does not hold himself out as engaged in business.

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

(3) "Consumer" shall mean and include every person storing, using or otherwise consuming in this State tangible personal property purchased or received from a retailer either within or without this State.

(4) "Cost price" means the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, cash discounts, labor or service costs, transportation charges or any expenses whatsoever.

(5) "Engaged in business" shall mean maintaining, occupying or using permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business, for the selling or delivering of tangible personal property for storage, use or consumption in this State, or permanently or temporarily, directly or through a subsidiary, having any representative, agent, salesman, canvasser or solicitor operating in this State in such selling or delivering, and the fact that any corporate retailer, agent or subsidiary engaged in business in this State may not be legally domesticated or qualified to do business in this State shall be immaterial. It shall also mean the maintain-

§ 105-164.3 is set out three times. See headings for effective dates.

ing in this State, either permanently or temporarily, directly or through a subsidiary, tangible personal property for the purpose of lease or rental.

(6) "Gross sales" means the sum total of all retail sales of tangible personal property as defined herein, whether for cash or credit without allowance for cash discount and without any deduction on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or any other expenses whatsoever and without any deductions of any kind or character except as provided in this Article.

(7) "In this (the) State" means within the exterior limits of the State of North Carolina and includes all territory within such limits owned by or ceded to the United States of America.

(8) "Lease or rental" means the leasing or renting of tangible personal property and the possession or use thereof by the lessee or rentee for a consideration without transfer of the title of such property.

(8a) "Motor vehicle" means any vehicle which is self-propelled and designed primarily for use upon the highways, any vehicle which is propelled by electric power obtained from trolley wires but not operated upon rails, and any vehicle designed to run upon the highways which is propelled by a self-propelled vehicle, but shall not include any implement of husbandry, farm tractor, road construction or maintenance machinery or equipment, special mobile equipment as defined in G.S. 20-4.01, or any vehicle designed primarily for use in work off the highway.

(9) "Net taxable sales" shall mean and include the gross retail sales of the business of the retailer taxed under this Article after deducting therefrom exempt sales and nontaxable sales.

(10) "Nonresident retail or wholesale merchant" means a person who does not have a place of business in this State, is engaged in the business of acquiring, by purchase, consignment, or otherwise, tangible personal property and selling the property outside the State, and is registered for sales and use tax purposes in a taxing jurisdiction outside the State.

(11) "Person" includes any individual, firm, copartnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate or other group, or combination acting as a unit, body politic, or political subdivision, whether public or private or quasi-public and the plural as well as the singular number.

(12) "Purchase" means acquired for a consideration whether

a. Such acquisition was effected by a transfer of title or possession, or both, or a license to use or consume;

b. Such transfer shall have been absolute or conditional and by whatever means it shall have been effected; and

c. Such consideration be a price or rental in money or by way of exchange or barter.

§ 105-164.3 is set out three times. See headings for effective dates.

It shall also include the procuring of a retailer to erect, install or apply tangible personal property for use in this State.

(13) "Retail" shall mean the sale of any tangible personal property in any quantity or quantities for any use or purpose on the part of the purchaser other than for resale.

(14) "Retailer" means and includes every person engaged in the business of making sales of tangible personal property at retail, either within or without this State, or peddling the same or soliciting or taking orders for sales, whether for immediate or future delivery, for storage, use or consumption in this State and every manufacturer, producer or contractor engaged in business in this State and selling, delivering, erecting, installing or applying tangible personal property for use in this State notwithstanding that said property may be permanently affixed to a building or realty or other tangible personal property. Provided, however, that when in the opinion of the Secretary it is necessary for the efficient administration of this Article to regard any salesmen, solicitors, representatives, consignees, peddlers, truckers or canvassers as agents of the dealers, distributors, consignors, supervisors, employers or persons under whom they operate or from whom they obtain the tangible personal property sold by them regardless of whether they are making sales on their own behalf or on behalf of such dealers, distributors, consignors, supervisors, employers or persons, the Secretary may so regard them and may regard the dealers, distributors, consignors, supervisors, employers or persons as "retailers" for the purpose of this Article.

(15) "Sale" or "selling" shall mean any transfer of title or possession, or both, exchange, barter, lease, license to use or consume, or rental of tangible personal property, conditional or otherwise, in any manner or by any means whatsoever, however effected and by whatever name called, for a consideration paid or to be paid, and includes the fabrication of tangible personal property for consumers by persons engaged in business who furnish either directly or indirectly the materials used in the fabrication work, and the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property or consumed at the place at which such property is prepared, served or sold. A transaction whereby the possession of the property is transferred but the seller retains title or security for the payment of the price shall be deemed a sale.

(16) "Sales price" means the total amount for which tangible personal property is sold including charges for any services that go into the fabrication, manufacture or delivery of such tangible personal property and that are a part of the sale valued in money whether paid in money or otherwise and includes any amount for which credit is given to the purchaser by the seller without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest charged, losses or

§ 105-164.3 is set out three times. See headings for effective dates.

any other expenses whatsoever. Provided, however, that where a manufacturer, producer or contractor erects, installs or affixes tangible personal property upon real property pursuant to a construction or performance-type contract with or for the benefit of the owner of such real property, the sales price shall be the cost of such property to the manufacturer, producer or contractor performing the contract. Provided, further:

a. The cost for labor or services rendered in erecting, installing or applying property sold when separately charged shall not be included as a part of the "sales price";

b. Finance charges, service charges or interest from credit extended under conditional sales contracts or other conditional contracts providing for deferred payments of the purchase price shall not be considered a part of the "sales price" when separately charged;

c. "Sales price" shall not include the amount of any tax imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or consumer except that any manufacturers' or importers' excise tax shall be included in the term.

d. "Sales price" shall not include any amounts charged as deposits on beverage containers which are returnable to vendors for reuse and which amounts are refundable or creditable to vendees, whether or not said deposits are separately charged.

e. "Sales price" shall not include amounts charged as deposits on automotive, industrial, marine and farm replacement parts which are returnable to vendors for rebuilding or remanufacturing and which amounts are refundable or creditable to vendees, whether or not such deposits are separately charged. This subsection shall not be construed to include tires and batteries.

(17) "Storage" means and includes any keeping or retention in this State for any purpose by the purchaser thereof, except sale in the regular course of business, of tangible personal property purchased from a retailer.

(18) "Use" means and includes the exercise of any right or power or dominion whatsoever over tangible personal property by a purchaser thereof and includes, but it not limited to, any withdrawal from storage, installation, affixation to real or personal property, exhaustion or consumption of tangible personal property by the owner or purchaser thereof, but shall not include the sale of tangible personal property in the regular course of business.

(19) "Storage" and "Use"; Exclusion. — "Storage" and "use" do not include the keeping, retaining or exercising of any right or power over tangible personal property by the purchaser thereof for the original purpose of subsequently transporting it outside the State for use by said purchaser thereafter solely outside the State and which purpose is consummated, or for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into, other tangible personal property to be transported

§ 105-164.3 is set out three times. See headings for effective dates.

outside the State and thereafter used by the purchaser thereof solely outside the State.

(20) "Tangible personal property" means and includes personal property which may be seen, weighed, measured, felt or touched or is in any other manner perceptible to the senses. The term "tangible personal property" shall not include stocks, bonds, notes, insurance or other obligations or securities, nor shall it include water delivered by or through main lines or pipes either for commercial or domestic use or consumption. The term includes all "canned" or prewritten computer programs, either in the form of written procedures or in the form of storage media on which or in which the program is recorded, held, or existing for general or repeated sale, lease, or license to use or consume. The term does not include the design, development, writing, translation, fabrication, lease, license to use or consume, or transfer for a consideration of title or possession of a custom computer program, other than a basic operational program, either in the form of written procedures or in the form of storage media on which or in which the program is recorded, or any required documentation or manuals designed to facilitate the use of the custom computer program.

As used in this subdivision:

a. "Basic operational program" or "control program" means a computer program that is fundamental and necessary to the functioning of a computer. A basic operational program is that part of an operating system, including supervisors, monitors, executives, and control or master programs, which consists of the control program elements of that system. A control or master program, as opposed to a processing program, controls the operation of a computer by managing the allocation of all system resources, including the central processing unit, main storage, input/output devices, and processing programs. A processing program is used to develop and implement the specific applications the computer is to perform.

b. "Computer program" means the complete plan for the solution of a problem, such as the complete sequence of automatic data-processing equipment instructions necessary to solve a problem, and includes both systems and application programs and subdivisions, such as assemblers, compliers, routines, generators, and utility programs.

c. "Custom computer program" means a computer program prepared to the special order of the customer. Custom computer programs include one of the following elements:

1. Preparation or selection of the programs for the customer's use requires an analysis of the customer's requirements by the vendor; or
2. The program requires adaptation by the vendor to be used in a particular make and model of computer utilizing a specified output device.

§ 105-164.3 is set out three times. See headings for effective dates.

d. "Storage media" means punched cards, tapes, disks, diskettes, or drums.

(21) "Taxpayer" means any person liable for taxes under this Article.

(22) "Use tax" means and includes the tax imposed by Part 3 in Division II of this Article.

(23) "Wholesale merchant" shall mean every person who engages in the business of buying or manufacturing any tangible personal property and selling same to registered retailers, wholesalers and nonresident retail or wholesale merchants for resale. It shall also include persons making sales of tangible personal property which are defined herein as wholesale sales. For the purposes of this Article any person, firm, corporation, estate or trust engaged in the business of manufacturing, producing, processing or blending any articles of commerce and maintaining a store or stores, warehouse or warehouses, or any other place or places, separate and apart from the place of manufacture or production, for the sale or distribution of its products (other than bakery products) to other manufacturers or producers, wholesale or retail merchants, for the purpose of resale shall be deemed a "wholesale merchant."

(24) "Wholesale sale" shall mean a sale of tangible personal property by a wholesale merchant to a manufacturer, or registered jobber or dealer, or registered wholesale or retail merchant, for the purpose of resale but does not include a sale to users or consumers not for resale.

(25) "Utility" means an electric power company, a gas company, or a telephone company that is subject to a privilege tax based on gross receipts under G.S. 105-116 or 105-120, a business entity that provides local, toll or private telecommunications service as defined by G.S. 105-120(a) or a municipality that sells electric power, other than a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5; 1961, c. 1213, s. 1; 1967, c. 1110, s. 6; 1973, c. 476, s. 193; c. 1287, s. 8; 1975, c. 104; c. 275, s. 6; 1979, c. 48, s. 2; c. 71; c. 801, s. 72; 1983, c. 713, ss. 87, 88; 1983 (Reg. Sess., 1984), c. 1097, ss. 4, 5; 1985, c. 23; 1987, c. 27; c. 557, s. 3.1.)

Section Set Out Three Times. — The section above is effective from January 1, 1989 to July 1, 1989. For this section as in effect until January 1, 1989, see the preceding section, also numbered § 105-164.3. For this section as amended effective July 1, 1989, see the following section, also numbered § 105-164.3.

Effect of Amendments. —

Session Laws 1987, c. 27, effective March 26, 1987, rewrote subdivision (10), defining "Nonresident retail or wholesale merchant", eliminating a requirement that such merchant obtain from the Secretary a certificate of registration.

Session Laws 1987, c. 557, s. 3.1, effective January 1, 1989, inserted "a business entity that provides local, toll or private telecommunications service as defined by G.S. 105-120(a)" in subdivision (25).

§ 105-164.3 is set out three times. See headings for effective dates.

§ 105-164.3. (Effective July 1, 1989) Definitions.

The words, terms and phrases when used in this Article shall have the meanings ascribed to them in this section except when the context clearly indicates a different meaning:

(1) "Business" shall include any activity engaged in by any person or caused to be engaged in by him with the object of gain, profit, benefit or advantage, either direct or indirect. The term "business" shall not be construed in this Article to include occasional and isolated sales or transactions by a person who does not hold himself out as engaged in business.

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

(3) "Consumer" shall mean and include every person storing, using or otherwise consuming in this State tangible personal property purchased or received from a retailer either within or without this State.

(4) "Cost price" means the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, cash discounts, labor or service costs, transportation charges or any expenses whatsoever.

(5) "Engaged in business" shall mean maintaining, occupying or using permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business, for the selling or delivering of tangible personal property for storage, use or consumption in this State, or permanently or temporarily, directly or through a subsidiary, having any representative, agent, salesman, canvasser or solicitor operating in this State in such selling or delivering, and the fact that any corporate retailer, agent or subsidiary engaged in business in this State may not be legally domesticated or qualified to do business in this State shall be immaterial. It shall also mean the maintaining in this State, either permanently or temporarily, directly or through a subsidiary, tangible personal property for the purpose of lease or rental.

(6) "Gross sales" means the sum total of all retail sales of tangible personal property as defined herein, whether for cash or credit without allowance for cash discount and without any deduction on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or any other expenses whatsoever and without any deductions of any kind or character except as provided in this Article.

(7) "In this (the) State" means within the exterior limits of the State of North Carolina and includes all territory within such limits owned by or ceded to the United States of America.

(8) "Lease or rental" means the leasing or renting of tangible personal property and the possession or use thereof by the lessee or rentee for a consideration without transfer of the title of such property.

§ 105-164.3 is set out three times. See headings for effective dates.

(8a) "Motor vehicle" means any vehicle which is self-propelled and designed primarily for use upon the highways, any vehicle which is propelled by electric power obtained from trolley wires but not operated upon rails, and any vehicle designed to run upon the highways which is propelled by a self-propelled vehicle, but shall not include any implement of husbandry, farm tractor, road construction or maintenance machinery or equipment, special mobile equipment as defined in G.S. 20-4.01, or any vehicle designed primarily for use in work off the highway.

(9) "Net taxable sales" shall mean and include the gross retail sales of the business of the retailer taxed under this Article after deducting therefrom exempt sales and nontaxable sales.

(10) "Nonresident retail or wholesale merchant" means a person who does not have a place of business in this State, is engaged in the business of acquiring, by purchase, consignment, or otherwise, tangible personal property and selling the property outside the State, and is registered for sales and use tax purposes in a taxing jurisdiction outside the State.

(11) "Person" includes any individual, firm, copartnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate or other group, or combination acting as a unit, body politic, or political subdivision, whether public or private or quasi-public and the plural as well as the singular number.

(12) "Purchase" means acquired for a consideration whether

a. Such acquisition was effected by a transfer of title or possession, or both, or a license to use or consume;

b. Such transfer shall have been absolute or conditional and by whatever means it shall have been effected; and

c. Such consideration be a price or rental in money or by way of exchange or barter.

It shall also include the procuring of a retailer to erect, install or apply tangible personal property for use in this State.

(13) "Retail" shall mean the sale of any tangible personal property in any quantity or quantities for any use or purpose on the part of the purchaser other than for resale.

(14) "Retailer" means and includes every person engaged in the business of making sales of tangible personal property at retail, either within or without this State, or peddling the same or soliciting or taking orders for sales, whether for immediate or future delivery, for storage, use or consumption in this State and every manufacturer, producer or contractor engaged in business in this State and selling, delivering, erecting, installing or applying tangible personal property for use in this State notwithstanding that said property may be permanently affixed to a building or realty or other tangible personal property. Provided, however, that when in the opinion of the Secretary it is necessary for the efficient administration of this Article to regard any salesmen, solicitors, representatives, consignees, peddlers, truckers or canvassers as agents of the dealers,

§ 105-164.3 is set out three times. See headings for effective dates.

distributors, consignors, supervisors, employers or persons under whom they operate or from whom they obtain the tangible personal property sold by them regardless of whether they are making sales on their own behalf or on behalf of such dealers, distributors, consignors, supervisors, employers or persons, the Secretary may so regard them and may regard the dealers, distributors, consignors, supervisors, employers or persons as "retailers" for the purpose of this Article.

(15) "Sale" or "selling" shall mean any transfer of title or possession, or both, exchange, barter, lease, license to use or consume, or rental of tangible personal property, conditional or otherwise, in any manner or by any means whatsoever, however effected and by whatever name called, for a consideration paid or to be paid, and includes the fabrication of tangible personal property for consumers by persons engaged in business who furnish either directly or indirectly the materials used in the fabrication work, and the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property or consumed at the place at which such property is prepared, served or sold. A transaction whereby the possession of the property is transferred but the seller retains title or security for the payment of the price shall be deemed a sale.

(16) Except as provided in paragraph f., "sales price" means the total amount for which tangible personal property is sold including charges for any services that go into the fabrication, manufacture or delivery of such tangible personal property and that are a part of the sale valued in money whether paid in money or otherwise and includes any amount for which credit is given to the purchaser by the seller without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest charged, losses or any other expenses whatsoever. Provided, however, that where a manufacturer, producer or contractor erects, installs or affixes tangible personal property upon real property pursuant to a construction or performance-type contract with or for the benefit of the owner of such real property, the sales price shall be the cost of such property to the manufacturer, producer or contractor performing the contract. Provided, further:

a. The cost for labor or services rendered in erecting, installing or applying property sold when separately charged shall not be included as a part of the "sales price";

b. Finance charges, service charges or interest from credit extended under conditional sales contracts or other conditional contracts providing for deferred payments of the purchase price shall not be considered a part of the "sales price" when separately charged;

c. "Sales price" shall not include the amount of any tax imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or con-

sumer except that any manufacturers' or importers' excise tax shall be included in the term.

d. "Sales price" shall not include any amounts charged as deposits on beverage containers which are returnable to vendors for reuse and which amounts are refundable or creditable to vendees, whether or not said deposits are separately charged.

e. "Sales price" shall not include amounts charged as deposits on automotive, industrial, marine and farm replacement parts which are returnable to vendors for rebuilding or remanufacturing and which amounts are refundable or creditable to vendees, whether or not such deposits are separately charged. This subsection shall not be construed to include tires and batteries.

f. The sales price of tangible personal property sold through a coin-operated vending machine, other than closed-container soft drinks subject to excise tax under Article 2B of this Chapter or tobacco products, is considered to be fifty percent (50%) of the total amount for which the property is sold in the vending machine.

(17) "Storage" means and includes any keeping or retention in this State for any purpose by the purchaser thereof, except sale in the regular course of business, of tangible personal property purchased from a retailer.

(18) "Use" means and includes the exercise of any right or power or dominion whatsoever over tangible personal property by a purchaser thereof and includes, but is not limited to, any withdrawal from storage, installation, affixation to real or personal property, exhaustion or consumption of tangible personal property by the owner or purchaser thereof, but shall not include the sale of tangible personal property in the regular course of business.

(19) "Storage" and "Use"; Exclusion. — "Storage" and "use" do not include the keeping, retaining or exercising of any right or power over tangible personal property by the purchaser thereof for the original purpose of subsequently transporting it outside the State for use by said purchaser thereafter solely outside the State and which purpose is consummated, or for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the State and thereafter used by the purchaser thereof solely outside the State.

(20) "Tangible personal property" means and includes personal property which may be seen, weighed, measured, felt or touched or is in any other manner perceptible to the senses. The term "tangible personal property" shall not include stocks, bonds, notes, insurance or other obligations or securities, nor shall it include water delivered by or through main lines or pipes either for commercial or domestic use or consumption. The term includes all "canned" or prewritten computer programs, either in the form of written procedures or in the form of storage media on which or in which the program is recorded, held, or existing for general or repeated sale, lease, or license to use or consume. The term does not include the design, develop-

§ 105-164.3 is set out three times. See headings for effective dates.

ment, writing, translation, fabrication, lease, license to use or consume, or transfer for a consideration of title or possession of a custom computer program, other than a basic operational program, either in the form of written procedures or in the form of storage media on which or in which the program is recorded, or any required documentation or manuals designed to facilitate the use of the custom computer program.

As used in this subdivision:

a. "Basic operational program" or "control program" means a computer program that is fundamental and necessary to the functioning of a computer. A basic operational program is that part of an operating system, including supervisors, monitors, executives, and control or master programs, which consists of the control program elements of that system. A control or master program, as opposed to a processing program, controls the operation of a computer by managing the allocation of all system resources, including the central processing unit, main storage, input/output devices, and processing programs. A processing program is used to develop and implement the specific applications the computer is to perform.

b. "Computer program" means the complete plan for the solution of a problem, such as the complete sequence of automatic data-processing equipment instructions necessary to solve a problem, and includes both systems and application programs and subdivisions, such as assemblers, compliers, routines, generators, and utility programs.

c. "Custom computer program" means a computer program prepared to the special order of the customer. Custom computer programs include one of the following elements:

1. Preparation or selection of the programs for the customer's use requires an analysis of the customer's requirements by the vendor; or
2. The program requires adaptation by the vendor to be used in a particular make and model of computer utilizing a specified output device.

d. "Storage media" means punched cards, tapes, disks, diskettes, or drums.

(21) "Taxpayer" means any person liable for taxes under this Article.

(22) "Use tax" means and includes the tax imposed by Part 3 in Division II of this Article.

(23) "Wholesale merchant" shall mean every person who engages in the business of buying or manufacturing any tangible personal property and selling same to registered retailers, wholesalers and nonresident retail or wholesale merchants for resale. It shall also include persons making sales of tangible personal property which are defined herein as wholesale sales. For the purposes of this Article any person, firm, corporation, estate or trust engaged in the business of manufacturing, producing, processing or blending any articles of commerce and maintaining a store or

§ 105-164.3 is set out three times. See headings for effective dates.

stores, warehouse or warehouses, or any other place or places, separate and apart from the place of manufacture or production, for the sale or distribution of its products (other than bakery products) to other manufacturers or producers, wholesale or retail merchants, for the purpose of resale shall be deemed a "wholesale merchant."

(24) "Wholesale sale" shall mean a sale of tangible personal property by a wholesale merchant to a manufacturer, or registered jobber or dealer, or registered wholesale or retail merchant, for the purpose of resale but does not include a sale to users or consumers not for resale.

(25) "Utility" means an electric power company, a gas company, or a telephone company that is subject to a privilege tax based on gross receipts under G.S. 105-116 or 105-120, a business entity that provides local, toll or private telecommunications service as defined by G.S. 105-120(a) or a municipality that sells electric power, other than a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5; 1961, c. 1213, s. 1; 1967, c. 1110, s. 6; 1973, c. 476, s. 193; c. 1287, s. 8; 1975, c. 104; c. 275, s. 6; 1979, c. 48, s. 2; c. 71; c. 801, s. 72; 1983, c. 713, ss. 87, 88; 1983 (Reg. Sess., 1984), c. 1097, ss. 4, 5; 1985, c. 23; 1987, c. 27; c. 557, s. 3.1; c. 854, ss. 2, 3.)

Section Set Out Three Times. — The section above is effective July 1, 1989. For this section as in effect from January 1, 1989 to July 1, 1989, see the preceding section, also numbered § 105-164.3. For this section as in effect until January 1, 1989, see the section preceding that section, also numbered § 105-164.3.

Effect of Amendments. —

Session Laws 1987, c. 27, effective March 26, 1987, rewrote subdivision (10), defining "Nonresident retail or wholesale merchant", eliminating a requirement that such merchant obtain from the Secretary a certificate of registration.

Session Laws 1987, c. 557, s. 3.1, effective January 1, 1989, inserted "a business entity that provides local, toll or private telecommunications service as defined by G.S. 105-120(a)" in subdivision (25).

"Session Laws 1987, c. 854, ss. 2, 3, effective July 1, 1989, and applicable to sales made on or after that date, inserted "Except as provided in paragraph f." at the beginning of the first sentence of subdivision (16), and added paragraph (16)f.

Division II. Taxes Levied.

Part 1. Retail Sales Tax.

§ 105-164.4. (Effective until July 1, 1988) 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

§§ 105-164.3, 105-164.4 are set out three times. See headings for effective dates.

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 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 three hundred dollars ($300.00).

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.

Notwithstanding G.S. 105-164.3(16) and regardless whether the seller is a retailer of motor vehicles, the sales price of a motor vehicle is the gross sales price of the motor vehicle less any allowance given for a motor vehicle taken in trade as part of the consideration for the purchased motor vehicle.

The tax levied under this section applies to all retail sales of motor vehicles regardless whether the seller is engaged in business as a retailer of motor vehicles or whether a tax on the sale of the vehicle has previously been paid under this Article. A purchaser of a motor vehicle from a retailer shall pay the tax imposed under this Article to the retailer, who is liable for collecting and remitting the tax to the Secretary. A purchaser of a motor vehicle is liable for payment of the tax imposed by this Article if the seller is not a retailer. The purchaser shall pay the tax to the Commissioner of Motor Vehicles when applying for a certificate of title for the vehicle. When property is transferred by an individual to a partnership or corporation, and no gain or loss arises as provided by Section 351 or Section 721 of the Code, such transfer is not a sale for the purpose of this subdivision if the transfer is incident to the organization of the partnership or corporation.

When applying for a certificate of title, a purchaser of a motor vehicle from a seller who is not a retailer shall certify in writing the sales price of the purchased motor vehicle. A purchaser who knowingly makes a false certification of the sales price is guilty of a misdemeanor.

§ 105-164.4 is set out three times. See headings for effective dates.

The Commissioner of Motor Vehicles may not issue a certificate of title for a motor vehicle sold by a seller who is not a retailer unless the tax imposed by this section is paid when the purchaser of the vehicle applies for a certificate of title. The Commissioner shall remit taxes collected by him under this subsection to the Secretary.

Persons who lease or rent motor vehicles shall collect and remit the tax imposed by this Article on the separate retail sale of a motor vehicle in addition to the tax imposed on the proceeds from the lease or rental of the motor vehicle.

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

a. Horses or mules by whomsoever sold.
b. Semen to be used in the artificial insemination of animals.
c. Sales of fuel, other than electricity or piped natural gas, 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, other than electricity or piped natural gas, 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, other than electricity or piped natural gas, to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.
f. Sales to freezer locker plants of wrapping paper, cartons and supplies consumed directly in the operation of such plant.

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

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

§ 105-164.4 is set out three times. See headings for effective dates.

parts, and accessories that come within the provisions of G.S. 105-164.13(4c).

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. As used in this paragraph, the term "manufacturing industries and plants" does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.

i. Sales of central office equipment and switchboard and private branch exchange equipment to telephone companies regularly engaged in providing telephone service to subscribers on a commercial basis, and sales to these companies of prewritten computer programs used in providing telephone service to their subscribers.

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. Repealed by Session Laws 1987, c. 800, s. 2, effective September 1, 1987.

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. Repealed by Session Laws 1983, c. 805, s. 2, effective July 1, 1983.

q. Sales of containers to farmers or producers for use in the planting, producing, harvesting, curing, marketing, packaging, sale, or transporting or delivery of their products when such containers do not go with and become part of the sale of their products at wholesale or retail.

(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, tourist camps, and similar type businesses and persons who rent private residences and cottages to transients are considered retailers under this Article. There is levied upon every such retailer 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 for a consideration. This tax does not apply to any private residence or cottage that is rented for less than 15 days in a calendar year or to any room, lodging, or accommodation supplied to the same person for a period of 90 or more continuous days.

As used in this subdivision, the term "persons who rent to transients" means (i) owners of private residences and cottages who rent to transients and (ii) rental agents, including "real estate brokers" as defined in G.S. 93A-2, who rent private residences and cottages to transients on behalf of the owners. If a rental agent is liable for the tax imposed by this subdivision, the owner is not liable.

(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

§ 105-164.4 is set out three times. See headings for effective dates.

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.

(4a) At the rate of three percent (3%) of the gross receipts derived by a utility from sales of electricity, piped natural gas, or intrastate telephone service. A person who operates a utility is considered a retailer under this Article.

(4b) A person who sells tangible personal property at a flea market, other than his own household personal property, is considered a retailer under this Article. A tax is levied on that person at the rate of three percent (3%) of the sales price of each article sold by him at the flea market. A person who leases or rents space at a flea market may not lease or rent this space unless the retailer requesting to rent or lease the space furnishes evidence that he has obtained the license required by this Article. A person who leases or rents space at a flea market shall keep records of retailers to whom he has leased or rented space at the market. As used in this subdivision, the term "flea market" means a place where space is rented to a person for the purpose of selling tangible personal property.

(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 property, 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.

§ 105-164.4 is set out three times. See headings for effective dates.

(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.

A retailer who sells tangible personal property at a flea market shall conspicuously display his sales tax license when making sales at the flea market. (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; 1981 (Reg. Sess., 1982), cc. 1207, 1273; 1983, c. 510; c. 713, ss. 89, 93; c. 805, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1065, ss. 1, 2; c. 1097, ss. 6, 13; 1985, c. 704; 1985 (Reg. Sess., 1986), c. 925; c. 1005; 1987, c. 800, ss. 2, 3.)

Section Set Out Three Times. — The section above is effective until July 1, 1988. For this section as amended effective July 1, 1988 to January 1, 1989, see the following section, also numbered § 105-164.4. For this section as amended effective January 1, 1989, see the section thereafter, also numbered § 105-164.4.

Editor's Note. —

Session Laws 1987, c. 524, s. 7 provides that the provisions of Session Laws 1985, c. 479, s. 9, noted in the Editor's Note under this section in the main volume, shall remain in effect until ratification of the Current Operations Appropriations Act for the 1987-89 biennium. Chapter 738 of Session Laws 1987, the appropriations act, was ratified on August 7, 1987.

Session Laws 1987, c. 738, s. 172 substituted "seventy-two cents (72¢)" for "seventy cents (70¢)" in Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 202, as noted in the Editor's Note under this section in the main volume.

Effect of Amendments. —

Session Laws 1985 (Reg. Sess., 1986), c. 925, effective with respect to transfers occurring on or after September 1, 1986, added the last sentence of the fourth paragraph of subdivision (1).

Session Laws 1985 (Reg. Sess., 1986), c. 1005, effective July 14, 1986, added the last sentence of subdivision (1)h.

The 1987 amendment, effective September 1, 1987, and applicable to transactions occurring on or after that date, deleted paragraph (1)n, relating to sales

to farmers of commercially manufactured swine, livestock, or poultry equipment or facilities and accessories, and added "except such machines, machinery, equipment, parts, and accessories that come within the provisions of G.S. 105-164.13(4c)" at the end of paragraph (1)g.

CASE NOTES

II. MANUFACTURING.

A restaurant is not a manufacturer as that term is used in subdivision (1)(h) of this section. Hed, Inc. v. Powers, — N.C. App. —, 352 S.E.2d 265 (1987).

V. LEASES AND RENTALS.

Monthly Equipment and Maintenance Charges. — Where a corporation that designed, manufactured, leased and sold computers and other business machines and equipment, in leasing such machines and equipment, required lessees to agree to pay both a "monthly equipment charge" and a "base monthly maintenance charge," both charges were part of the gross proceeds derived from the renting of machines and equipment within the contemplation of this section. Sperry Corp. v. Lynch, 76 N.C. App. 327, 332 S.E.2d 757, cert. denied, 314 N.C. 669, 336 S.E.2d 401 (1985).

§ 105-164.4. (Effective July 1, 1988 to January 1, 1989) 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 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 three hundred dollars ($300.00).

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.

§ 105-164.4 is set out three times. See headings for effective dates.

Notwithstanding G.S. 105-164.3(16) and regardless whether the seller is a retailer of motor vehicles, the sales price of a motor vehicle is the gross sales price of the motor vehicle less any allowance given for a motor vehicle taken in trade as part of the consideration for the purchased motor vehicle.

The tax levied under this section applies to all retail sales of motor vehicles regardless whether the seller is engaged in business as a retailer of motor vehicles or whether a tax on the sale of the vehicle has previously been paid under this Article. A purchaser of a motor vehicle from a retailer shall pay the tax imposed under this Article to the retailer, who is liable for collecting and remitting the tax to the Secretary. A purchaser of a motor vehicle is liable for payment of the tax imposed by this Article if the seller is not a retailer. The purchaser shall pay the tax to the Commissioner of Motor Vehicles when applying for a certificate of title for the vehicle. When property is transferred by an individual to a partnership or corporation, and no gain or loss arises as provied by Section 351 or Section 721 of the Code, such transfer is not a sale for the purpose of this subdivision if the transfer is incident to the organization of the partnership or corporation.

When applying for a certificate of title, a purchaser of a motor vehicle from a seller who is not a retailer shall certify in writing the sales price of the purchased motor vehicle. A purchaser who knowingly makes a false certification of the sales price is guilty of a misdemeanor.

The Commissioner of Motor Vehicles may not issue a certificate of title for a motor vehicle sold by a seller who is not a retailer unless the tax imposed by this section is paid when the purchaser of the vehicle applies for a certificate of title. The Commissioner shall remit taxes collected by him under this subsection to the Secretary.

Persons who lease or rent motor vehicles shall collect and remit the tax imposed by this Article on the separate retail sale of a motor vehicle in addition to the tax imposed on the proceeds from the lease or rental of the motor vehicle.

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

a. Horses or mules by whomsoever sold.
b. Semen to be used in the artificial insemination of animals.
c. Sales of fuel, other than electricity or piped natural gas, 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, other than electricity or piped natural gas, to manufacturing industries and manufacturing plants for use in connection with the operation of such

§ 105-164.4 is set out three times. See headings for effective dates.

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, other than electricity or piped natural gas, to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.

f. Sales to freezer locker plants of wrapping paper, cartons and supplies consumed directly in the operation of such plant.

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

g. Sales of machines and machinery, whether animal or motor drawn or operated, and parts and accessories for such machines and machinery to farmers for use by them in the planting, cultivating, harvesting or curing of farm crops, and sales of machines and machinery and parts and accessories for such machines and machinery to dairy operators, poultry farmers, egg producers, and livestock farmers for use by them in the production of dairy products, poultry, eggs or livestock, except such machines, machinery, equipment, parts, and accessories that come within the provisions of G.S. 105-164.13(4c).

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

§ 105-164.4 is set out three times. See headings for effective dates.

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. As used in this paragraph, the term "manufacturing industries and plants" does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.

i. Sales of central office equipment and switchboard and private branch exchange equipment to telephone companies regularly engaged in providing telephone service to subscribers on a commercial basis, and sales to these companies of prewritten computer programs used in providing telephone service to their subscribers.

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. Repealed by Session Laws 1987, c. 800, s. 2, effective September 1, 1987.

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. Repealed by Session Laws 1983, c. 805, s. 2, effective July 1, 1983.

q. Sales of containers to farmers or producers for use in the planting, producing, harvesting, curing, marketing, packaging, sale, or transporting or delivery of their products when such containers do not go with and become part of the sale of their products at wholesale or retail.

(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, tourist camps, and similar type businesses and persons who rent private

§ 105-164.4 is set out three times. See headings for effective dates.

residences and cottages to transients are considered retailers under this Article. There is levied upon every such retailer 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 for a consideration. This tax does not apply to any private residence or cottage that is rented for less than 15 days in a calendar year or to any room, lodging, or accommodation supplied to the same person for a period of 90 or more continuous days.

As used in this subdivision, the term "persons who rent to transients" means (i) owners of private residences and cottages who rent to transients and (ii) rental agents, including "real estate brokers" as defined in G.S. 93A-2, who rent private residences and cottages to transients on behalf of the owners. If a rental agent is liable for the tax imposed by this subdivision, the owner is not liable.

(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 tax imposed by this subdivision does not apply to receipts derived from coin or token-operated washing machines, extractors, and dryers. 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.

(4a) At the rate of three percent (3%) of the gross receipts derived by a utility from sales of electricity, piped natural gas, or intrastate telephone service. A person who operates a utility is considered a retailer under this Article.

§ 105-164.4 is set out three times. See headings for effective dates.

(4b) A person who sells tangible personal property at a flea market, other than his own household personal property, is considered a retailer under this Article. A tax is levied on that person at the rate of three percent (3%) of the sales price of each article sold by him at the flea market. A person who leases or rents space at a flea market may not lease or rent this space unless the retailer requesting to rent or lease the space furnishes evidence that he has obtained the license required by this Article. A person who leases or rents space at a flea market shall keep records of retailers to whom he has leased or rented space at the market. As used in this subdivision, the term "flea market" means a place where space is rented to a person for the purpose of selling tangible personal property.

(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 property, 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.

§ 105-164.4 is set out three times. See headings for effective dates.

A retailer who sells tangible personal property at a flea market shall conspicuously display his sales tax license when making sales at the flea market. (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; 1981 (Reg. Sess., 1982), cc. 1207, 1273; 1983, c. 510; c. 713, ss. 89, 93; c. 805, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1065, ss. 1, 2; c. 1097, ss. 6, 13; 1985, c. 704; 1985 (Reg. Sess., 1986), c. 925; c. 1005; 1987, c. 800, ss. 2, 3; c. 854, s. 1.)

Section Set Out Three Times. — The section above is effective from July 1, 1988 to January 1, 1989. For this section as in effect until July 1, 1988, see the preceding section, also numbered § 105-164.4. For this section as amended effective January 1, 1989, see the following section, also numbered § 105-164.4.

Effect of Amendments. —

Session Laws 1987, c. 800, ss. 2, 3, effective September 1, 1987, and applicable to transactions occurring on or after that date, deleted paragraph (1)n, relating to sales to farmers of commercially manufactured swine, livestock, or poultry equipment or facilities and accessories, and added "except such machines, machinery, equipment, parts, and accessories that come within the provisions of G.S. 105-164.13(4c)" at the end of paragraph (1)g.

Session Laws 1987, c. 854, s. 1, effective July 1, 1988, and applicable to services rendered and sales made on or after that date, inserted the present third sentence of subdivision (4).

§ 105-164.4. (Effective January 1, 1989) 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 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 three hundred dollars ($300.00).

§ 105-164.4 is set out three times. See headings for effective dates.

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.

Notwithstanding G.S. 105-164.3(16) and regardless whether the seller is a retailer of motor vehicles, the sales price of a motor vehicle is the gross sales price of the motor vehicle less any allowance given for a motor vehicle taken in trade as part of the consideration for the purchased motor vehicle.

The tax levied under this section applies to all retail sales of motor vehicles regardless whether the seller is engaged in business as a retailer of motor vehicles or whether a tax on the sale of the vehicle has previously been paid under this Article. A purchaser of a motor vehicle from a retailer shall pay the tax imposed under this Article to the retailer, who is liable for collecting and remitting the tax to the Secretary. A purchaser of a motor vehicle is liable for payment of the tax imposed by this Article if the seller is not a retailer. The purchaser shall pay the tax to the Commissioner of Motor Vehicles when applying for a certificate of title for the vehicle. When property is transferred by an individual to a partnership or corporation, and no gain or loss arises as provided by Section 351 or Section 721 of the Code, such transfer is not a sale for the purpose of this subdivision if the transfer is incident to the organization of the partnership or corporation.

When applying for a certificate of title, a purchaser of a motor vehicle from a seller who is not a retailer shall certify in writing the sales price of the purchased motor vehicle. A purchaser who knowingly makes a false certification of the sales price is guilty of a misdemeanor.

The Commissioner of Motor Vehicles may not issue a certificate of title for a motor vehicle sold by a seller who is not a retailer unless the tax imposed by this section is paid when the purchaser of the vehicle applies for a certificate of title. The Commissioner shall remit taxes collected by him under this subsection to the Secretary.

Persons who lease or rent motor vehicles shall collect and remit the tax imposed by this Article on the separate retail sale of a motor vehicle in addition to the tax imposed on the proceeds from the lease or rental of the motor vehicle.

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

a. Horses or mules by whomsoever sold.
b. Semen to be used in the artificial insemination of animals.
c. Sales of fuel, other than electricity or piped natural gas, to farmers to be used by them for any farm purposes other than preparing food, heating dwellings and

§ 105-164.4 is set out three times. See headings for effective dates.

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, other than electricity or piped natural gas, 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, other than electricity or piped natural gas, to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.

f. Sales to freezer locker plants of wrapping paper, cartons and supplies consumed directly in the operation of such plant.

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

g. Sales of machines and machinery, whether animal or motor drawn or operated, and parts and accessories for such machines and machinery to farmers for use by them in the planting, cultivating, harvesting or curing of farm crops, and sales of machines and machinery and parts and accessories for such machines and machinery to dairy operators, poultry farmers, egg producers, and livestock farmers for use by them in the production of dairy products, poultry, eggs or livestock, except such machines, machinery, equipment, parts, and accessories that come within the provisions of G.S. 105-164.13(4c).

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

§ 105-164.4 is set out three times. See headings for effective dates.

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. As used in this paragraph, the term "manufacturing industries and plants" does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.

i. Sales of central office equipment and switchboard and private branch exchange equipment to telephone companies regularly engaged in providing telephone service to subscribers on a commercial basis, and sales to these companies of prewritten computer programs used in providing telephone service to their subscribers.

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. Repealed by Session Laws 1987, c. 800, s. 2, effective September 1, 1987.

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. Repealed by Session Laws 1983, c. 805, s. 2, effective July 1, 1983.

q. Sales of containers to farmers or producers for use in the planting, producing, harvesting, curing, marketing, packaging, sale, or transporting or delivery of their products when such containers do not go with and become part of the sale of their products at wholesale or retail.

(2) At the rate of three percent (3%) of the gross proceeds derived from the lease or rental of tangible personal property

§ 105-164.4 is set out three times. See headings for effective dates.

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, tourist camps, and similar type businesses and persons who rent private residences and cottages to transients are considered retailers under this Article. There is levied upon every such retailer 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 for a consideration. This tax does not apply to any private residence or cottage that is rented for less than 15 days in a calendar year or to any room, lodging, or accommodation supplied to the same person for a period of 90 or more continuous days.

As used in this subdivision, the term "persons who rent to transients" means (i) owners of private residences and cottages who rent to transients and (ii) rental agents, including "real estate brokers" as defined in G.S. 93A-2, who rent private residences and cottages to transients on behalf of the owners. If a rental agent is liable for the tax imposed by this subdivision, the owner is not liable.

(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 tax imposed by this subdivision does not apply to receipts derived from coin or token-operated washing machines, extractors, and dryers. 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 here-

§ 105-164.4 is set out three times. See headings for effective dates.

inafter required and has paid the tax at the rate of three percent (3%) of the total gross receipts derived from business solicited.

(4a) At the rate of three percent (3%) of the gross receipts derived by a utility from sales of electricity, piped natural gas, or local telecommunications service as defined by G.S. 105-120(a). A person who operates a utility is considered a retailer under this Article.

(4b) A person who sells tangible personal property at a flea market, other than his own household personal property, is considered a retailer under this Article. A tax is levied on that person at the rate of three percent (3%) of the sales price of each article sold by him at the flea market. A person who leases or rents space at a flea market may not lease or rent this space unless the retailer requesting to rent or lease the space furnishes evidence that he has obtained the license required by this Article. A person who leases or rents space at a flea market shall keep records of retailers to whom he has leased or rented space at the market. As used in this subdivision, the term "flea market" means a place where space is rented to a person for the purpose of selling tangible personal property.

(4c) At the rate of six and one-half percent (6 ½%) of the gross receipts derived from providing toll telecommunications services or private telecommunications services as defined by G.S. 105-120(a) that both originate from and terminate in the State which are not subject to the privilege tax under G.S. 105-120. Any business entity that provides the service outlined above is considered a retailer under this Article. This subdivision shall not apply to telephone membership corporations as described in Chapter 117 of the General Statutes.

(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 property, 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

§ 105-164.4 is set out three times. See headings for effective dates.

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.

A retailer who sells tangible personal property at a flea market shall conspicuously display his sales tax license when making sales at the flea market. (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; 1981 (Reg. Sess., 1982), cc. 1207, 1273; 1983, c. 510; c. 713, ss. 89, 93; c. 805, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1065, ss. 1, 2; c. 1097, ss. 6, 13; 1985, c. 704; 1985 (Reg. Sess., 1986), c. 925; c. 1005; 1987, c. 557, ss. 4, 5; c. 800, ss. 2, 3; c. 854, s. 1.)

Section Set Out Three Times. — The section above is effective January 1, 1989. For this section as in effect from July 1, 1988, until January 1, 1989, see the preceding section, also numbered § 105-164.4. For this section as in effect until July 1, 1988, see the section preceding that section, also numbered § 105-164.4.

Editor's Note. —

Session Laws 1987, c. 557, s. 10, provides: "Prior to the effective date of the tax imposed by Sec. 105-164.4(4c), customers shall be notified by the service providers concerning the change in the law, services subject to this tax and the rate of tax by bill inserts, public notices and other means necessary to adequately apprise the public."

Effect of Amendments. — Session Laws 1987, c. 800, ss. 2, 3, effective September 1, 1987, and applicable to transactions occurring on or after that date, deleted paragraph (1)n, relating to sales to farmers of commercially manufactured swine, livestock, or poultry equipment or facilities and accessories, and added "except such machines, machinery, equipment, parts, and accessories that come within the provisions of G.S. 105-164.13(4c)" at the end of paragraph (1)g.

Session Laws 1987, c. 854, s. 1, effective July 1, 1988, and applicable to services rendered and sales made on or after that date, inserted the present third sentence of subdivision (4).

Session Laws 1987, c. 557, ss. 4, 5, effective January 1, 1989, substituted "local telecommunications service as defined by G.S. 105-120(a)" for "intrastate telephone service" at the end of the first sentence of subdivision (4a) and added subdivision (4c).

Part 4. General Provisions.

§ 105-164.12A. Electric golf cart and battery charger considered a single article.

The sale of an electric golf cart and a battery charger that is not physically attached to the golf cart is considered the sale of a single article of tangible personal property in imposing tax under this Article if the battery charger is designed to recharge the golf cart and is sold to the purchaser of the golf cart when the golf cart is sold. (1985 (Reg. Sess., 1986), c. 901.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 901, s. 2 makes this section effective July 1, 1986.

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 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.
(4a) Baby chicks and poults sold for commercial poultry or egg production.
(4b) Products of a farm sold in their original state by the producer of the products if the producer is not primarily a retail merchant.
(4c) Commercially manufactured swine, livestock, and poultry facilities to be used for commercial purposes for housing, raising, or feeding of swine, livestock, or poultry or for housing equipment necessary for these commercial activities; building materials, supplies, fixtures, and equipment to be used in the construction, repair, or improvement and that become a part of an enclosure or structure specifically designed, constructed and used for such above commercial

purposes; and commercially manufactured swine, livestock, and poultry equipment, parts and accessories therefor placed or installed in or affixed to such facilities, enclosures, or structures.

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 persons for use by them principally in commercial fishing operations within the meaning of G.S. 113-152, except when the property is for use by persons principally to take fish for recreation or personal use or consumption. As used in this subdivision, "fish" is defined as in G.S. 113-129(7).
(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) Therapeutic, prosthetic, or artifical devices, such as pulmonary respirators or medical beds, that are designed for individual personal use to correct or alleviate physical illness, disease, or incapacity and that are sold on the written

prescription of a physician, dentist, or other professional person licensed to prescribe, and crutches, artificial limbs, artificial eyes, hearing aids, false teeth, eyeglasses ground on prescription of a physician or an optometrist, and orthopedic appliances designed to be worn by the purchaser or user. This subdivision does not apply to a motor vehicle.

(13) Medicines sold on prescription of physicians, dentists, or veterinarians.

Printed Materials Group.

(14) Holy Bibles; public school books on the adopted list, the selling price of which is fixed by State contract.

(14a) Printed material which is sold by a printer to a purchaser within or without this State, when such printed material is delivered in this State to a common carrier or to the United States Postal Service for delivery to the purchaser or the purchaser's designees outside this State, if the purchaser does not thereafter use the printed material in this State.

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 other than motor vehicles 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 other than motor vehicles 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 thousand five hundred dollars ($1,500). 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; and "funeral expenses" and "services rendered" shall not include death certificates procured 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 registered, 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. For sales made by a seller who is not a retailer, this exemption applies if the purchaser furnishes the Secretary an affidavit containing the information otherwise required from a retailer within 45 days of the date of the sale.

(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.

(36) Advertising supplements and any other printed matter ultimately to be distributed with or as part of a newspaper.

(37) Spirituous liquor. This exemption does not prohibit the levy of sales and use taxes on mixed beverages. As used in this subdivision, the terms "spirituous liquor" and "mixed beverage" have the same meanings as in G.S. 18B-101(14) and G.S. 18B-101(10) respectively.

(38) Food and other items lawfully purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51, and supplemental foods lawfully purchased with a food instrument issued under the Special Supplemental Food Program, 42 U.S.C. § 1786.

(39) Sales of paper, ink, and other tangible personal property to commercial printers and commercial publishers for use as ingredient or component parts of free circulation publications, and sales by printers of free circulation publications to the publishers of these publications. As used in this subdivision, the term "free circulation publications" means shoppers' guides that:

(1) Are published on a periodic basis at recurring intervals;

(2) Are mailed or are distributed house-to-house, by street distributors, in racks, or in any other manner at other locations without charge to the recipient;

(3) Contain advertising of a general nature; and

(4) Make space available to all advertisers for the purpose of inducing readers to purchase the goods and services of the advertisers.

The term does not include house organs or trade, professional, or similar types of publications. The ratio of news to

advertising in a publication is not a factor in determining whether the publication is a free circulation publication.

(40) Sales to the Department of Transportation. (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, cc. 14, 207, 982; 1983, c. 156; c. 570, s. 21; c. 713, ss. 91, 92; c. 873; c. 887; 1983 (Reg. Sess., 1984), c. 1071, s. 1; 1985, c. 114, s. 4; c. 555; c. 656, ss. 24, 25; 1985 (Reg. Sess., 1986), c. 953; c. 973; c. 982, s. 2; 1987, c. 800, s. 1.)

Effect of Amendments. —

Session Laws 1985 (Reg. Sess., 1986), c. 953, effective August 1, 1986, deleted "farms," following "Products of" in subdivision (3) and added subdivision (4b).

Session Laws 1985 (Reg. Sess., 1986), c. 973, effective August 1, 1986, added subdivision (4c).

Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 2, effective August 1, 1986, added subdivision (40).

The 1987 amendment, effective September 1, 1987, and applicable to transactions occurring on or after that date, rewrote subdivision (4c).

Legal Periodicals. — For article, "All the News That's Fit to Tax: First Amendment Limitations on State and Local Taxation of the Press," see 21 Wake Forest L. Rev. 59 (1985).

For note on the North Carolina sales and use tax exemption for newspapers, in light of In re Village Publishing Corp., 312 N.C. 211, 322 S.E.2d 155 (1984), appeal dismissed, — U.S. —, 105 S. Ct. 2693, 86 L. Ed. 2d 710 (1985), see 21 Wake Forest L. Rev. 145 (1985).

§ 105-164.14. (Effective until January 1, 1989) Certain refunds authorized.

(a) Any person engaged in transporting persons or property in interstate commerce for compensation who is subject to regulation by, and to the jurisdiction of, the Interstate Commerce Commission or the United States Department of Transportation and who is required by either such federal agency to keep records according to its standard classification of accounting or, in the case of a small certificated air carrier, is required by the U.S. Department of Transportation to make reports of financial and operating statistics, may secure a refund from the Secretary of Revenue with respect to sales or use tax paid by such person on purchases or acquisitions of lubricants, repair parts and accessories in this State for motor vehicles, railroad cars, locomotives, and airplanes operated by such person, upon the conditions described below. The Secretary of Revenue shall prescribe the periods of time, whether monthly, quarterly, semiannually or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following such periods, an application for refund may be made. An applicant for refund shall furnish such information as the Secretary may require, including detailed information as to lubricants, repair parts and accessories wherever purchased, whether within or without the State, acquired during the period with respect to which a refund is sought, and the purchase price thereof, detailed information as to sales and use tax paid in this State thereon, and detailed information as to the number of miles such motor vehicles, railroad cars,

§ 105-164.14 is set out twice. See headings for effective dates.

locomotives, and airplanes were operated both within this State, and without this State, during such period, together with satisfactory proof thereof. The Secretary shall thereupon compute the tax which would be due with respect to all lubricants, repair parts and accessories acquired during the refund period as though all such purchases were made in this State, but only on such proportion of the total purchase prices thereof as the total number of miles of operation of such applicants' motor vehicles, railroad cars, locomotives, and airplanes within this State bears to the total number of miles of operation of such applicants' motor vehicles, railroad cars, locomotives and airplanes within and without this State, and such amount of sales and use tax as the applicant has paid in this State during said refund period in excess of the amounts so computed shall be refunded to the applicant.

(b) The Secretary of Revenue shall make refunds semiannually to hospitals not operated for profit (including hospitals and medical accommodations operated by an authority created under the Hospital Authorities Law, Article 12 of Chapter 131), educational institutions not operated for profit, churches, orphanages and other charitable or religious institutions and organizations not operated for profit of sales and use taxes paid under this Article, except under G.S. 105-164.4(4a), by such institutions and organizations on direct purchases of tangible personal property for use in carrying on the work of such institutions or organizations. Sales and use tax liability indirectly incurred by such institutions and organizations on building materials, supplies, fixtures and equipment which shall become a part of or annexed to any building or structure being erected, altered or repaired for such institutions and organizations for carrying on their nonprofit activities shall be construed as sales or use tax liability incurred on direct purchases by such institutions and organizations, and such institutions and organizations may obtain refunds of such taxes indirectly paid. The Secretary of Revenue shall also make refunds semiannually to all other hospitals (not specifically excluded herein) of sales and use tax paid by them on medicines and drugs purchased for use in carrying out the work of such hospitals. This subsection does not apply to organizations, corporations, and institutions that are owned and controlled by the United States, the State, or a unit of local government, except hospital facilities created under Article 12 of Chapter 131 of the General Statutes and nonprofit hospitals owned and controlled by a unit of local government that elect to receive semiannual refunds under this subsection instead of annual refunds under subsection (c). In order to receive the refunds herein provided for, such institutions and organizations shall file a written request for refund covering the first six months of the calendar year on or before the fifteenth day of October next following the close of said period, and shall file a written request for refund covering the second six months of the calendar year on or before the fifteenth day of April next following the close of that period. Such requests for refund shall be substantiated by such proof as the Secretary of Revenue may require, and no refund shall be made on applications not filed within the time allowed by this section and in such manner as the Secretary may require.

(c) Upon receipt of timely applications for refund, the Secretary of Revenue shall make refunds annually to all governmental entities, as hereinafter defined, of sales and use tax paid under this

§ 105-164.14 is set out twice. See headings for effective dates.

Article, except under G.S. 105-164.4(4a), by said governmental entities on direct purchases of tangible personal property. Sales and use tax liability indirectly incurred by such governmental entities on building materials, supplies, fixtures and equipment which shall become a part of or annexed to any building or structure being erected, altered or repaired which is owned or leased by such governmental entities shall be construed as sales or use tax liability incurred on direct purchases by such governmental entities, and such entities may obtain refunds of such taxes indirectly paid. The refund provisions contained in this subsection shall not apply to any governmental entities not specifically named herein. In order to receive the refund herein provided for, governmental entities shall file a written request for said refund within six months of the close of the fiscal year of the governmental entities seeking said refund, and such request for refund shall be substantiated by such records, receipts and information as the Secretary may require. No refunds shall be made on applications not filed within the time allowed by this section and in such manner as the Secretary may otherwise require. The term "governmental entities," for the purposes of this subsection, shall mean all counties, incorporated cities and towns, water and sewer authorities created and existing under the provisions of Chapter 162A of the General Statutes, lake authorities created by a board of county commissioners pursuant to an act of the General Assembly, sanitary districts, regional councils of governments created pursuant to G.S. 160A-470, area mental health, mental retardation, and substance abuse authorities (other than single-county area authorities) established pursuant to Article 4 of Chapter 122C of the General Statutes, district health departments, regional planning and economic development commissions created pursuant to G.S. 158-14, regional economic development commissions created pursuant to G.S. 158-8, regional planning commissions created pursuant to G.S. 153A-391, metropolitan sewerage districts and metropolitan water districts in this State, the North Carolina Low-Level Radioactive Waste Management Authority created pursuant to Chapter 104G of the General Statutes.

(d) Refunds made pursuant to applications filed after the dates specified in subsections (b) and (c) above shall be subject to the following penalties for late filing: applications filed within 30 days after said dates, twenty-five percent (25%); applications filed after 30 days but within six months after said dates, fifty percent (50%). However, refunds which are applied for after six months following said dates shall be barred. (1957, c. 1340, s. 5; 1961, c. 826, s. 2; 1963, cc. 169, 1134; 1965, c. 1006; 1967, c. 1110, s. 6; 1969, c. 1298, s. 1; 1971, cc. 89, 286; 1973, c. 476, s. 193; 1977, c. 895, s. 1; 1979, c. 47; c. 801, ss. 77, 79-82; 1983, c. 594, s. 1; c. 891, s. 13; 1983 (Reg. Sess., 1984), c. 1097, s. 7; 1985, cc. 431, 523; 1985 (Reg. Sess., 1986), c. 863, s. 5; 1987, c. 850, s. 16.)

Section Set Out Twice. — The section above is effective until January 1, 1989. For this section as amended effective January 1, 1989, see the following section, also numbered § 105-164.14.

Editor's Note. —

Session Laws 1987, c. 850, s. 27(a) provides: "Notwithstanding any other provision of this act, this act shall not be construed as a revenue bill within the meaning of Section 23 of Article II of the Constitution of North Carolina. Any provision of this act contrary to this section is void."

Session Laws 1987, c. 850, s. 27(b) is a severability clause.

Article 12 of Chapter 131, referred to in this section, has been repealed. As to

§ 105-164.14 is set out twice. See headings for effective dates.

hospital authorities, see now § 131E-15 et seq.

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment, effective August 1, 1986, substituted "area mental health, mental retardation, and substance abuse authorities (other than single-county area authorities) established pursuant to Article 4 of Chapter 122C of the General Statutes" for "area mental health boards (other than single-county boards) established pursuant to Article 2F of Chapter 122 of the General Statutes" in the last sentence of subsection (c).

The 1987 amendment, effective August 14, 1987, added "the North Carolina Low-Level Radioactive Waste Management Authority created pursuant to Chapter 104G of the General Statutes" at the end of subsection (c).

§ 105-164.14. (Effective January 1, 1989) Certain refunds authorized.

(a) Any person engaged in transporting persons or property in interstate commerce for compensation who is subject to regulation by, and to the jurisdiction of, the Interstate Commerce Commission or the United States Department of Transportation and who is required by either such federal agency to keep records according to its standard classification of accounting or, in the case of a small certificated air carrier, is required by the U.S. Department of Transportation to make reports of financial and operating statistics, may secure a refund from the Secretary of Revenue with respect to sales or use tax paid by such person on purchases or acquisitions of lubricants, repair parts and accessories in this State for motor vehicles, railroad cars, locomotives, and airplanes operated by such person, upon the conditions described below. The Secretary of Revenue shall prescribe the periods of time, whether monthly, quarterly, semiannually or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following such periods, an application for refund may be made. An applicant for refund shall furnish such information as the Secretary may require, including detailed information as to lubricants, repair parts and accessories wherever purchased, whether within or without the State, acquired during the period with respect to which a refund is sought, and the purchase price thereof, detailed information as to sales and use tax paid in this State thereon, and detailed information as to the number of miles such motor vehicles, railroad cars, locomotives, and airplanes were operated both within this State, and without this State, during such period, together with satisfactory proof thereof. The Secretary shall thereupon compute the tax which would be due with respect to all lubricants, repair parts and accessories acquired during the refund period as though all such purchases were made in this State, but only on such proportion of the total purchase prices thereof as the total number of miles of operation of such applicants' motor vehicles, railroad cars, locomotives, and airplanes within this State bears to the total number of miles of operation of such applicants' motor vehicles, railroad cars, locomotives and airplanes within and without this State, and such amount of sales and use tax as the applicant has paid in this State during said refund period in excess of the amounts so computed shall be refunded to the applicant.

(b) The Secretary of Revenue shall make refunds semiannually to hospitals not operated for profit (including hospitals and medical accommodations operated by an authority created under the Hospital Authorities Law, Article 12 of Chapter 131), educational institu-

§ 105-164.14 is set out twice. See headings for effective dates.

tions not operated for profit, churches, orphanages and other charitable or religious institutions and organizations not operated for profit of sales and use taxes paid under this Article, except under G.S. 105-164.4(4a) and G.S. 105-164.4(4c), by such institutions and organizations on direct purchases of tangible personal property for use in carrying on the work of such institutions or organizations. Sales and use tax liability indirectly incurred by such institutions and organizations on building materials, supplies, fixtures and equipment which shall become a part of or annexed to any building or structure being erected, altered or repaired for such institutions and organizations for carrying on their nonprofit activities shall be construed as sales or use tax liability incurred on direct purchases by such institutions and organizations, and such institutions and organizations may obtain refunds of such taxes indirectly paid. The Secretary of Revenue shall also make refunds semiannually to all other hospitals (not specifically excluded herein) of sales and use tax paid by them on medicines and drugs purchased for use in carrying out the work of such hospitals. This subsection does not apply to organizations, corporations, and institutions that are owned and controlled by the United States, the State, or a unit of local government, except hospital facilities created under Article 12 of Chapter 131 of the General Statutes and nonprofit hospitals owned and controlled by a unit of local government that elect to receive semiannual refunds under this subsection instead of annual refunds under subsection (c). In order to receive the refunds herein provided for, such institutions and organizations shall file a written request for refund covering the first six months of the calendar year on or before the fifteenth day of October next following the close of said period, and shall file a written request for refund covering the second six months of the calendar year on or before the fifteenth day of April next following the close of that period. Such requests for refund shall be substantiated by such proof as the Secretary of Revenue may require, and no refund shall be made on applications not filed within the time allowed by this section and in such manner as the Secretary may require.

(c) Upon receipt of timely applications for refund, the Secretary of Revenue shall make refunds annually to all governmental entities, as hereinafter defined, of sales and use tax paid under this Article, except under G.S. 105-164.4(4a) and G.S. 105-164.4(4c), by said governmental entities on direct purchases of tangible personal property. Sales and use tax liability indirectly incurred by such governmental entities on building materials, supplies, fixtures and equipment which shall become a part of or annexed to any building or structure being erected, altered or repaired which is owned or leased by such governmental entities shall be construed as sales or use tax liability incurred on direct purchases by such governmental entities, and such entities may obtain refunds of such taxes indirectly paid. The refund provisions contained in this subsection shall not apply to any governmental entities not specifically named herein. In order to receive the refund herein provided for, governmental entities shall file a written request for said refund within six months of the close of the fiscal year of the governmental entities seeking said refund, and such request for refund shall be substantiated by such records, receipts and information as the Secretary may require. No refunds shall be made on applications not filed within the time allowed by this section and in such manner as the Secre-

§ 105-164.14 is set out twice. See headings for effective dates.

tary may otherwise require. The term "governmental entities," for the purposes of this subsection, shall mean all counties, incorporated cities and towns, water and sewer authorities created and existing under the provisions of Chapter 162A of the General Statutes, lake authorities created by a board of county commissioners pursuant to an act of the General Assembly, sanitary districts, regional councils of governments created pursuant to G.S. 160A-470, area mental health, mental retardation, and substance abuse authorities (other than single-county area authorities) established pursuant to Article 4 of Chapter 122C of the General Statutes, district health departments, regional planning and economic development commissions created pursuant to G.S. 158-14, regional economic development commissions created pursuant to G.S. 158-8, regional planning commissions created pursuant to G.S. 153A-391, metropolitan sewerage districts and metropolitan water districts in this State, the North Carolina Low-Level Radioactive Waste Management Authority created pursuant to Chapter 104G of the General Statutes.

(d) Refunds made pursuant to applications filed after the dates specified in subsections (b) and (c) above shall be subject to the following penalties for late filing: applications filed within 30 days after said dates, twenty-five percent (25%); applications filed after 30 days but within six months after said dates, fifty percent (50%). However, refunds which are applied for after six months following said dates shall be barred. (1957, c. 1340, s. 5; 1961, c. 826, s. 2; 1963, cc. 169, 1134; 1965, c. 1006; 1967, c. 1110, s. 6; 1969, c. 1298, s. 1; 1971, cc. 89, 286; 1973, c. 476, s. 193; 1977, c. 895, s. 1; 1979, c. 47; c. 801, ss. 77, 79-82; 1983, c. 594, s. 1; c. 891, s. 13; 1983 (Reg. Sess., 1984), c. 1097, s. 7; 1985, cc. 431, 523; 1985 (Reg. Sess., 1986), c. 863, s. 5; 1987, c. 557, ss. 8, 9; c. 850, s. 16.)

Section Set Out Twice. — The section above is effective January 1, 1989. For this section as in effect until January 1, 1989, see the preceding section, also numbered § 105-164.14.

Editor's Note. —

Article 12 of Chapter 131, referred to in this section, has been repealed. As to hospital authorities, see now § 131E-15 et seq.

Effect of Amendments. — Session Laws 1987, c. 850, s. 16, effective August 14, 1987, added "the North Carolina Low-Level Radioactive Waste Management Authority created pursuant to Chapter 104G of the General Statutes" at the end of subsection (c).

Session Laws 1987, c. 557, ss. 8, 9, effective January 1, 1989, inserted references to § 105-164.4(4c) in the first sentences of subsections (b) and (c).

Division IV. Reporting and Payment.

§ 105-164.16. (Effective until January 1, 1989) Report and payment of taxes.

(a) Payment. — Taxes levied under this Article are due when a return is required to be filed. Every taxpayer liable for the tax imposed by this Article shall, within the specified time after the end of the appropriate reporting period, submit a return to the Secretary, on a form prescribed by the Secretary, stating the taxpayer's gross sales for the reporting period, the amount and type of sales made in the period that are exempt from tax under G.S. 105-164.13 or are elsewhere excluded from tax, the amount of tax

§§ 105-164.14, 105-164.16 are set out twice. See headings for effective dates.

due, and any other information required by the Secretary. Each return shall be accompanied by a payment to the Secretary for the amount of taxes shown to be due on the return and shall be signed by the taxpayer or his agent. Returns that do not contain the required information shall not be accepted. When an unacceptable return is submitted, the Secretary shall require a corrected return to be filed.

(b) General Reporting Periods. — Returns of taxpayers who are required to report on a monthly or quarterly basis are due within 15 days after the end of each monthly or quarterly period. Returns of taxpayers who are required to report on a semimonthly basis are due within 10 days after the end of each semimonthly period.

A taxpayer who is consistently liable for less than twenty-five dollars ($25.00) a month in State and local sales and use taxes may, with the approval of the Secretary, file a return on a quarterly basis. A taxpayer who is consistently liable for at least twenty thousand dollars ($20,000) a month in State and local sales and use taxes shall, when directed to do so by the Secretary, file a return on a semimonthly basis. All other taxpayers shall file a return on a monthly basis. Quarterly reporting periods end on the last day of March, June, September, and December; monthly reporting periods end on the last day of the month; and semimonthly reporting periods end on the 15th of each month and the last day of each month.

The Secretary shall monitor the amount of tax remitted by a taxpayer and shall direct a taxpayer who consistently remits at least twenty thousand dollars ($20,000) each month to file a return on a semimonthly basis. In determining the amount of tax due from a taxpayer for a reporting period the Secretary shall consider the total amount due from all places of business owned or operated by the same person as the amount due from that person.

A taxpayer who is directed to remit sales and use taxes on a semimonthly basis but who is unable to gather the information required to submit a complete return for either the first reporting period or both the first and second semimonthly reporting periods may, upon written authorization by the Secretary, file an estimated return for that first reporting period or both periods on the basis prescribed by the Secretary. Once a taxpayer is authorized to file an estimated return for the first period or both periods, the taxpayer may continue to file an estimated return for the first or both periods until the Secretary, by written notification, revokes the taxpayer's authorization to do so. When filing a return for the second semimonthly reporting period, a taxpayer who files an estimated return for the first period but not both periods shall remit the amount of tax due for both the first and second reporting periods, less the amount he remitted with his estimated return.

A taxpayer who files an estimated return for both periods is considered to have been granted an extension for both the first and second reporting periods. Notwithstanding G.S. 105-164.19, if a taxpayer who files an estimated return for both periods files a reconciling return for those periods within ten days of the due date of the return for the second period and any underpayment of estimated taxes remitted with the reconciling return is less than ten percent (10%) of the amount of taxes due for both the first and second reporting periods, no interest shall be charged. Otherwise, a taxpayer who files an estimated return for both periods shall be charged interest at the statutory rate from the due date of the

§ 105-164.16 is set out twice. See headings for effective dates.

return for the first reporting period to the date the reconciling return is filed.

(c) Sales Tax on Utility Services. — Taxes levied under G.S. 105-164.4(4a) are due and payable quarterly on or before the 30th day following the end of the calendar quarter in which the tax accrues. (1957, c. 1340, s. 5; 1967, c. 1110, s. 6; 1973, c. 476, s. 193; 1979, c. 801, s. 83; 1983 (Reg. Sess., 1984), c. 1097, s. 14; 1985, c. 656, s. 26; 1985 (Reg. Sess., 1986), c. 1007.)

Section Set Out Twice. — The section above is effective until January 1, 1989. For this section as amended effective January 1, 1989, see the following section, also numbered § 105-164.16.

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment, effective August 1, 1986, and applicable to reporting periods on or after that date, substituted "semimonthly" for "bimonthly" throughout subsection (b) and added the last two paragraphs of subsection (b).

§ 105-164.16. (Effective January 1, 1989) Report and payment of taxes.

(a) Payment. — Taxes levied under this Article are due when a return is required to be filed. Every taxpayer liable for the tax imposed by this Article shall, within the specified time after the end of the appropriate reporting period, submit a return to the Secretary, on a form prescribed by the Secretary, stating the taxpayer's gross sales for the reporting period, the amount and type of sales made in the period that are exempt from tax under G.S. 105-164.13 or are elsewhere excluded from tax, the amount of tax due, and any other information required by the Secretary. Each return shall be accompanied by a payment to the Secretary for the amount of taxes shown to be due on the return and shall be signed by the taxpayer or his agent. Returns that do not contain the required information shall not be accepted. When an unacceptable return is submitted, the Secretary shall require a corrected return to be filed.

(b) General Reporting Periods. — Returns of taxpayers who are required to report on a monthly or quarterly basis are due within 15 days after the end of each monthly or quarterly period. Returns of taxpayers who are required to report on a semimonthly basis are due within 10 days after the end of each semimonthly period.

A taxpayer who is consistently liable for less than twenty-five dollars ($25.00) a month in State and local sales and use taxes may, with the approval of the Secretary, file a return on a quarterly basis. A taxpayer who is consistently liable for at least twenty thousand dollars ($20,000) a month in State and local sales and use taxes shall, when directed to do so by the Secretary, file a return on a semimonthly basis. All other taxpayers shall file a return on a monthly basis. Quarterly reporting periods end on the last day of March, June, September, and December; monthly reporting periods end on the last day of the month; and semimonthly reporting periods end on the 15th of each month and the last day of each month.

The Secretary shall monitor the amount of tax remitted by a taxpayer and shall direct a taxpayer who consistently remits at least twenty thousand dollars ($20,000) each month to file a return on a semimonthly basis. In determining the amount of tax due from a taxpayer for a reporting period the Secretary shall consider the

§ 105-164.16 is set out twice. See headings for effective dates.

total amount due from all places of business owned or operated by the same person as the amount due from that person.

A taxpayer who is directed to remit sales and use taxes on a semimonthly basis but who is unable to gather the information required to submit a complete return for either the first reporting period or both the first and second semimonthly reporting periods may, upon written authorization by the Secretary, file an estimated return for that first reporting period or both periods on the basis prescribed by the Secretary. Once a taxpayer is authorized to file an estimated return for the first period or both periods, the taxpayer may continue to file an estimated return for the first or both periods until the Secretary, by written notification, revokes the taxpayer's authorization to do so. When filing a return for the second semimonthly reporting period, a taxpayer who files an estimated return for the first period but not both periods shall remit the amount of tax due for both the first and second reporting periods, less the amount he remitted with his estimated return.

A taxpayer who files an estimated return for both periods is considered to have been granted an extension for both the first and second reporting periods. Notwithstanding G.S. 105-164.19, if a taxpayer who files an estimated return for both periods files a reconciling return for those periods within ten days of the due date of the return for the second period and any underpayment of estimated taxes remitted with the reconciling return is less than ten percent (10%) of the amount of taxes due for both the first and second reporting periods, no interest shall be charged. Otherwise, a taxpayer who files an estimated return for both periods shall be charged interest at the statutory rate from the due date of the return for the first reporting period to the date the reconciling return is filed.

(c) Sales Tax on Utility Services. — Taxes levied under G.S. 105-164.4(4a) and G.S. 105-164.4(4c) are due and payable quarterly on or before the 30th day following the end of the calendar quarter in which the tax accrues. (1957, c. 1340, s. 5; 1967, c. 1110, s. 6; 1973, c. 476, s. 193; 1979, c. 801, s. 83; 1983 (Reg. Sess., 1984), c. 1097, s. 14; 1985, c. 656, s. 26; 1985 (Reg. Sess., 1986), c. 1007; 1987, c. 557, s. 6.)

Section Set Out Twice. — The section above is effective January 1, 1989. For this section as in effect until January 1, 1989, see the preceding section, also numbered § 105-164.16.

Effect of Amendments. —

The 1987 amendment, effective January 1, 1989, inserted "and G.S. 105-164.4(4c)" in subsection (c).

§ 105-164.21: Repealed by Session Laws 1987, c. 622, s. 10, effective August 1, 1987.

Editor's Note. — Session Laws 1987, c. 622, s. 17 as rewritten by Session Laws 1987, c. 813, s. 24, provides that s. 10 of c. 622, repealing § 105-164.21, is effective August 1, 1987, and applies to remittances of sales and use taxes collected on sales made on or after that date.

Session Laws 1987, c. 622, s. 1, provides that the act shall be known as the "School Facilities Finance Act of 1987."

Session Laws 1987, c. 622, s. 16 and Session Laws 1987, c. 813, s. 25, provide: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute

§ 105-164.16 is set out twice. See headings for effective dates.

amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Division V. Records Required to Be Kept.

§ 105-164.23. Consumer must keep records.

Every consumer shall keep such records, receipts, invoices and other pertinent papers in such form as may be required by the Secretary and all such books, invoices and other records shall be open for examination by the Secretary or any of his duly authorized agents. In the event the retailer, user or consumer has imported the tangible personal property and fails to produce an invoice showing the cost price of the tangible personal property as defined in this Article which is subject to tax or the invoices do not reflect the true or actual cost as defined herein, then the Secretary shall ascertain in any manner feasible the true cost price and assess and collect the tax with interest, plus penalties, if such have accrued, on the true cost price as determined by him. (1957, c. 1340, s. 5; 1973, c. 476, s. 193.)

Editor's Note. — The section above is set out to correct an error in the section number in the main volume.

Division VIII. Administration and Enforcement.

§ 105-164.44B. Transfer to Wildlife Resources Fund of taxes on hunting and fishing supplies and equipment.

For the 1987-88 fiscal year, the Secretary of Revenue shall transfer at the end of each quarter from the State sales and use net tax collections received by the Department of Revenue under Article 5 of Chapter 105 of the General Statutes to the State Treasurer for the Wildlife Resources Fund, one fourth of one million nine hundred sixty thousand dollars ($1,960,000). During subsequent fiscal years, the Secretary of Revenue shall transfer at the end of each quarter from the State sales and use tax net collections received by the Department of Revenue under Article 5 of Chapter 105 of the General Statutes to the State Treasurer for the Wildlife Resources Fund, one fourth of one million nine hundred sixty thousand dollars ($1,960,000) plus or minus the percentage of that amount by which the total collection of State sales and use taxes increased or decreased during the preceding fiscal year. (1983 (Reg. Sess., 1984), c. 1116, s. 88; 1987, c. 738, s. 150.)

Editor's Note. — Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

Session Laws 1987, c. 738, s. 237 is a severability clause.

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, rewrote this section.

Article 6.

Schedule G. Gift Taxes.

§ 105-188.1. Powers of appointment.

(b) Any person having a general power of appointment with respect to any interest in property shall for gift tax purposes be deemed to be the owner of such interest, and accordingly:

(1) If in connection with any gift of property the donor shall give to any person a general power of appointment with respect to any interest in such property, the donor shall be deemed to have given such person such interest in such property.

(2) If any person holding a general power of appointment with respect to any interest in property shall exercise such power in favor of any other person or persons, he shall be deemed to have made a gift of such interest to such person or persons.

(3) If any person holding a general power of appointment with respect to any interest in property shall relinquish such power, he shall be deemed to have made a gift of such interest to the person or persons who shall benefit by such relinquishment.

(4) The lapse of a general power of appointment during the life of the individual possessing the power shall be considered a relinquishment of the power. The rule of the preceding sentence shall apply with respect to the lapse of such powers during any calendar year only to the extent that the interest in property which could have been appointed by exercise of the lapsed power exceeds in value the greater of the following amounts:

a. Five thousand dollars ($5,000) or

b. Five percent (5%) of the aggregate value of the interest in property out of which, or the proceeds of which, the exercise of the lapsed power could be satisfied.

(1963, c. 942; 1967, c. 1110, s. 7; 1987, c. 556.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective July 6, 1987, and applicable to general powers of appointment that lapse on or after that date, added subdivision (b)(4).

§ 105-197. When return required; due date of return.

Anyone who, during the calendar year, gives to a donee a gift of a future interest or one or more gifts whose total value exceeds the amount of the annual exclusion set in G.S. 105-188(d) shall file a gift tax return, under oath or affirmation, with the Secretary of Revenue on a form prescribed by the Secretary. A return is due on or before April 15th following the end of the calendar year. (1939, c. 158, s. 609; 1955, c. 22, s. 1; 1973, c. 1287, s. 9; 1985 (Reg. Sess., 1986), c. 821.)

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective June 27, 1986, and applicable to returns filed for the 1986 calendar year and thereafter, rewrote this section.

Article 7.

Schedule H. Intangible Personal Property.

§ 105-206. When taxes due and payable; date lien attaches; nonresidents; forms for returns; extensions.

CASE NOTES

Fact that an executor is a fiduciary under this section and § 105-207, relating to the filing of returns and the payment of tax, does not mean that every provision in the intangible tax article which speaks of fiduciaries must be construed to apply to executors, no matter how tortured a construction would result. Blumenthal v. Lynch, 315 N.C. 571, 340 S.E.2d 358 (1986).

§ 105-207. Fiduciaries to pay taxes.

CASE NOTES

Fact that an executor is a fiduciary under this section and § 105-206, relating to the filing of returns and the payment of tax, does not mean that every provision in the intangible tax article which speaks of fiduciaries must be construed to apply to executors, no matter how tortured a construction would result. Blumenthal v. Lynch, 315 N.C. 571, 340 S.E.2d 358 (1986).

Duty of Executor to Pay Tax. — Though it is the estate's assets and not the personal assets of the executor himself that are subject to tax, it is the executor who is charged with the duty and responsibility of paying the intangibles tax. Blumenthal v. Lynch, 315 N.C. 571, 340 S.E.2d 358 (1986).

Executor Is Not Entitled to Charitable Exemption. — To be covered by the charitable exemption, the party must be an "organization." An executor is not an "organization," much less a "charitable organization" entitled to exemption under the first paragraph of § 105-212. Blumenthal v. Lynch, 315 N.C. 571, 340 S.E.2d 358 (1986).

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

None of the taxes levied in this Article or schedule shall apply to religious, educational, charitable or benevolent organizations not conducted for profit, nor to trusts established for religious, educational, charitable or benevolent purposes where none of the property or the income from the property owned by such trust may inure to the benefit of any individual or any organization conducted for profit, nor to any funds, evidences of debt, or securities held irrevocably in a charitable remainder trust meeting the requirements of section 664 of the Code or in a pooled income fund meeting the requirements of section 642(c)(5) of the Code, nor to any funds held irrevocably in trust exclusively for the maintenance and care of places of burial; nor to any funds, evidences of debt, or securities

held irrevocably in pension, profit-sharing, stock bonus, or annuity trusts, or combinations thereof, established by employers for the purpose of distributing both the principal and income thereof exclusively to eligible employees, or the beneficiaries of such employees, if such trusts qualify for exemption from income tax under the provisions of G.S. 105-161(f)(1)a; nor to any funds, evidences of debt or securities held irrevocably in a pension, profit-sharing, stock bonus or annuity plan established by an employer for the benefit of his employees or for himself and his employees if such plan qualifies for exemption from income tax under the provisions of G.S. 105-141(b)(19); nor to any funds, evidences of debt, or securities held in an individual retirement account described in section 408(a) of the Code, or an individual retirement annuity described in section 408(b) of the Code, if such individual retirement account or individual retirement annuity is exempt from income tax under the provisions of G.S. 105-161(f)(1)c or 105-141(b)(19). Insurance companies reporting premiums to the Commissioner of Insurance of this State and paying a tax thereon under the provisions of Article 8B. Schedule I-B shall not be subject to the provisions of G.S. 105-201, 105-202 and 105-203, building and loan associations and savings and loan associations paying a tax under the provisions of Article 8D of Chapter 105 of the General Statutes shall not be subject to the provisions of G.S. 105-201, 105-202 and 105-203; State credit unions organized pursuant to the provisions of Subchapter III, Chapter 54, paying the supervisory fees required by law, shall not be subject to any of the taxes levied in this Article or schedule; banks, banking associations and trust companies shall not be subject to the tax levied in this Article or schedule on evidences of debt held by them when said evidences of debt represent investment of funds on deposit with such banks, banking associations and trust companies: Provided, that each such institution must, upon request by the Secretary of Revenue, establish in writing its claim for exemption as herein provided. The exemption in this section shall apply only to those institutions, and only to the extent, specifically mentioned, and no other.

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

If any intangible personal property held or controlled by a fiduciary domiciled in this State is so held or controlled for the benefit of a nonresident or nonresidents, or for the benefit of any organization exempt under this section for the tax imposed by this Article, such intangible personal property shall be partially or wholly exempt from taxation and under the provisions of this Article in the ratio which the net income distributed or distributable to such nonresident, nonresidents or organization, derived from such intangible personal property during the calendar year for which the taxes levied by this Article are imposed, bears to the entire net income derived from such intangible personal property during such calendar year. "Net income" shall be deemed to have the same meaning that it has in the income tax article. Where the intangible personal

property for which this exemption is claimed is held or controlled with other property as a unit, allocation of appropriate deductions from gross income shall be made to that part of the entire gross income which is derived from the intangible personal property by direct method to the extent practicable; and otherwise by such other method as the Secretary of Revenue shall find to be reasonable: Provided, that each fiduciary claiming the exemption provided in this paragraph shall, upon the request of the Secretary of Revenue, establish in writing its claim to such exemption. No provisions of law shall be construed as exempting trust funds or trust property from the taxes levied by this Article except in the specific cases covered by this section.

As used in this section, the term "Code" means the Internal Revenue Code as enacted as of January 1, 1987, and includes any provisions enacted as of that date which become effective either before or after that date. (1939, c. 158, s. 714; 1943, c. 400, s. 8; 1945, c. 708, s. 8; 1947, c. 501, s. 7; 1951, c. 937, s. 2; 1957, c. 1340, ss. 7, 9; 1967, c. 1110, s. 13; 1971, c. 827; 1973, c. 476, s. 193; c. 1287, s. 11; 1975, c. 559, s. 7; 1979, c. 179, s. 4; c. 801, ss. 86, 87; c. 1009; 1983, c. 713, ss. 67, 80, 82; 1985, c. 656, ss. 7, 35; 1985 (Reg. Sess., 1986), c. 853, s. 1; 1987, c. 778, s. 1.)

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment, effective for taxable years beginning on or after January 1, 1986, substituted "January 1, 1986" for "December 31, 1984" in the last paragraph.

The 1987 amendment, effective August 12, 1987, substituted "January 1, 1987, and includes any provisions enacted as of that date which become effective either before or after that date" for "January 1, 1986, and includes any provisions enacted as of that date which become effective after that date" in the last paragraph.

CASE NOTES

Intent of Exemption of Intangibles, etc. —

The purpose in enacting the exemption in 1947 was to assure trust settlors that naming a North Carolina trustee would not subject the interests of the nonresident beneficiaries to an additional tax burden just because the trustee was domiciled in this State. It was not intended to exempt intangibles theretofore subject to the intangible personal property tax. NCNB Nat'l Bank v. Powers, 82 N.C. App. 540, 347 S.E.2d 77 (1986), cert. denied, 318 N.C. 696, 351 S.E.2d 749 (1987).

The exemption in this section was intended and designed to remove unfair impediments to the selection of North Carolina fiduciaries by trust settlors. But there was no apparent intention to actively encourage the selection of such fiduciaries by allowing them to avoid intangibles taxation on trust property that otherwise would be subject to it. NCNB Nat'l Bank v. Powers, 82 N.C. App. 540, 347 S.E.2d 77 (1986), cert. denied, 318 N.C. 696, 351 S.E.2d 749 (1987).

When Exemption of Intangibles Is Total. — This section does not provide an exemption for all the intangible personal property held in a North Carolina trust whenever the trustee has the discretion to distribute the net income to nonresident beneficiaries, unless there are no named resident beneficiaries. NCNB Nat'l Bank v. Powers, 82 N.C. App. 540, 347 S.E.2d 77 (1986), cert. denied, 318 N.C. 696, 351 S.E.2d 749 (1987).

A total exemption is not required for any trust which gives discretion to the trustee to distribute the net income to nonresidents regardless of any actual distribution to residents or the retention of income in the trust. The case of Dickson v. Lynch, 66 N.C. App. 195, 310 S.E.2d 404 (1984), requires only that if all the net income is distributed to nonresidents or if the only potential beneficiaries are nonresidents, the trust is entirely exempt from intangibles taxation under this section. NCNB Nat'l Bank v. Powers, 82 N.C. App. 540, 347 S.E.2d 77

(1986), cert. denied, 318 N.C. 696, 351 S.E.2d 749 (1987).

Same — Department Regulation. — A Department of Revenue regulation, 17 NCAC 8.1505, which provides for a total exemption when (1) all the trust income is distributed to nonresidents, or (2) the only beneficiaries are nonresidents, and provides for partial exemption when (1) there are resident and nonresident beneficiaries, and (2) not all the income is distributed to nonresidents, and under which the intangible trust property is exempted in the ratio which net income distributed or "distributable" to nonresidents bears to total net income and net income that is subject to distribution in the trustee's discretion but is retained in the trust is considered distributable to resident and nonresident beneficiaries in equal shares unless otherwise provided in the trust instrument, is consistent with the language in this section providing for partial exemptions, when appropriate, in the proportion approximating the percentage of the trust benefitting nonresidents. It is also consistent with the purposes of the statute to fairly apportion the tax burden and to avoid imposing a burden on otherwise exempt interests solely because the trustee is domiciled in North Carolina. NCNB Nat'l Bank v. Powers, 82 N.C. App. 540, 347 S.E.2d 77 (1986), cert. denied, 318 N.C. 696, 351 S.E.2d 749 (1987).

An estate itself is not a charitable, religious, educational, or benevolent organization. Blumenthal v. Lynch, 315 N.C. 571, 340 S.E.2d 358 (1986).

Executor Is Not Entitled to Charitable Exemption. — To be covered by the charitable exemption, the party must be an "organization." An executor is not an "organization," much less a "charitable organization" entitled to exemption under the first paragraph of § 105-212. Blumenthal v. Lynch, 315 N.C. 571, 340 S.E.2d 358 (1986).

Argument that if assets in the hands of executor were not totally exempt from the time of the decedent's death, they became exempt either (1) when charitable foundation became the only remaining beneficiary not to have received its distribution, or (2) when the taxes and debts were paid, on the theory that at those points in time the administration of the estate became "passive" as opposed to "active" and thus divisible into nonexempt and exempt periods, was without merit, as the period of administration is indivisible for intangibles tax purposes. Blumenthal v. Lynch, 315 N.C. 571, 340 S.E.2d 358 (1986).

The fiduciary exemption contained in this section, etc. —

The fiduciary exemption of the third paragraph of this section is unavailable in respect of intangibles held and controlled by any personal representative of a resident decedent at any time during administration of the estate. The fiduciary exemption simply has no application to a decedent's estate in the process of administration. Blumenthal v. Lynch, 315 N.C. 571, 340 S.E.2d 358 (1986).

§ 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, the Secretary shall deduct from the net amount of taxes collected under this Article, which is the total amount collected less refunds, the cost to the State for the preceding fiscal year to:

(1) Collect and administer the taxes levied under this Article;

(2) Perform the duties imposed upon the Department of Revenue by Article 15 of this Chapter;

(3) Operate the Property Tax Commission; and

(4) Operate a training program in property tax appraisal and assessment administration by the Institute of Government.

The Secretary shall allocate the net amount of taxes collected under this Article, less the deductions enumerated above, to the counties according to the county in which the taxes were collected. The Secretary shall then increase the amount allocable to each county by a sum equal to forty percent (40%) of the amount of tax on accounts receivable allocated to the county on the basis of collections. 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.

(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; 1981 (Reg. Sess., 1982), c. 1282, s. 69; 1985, c. 656, ss. 34, 43; 1987, c. 804, s. 7.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. —

Session Laws 1987, c. 804, s. 8 provides: "Notwithstanding Section 7 of this act [which rewrote the second paragraph of subsection (a)], in determining the amount to be distributed under G.S. 105-213 for the fiscal year ending June 30, 1987, the Department of Revenue shall deduct all tax credits allowed under G.S. 105-122(d) during that fiscal year."

Session Laws 1987, c. 830, s. 84(d), provides: "The enactment of the School Facilities Finance Act of 1987 has created the need for a statistical adjustment of the assessed value of taxable real property in each county in light of the staggered real property revaluation cycle. This adjustment is necessary for the allocation of the proceeds of the Critical School Facility Needs Fund. This need is in addition to the adjustments required by the 1985 legislation that equalized the property tax burden of public service companies.

"For the purpose of determining net collections under G.S. 105-213 for the

fiscal year ending June 30, 1987, the sum of seventy-two thousand three hundred forty-five dollars ($72,345) shall be deducted, in addition to the amounts specified by the second paragraph of G.S. 105-213(a), to fund the cost to the Department of Revenue for the 1987-88 fiscal year of making the sales-assessment ratio studies required by G.S. 105-284 and G.S. 105-289. Such deduction shall be expended as follows:

PURPOSE	1987-88
Property Valuation Specialists	$ 46,828
Accounting Clerk	12,267
Additional Travel Expense	6,000
Total Recurring	65,095
Furniture and Equipment	2,250
Data Processing Equipment	5,000
Total Nonrecurring	7,250
Total Expenditures	$ 72,345"

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, rewrote the second paragraph of subsection (a).

Article 8B.

Schedule I-B. Taxes upon Insurance Companies.

§ 105-228.3. To whom this Article shall apply.

The provisions of this Article shall apply to every person, firm, corporation, association, society, or order operating in this State, hereinafter to be referred to as insurance company, which contracts or offers on his, their, or its account to issue any policy or contract for annuities or insurance as defined in G.S. 58-3, or to exchange or issue reciprocal or interinsurance contracts, or to function as a rate-making bureau or association, advisory organization, joint underwriting or joint reinsurance organization, or to serve as an underwriters agency. Said provisions shall likewise apply to any person, firm or corporation who or which shall be a broker, organizer, manager, or agent, whether local, special or general, of any insurance company, and to self-insurers under the provisions of the Workers' Compensation Act. (1945, c. 752, s. 2; 1985 (Reg. Sess., 1986), c. 928, s. 12.)

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 8, 1986, inserted "advisory organization, joint underwriting or joint reinsurance organization" near the end of the first sentence.

§ 105-228.5. (Effective for taxable years beginning prior to January 1, 1990) Taxes measured by gross premiums.

Every insurance company and every Chapter 57 corporation shall pay to the Commissioner of Insurance, at the time and rates provided in this section, a tax measured by gross premiums from business done in this State during the preceding calendar year, or, for Chapter 57 corporations, a tax measured by gross collections from membership dues, exclusive of receipts from cost plus plans, received by such corporations during the preceding calendar year.

Gross premiums from business done in this State in the case of life insurance and annuity contracts, including any supplemental contracts thereto providing for disability benefits, accidental death benefits, or other special benefits, shall for the purposes of the taxes

§ 105-228.5 is set out twice. See headings for effective dates.

levied in this section mean any and all premiums collected in the calendar year (other than for contracts for reinsurance) for policies the premiums on which are paid by or credited to persons, firms or corporations resident in this State, or in the case of group policies for any contracts of insurance covering persons resident within this State, with no deduction for considerations paid for annuity contracts which are subsequently returned except as below specified, and with no other deduction whatsoever except for premiums returned under one or more of the following conditions: premiums refunded on policies rescinded for fraud or other breach of contract; premiums which were paid in advance on life insurance contracts and subsequently refunded to the insured, premium payer, beneficiary or estate; and in the case of group annuity contracts the premiums returned by reason of a change in the composition of the group covered. Said gross premiums shall be deemed to have been collected for the amounts as provided in the policy contracts for the time in force during the year, whether satisfied by cash payment, notes, loans, automatic premium loans, applied dividend or in any other manner whatsoever, except in the case of premiums waived by any of said companies pursuant to a contract for waiver of premium in case of disability.

An insurer, in computing its premium taxes, shall pay premium taxes on a premium for the purchase of annuities at the time the contract holder elects to commence annuity benefits, instead of at the time the premium is collected.

Every insurer, in computing the premium tax, shall exclude from the gross amount of premiums all premiums received on or after July 1, 1973, from policies or contracts, issued in connection with the funding of a pension, annuity or profit-sharing plan, qualified or exempt under sections 401, 403, 404, 408, 457 or 501 of the Code as defined in G.S. 105-135(15) and the gross amount of all such premiums shall be exempt from the tax levied by this section.

Gross premiums from business done in this State in the case of contracts for fire insurance, casualty insurance, and any other type of insurance except life and annuity contracts as above specified, including contracts of insurance required to be carried by the Workers' Compensation Act, shall for the purposes of the taxes levied in this section mean any and all premiums written during the calendar year, or the equivalent thereof in the case of self-insurers under the Workers' Compensation Act, for contracts covering property or risks in this State, other than for contracts of reinsurance, whether such premiums are designated as premiums, deposits, premium deposits, policy fees, membership fees, or assessments. Gross premiums shall be deemed to have been written for the amounts as provided in the policy contracts, new and renewal, becoming effective during the year irrespective of the time or method of making payment or settlement for such premiums, and with no deduction for dividends whether returned in cash or allowed in payment or reduction of premiums or for additional insurance, and without any other deduction except for return of premiums, deposits, fees or assessments for adjustment of policy rates or for cancellation or surrender of policies.

In determining the amount of gross premiums from business in this State all gross premiums received in this State, or credited to policies written or procured in this State, or derived from business written in this State shall be deemed to be for contracts covering

§ 105-228.5 is set out twice. See headings for effective dates.

persons, property or risks resident or located in this State except for such premiums as are properly reported and properly allocated as being received from business done in some other nation, territory, state or states, and except for premiums from policies written in federal areas for persons in military service who pay premiums by assignment of service pay.

The tax rate to be applied to gross premiums collected on contracts applicable to liabilities under the Workers' Compensation Act shall be two and five-tenths percent (2.5%). The tax rate to be applied to gross premiums collected on annuities and all other insurance contracts issued by insurers shall be one and seventy-five hundredths percent (1.75%). The tax rate to be applied to amounts collected on contracts of insurance applicable to fire and lightning coverage (except marine and automobile policies) shall be one and thirty-three hundredths percent (1.33%) in addition to the one and seventy-five hundredths percent (1.75%) tax. Twenty-five percent (25%) of the net proceeds of the one and thirty-three hundredths percent (1.33%) tax on amounts collected on contracts of insurance applicable to fire and lightning coverage shall be deposited in the Rural Volunteer Fire Department Fund established in Chapter 118 of the General Statutes. Effective July 1, 1988, the tax rate to be applied to gross premiums and/or gross collections from membership dues, exclusive of receipts from cost plus plans, received by Chapter 57 corporations shall be one-half of one percent (1/2 of 1%).

The taxes levied herein measured by premiums and/or membership dues shall be in lieu of all other taxes upon insurance companies except: fees and licenses under this Article, or as specified in Chapter 58 of the General Statutes of North Carolina as amended; taxes imposed by Chapter 118 of the General Statutes of North Carolina; taxes imposed by Article 5 of Chapter 105 of the General Statutes of North Carolina as amended; and ad valorem taxes upon real property and personal property owned in this State.

For the tax above levied as measured by gross premiums and/or gross collections from membership dues exclusive of receipts from cost plus plans the president, secretary, or other executive officer of each insurance company and Chapter 57 corporation doing business in this State shall within the first 15 days of March file with the Commissioner of Insurance a full and accurate report of the total gross premiums as above defined or the total gross collections from membership dues exclusive of receipts from cost plus plans collected in this State during the preceding calendar year. The report shall be in such form and contain such information as the Commissioner of Insurance may specify, and the report shall be verified by the oath of the company official transmitting the same or by some principal officer at the home or head office of the company or association in this country. At the time of making such report the taxes above levied with respect to the gross premiums or the gross collections from membership dues shall be paid to the Commissioner of Insurance. The provisions above shall likewise apply as to reports and taxes for any firm, corporation, or association exchanging reciprocal or interinsurance contracts, and said reports and taxes shall be transmitted by their attorneys-in-fact.

Insurance companies and Chapter 57 corporations subject to the tax imposed by this section with a premium tax liability of ten thousand dollars ($10,000) or more for business done in North Carolina during the immediately preceding year shall remit three equal

§ 105-228.5 is set out twice. See headings for effective dates.

quarterly installments with each installment equal to at least twenty-seven and one-half percent (27½%) of the premium tax liability incurred in the immediately preceding taxable year. The quarterly installment payments shall be made on or before April 15, June 15, and October 15 of each taxable year. The company shall remit the balance by the following March 15 in the same manner provided in this section for annual returns. For taxable years beginning on or after January 1, 1989, each of the three quarterly installments shall be equal to at least thirty-three and one-third percent (33⅓%) and payment of these installments shall be made on or before April 15, June 15, and October 15 of each taxable year. The balance shall be remitted by the following March 15 in the same manner provided in this section for annual returns.

The Commissioner of Insurance may, by regulation, permit an insurance company to pay less than the required estimated payment when the insurer reasonably believes that the total estimated payments made for the current year will exceed the total anticipated tax liability for the year.

If a company does not meet the installment payment requirement of this section, the Commissioner of Insurance shall assess a penalty on underpayments that is equal to the interest rate adopted by the Secretary of Revenue under G.S. 105-241.1(i). Any overpayment shall be credited to the company and applied against the taxes imposed upon the company under this Article.

The provisions as to reports and taxes as measured by gross premiums shall not apply to farmers' mutual assessment fire insurance companies or to fraternal orders or societies that do not operate for a profit and do not issue policies on any person except members.

With respect to the taxes levied in this section on the equivalent of premiums of self-insurers under the provisions of the Workers' Compensation Act, the reports required herein shall be transmitted to and the taxes collected by the Insurance Commissioner as provided in G.S. 97-100(j). (1945, c. 752, s. 2; 1947, c. 501, s. 8; 1951, c. 643, s. 8; 1955, c. 1313, s. 5; 1957, c. 1340, s. 12; 1959, c. 1211; 1961, c. 783; 1963, c. 1096; 1969, c. 1221; 1973, cc. 142, 1019; 1975, c. 143; c. 559, s. 8; 1979, c. 714, s. 2; 1983, c. 713, s. 81; 1985, c. 119, s. 3; c. 719, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 1031, ss. 1-5; 1987, c. 709, s. 2; c. 814, s. 2.)

Section Set Out Twice. — The section above is effective for taxable years beginning prior to January 1, 1990. For this section as amended effective for taxable years beginning on or after January 1, 1990, see the following section, also numbered § 105-228.5.

Editor's Note. — Section 5.2 of Session Laws 1985 (Reg. Sess., 1986), c. 1031 provides that not later than for the taxable year 1988, the General Assembly will reexamine insurance premium taxes with a view to making the changes revenue neutral.

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment by c. 1031, ss. 1 to 5, effective with respect to taxable years beginning on and after January 1, 1986, rewrote the first paragraph, added a new third paragraph, rewrote the present seventh paragraph, added the former eighth and ninth paragraphs, and added the former twelfth through fifteenth paragraphs.

Session Laws 1987, c. 709, s. 2, effective for taxable years beginning on and after January 1, 1987, substituted "one and thirty-three hundredths percent (1.33%)" for "one percent (1%)" in the third sentence of the seventh paragraph and added the next-to-last sentence of that paragraph.

Session Laws 1987, c. 814, ss. 2(1), 2(2), 2(4), 2(5), 2(7) and 2(8), effective for taxable years beginning on or after January 1, 1988, rewrote the first para-

§ 105-228.5 is set out twice. See headings for effective dates.

graph, rewrote the third paragraph, added the final sentence of the seventh paragraph, rewrote the tenth, eleventh, twelfth, and thirteenth paragraphs, deleted the former ninth paragraph, giving an insurance company domiciled in this State a credit against premium taxes imposed by this section, deleted the former fourteenth paragraph, relating to the second installment payment for taxable years beginning on or after January 1, 1988, and rewrote the sixteenth paragraph.

Session Laws 1987, c. 814, ss. 2(3) and 2(6), effective for taxable years beginning on or after January 1, 1987, inserted a reference to section 457 of the Internal Revenue Code in the fourth paragraph and deleted the former eighth paragraph, relating to determining the amount of gross premiums from business in this State.

§ 105-228.5. (Effective for taxable years beginning on or after January 1, 1990) Taxes measured by gross premiums.

The only taxes upon insurance companies shall be: fees and licenses under this Article, or as specified in Chapter 58 of the General Statutes of North Carolina as amended; taxes imposed by Chapter 118 of the General Statutes of North Carolina; taxes imposed by Article 5 of Chapter 105 of the General Statutes of North Carolina as amended; and ad valorem taxes upon real property and personal property owned in this State. (1945, c. 752, s. 2; 1947, c. 501, s. 8; 1951, c. 643, s. 8; 1955, c. 1313, s. 5; 1957, c. 1340, s. 12; 1959, c. 1211; 1961, c. 783; 1963, c. 1096; 1969, c. 1221; 1973, cc. 142, 1019; 1975, c. 143; c. 559, s. 8; 1979, c. 714, s. 2; 1983, c. 713, s. 81; 1985, c. 119, s. 3; c. 719, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 1031, s. 5.1; 1987, c. 709, s. 2; c. 814, ss. 2, 4.)

Section Set Out Twice. — The section above is effective for taxable years beginning on or after January 1, 1990. For this section as in effect for taxable years beginning prior to January 1, 1990, see the preceding section, also numbered § 105-228.5.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1031, s. 5.1, as amended by Session Laws 1987, c. 814, s. 4, which, effective for taxable years beginning on or after January 1, 1990, repeals all but one paragraph of this section and repeals § 105-228.6, provides: "This section does not affect the rights or liabilities of the State, a taxpayer, or other persons arising under these sections before their repeal, nor does it affect the right to any refund of a tax that would otherwise have been available before the repeal."

Section 5.2 of Session Laws 1985 (Reg. Sess., 1986), c. 1031 provides that not later than for the taxable year 1988, the General Assembly will reexamine insurance premium taxes with a view to making the changes revenue neutral.

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment, by c. 1031, ss. 1 to 5, effective with respect to taxable years beginning on and after January 1, 1986, in this section as it read prior to the amendments by Session Laws 1985 (Reg. Sess., 1986), c. 1031, s. 5.1 and by Session Laws 1987, cc. 709 and 814, rewrote the first paragraph, added a new third paragraph, rewrote the seventh paragraph, added the eighth and ninth paragraphs, and added the twelfth through fifteenth paragraphs.

Session Laws 1987, c. 709, s. 2, effective for taxable years beginning on and after January 1, 1987, substituted "one and thirty-three hundredths percent (1.33%)" for "one percent (1%)" in the third sentence of the seventh paragraph and added the last sentence of that paragraph.

Session Laws 1987, c. 814, ss. 2(1), 2(2), 2(4), 2(5), 2(7) and 2(8), effective for taxable years beginning on or after January 1, 1988, rewrote the first paragraph, rewrote the third paragraph, added the final sentence of the second paragraph, rewrote the tenth, eleventh, twelfth, and thirteenth paragraphs, deleted the former ninth paragraph, giving an insurance company domiciled in this State a credit against premium taxes

§ 105-228.5 is set out twice. See headings for effective dates.

imposed by this section, deleted the former fourteenth paragraph, relating to the second installment payment for taxable years beginning on or after January 1, 1988, and rewrote the sixteenth paragraph.

Session Laws 1987, c. 814, ss. 2(3) and 2(6), effective for taxable years beginning on or after January 1, 1987, inserted a reference to section 457 of the Internal Revenue Code in the fourth paragraph and deleted the former eighth paragraph, relating to determining the amount of gross premiums from business in this State.

The 1985 (Reg. Sess., 1986) amendment by c. 1031, s. 5.1, as amended by Session Laws 1987, c. 814, s. 4, effective for taxable years beginning on or after January 1, 1990, deleted all but one paragraph of this section, and at the beginning of that paragraph substituted "The only taxes upon insurance companies shall be" for "The taxes levied herein measured by premiums shall be in lieu of all other taxes upon insurance companies except."

§ 105-228.6: Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1031, s. 5.1, as amended by Session Laws 1987, c. 814, s. 4, effective for taxable years beginning on or after January 1, 1990.

For this section as in effect for taxable years beginning prior to January 1, 1990, see the main volume.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1031, s. 5.1, as amended by Session Laws 1987, c. 814, s. 4, which effective for taxable years beginning on or after January 1, 1990, repeals all but one paragraph of § 105-228.5 and repeals this section, provides: "This section does not affect the rights or liabilities of the State, a taxpayer, or other persons arising under these sections before their repeal, nor does it affect the right to any refund of a tax that would otherwise have been available before the repeal."

§ 105-228.7. (Repealed effective February 1, 1988) Registration fees for agents, brokers and others.

Every manager, organizer, adjuster, broker, or agent representing in this State any insurance company, and every motor vehicle damage appraiser as defined in G.S. 58-39.4(o), shall apply for and obtain an annual certificate of registration or license from the Commissioner of Insurance in accordance with G.S. 58-40 or G.S. 58-40.1. There shall be no additional fee charged for affixing a seal. The following table indicates the annual fees for the respective certificates or licenses:

Insurance agent (local for each company represented)	$10.00
General agent or manager, for each company represented	12.00
Special agent or organizer, for each company represented	10.00
Insurance broker	5.00
Nonresident broker	50.00
Insurance adjuster (other than adjuster for hail damage to crops)	50.00
Insurance adjuster for hail damage to crops	10.00
Motor vehicle damage appraiser	50.00
Company cancellation of agent license (paid by company)	5.00
Surplus lines individual	50.00

Surplus lines corporate	$25.00
Persons licensed under G.S. 58-41.5	25.00
G.S. Chapter 57 agent	10.00
G.S. Chapter 57B agent	10.00

The above fees shall be in lieu of any and all other license fees. Fees paid by a company on behalf of a person who is licensed to represent the company shall be paid to the Commissioner on a quarterly or monthly basis, in the discretion of the Commissioner.

In cases where temporary license may be issued pursuant to law the fee for a temporary certificate shall be at the same rates as above specified, and any amounts so paid for temporary license may be credited against the fees required for issuance of the annual license or certificate.

Any person not registered who is required by law or administrative rule to secure a license shall, upon application for registration, pay to the Commissioner of Insurance a fee of ten dollars ($10.00). In the event additional licensing for other lines of insurance is requested, a fee of ten dollars ($10.00) shall be paid to the Commissioner upon application for registration for each additional line of insurance. The requirement for an examination or a registration fee does not apply to agents for domestic farmers' mutual assessment fire insurance companies or associations specified in G.S. 105-228.4.

In the event a certificate issued under this section is lost or destroyed the Commissioner of Insurance for a fee of one dollar ($1.00) may certify to its issuance, giving number, date, and form, which may be used by the original party named thereon in lieu of the annual certificate. There shall be no charge for the seal attached to such certification. (1945, c. 752, s. 2; 1947, c. 1023, s. 2; 1949, c. 958, s. 2; 1951, c. 105, s. 2; 1955, c. 1313, s. 5; 1971, c. 757, s. 9; 1983, c. 790, ss. 1-4; 1985, c. 484, ss. 8, 9; 1985 (Reg. Sess., 1986), c. 928, s. 9.)

Section Repealed Effective February 1, 1988. — This section is repealed, effective February 1, 1988, by Session Laws 1987, c. 629, s. 21.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective September 1, 1986, added the last five entries to the schedule in the first paragraph and rewrote the next-to-last paragraph.

§ 105-228.8. Retaliatory premium taxes.

(a) When the laws of any other state impose, or would impose, any premium taxes, upon North Carolina insurers doing business in the other state that are, on an aggregate basis, in excess of the premium taxes directly imposed upon similar insurers by the statutes of this State, the Commissioner of Insurance shall impose the same premium taxes, on an aggregate basis, upon the insurers chartered in the other state doing business or seeking to do business in North Carolina. Any insurer subject to the retaliatory tax imposed by this section shall report and pay such tax with the annual premium tax return required by G.S. 105-228.5. The retaliatory tax imposed by this section shall be included in the quarterly prepayment rules for premium taxes.

(b) For purposes of this section, the following definitions shall be applied:

§ 105.228.7 has a delayed repeal date. See notes for date.

(1) "State" includes the District of Columbia and other states, territories, and possessions of the United States, the provinces of Canada, and other nations.

(2) "Insurers" includes all entities subject to tax under G.S. 105-228.5.

(c) For purposes of this section, any premium taxes that are, or would be, imposed upon North Carolina insurers by any city, county, or other political subdivision or agency of another state shall be deemed to be imposed directly by that state.

(d) In computing the premium taxes that another state imposes, or would impose, upon a North Carolina insurer doing business in the state, it shall be assumed that North Carolina insurers pay the highest rates of premium tax that are generally imposed by the other state on similar insurers chartered outside of the state.

(e) This section shall not apply to special purpose obligations or assessments based on premiums imposed in connection with particular kinds of insurance, or to dedicated special purpose taxes based on premiums.

(f) If the laws of another state retaliate against North Carolina insurers on other than an aggregate basis, the Commissioner of Insurance shall retaliate against insurers chartered in such state on the same basis. (1945, c. 752, s. 2; 1987, c. 814, s. 1.)

Effect of Amendments. — The 1987 amendment, effective for taxable years beginning on or after January 1, 1988, rewrote this section.

§ 105-228.9. Commissioner of Insurance to administer Article.

This Article shall be administered solely by the Commissioner of Insurance, who has the same authority and responsibility in administering this Article as the Secretary of Revenue has in administering the other Articles of this Chapter. All provisions of this Chapter that are not inconsistent with this Article apply to this Article. (1945, c. 752, s. 2; 1955, c. 1350, s. 22; 1973, c. 476, s. 193; 1987, c. 804, s. 9.)

Effect of Amendments. — The 1987 amendment, effective for taxable years beginning on or after January 1, 1987, rewrote this section.

Article 8E.

Excise Stamp Tax on Conveyances.

§ 105-228.30. Imposition of excise stamp tax.

OPINIONS OF ATTORNEY GENERAL

Lessee's Conveyance of Leasehold Improvements to Purchaser. — An instrument conveying ownership of leasehold improvements, owned by a lessee, from the lessee to a purchaser is not subject to the excise stamp tax on conveyances. See opinion of Attorney General to Mr. Thomas Russell Odom, Durham County Attorney, 55 N.C.A.G. 109 (1986).

Article 9.

Schedule J. General Administration; Penalties and Remedies.

§ 105-230. Charter suspended for failure to report.

If a corporation required by the provisions of this Subchapter to file any report or return or to pay any tax or fee, either as a public utility (not as an agency of interstate commerce) or as a corporation incorporated under the laws of this State, or as a foreign corporation domesticated in or doing business in this State, or owning and using a part or all of its capital or plant in this State, fails or neglects to make any such report or return or to pay any such tax or fee for 90 days after the time prescribed in this Subchapter for making such report or return, or for paying such tax or fee, the Secretary of Revenue shall certify such fact to the Secretary of State. The Secretary of State shall thereupon suspend the articles of incorporation of any such corporation which is incorporated under the laws of this State by appropriate entry upon the records of his office, or suspend the certificate of authority of any such foreign corporation to do business in this State by proper entry. Thereupon all the powers, privileges, and franchises conferred upon such corporation by such articles of incorporation or by such certificate of authority shall cease and determine. The Secretary of State shall immediately notify by mail every such domestic or foreign corporation of the action taken by him, and also shall immediately certify such suspension to the register of deeds of the county in which the principal office or registered office of such corporation is located in this State with instructions to the register of deeds, and it shall be the register's duty to record and index the suspension in the Record of Incorporations. After the recordations, the register may destroy the certificate. (1939, c. 158, s. 901; 1957, c. 498; 1967, c. 823, s. 31; 1969, c. 965, s. 2; 1973, c. 476, s. 193; 1987, c. 644, s. 1.)

Effect of Amendments. — The 1987 amendment, effective July 20, 1987, substituted the present last two sentences for the former last two sentences of this section, which read "The Secretary of State shall immediately notify by certified mail every such domestic or foreign corporation of the action taken by him, and also shall immediately certify such suspension to the register of deeds of the county in which the principal office or place of business of such corporation is located in this State with instructions to said register of deeds, and it shall be the register's duty to record and index this suspension in the Record of Incorporations; promptly after the recordations, the register shall note the fact of recordation on the said copy and return it to the corporation or its representative. If the corporation or its representative cannot be located, the register may destroy the copy."

§ 105-232. Corporate rights reinstated; receivership and liquidation.

Any corporation whose articles of incorporation or certificate of authority to do business in this State has been suspended by the Secretary of State, as provided in G.S. 105-230, which complies within five years after such suspension with all the requirements of this Subchapter and pays all State taxes, fees, or penalties due from it (which total amount due may be computed, for years prior and subsequent to said suspension in the same manner as if such suspension had not taken place), and upon payment to the Secretary of Revenue of a fee of twenty-five dollars ($25.00) to cover the cost of reinstatement, shall be entitled to exercise again its rights, privileges, and franchises in this State. The Secretary of Revenue shall notify the Secretary of State of such compliance and the Secretary of State shall reinstate the corporation by appropriate entry upon the records of his office. The Secretary of State shall immediately notify the corporation of the reinstatement and certify such reinstatement to the register of deeds of the county in which the suspension was recorded. It shall thereupon be the register's duty, upon receipt of the fee specified in G.S. 161-10 from the corporation, to record and index the reinstatement in the Records of Corporations. The Register of Deeds shall note the fact of recordation on the certificate and forward it to the corporation or its representative.

When the certificate or articles of incorporation in this State have been suspended by the Secretary of State, as provided in G.S. 105-230, or similar provisions of prior or subsequent Revenue Acts, and there remains property held in the name of the corporation, or undisposed of at the time of such suspension, or there remain possibilities of reverters, reversionary interests, rights of reentry or other future interests that may accrue to the corporation or its successors or stockholders, and the time within which the corporate rights might be restored as provided by this section has expired, any stockholder or any bona fide creditor or other interested party may apply to the superior court for the appointment of a receiver. Application for such receiver may be made in a civil action to which all stockholders or their representatives or next of kin shall be made parties. Stockholders whose whereabouts are unknown and unknown stockholders and unknown heirs and next of kin of deceased stockholders may be served by publication, as well as creditors, dealers and other interested persons, and a guardian ad litem may be appointed for any stockholders or their representatives who may be an infant or incompetent. The receiver shall enter into such bond with such sureties as may be set by the court and shall give such notice to creditors by publication or otherwise as the court may prescribe. Any creditor who shall fail to file his claim with the receiver within the time set shall be barred of the right to participate in the distribution of the assets. Such receiver shall have authority to sell such property or possibilities of reverters, reversionary interests, rights of reentry, or other future interests, upon such terms and in such manner as shall be ordered by the court, apply the proceeds to the payment of any debts of such corporation, and distribute the remainder among the stockholders or their representatives in proportion to their interests therein. Shares due to any stockholder who is unknown or whose whereabouts are unknown shall be paid into the office of the clerk of the superior court, by him

to be disbursed according to law, in the event the stock books of the corporation shall be lost or shall not reflect the latest stock transfers, the court shall determine the respective interests of the stockholders from the best evidence available, and the receiver shall be protected in acting in accordance with such finding. Such proceeding is authorized for the sole purpose of providing a procedure for disposing of the corporate assets by the payment of corporate debts, including franchise taxes which had accrued prior to the suspension of the corporate charter and any other taxes the assessment or collection of which is not barred by a statute of limitations, and by the transfer to the stockholders or their representatives their proportionate shares of the assets owned by the corporation. (1939, c. 158, s. 903; c. 370, s. 1; 1943, c. 400, s. 9; 1947, c. 501, s. 9; 1951, c. 29; 1969, c. 541, s. 10; 1973, c. 476, s. 193; c. 1065; 1987, c. 644, s. 2.)

Effect of Amendments. — The 1987 amendment, effective July 20, 1987, rewrote the first paragraph.

§ 105-236. Penalties.

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

(10) Failure to File Informational Returns. —

a. For failure to file a partnership or a fiduciary informational return when such returns are due to be filed, there shall be assessed as a tax against the delinquent five dollars ($5.00) per month or fraction thereof of such delinquency, such tax, however, in the aggregate not to exceed the sum of twenty-five dollars ($25.00). When assessed against a fiduciary, the tax herein provided shall be paid by the fiduciary and shall not be passed on to the trust or estate. No tax may be assessed against the delinquent when it is a partnership as defined under Section 6231(a) (1) (B) of the Code and no penalty could be assessed as provided by Rev. Proc. 84-35, except that for the purpose of Section 3.01 of that procedure "the Department of Revenue" is substituted for "the Internal Revenue Service".

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

(1939, c. 158, s. 907; 1953, c. 1302, s. 7; 1959, c. 1259, s. 8; 1963, c. 1169, s. 6; 1967, c. 1110, s. 9; 1973, c. 476, s. 193; c. 1287, s. 13; 1979, c. 156, s. 2; 1985, c. 114, s. 11; 1985 (Reg. Sess., 1986), c. 983.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective for taxable years beginning on or after January 1, 1986, added the last sentence of subdivision (10)a.

§ 105-230. Charter canceled for failure to report.

CASE NOTES

Duty of Officers to Corporation. — While corporate officers in North Carolina are not trustees, their fiduciary duty to the corporation is a high one; this includes a duty not to continue to incur ordinary business obligations on behalf of the corporation when they have knowledge that the corporation's charter has been suspended. Pierce Concrete, Inc. v. Cannon Realty & Constr. Co., 77 N.C. App. 411, 335 S.E.2d 30 (1985).

§ 105-231. Penalty for exercising corporate functions after cancellation or suspension of charter.

CASE NOTES

Duty of Officers to Corporation. — While corporate officers in North Carolina are not trustees, their fiduciary duty to the corporation is a high one; this includes a duty not to continue to incur ordinary business obligations on behalf of the corporation when they have knowledge that the corporation's charter has been suspended. Pierce Concrete, Inc. v. Cannon Realty & Constr. Co., 77 N.C. App. 411, 335 S.E.2d 30 (1985).

Use of Corporate Name as Shield. — The law will not permit a corporate officer to create obligations in the name of the corporation, knowing the acts are without authority and invalid, and then be permitted to use the corporate name as a shield against creditors. Pierce Concrete, Inc. v. Cannon Realty & Constr. Co., 77 N.C. App. 411, 335 S.E.2d 30 (1985).

§ 105-241.1. Additional taxes; assessment procedure.

(h) The rules of evidence do not apply in a hearing before the Secretary of Revenue under this section. G.S. 105-241.2, 105-241.3, and 105-241.4 apply to a tax or additional tax assessed under this section.

(1949, c. 392, s. 6; 1951, c. 643, s. 9; 1955, c. 1350, s. 23; 1957, c. 1340, s. 10; 1959, c. 1259, s. 8; 1969, c. 1132, s. 1; 1973, c. 476, s. 193; c. 1287, s. 13; 1977, c. 657, s. 6; c. 1114, ss. 1, 11; 1981 (Reg. Sess., 1982), c. 1211, s. 2; c. 1223, s. 4; 1987, c. 827, s. 21.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, rewrote subsection (h).

CASE NOTES

Cited in Secretary of Revenue v. Carolina Tel. & Tel. Co., 81 N.C. App. 240, 344 S.E.2d 46 (1986).

§ 105-241.2. Administrative review.

CASE NOTES

Cited in Secretary of Revenue v. Carolina Tel. & Tel. Co., 81 N.C. App. 240, 344 S.E.2d 46 (1986).

§ 105-241.3. Appeal without payment of tax from Tax Review Board decision.

(a) Any taxpayer aggrieved by the decision of the Tax Review Board may, upon payment of the tax, penalties and interest asserted to be due or upon filing with the Secretary a bond in such form as the Secretary may prescribe in the amount of said taxes, penalties and interest conditioned on payment of any liability found to be due on an appeal, appeal said decision to the superior court under the provisions of Article 4 of Chapter 150B of the General Statutes; provided, neither this section nor the provisions of Article 4 of Chapter 150B shall be construed to prohibit a jeopardy assessment and execution made in accordance with the provisions of G.S. 105-241.2.

(1955, c. 1350, s. 6; 1957, c. 1340, s. 10; 1973, c. 476, s. 193; 1981 (Reg. Sess., 1982), c. 1211, s. 1; 1987, c. 827, s. 20.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, substituted "Chapter 150B" for "Chapter 150A" in two places in subsection (a).

§ 105-241.4. Action to recover tax paid.

CASE NOTES

Cited in Blumenthal v. Lynch, 315 N.C. 571, 340 S.E.2d 358 (1986).

§ 105-259. Secrecy required of officials; penalty for violation.

With respect to any one of the following persons: (i) the Secretary of Revenue and all other officers or employees, and former officers and employees, of the Department of Revenue; (ii) local tax officials, as defined in G.S. 105-273, and former local tax officials; (iii) members and former members of the Property Tax Commission; (iv) any other person authorized in this section to receive information concerning any item contained in any report or return, or authorized to inspect any report or return; and (v) the Commissioner of

Insurance and all other officers or employees and former officers and employees of the Department of Insurance with respect to State and federal income tax returns filed with the Commissioner of Insurance by domestic insurance companies; and except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any of said persons to divulge or make known in any manner the amount of income, income tax or other taxes of any taxpayer, or information relating thereto or from which the amount of income, income tax or other taxes or any part thereof might be determined, deduced or estimated, whether the same be set forth or disclosed in or by means of any report or return required to be filed or furnished under this Subchapter, or in or by means of any audit, assessment, application, correspondence, schedule or other document relating to such taxpayer, notwithstanding the provisions of Chapter 132 of the General Statutes or of any other law or laws relating to public records. It shall likewise be unlawful to reveal whether or not any taxpayer has filed a return, and to abstract, compile or furnish to any person, firm or corporation not otherwise entitled to information relating to the amount of income, income tax or other taxes of a taxpayer, any list of names, addresses, social security numbers or other personal information concerning such taxpayer, whether or not such list discloses a taxpayer's income, income tax or other taxes, or any part thereof, except that when an election is made by a husband and wife under G.S. 105-152(e) to file their separate returns on a single form, or in order to determine an exemption allowable under G.S. 105-149(a)(2), any information given to one spouse concerning the income or income tax of the other spouse reported or reportable on such single return or on separate returns shall not be a violation of the provisions of this section.

Nothing in this section shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns, and the items thereof; the inspection of such reports or returns by the Governor, Attorney General, or their duly authorized representative; or the inspection by a legal representative of the State of the report or return of any taxpayer who shall bring an action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or penalty imposed by this Subchapter; nor shall the provisions of this section prohibit the Department of Revenue furnishing information to other governmental agencies of persons and firms properly licensed under Schedule B, G.S. 105-33 to 105-113. The Department of Revenue may exhange information with the officers of organized associations of taxpayers under Schedule B, G.S. 105-33 to 105-113, with respect to parties liable for such taxes and as to parties who have paid such license taxes.

When any record of the Department of Revenue shall have been photographed, photocopied or microphotocopied pursuant to the authority contained in G.S. 8-45.3, the original of said record may thereafter be destroyed at any time upon the order of the Secretary of Revenue, notwithstanding the provisions of G.S. 121-5, G.S. 132-3 or any other law or laws relating to the preservation of public records. Any record which shall not have been so photographed, photocopied or microphotocopied shall be preserved for three years, and thereafter until the Secretary of Revenue shall order the same to be destroyed.

Any person, officer, agent, clerk, employee, local tax official or former officer, employee or local tax official violating the provisions of this section shall be guilty of a misdemeanor and fined not less than two hundred dollars ($200.00) nor more than one thousand dollars ($1,000) and/or imprisoned, in the discretion of the court; and if such offending person be a public officer or employee, he shall be dismissed from such office or employment, and shall not hold any public office or employment in this State for a period of five years thereafter.

Notwithstanding the provisions of this section, the Secretary of Revenue may permit the Commissioner of Internal Revenue of the United States, or the revenue officer of any other state imposing any of the taxes imposed in this Subchapter, or the duly authorized representative of either, to inspect the report or return of any taxpayer; or may furnish such officer or his authorized agent an abstract of the report or return of any taxpayer; or supply such officer with information concerning any item contained in any report or return, or disclosed by the report of any investigation of such report or return of any taxpayer. Such permission, however, shall be granted or such information furnished to such officer, or his duly authorized representatives, only if the statutes of the United States or of such other state grants substantially similar privilege to the Secretary of Revenue of this State or his duly authorized representative. Notwithstanding contrary provisions of this section, the Secretary may also furnish to the Employment Security Commission account and identification numbers, and names and addresses, of taxpayers when said Commission requires such information for the purpose of administering Chapter 96 of the General Statutes. Neither this section nor any other law prevents the exchange of information between the Department of Revenue and the Department of Transportation's Division of Motor Vehicles when the information is needed by either to administer the laws with which they are charged. Notwithstanding any other provision of law, State officers and employees who perform computerized data processing functions pursuant to G.S. 143-341(9) for the Department of Revenue are authorized to receive and process for the Department of Revenue information in reports and returns and are subject to the criminal provisions of this section.

Notwithstanding the provisions of this section, the Secretary of Revenue may contract with any person, firm or corporation to receive and address, sort, bag, or deliver to the United States Postal Service any bulk mailing originated by the Department of Revenue, and may deliver the mail to the contractor pursuant to the contract. To ensure performance of the contract, the contractor shall furnish a bond in a form and amount acceptable to the Secretary. (1939, c. 158, s. 928; 1951, c. 190, s. 2; 1973, c. 476, s. 193; c. 903, s. 4; c. 1287, s. 13; 1975, c. 19, s. 29; c. 275, s. 7; 1977, c. 657, s. 6; 1979, c. 495; 1983, c. 7; 1983 (Reg. Sess., 1984), c. 1004, s. 3; c. 1034, s. 125; 1987, c. 440, s. 4.)

Effect of Amendments. —

The 1987 amendment, effective June 22, 1987, in the first sentence of the first paragraph substituted present clauses (ii) and (iii) for former clause (ii), which read "local tax authorities (as defined in G.S. 105-289(e)) and former local tax authorities" and renumbered former clauses (iii) and (iv) as clauses (iv) and (v), and in the fourth paragraph substituted "official" for "authority" in two places.

§ 105-266.1. Refunds of overpayment of taxes.

(b) The rules of evidence do not apply in a hearing before the Secretary of Revenue under this section. G.S. 105-241.2, 105-241.3, and 105-241.4 apply to a tax or additional tax assessed under this section.

(1957, c. 1340, s. 10; 1969, c. 44, s. 66; c. 1132, s. 2; 1973, c. 476, s. 193; 1979, c. 801, s. 91; 1981 (Reg. Sess., 1982), c. 1211, s. 2; 1987, c. 827, s. 22.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, rewrote subsection (b).

CASE NOTES

Cited in Hed, Inc. v. Powers, — N.C. App. —, 352 S.E.2d 265 (1987).

§ 105-267. Taxes to be paid; suits for recovery of taxes.

CASE NOTES

Cited in Blumenthal v. Lynch, 315 N.C. 571, 340 S.E.2d 358 (1986).

SUBCHAPTER II. LISTING, APPRAISAL, AND ASSESSMENT OF PROPERTY AND COLLECTION OF TAXES ON PROPERTY.

Article 11.

Short Title, Purpose, and Definitions.

CASE NOTES

Application of North Carolina's ad valorem property tax to imported tobacco destined for domestic markets does not violate the import-export clause or the due process clause of the federal Constitution. R.J. Reynolds Tobacco Co. v. Durham County, — U.S. —, 107 S. Ct. 499, 93 L. Ed. 2d 449 (1986).

Consistent with the supremacy clause, a State may impose a nondiscriminatory ad valorem property tax on imported goods stored in a customs-bonded warehouse and destined for domestic manufacture and sale. R.J. Reynolds Tobacco Co. v. Durham County, — U.S. —, 107 S. Ct. 499, 93 L. Ed. 2d 449 (1986).

§ 105-272. Purpose of Subchapter.

CASE NOTES

Cited in R.J. Reynolds Tobacco Co. v. Durham County, — U.S. —, 107 S. Ct. 499, 93 L. Ed. 2d 449 (1986).

§ 105-273. Definitions.

When used in this Subchapter (unless the context requires a different meaning):

(8a) "Inventories" means goods held for sale in the regular course of business by manufacturers and retail and wholesale merchants. As to manufacturers, the term includes raw materials, goods in process, and finished goods, as well as other materials or supplies that are consumed in manufacturing or processing, or that accompany and become a part of the sale of the property being sold. The term also includes crops, livestock, poultry, feed used in the production of livestock and poultry, and other agricultural or horticultural products held for sale, whether in process or ready for sale. The term does not include fuel used in manufacturing or processing, nor does it include materials or supplies not used directly in manufacturing or processing. As to retail and wholesale merchants, the term includes, in addition to articles held for sale, packaging materials that accompany and become a part of the sale of the property being sold.

(10) Repealed by Session Laws 1987, c. 43, s. 1, effective April 2, 1987.

(10a) "Local tax official" includes a county assessor, an assistant county assessor, a member of a county board of commissioners, a member of a county board of equalization and review, a county tax collector, and the municipal equivalents of these officials.

(10b) "Manufacturer" means a taxpayer who is regularly engaged in the mechanical or chemical conversion or transformation of materials or substances into new products for sale or in the growth, breeding, raising, or other production of new products for sale. The term does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.

(13) "Real property," "real estate," and "land" means not only the land itself, but also buildings, structures, improvements, and permanent fixtures thereon, and all rights and privileges belonging or in any wise appertaining thereto. These terms also mean a manufactured home as defined in G.S. 143-143.9(6) if it is a multi-section residential structure (consisting of two or more sections); has the moving hitch, wheels, and axles removed; and is placed upon a permanent enclosed foundation on land owned by the owner of the manufactured home.

(13a) "Retail Merchant" means a taxpayer who is regularly engaged in the sale of tangible personal property, acquired by a means other than manufacture, processing, or producing by the merchant, to users or consumers.

(19) "Wholesale Merchant" means a taxpayer who is regularly engaged in the sale of tangible personal property, acquired by a means other than manufacture, processing, or producing by the merchant, to other retail or wholesale merchants for resale or to manufacturers for use as ingredient or component parts of articles being manufactured for sale. (1939, c. 310, s. 2; 1971, c. 806, s. 1; 1973, c. 695, ss. 14, 15; 1985, c. 656, s. 20; 1985 (Reg. Sess., 1986), c. 947, ss. 3, 4; 1987, c. 43, s. 1; c. 440, s. 2; c. 805, s. 3; c. 813, ss. 1-4.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. —

Session Laws 1987, c. 813, s. 25 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment, effective for taxable years beginning on or after January 1, 1986, rewrote subdivision (8a) and added subdivisions (10a) (now (10b)), (13a) and (19).

Session Laws 1987, c. 43, s. 1, effective April 2, 1987, deleted former subdivision (10), defining "list taker."

Session Laws 1987, c. 440, s. 2, effective June 22, 1987, added present subdivision (10a).

Session Laws 1987, c. 805, s. 3, effective for tax years beginning on and after January 1, 1988, added the last sentence of subdivision (13).

Session Laws 1987, c. 813, ss. 1-4, effective for taxable years beginning on or after January 1, 1988, inserted the present third sentence of subdivision (8a), deleted "at a manufacturing or processing plant, mill, or factory in this State" following "engaged" and added "or in the growth, breeding, raising, or other production of new products for sale" in the first sentence of present subdivision (10b), and deleted the former second sentences of subdivisions (13a) and (19), which read "For the purpose of the classification in G.S. 105-277(i), the term includes a manufacturer who holds property for sale that it did not manufacture or who holds finished goods for sale at a location other than its establishment."

Article 12.

Property Subject to Taxation.

§ 105-274. Property subject to taxation.

CASE NOTES

Taxation of Personal Property of Nonresidents, etc. —

When personal property belonging to a nonresident has acquired a taxable situs in this State, this State may tax that nonresident's property without violating the provisions of the Fourteenth Amendment of the United States Constitution. In re Bassett Furn. Indus., Inc., 79 N.C. App. 258, 339 S.E.2d 16, appeal dismissed, 316 N.C. 553, 344 S.E.2d 4 (1986).

Situs Essential for Tax Exaction. — Taxable tangible personal property must have acquired a tax situs in this State, for situs is an absolute essential for tax exaction. In re Bassett Furn. Indus., Inc., 79 N.C. App. 258, 339 S.E.2d 16, appeal dismissed, 316 N.C. 553, 344 S.E.2d 4 (1986).

Situs of personal property for tax purposes is determined by the legislature, and the legislature may provide different rules for different kinds of property and may change the rules from time to time. In re Bassett Furn. Indus., Inc., 79 N.C. App. 258, 339 S.E.2d 16, appeal dismissed, 316 N.C. 553, 344 S.E.2d 4 (1986).

A jet aircraft hangared in Rockingham County, North Carolina for approximately one year by a nonresident corporation having no principal place of business in this State, under the stipulated facts and evidence, was "situated" or "more or less permanently located" in Rockingham County on January 1, 1984, and therefore had a tax situs in Rockingham County on that date. The fact that the airplane happened to be physically located at a Virginia airport on January 1, 1984, did not defeat taxation by Rockingham County. In re Bassett Furn. Indus., Inc., 79 N.C. App. 258, 339 S.E.2d 16, appeal dismissed, 316 N.C. 553, 344 S.E.2d 4 (1986).

§ 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) Repealed by Session Laws 1987, c. 813, s. 5, effective for taxable years beginning on or after January 1, 1988.

(4) Repealed by Session Laws 1987, c. 813, s. 5, effective for taxable years beginning on or after January 1, 1988.

(9) to (11) Repealed by Session Laws 1987, c. 813, s. 5, effective for taxable years beginning on or after January 1, 1988.

(16) Non-business Property. — As used in this subdivision, the term "non-business property" means personal property that is used by the owner of the property for a purpose other than the production of income and is not used in connection with a business. The term includes household furnishings, clothing, pets, lawn tools, and lawn equipment. The term does not include motor vehicles, mobile homes, aircraft, watercraft, or engines for watercraft.

(22) Repealed by Session Laws 1987, c. 813, s. 5, effective for taxable years beginning on or after January 1, 1988.

(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.

(30) Repealed by Session Laws 1987, c. 813, s. 5, effective for taxable years beginning on or after January 1, 1988.

(32) Real and personal property owned by a home for the aged, sick, or infirm, that is exempt from tax under Article 4 of this Chapter, and used in the operation of that home. The term "home for the aged, sick, or infirm" means a self-contained community that (i) is designed for elderly residents; (ii) operates a skilled nursing facility, an intermediate care facility, or a home for the aged; (iii) includes residential dwelling units, recreational facilities, and service facilities; (iv) the charter of which provides that in the event of dissolution, its assets will revert or be conveyed to an entity organized exclusively for charitable, educational, scientific, or religious purposes, and which qualifies as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986; (v) is owned, operated, and managed by one of the following entities:

A. A congregation, parish, mission, synagogue, temple, or similar local unit of a church or religious body;
B. A conference, association, division, presbytery, diocese, district, synod, or similar unit of a church or religious body;
C. A Masonic organization whose property is excluded from taxation pursuant to G.S. 105-275(18); or
D. A nonprofit corporation governed by a board of directors at least a majority of whose members elected for terms commencing on or before December 31, 1987, shall have been elected or confirmed by, and all of whose members elected for terms commencing after December 31, 1987, shall be selected by, one or more entities described in A., B., or C. of this subdivision, or organized for a religious purpose as defined in G.S. 105-278.3(d)(1); and

(vi) has an active program to generate funds through one or more sources, such as gifts, grants, trusts, bequests, endowment, or an annual giving program, to assist the home in serving persons who might not be able to reside at the home without financial assistance or subsidy.

(33) Inventories owned by manufacturers.

(34) Inventories owned by retail and wholesale merchants.

(35) Severable development rights, as defined in G.S. 136-66.11(a), when severed and evidenced by a deed recorded in the office of the register of deeds pursuant to G.S. 136-66.11(c).

(36) Real and personal property belonging to the North Carolina Low-Level Radioactive Waste Management Authority created under Chapter 104G of the General Statutes. (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; 1981 (Reg. Sess., 1982), c. 1244, ss. 1, 2; 1983, c. 643, ss. 1, 2; c. 693; 1983 (Reg. Sess., 1984), c. 1060; 1985, c. 510, s. 1; c. 656, s. 37; 1985 (Reg. Sess., 1986), c. 982, s. 18; 1987, c. 356; c. 622, s. 2; c. 747, s. 8; c. 777, s. 6; c. 813, ss. 5, 6, 22; c. 850, s. 17.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. — Session Laws 1987, c. 622, s. 1, provides that the act shall be known as the "School Facilities Finance Act of 1987."

Session Laws 1987, c. 622, s. 16 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Session Laws 1987, c. 747, s. 25 provides that as used in the act, the word "municipality" means a "city" as defined by G.S. 160A-1.

Session Laws 1987, c. 813, s. 25 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or re-

pealed statute before its amendment or repeal."

Session Laws 1987, c. 850, s. 27(a) provides: "Notwithstanding any other provision of this act, this act shall not be construed as a revenue bill within the meaning of Section 23 of Article II of the Constitution of North Carolina. Any provision of this act contrary to this section is void."

Session Laws 1987, c. 747, s. 26 and c. 850, s. 27(b) are severability clauses.

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment, effective for taxable years beginning on or after January 1, 1987, rewrote subdivision (16), which formerly related to dogs owned and held by individuals for their personal use.

Session Laws 1987, c. 356, effective for tax years beginning on and after January 1, 1987, and also applicable to prior tax years for which contested tax levy proceedings have not been finally determined as of the ratification of the act (June 12, 1987), added subdivision (32).

Session Laws 1987, c. 622, s. 2, as amended by c. 813, s. 22, effective for taxable years beginning on or after January 1, 1988, added subdivisions (33) and (34).

Session Laws 1987, c. 747, s. 8, effective August 7, 1987, added subdivision (35).

Session Laws 1987, c. 777, s. 6, effective August 12, 1987, substituted "Non-business" and "non-business" for "Household personal" and "household personal" in subdivision (16), and substituted "aircraft, watercraft, or engines for watercraft" for "boats, or airplanes" in that subdivision.

Session Laws 1987, c. 813, ss. 5 and 6, effective for taxable years beginning on or after January 1, 1988, deleted subdivisions (1), (4), (9), (10), (11), (22), and (30), and deleted the second sentence of subdivision (25), which read "This classification shall not include raw materials, supplies, or goods in process of manufacture in this State."

Session Laws 1987, c. 850, s. 17, effective August 14, 1987, added subdivision (36).

CASE NOTES

I. GENERAL CONSIDERATION.

Application of North Carolina's ad valorem property tax to imported tobacco destined for domestic markets does not violate the import-export clause or the due process clause of the federal Constitution. R.J. Reynolds Tobacco Co. v. Durham County, — U.S. —, 107 S. Ct. 499, 93 L. Ed. 2d 449 (1986).

Consistent with the supremacy clause, a State may impose a nondiscriminatory ad valorem property tax on imported goods stored in a customs-bonded warehouse and destined for domestic manufacture and sale. R.J. Reynolds Tobacco Co. v. Durham County, — U.S. —, 107 S. Ct. 499, 93 L. Ed. 2d 449 (1986).

IV. PROPERTY WAREHOUSED FOR TRANSSHIPMENT OUTSIDE STATE.

Goods Held for Transshipment to Taxpayer Stores. —

Warehoused goods held for transshipment to taxpayer's customers are within the exempted class under subdivision (10) of this section, but goods held for transshipment to taxpayer stores were outside the exempted class and were therefore subject to taxation. In re K-Mart Corp., 79 N.C. App. 725, 340 S.E.2d 752, cert. granted, 317 N.C. 334, 346 S.E.2d 500 (1986).

Applied in In re K-Mart Corp., — N.C. —, 354 S.E.2d 468 (1987).

§ 105-275.1. (Effective January 1, 1989) Reimbursement for exclusion of manufacturers' inventories.

(a) Initial Distribution. On or before January 15, 1989, the governing body of each county and each city shall furnish to the Secretary a list of all the inventories owned by manufacturers that were required to be listed and assessed as of January 1, 1987, and were

§ 105-275.1 has a delayed effective date. See notes for date.

listed on or before September 1, 1987, in the county or city under this Subchapter. The list shall contain the value of the inventories as well as the property tax rates in effect in the county or city for the eight years from 1980 through 1987. The list shall also contain the property tax rates in effect for those years in each special district for which the county or city collected taxes in 1987 but whose tax rates were not included in the rates listed for the county or city, and the value of the inventories owned by manufacturers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in that district. The list shall be accompanied by an affidavit attesting to the accuracy of the list and shall be on a form prescribed by the Secretary.

On or before March 20, 1989, the Secretary shall pay to each county and city that submitted a list under this subsection an amount equal to the county or city average rate, as provided below, multiplied by the value of the inventories owned by manufacturers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the county or city, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

On or before March 20, 1989, the Secretary shall also pay to each county and city that submitted a list under this subsection an amount equal to the average rate, as provided below, for each special district for which the county or city collected taxes in 1987, but whose tax rates were not included in the county or city's rates, multiplied by the value of the inventories owned by manufacturers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the district, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

The Secretary shall calculate an average rate for each county and city, and for each special district whose tax rates were not included in the tax rates of a county or city, as the arithmetic mean of the property tax rates in effect in the county, city, or district for the eight years from 1980 through 1987. If a county, city, or district did not have tax rates in effect for the entire eight-year period, the average rate shall be the arithmetic mean of the property rates in effect for the years during the eight-year period that it did have rates in effect.

Of the funds received by each county and city pursuant to this subsection, the portion that was received because the county or city was collecting taxes for a special district (either because the district's tax rate was included in the city or county's rate or because the Secretary paid the county or city the product of the district's average rate and the value of the inventories in the district) shall be distributed among the districts in the county or city in accordance with regulations issued by the Local Government Commission. This distribution shall be made as soon as practicable after the city or county receives funds under this subsection.

§ 105-275.1 has a delayed effective date. See notes for date.

(b) Subsequent Distributions. — Thereafter, as soon as practicable after January 1 of each year, the Secretary shall distribute to each county and city the amount it received under this section the preceding year. As soon as practicable after receiving funds under this subsection, every county and city shall distribute among the special districts for which the county or city collects tax an amount equal to the amount it distributed among such districts the previous year. This distribution shall be in accordance with regulations issued by the local Government Commission.

(c) Use. — Funds received by a county, city, or special district under this section may be used for any lawful purpose.

(d) "City" Defined. — As used in this section, the term "city" has the same meaning as in G.S. 153A-1(1).

(e) Source of Funds. — To pay for the distribution required by this section and the cost to the Department of Revenue of making the distribution, the Secretary of Revenue shall charge the collections received by the Department under Division I of Article 4 of Chapter 105 with an amount equal to the amount distributed and the cost of making the distribution. (1987, c. 622, s. 7; c. 813, s. 7.)

Editor's Note. — Session Laws 1987, c. 622, s. 17, as rewritten by Session Laws 1987, c. 813, s. 7, makes this section effective January 1, 1989.

Session Laws 1987, c. 622, s. 1, provides that the act shall be known as the "School Facilities Finance Act of 1987."

Session Laws 1987, c. 622, s. 16 and Session Laws 1987, c. 813, s. 25 both provide: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — Session Laws 1987, c. 813, s. 7, effective January 1, 1989, rewrote this section, as enacted by Session Laws 1987, c. 622, s. 7.

§ 105-276. Taxation of intangible personal property.

Intangible personal property that is not excluded from taxation under G.S. 105-275(31) or classified under Schedule H, G.S. 105-198 through G.S. 105-217, is subject to this Subchapter. The classification of such property for taxation under Schedule H shall not exclude the property from the system property valuation of public service companies under Article 23 provided proper adjustments are made to prevent duplicate taxation. (1939, c. 310, s. 601; 1971, c. 806, s. 1; 1973, c. 1180; 1985, c. 656, s. 38; 1987, c. 813, s. 8.)

Editor's Note. —

Session Laws 1987, c. 813, s. 25 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. —

The 1987 amendment, effective August 13, 1987, substituted "G.S. 105-275(31)" for "G.S. 105-275(30)."

§ 105-275.1 has a delayed effective date. See notes for date.

§ 105-277. Property classified for taxation at reduced rates; certain deductions.

(a) to (c) Repealed by Session Laws 1987, c. 813, s. 9, effective for taxable years beginning on or after January 1, 1988.

(d) All bona fide indebtedness incurred in the purchase of fertilizer and fertilizer materials owing by a taxpayer as principal debtor may be deducted from the total value of all fertilizer and fertilizer materials as are held by such taxpayer for his own use in agriculture during the current year. Provided, further, that from the total value of cotton stored in this State there may be deducted by the owner thereof all bona fide indebtedness incurred directly for the purchase of said cotton and for the payment of which the cotton so purchased is pledged as collateral.

(e) Repealed by Session Laws 1987, c. 813, s. 9, effective for taxable years beginning on or after January 1, 1988.

(f) Repealed by Session Laws 1977, c. 869, s. 1, effective January 1, 1978.

(g) Buildings equipped with a solar energy heating or cooling system, or both, are hereby designated a special class of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution. Such buildings shall be assessed for taxation in accordance with each county's schedules of value for buildings equipped with conventional heating or cooling systems and no additional value shall be assigned for the difference in cost between a solar energy heating or cooling system and a conventional system typically found in the county. As used in this classification, the term "system" includes all controls, tanks, pumps, heat exchangers and other equipment used directly and exclusively for the conversion of solar energy for heating or cooling. The term "system" does not include any land or structural elements of the building such as walls and roofs nor other equipment ordinarily contained in the structure.

(h) Private Water Companies. — Contributions in aid of construction and acquisition adjustments. In assessing the property of any private water company, there shall be excluded that portion of the investment of the company represented by contributions in aid of construction and by acquisition adjustments which is designated a special class of property under Article V, Sec. 2(2) of the Constitution. "Investment," "contributions in aid of construction" and "acquisition adjustment" shall have the meanings as those terms are defined in the Uniform System of Accounts specified by the North Carolina Utilities Commission for use by such private water company.

(i) Repealed by Session Laws 1987, c. 622, s. 5, effective for taxable years beginning on or after January 1, 1988. (1947, c. 1026; 1955, c. 697, s. 1; 1961, c. 1169, ss. 6, 7, 7½; 1963, c. 940; 1971, c. 806, s. 1; 1973, c. 511, s. 4; c. 695, s. 2; 1975, c. 578; 1977, c. 869, s. 1; c. 965; 1979, c. 605, s. 1; 1985, c. 656, ss. 52, 52.1; 1985 (Reg. Sess., 1986), c. 947, s. 5; 1987, c. 622, s. 5; c. 813, s. 9.)

Editor's Note. — Session Laws 1985, c. 656, s. 55 provides: "This act shall be known as the 'Tax Reduction Act of 1985'."

Section 56 of Session Laws 1985, c. 656 provides that the act does not affect the rights or liabilities of the State or a taxpayer arising under a section amended or repealed by the act before its amendment or repeal, nor affect the right to any refund or credit of a tax, such as the franchise tax credit under § 105-120.2(d) or § 105-122(d) that would otherwise have been available un-

der a section amended or repealed by the act before its amendment or repeal.

Session Laws 1987, c. 622, s. 1, provides that the act shall be known as the "School Facilities Finance Act of 1987."

Session Laws 1987, c. 622, s. 16 and c. 813, s. 25, both provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; not does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — The 1985 amendment by c. 656, s. 52, effective for taxable years beginning on or after January 1, 1986, added former subsection (i).

The 1985 amendment by c. 656, s. 52.1, effective for taxable years beginning on or after January 1, 1987, substituted "eighty percent (80%)" for "ninety percent (90%)" in former subsection (i).

The 1985 (Reg. Sess., 1986) amendment by c. 947, s. 5, effective for taxable years beginning on or after January 1, 1986, rewrote former subsection (i).

Session Laws 1987, c. 622, s. 5, effective for taxable years beginning on or after January 1, 1988, deleted subsection (i), relating to inventories of retail and wholesale merchants.

Session Laws 1987, c. 813, s. 9, effective for taxable years beginning on or after January 1, 1988, deleted subsections (a), (b), (c) and (e), relating to agricultural products in storage, peanuts, bailed cotton, and vinous and other fruit products.

CASE NOTES

Former Subsection (a) Held to Discriminate against Railroads. —

In suits alleging discriminatory taxation of real and personal property in violation of § 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 (the 4-R Act), codified at 49 U.S.C. § 11503 (1982), the trial court was correct in considering as a factor in its finding of tax discrimination the fact that under this section stored tobacco inventories were taxed at only 60% of fair market value. Clinchfield R.R. v. Lynch, 784 F.2d 545 (4th Cir. 1986).

Application of North Carolina's ad valorem property tax to imported tobacco destined for domestic markets does not violate the import-export clause or the due process clause of the federal Constitution. R.J. Reynolds Tobacco Co. v. Durham County, — U.S. —, 107 S. Ct. 499, 93 L. Ed. 2d 449 (1986).

Consistent with the supremacy clause, a State may impose a nondiscriminatory ad valorem property tax on imported goods stored in a customs-bonded warehouse and destined for domestic manufacture and sale. R.J. Reynolds Tobacco Co. v. Durham County, — U.S. —, 107 S. Ct. 499, 93 L. Ed. 2d 449 (1986).

§ 105-277A. (Effective until January 1, 1989) Reimbursement for partial exclusion of retailers' and wholesalers' inventories.

(a) The Secretary of Revenue shall reimburse taxing units for the partial property tax exclusion provided for retailers' and wholesalers' inventories as provided in this section. As soon as practicable after January 1 of 1988, the Secretary shall distribute to each taxing unit the unit's per capita share of the sum of fifteen million eighty thousand dollars ($15,080,000). Thereafter, as soon as practicable after January 1 of each year the Secretary shall distribute to each taxing unit the unit's per capita share of the sum distributed to all taxing units the previous year, plus or minus an amount that equals the product of the sum distributed the previous year and the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State

§ 105-277A is set out twice. See headings for effective dates.

personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

To make the per capita distributions required by this section, the Secretary shall first allocate the sum to be distributed among the counties on a per capita basis. The Secretary shall then compute a per capita distributable amount for each county by dividing the amount allocated to a county by the total population of the county, plus the population of any incorporated towns and cities located in the county. Each taxing unit in a county, including the county itself, shall receive the product of the population of the taxing unit and the per capita distributable amount for that county. The Secretary shall use the most recent annual population estimates certified by the State Budget Officer in determining the population of taxing units.

As used in this subsection, the term "taxing unit" means a unit that levied a property tax for the fiscal year beginning July 1 of the year preceding the date a distribution is made under this section.

(b) A city or county that receives funds under this section and that collects taxes for another taxing unit shall distribute part of the taxes received by it to the taxing unit for which it collects tax. The distribution shall be made on the basis of the proportionate amount of ad valorem taxes levied, for the most recent fiscal year beginning July 1, by the city or county and by all the taxing units for which the city or county collects tax. This distribution shall be made as soon as practicable after a city or county receives funds from the State under this section.

(c) To pay for the reimbursement under this section and the cost to the Department of Revenue for administering the reimbursement, the Secretary of Revenue may withhold from net collections received by the Department under Article 4 of Chapter 105 an amount equal to the reimbursement and the cost of administering the reimbursement. (1985, c. 656, s. 53; 1985 (Reg. Sess., 1986), c. 947, ss. 7, 8; 1987, c. 813, s. 10.)

Section Set Out Twice. — The section above is effective until January 1, 1989. For this section as amended effective January 1, 1989, see the following section, also numbered § 105-277A.

Editor's Note. — Session Laws, c. 622, s. 1, provides that the act shall be known as the "School Facilities Finance Act of 1987."

Session Laws 1987, c. 622, s. 16 and c. 813, s. 25 both provide: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Session Laws 1987, c. 622, s. 15.1, as amended by Session Laws 1987, c. 813, s. 23 provides: "There is created in the Department of Revenue the Inventory Tax Reimbursement Fund to partially fund the 1989 reimbursement to taxing units under G.S. 105-277A. Notwithstanding any other provision of law, for distributions of local sales and use taxes made on or after October 1, 1987, and before March 31, 1988, the Secretary of Revenue shall withhold from the net proceeds, as defined in G.S. 105-472, to be distributed to the taxing counties pursuant to G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws, an amount equal to three and one-half percent (3.5%) of such net proceeds. For distributions of local sales and use taxes made on or after April 1, 1988, and before June 30, 1988, the Secretary shall withhold from such net proceeds an amount equal to twenty million four hundred thousand dollars ($20,400,000) minus the amounts withheld between October 1, 1987, and March 31, 1988, under this section. This amount shall be deducted

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proportionally from such net proceeds to be distributed pursuant to G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws. The amounts withheld shall be deposited in the Inventory Tax Reimbursement Fund to be distributed in accordance with G.S. 105-277A. Notwithstanding the provisions of G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws, the Secretary of Revenue shall reduce each taxing county's net proceeds to be distributed under those provisions by the amounts withheld therefrom under this section.

"In addition, as soon as practicable after November 1, 1988, the Secretary of Revenue shall deposit in the Inventory Tax Reimbursement Fund the sum of seven million one hundred thousand dollars ($7,100,000), which shall be drawn from State sales and use tax collections received by the Department during October of 1988 under Article 5 of Chapter 105 of the General Statutes. These funds shall be distributed in 1989 as provided in G.S. 105-277A."

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective for taxable years beginning on or after January 1, 1986, added the last paragraph of subsection (a) and rewrote subsection (b).

The 1987 amendment by c. 813, s. 10, effective August 13, 1987, deleted the former second sentence of the first paragraph of subsection (a), which read "As soon as practicable after January 1 of 1987, the Secretary shall distribute to each taxing unit the unit's per capita share of the sum of nine million six hundred thousand dollars ($9,600,000)," substituted "fifteen million eighty thousand dollars ($15,080,000)" for "twenty million eight hundred thousand dollars ($20,800,000)" at the end of the present second sentence of the first paragraph of subsection (a), and deleted "disposable" preceding "personal income has increased or decreased" in the final sentence of the first paragraph of subsection (a).

§ 105-277A. (Effective January 1, 1989) Reimbursement for exclusion of retailers' and wholesalers' inventories.

(a) Submission of Claims. — On or before January 15, 1989, the governing body of each county and city shall furnish to the Secretary a list of all the inventories owned by retailers and wholesalers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the county or city under this Subchapter. The list shall contain the value of the inventories as well as the property tax rates in effect in the county or city for the eight years from 1980 through 1987. The list shall also contain the property tax rates in effect for those years in each special district for which the county or city collected taxes in 1987 but whose tax rates were not included in the rates listed for the county or city, and the value of the inventories owned by retailers and wholesalers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in that district. The list shall be accompanied by an affidavit attesting to the accuracy of the list and shall be on a form prescribed by the Secretary.

The Secretary shall calculate an average rate for each county and city, and for each special district whose tax rates were not included in the tax rates of a county or city, as the arithmetic mean of the property tax rates in effect in the county, city, or district for the eight years from 1980 through 1987. If a county, city, or district did not have tax rates in effect for the entire eight-year period, the average rate shall be the arithmetic mean of the property rates in effect for the years during the eight-year period that it did have rates in effect.

§ 105-277A is set out twice. See headings for effective dates.

(b) Per Capita Distribution. — As soon as practicable after January 1, 1989, the Secretary shall distribute to each taxing unit the unit's per capita share of the sum of fifteen million seven hundred forty-five thousand dollars ($15,745,000). Thereafter, as soon as practicable after January 1 of each year the Secretary shall distribute to each taxing unit the unit's per capita share of an amount equal to the sum distributed to all taxing units the previous year under this subsection plus or minus the product of the sum distributed the previous year and the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

To make the per capita distributions required by this subsection, the Secretary shall first allocate the sum to be distributed among the counties on a per capita basis. The Secretary shall then compute a per capita distributable amount for each county by dividing the amount allocated to a county by the total population of the county, plus the population of any incorporated towns and cities located in the county. Each taxing unit in a county, including the county itself, shall receive the product of the population of the taxing unit and the per capita distributable amount for that county.

A city or county that receives funds under this subsection and that collects taxes for another taxing unit shall distribute part of the taxes received by it to the taxing unit for which it collects tax. The distribution shall be made on the basis of the proportionate amount of ad valorem taxes levied, for the most recent fiscal year beginning July 1, by the city or county and by all the taxing units for which the city or county collects tax. This distribution shall be made as soon as practicable after a city or county receives funds from the State under this section.

(c) Claims-based Distribution. — On or before March 20, 1989, the Secretary shall allocate to each county an amount equal to the greater of the following:

(1) The county's per capita share of the sum of thirty-nine million dollars ($39,000,000); or

(2) The total of the county average rate multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section by the county, plus the city average rate for each city in the county multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section by the city, plus the average rate for each special district for which the county or a city in the county collected taxes in 1987, but whose tax rates were not included in the county or city's rates, multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section in behalf of the district, plus or minus the percentage of this sum that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce, minus three and four-tenths percent (3.4%) of the total distribution received by the county and the cities located in the county under

§ 105-277A is set out twice. See headings for effective dates.

G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws between January 1, 1988, and December 31, 1988.

Each year thereafter, as soon as practicable after January 1, the Secretary of Revenue shall allocate to each county the amount it received the previous year under this subsection.

Amounts allocated to a county under this subsection shall in turn be divided and distributed between the county and the cities located in the county in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding the distribution. For the purposes of this section, the amount of the ad valorem taxes levied by a county or city shall include any ad valorem taxes collected by the county or city in behalf of a special district. For the purpose of computing the distribution for any year with respect to which the property valuation of a public service company is the subject of an appeal and the Department of Revenue is restrained by law from certifying the valuation to the appropriate counties and cities, the Department shall use the latest property valuation of that public service company that has been certified.

The governing body of each county and city shall report to the Secretary of Revenue such information as he may request in order to make the distribution under this subsection. If a county or city fails to make a requested report within the time prescribed, the Secretary may disregard that county or city and the other taxing units in the county or city in making the distribution.

Of the funds received by each county and city pursuant to this subsection, the portion that was received because the county or city was collecting taxes for a special district shall be distributed among the districts in the county or city in accordance with regulations issued by the Local Government Commission. This distribution shall be made as soon as practicable after the city or county receives funds under this subsection.

(d) Definitions. — As used in this section, the term "taxing unit" means a unit that levied a property tax or for which another unit collected a property tax for the fiscal year beginning July 1 of the year preceding the date a distribution is made under this section. As used in this section, the term "city" has the same meaning as in G.S. 153A-1(1).

(e) Population Estimates. — In making the per capita calculations under this section, the Secretary shall use the most recent annual population estimates certified by the State Budget Officer.

(f) Source of Funds. — The Secretary of Revenue shall pay for the distribution required by this section and the cost of making the distribution as follows:

(1) For the distribution made in 1989, the Secretary shall draw an amount equal to the amount distributed and the cost of making the distribution first from the Inventory Tax Reimbursement Fund created in Section 15.1 of the School Facilities Finance Act of 1987, until it is exhausted, and then the remainder of that amount from collections received by the Department under Division I of Article 4 of this Chapter.

(2) For distributions made in subsequent years, the Secretary shall charge the collections received by the Department under Division I of Article 4 of this Chapter with an amount equal to the amount distributed and the cost of

§ 105-277A is set out twice. See headings for effective dates.

making the distribution. (1985, c. 656, s. 53; 1985 (Reg. Sess., 1986), c. 947, ss. 7, 8; 1987, c. 622, s. 6; c. 813, ss. 10, 11.)

Section Set Out Twice. — The section above is effective January 1, 1989. For this section as in effect until January 1, 1989, see the preceding section, also numbered § 105-277A.

Editor's Note. — Session Laws 1987, c. 622, s. 1, provides that the act shall be known as the "School Facilities Finance Act of 1987."

Session Laws 1987, c. 622, s. 16 and c. 813, s. 25 both provide: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Session Laws 1987, c. 622, s. 15.1, as amended by Session Laws 1987, c. 813, s. 23 provides: "There is created in the Department of Revenue the Inventory Tax Reimbursement Fund to partially fund the 1989 reimbursement to taxing units under G.S. 105-277A. Notwithstanding any other provision of law, for distributions of local sales and use taxes made on or after October 1, 1987, and before March 31, 1988, the Secretary of Revenue shall withhold from the net proceeds, as defined in G.S. 105-472, to be distributed to the taxing counties pursuant to G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws, an amount equal to three and one-half percent (3.5%) of such net proceeds. For distributions of local sales and use taxes made on or after April 1, 1988, and before June 30, 1988, the Secretary shall withhold from such net proceeds an amount equal to twenty million four hundred thousand dollars ($20,400,000) minus the amounts withheld between October 1, 1987, and March 31, 1988, under this section. This amount shall be deducted proportionally from such net proceeds to be distributed pursuant to G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws. The amounts withheld shall be deposited in the Inventory Tax Reimbursement Fund to be distributed in accordance with G.S. 105-277A. Notwithstanding the provisions of G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws, the Secretary of Revenue shall reduce each taxing county's net proceeds to be distributed under those provisions by the amounts withheld therefrom under this section.

"In addition as soon as practicable after November 1, 1988, the Secretary of Revenue shall deposit in the Inventory Tax Reimbursement Fund the sum of seven million one hundred thousand dollars ($7,100,000), which shall be drawn from State sales and use tax collections received by the Department during October of 1988 under Article 5 of Chapter 105 of the General Statutes. These funds shall be distributed in 1989 as provided in G.S. 105-277A."

Effect of Amendments. —

The 1987 amendment by c. 813, s. 10, effective August 13, 1987, deleted the former second sentence of the first paragraph of subsection (a), which read "As soon as practicable after January 1 of 1987, the Secretary shall distribute to each taxing unit the unit's per capita share of the sum of nine million six hundred thousand dollars ($9,600,000)," substituted "fifteen million eighty thousand dollars ($15,080,000)" for "twenty million eight hundred thousand dollars ($20,800,000)" at the end of the present second sentence of the first paragraph of subsection (a), and deleted "disposable" preceding "personal income has increased or decreased" in the final sentence of the first paragraph of subsection (a).

Session Laws 1987, c. 622, s. 6, as amended by c. 813, s. 11, effective January 1, 1989, rewrote this section.

§ 105-277A is set out twice. See headings for effective dates.

§ 105-277.1. Property classified for taxation at reduced valuation.

(a) The following class of property is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be assessed for taxation as follows. The first twelve thousand dollars ($12,000) in assessed value of real property, or a mobile home, owned by a North Carolina resident and occupied by the owner as his permanent residence shall not be assessed for taxation if, as of January 1 of the year for which the benefit of this section is claimed:

(1) The owner is either 65 years of age or older or is totally and permanently disabled; and

(2) The owner's disposable income for the preceding calendar year did not exceed eleven thousand dollars ($11,000); and

(3) The owner makes the required application.

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 twelve thousand dollars ($12,000).

(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) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 20.

(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 assessor under G.S. 105-282.1.

(2) Disabled Applicants. — Persons who are totally and permanently disabled may apply for this exclusion by (i) entering the appropriate information on a form made available by the assessor under G.S. 105-282.1 and (ii) furnishing acceptable proof of their disability. 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; 1985, c. 656, ss. 44, 45; 1985 (Reg. Sess., 1986), c. 982, ss. 19, 20; 1987, c. 45, s. 1.)

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment, effective for taxable years beginning on or after January 1, 1987, rewrote subsection (a) and deleted subdivision (b)(2a), relating to household personal property.

The 1987 amendment, effective April 3, 1987, substituted "assessor" for "tax supervisor" in subdivision (c)(1) and in the first sentence of subdivision (c)(2).

§ 105-277.2. Agricultural, horticultural and forestland — Definitions.

For the purposes of G.S. 105-277.3 through 105-277.7 the following definitions shall apply:

(1) "Agricultural land" means land that is a part of a farm unit that is actively engaged in the commercial production or growing of crops, plants, or animals under a sound management program. Agricultural land includes woodland and wasteland that is a part of the farm unit, but the

woodland and wasteland included in the unit shall be appraised under the use-value schedules as woodland or wasteland. A farm unit may consist of more than one tract of agricultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(1), and each tract must be under a sound management program.

(2) "Forestland" means land that is a part of a forest unit that is actively engaged in the commercial growing of trees under a sound management program. Forestland includes wasteland that is a part of the forest unit, but the wasteland included in the unit shall be appraised under the use-value schedules as wasteland. A forest unit may consist of more than one tract of forestland, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(3), and each tract must be under a sound management program.

(3) "Horticultural land" means land that is a part of a horticultural unit that is actively engaged in the commercial production or growing of fruits or vegetables or nursery or floral products under a sound management program. Horticultural land includes woodland and wasteland that is a part of the horticultural unit, but the woodland and wasteland included in the unit shall be appraised under the use-value schedules as woodland or wasteland. A horticultural unit may consist of more than one tract of horticultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(2), and each tract must be under a sound management program.

(1973, c. 709, s. 1; 1975, c. 746, s. 1; 1985, c. 628, s. 1; c. 667, ss. 1, 4; 1987, c. 698, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. —

The 1987 amendment, effective July 30, 1987, inserted "under the use-value schedules" in the second sentences of subdivisions (1), (2) and (3), and substituted "requirements" for "minimum size requirement" in the third sentences of those subdivisions.

CASE NOTES

Statutory Scheme is Tax Deferment. — The statutory scheme for taxation of property qualifying for present use value treatment as defined in this section and § 105-277.3 is a tax deferment. In re Parker, 76 N.C. App. 447, 333 S.E.2d 749 (1985).

§ 105-277.3. Agricultural, horticultural and forestland — Classifications.

(a) The following classes of property are hereby designated special classes of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution and shall be appraised, assessed and taxed as hereinafter provided:

(1) Individually owned agricultural land consisting of one or more tracts, one of which consists of at least 10 acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this

section is claimed, have produced an average gross income of at least one thousand dollars ($1,000). Gross income includes income from the sale of the agricultural products produced from the land and any payments received under a governmental soil conservation or land retirement program. Land in actual production includes land under improvements used in the commercial production or growing of crops, plants, or animals.

(2) Individually owned horticultural land consisting of one or more tracts, one of which consists of at least five acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have produced an average gross income of at least one thousand dollars ($1,000). Gross income includes income from the sale of the horticultural products produced from the land and any payments received under a governmental soil conservation or land retirement program. Land in actual production includes land under improvements used in the commercial production or growing of fruits or vegetables or nursery or floral products.

(3) Individually owned forestland consisting of one or more tracts, one of which consists of at least 20 acres that are in actual production and are not included in a farm unit.

(b) In order to come within a classification described in subdivision (a)(1), (2) or (3), above, the property must, if owned by natural persons, also:

(1) Be the owner's place of residence; or

(2) Have been owned by the current owner or a relative of the current owner for the four years preceding January 1 of the year for which the benefit of this section is claimed.

If owned by a corporation, the property must have been owned by the corporation or by one or more of its principal shareholders as defined in G.S. 105-277.2(4)b for the four years immediately preceding January 1 of the year for which the benefit of this section is claimed. Notwithstanding the provisions of G.S. 105-277.2(4)b, above, a corporation qualifying for a classification described in G.S. 105-277.3 shall not lose the benefit of the classification by reason of the death of one of the principal shareholders provided the decedent's ownership passes to and remains in a relative of the decedent.

(1973, c. 709, s. 1; 1975, c. 746, s. 2; 1983, c. 821; c. 826; 1985, c. 667, ss. 2, 3, 6.1; 1987, c. 698, ss. 2-5.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1987, c. 698, s. 7 adds a new section to Session Laws 1985, c. 667, to read: "Sec. 6.2. If property loses its eligibility for use-value classification because of the amendments made by Section 2 of this act [which rewrote subdivisions (a)(1) to (a)(3)], no deferred taxes are due on the property and the lien for the deferred taxes that would otherwise be payable is extinguished."

Effect of Amendments. —

The 1987 amendment, effective July 30, 1987, rewrote the first sentence of subdivision (a)(1), which read "Individually owned agricultural land consisting of at least 10 acres in actual production and averaging at least one thousand dollars ($1,000) a year in gross income for the three years preceding January 1 of the year for which the benefit of this section is claimed"; rewrote the first sentence of subdivision (a)(2), which read "Individually owned horticultural land consisting of at least five acres in actual

production and averaging at least one thousand dollars ($1,000) a year in gross income for the three years preceding January 1 of the year for which the benefit of this section is claimed"; rewrote subdivision (a)(3), which read "Individually owned forestland consisting of at least 20 acres in actual production, if the property is not included in a farm unit"; and substituted "a relative of the decedent" for "the surviving spouse or children" in the last sentence of subsection (b).

CASE NOTES

Statutory Scheme is Tax Deferment. — The statutory scheme for taxation of property qualifying for present use value treatment as defined in § 105-277.2 and this section is a tax deferment. In re Parker, 76 N.C. App. 447, 333 S.E.2d 749 (1985).

§ 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 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 assessor 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 assessor to properly appraise the property at its present-use value. An initial application shall be filed during the regular listing period of the year for which the benefit of this classification is first claimed, or within 30 days of the date shown on a notice of a change in valuation made pursuant to G.S. 105-286 or G.S. 105-287. A new application is not required to be submitted unless the property is transferred or becomes ineligible for use-value appraisal because of a change in use or acreage.

(b) Upon receipt of a properly executed application, the assessor shall appraise the property at its present-use value as established in the schedule prepared pursuant to G.S. 105-317. In appraising the property at its present-use value, the assessor 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 assessor 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 assessor 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.

(1973, c. 709, s. 1; c. 905; c. 906, ss. 1, 2; 1975, c. 62; c. 746, ss. 3-7; 1981, c. 835; 1985, c. 518, s. 1; c. 667, ss. 5, 6; 1987, c. 45, s. 1; c. 295, s. 5; c. 698, s. 6.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. —

Session Laws 1987, c. 45, s. 1, effective April 3, 1987, substituted "assessor" for "tax supervisor" in subsections (a), (b), and (b1).

Session Laws 1987, c. 295, s. 5, effective January 1, 1988, deleted "as provided in G.S. 105-324" at the end of the second sentence of subsection (b1).

Session Laws 1987, c. 698, s. 6, effective July 30, 1987, substituted "G.S. 105-317" for "G.S. 105-277.6(c)" in the first sentence of subsection (b).

§ 105-277.5. Agricultural, horticultural and forestland — Notice of change in use.

Not later than the close of the listing period following a change which could disqualify all or a part of a tract of land receiving the benefit of this classification, the property owner shall furnish the assessor with complete information regarding such change. Any property owner who fails to notify the assessor of changes as aforesaid regarding land receiving the benefit of this classification shall be subject to a penalty of ten percent (10%) of the total amount of the deferred taxes and interest thereon for each listing period for which the failure to report continues. (1973, c. 709, s. 1; 1975, c. 746, s. 8; 1987, c. 45, s. 1.)

Effect of Amendments. — The 1987 amendment, effective April 3, 1987, substituted "assessor" for "tax supervisor" in two places.

§ 105-277.6. Agricultural, horticultural and forestland — Appraisal; computation of deferred tax.

(a) In determining the amount of the deferred taxes herein provided, the assessor shall use the appraised valuation established in the county's last general revaluation except for any changes made under the provisions of G.S. 105-287.

(b) In revaluation years, as provided in G.S. 105-286, all property entitled to classification under G.S. 105-277.3 shall be reappraised at its true value in money and at its present use value as of the effective date of the revaluation. The two valuations shall continue in effect and shall provide the basis for deferred taxes until a change in one or both of the appraisals is required by law. The present use-value schedule, standards, and rules shall be used by the tax assessor to appraise property receiving the benefit of this classification until the next general revaluation of real property in the county as required by G.S. 105-286.

(c) Repealed by Session Laws 1987, c. 295, s. 2, effective January 1, 1988. (1973, c. 709, s. 1; 1975, c. 746, ss. 9, 10; 1987, c. 295, s. 2.)

Effect of Amendments. — Session Laws 1987, c. 45, s. 1, effective April 3, 1987, substituted "assessor" for "tax supervisor" in subsection (a).

Session Laws 1987, c. 295, s. 2, effective January 1, 1988, added the last sentence of subsection (b), and deleted subsection (c), relating to preparation of a schedule of land values, standards and rules.

CASE NOTES

This section mandates that true value schedule and use value schedule be determined separately. In re Parker, 76 N.C. App. 447, 333 S.E.2d 749 (1985), decided prior to the 1987 amendments.

Under the plain language of this section, the board of county commissioners was required to adopt a separate market value schedule and use value schedule. In re Parker, 76 N.C. App. 447, 333 S.E.2d 749 (1985).

§ 105.277.7. Use-Value Advisory Board.

Editor's Note. —

Session Laws 1987, c. 45, s. 1, effective April 3, 1987, directs that reference to assessors be substituted for reference to tax supervisors in a number of statutes, including this section. However, this section does not currently contain any reference to tax supervisors. Therefore, no change has been made in this section pursuant to c. 45.

§ 105-277.8. Taxation of property of nonprofit homeowners' association.

(a) The value of real and personal property owned by a nonprofit homeowners' association shall be included in the appraisals of property owned by members of the association and shall not be assessed against the association if:

(1) All property owned by the association is held for the use, benefit, and enjoyment of all members of the association equally;

(2) Each member of the association has an irrevocable right to use and enjoy, on an equal basis, all property owned by the association, subject to any restrictions imposed by the instruments conveying the right or the rules, regulations, or bylaws of the association; and

(3) Each irrevocable right to use and enjoy all property owned by the association is appurtenant to taxable real property owned by a member of the association.

The assessor may allocate the value of the association's property among the property of the association's members on any fair and reasonable basis.

(b) As used in this section, "nonprofit homeowners' association" means a homeowners' association as defined in § 528(c) of the Internal Revenue Code. (1979, c. 686, s. 1; 1987, c. 130.)

Effect of Amendments. — The 1987 amendment, effective January 1, 1988, rewrote this section.

§ 105-277.9. Taxation of property inside certain roadway corridors.

Real property that lies within a roadway corridor marked on an official map filed under Article 2E of Chapter 136 of the General statutes is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and is taxable at twenty percent (20%) of the general tax rate levied on real property by the taxing unit in which the property is situated if:

(1) As of January 1, no building or other structure is located on the property; and
(2) The property has not been subdivided, as defined in G.S. 153A-335 or G.S. 160A-376, since it was included in the corridor. (1987, c. 747, s. 22.)

Editor's Note. — Session Laws 1987, c. 747, s. 27 makes this section effective upon ratification. The act was ratified August 7, 1987.

Session Laws 1987, c. 747, s. 25 provides that as used in the act, the word "municipality" means a "city" as defined by G.S. 160A-1.

Session Laws 1987, c. 747, s. 26 is a severability clause.

§ 105-278.1. Exemption of real and personal property owned by units of government.

(b) Real and personal property belonging to the State, counties, and municipalities is exempt from taxation.
(1973, c. 695, s. 4; 1987, c. 777, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective August 12, 1987, rewrote subsection (b).

§ 105-278.2. Burial property.

(a) Real property set apart for burial purposes shall be exempted from taxation unless it is owned and held for purposes of (i) sale or rental or (ii) sale of burial rights therein.
(b) Taxable real property set apart for human burial purposes is hereby designated a special class of property under authority of Article V, Section 2(2) of the North Carolina Constitution, and it shall be assessed for taxation taking into consideration the following:
(1) The effect on its value by division and development into burial plots;
(2) Whether it is irrevocably dedicated for human burial purposes by plat recorded with the Register of Deeds in the county in which the land is located; and
(3) Whether the owner is prohibited or restricted by law or otherwise from selling, mortgaging, leasing or encumbering the same.
(c) For purposes of this section, the term "real property" includes land, tombs, vaults, monuments, and mausoleums, and the term "burial" includes entombment. (1973, c. 695, s. 4; 1987, c. 724.)

Effect of Amendments. — The 1987 amendment, effective January 1, 1988, designated the existing language as subsection (a), deleted a former second sentence thereof, which read "For purposes of this section, the term 'real property' includes land, tombs, vaults, mausoleums, monuments, and similar structures," and added subsections (b) and (c).

§ 105-278.9: Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 21, effective for taxable years beginning on or after January 1, 1987.

§ 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 provided below, an owner claiming exemption or exclusion shall annually file an application for exemption or exclusion during the listing period. If the property for which the exemption or exclusion is claimed is appraised by the Department of Revenue, the application shall be filed with the Department. Otherwise, the application shall be filed with the assessor of the county in which the property is situated. If the property covered by the application is located within a municipality, that fact shall be shown on the application. Each application filed with the Department of Revenue or an assessor shall be submitted on a form approved by the Department. Application forms shall be made available by the assessor and the Department, as appropriate.

(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), (15), (16), (26), (31), (33), or (34), or exempted under G.S. 105-278.2 are not required to file applications for the exclusion of that 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) Upon a showing of good cause by the applicant for failure to make a timely application, an application for exemption or exclusion filed after the close of the listing period may be approved by the Department of Revenue, the board of equalization and review, the board of county commissioners, or the governing body of a municipality, as appropriate. An untimely application for exemption or exclusion approved under this subdivision applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed.

(b) The Department of Revenue or the assessor to whom an application for exemption or exclusion is submitted shall review the

application and either approve or deny the application. Approved applications shall be filed and made available to all taxing units in which the exempted or excluded property is situated. If the Department denies an application for exemption or exclusion, it shall notify the taxpayer, who may appeal the denial to the Property Tax Commission.

If an assessor denies an application for exemption or exclusion, 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. If the notice of denial covers property located within a municipality, the assessor 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. Nothing in this section shall prevent the governing body of a municipality from denying an application which has been approved by the assessor 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 that may be eligible for exemption or exclusion neither lists the property nor files an application for exemption or exclusion, the assessor or the Department of Revenue, as appropriate, shall proceed to discover the property. If, upon appeal, the owner demonstrates that the property meets the conditions for exemption or exclusion, the body hearing the appeal may approve the exemption or exclusion. Discovery of the property by the Department or the county shall automatically constitute a discovery by any taxing unit in which the property has a taxable situs.

(d) The county assessor 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; 1985 (Reg. Sess., 1986), c. 982, s. 22; 1987, c. 45, s. 1; c. 295, ss. 5, 6; c. 680, ss. 1-3; c. 813, s. 13.)

Editor's Note. —

Session Laws 1987, c. 813, s. 25 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or re-

pealed statute before its amendment or repeal."

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective for taxable years beginning on or after January 1, 1987, rewrote subdivision (a)(2).

Session Laws 1987, c. 45, s. 1, effective April 3, 1987, substituted reference to assessors for reference to tax supervisors.

Session Laws 1987, c. 295, ss. 5 and 6, effective January 1, 1988, deleted "as provided in G.S. 105-322 and 105-324" at the end of the second sentence of subsection (b), and deleted "as provided in G.S. 105-324" at the end of the fifth sentence of subsection (b).

Session Laws 1987, c. 680, ss. 1-3, effective January 1, 1988, rewrote the introductory paragraph of subsection (a), rewrote subdivision (a)(4), substituted the present first three sentences of subsection (b) for a former first sentence, which read "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 with any municipalities within the county," substituted "If an assessor denies an application for exemption or exclusion, he" for "If an application for exemption or exclusion is denied by the tax supervisor, he" at the beginning of the present fourth sentence of subsection (b), divided subsection (b) into two paragraphs, rewrote the first two sentences of subsection (c), which read "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. 105-302. 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," substituted "by the Department or the county" for "by the county" in the last sentence of subsection (c) and in that sentence deleted "other" preceding "taxing unit" and deleted "also" preceding "have a taxable situs."

Session Laws 1987, c. 813, s. 13, effective for taxable years beginning on or after January 1, 1988, inserted a reference to subdivisions (33) and (34) of G.S. 105-275 in subdivision (a)(2) of this section.

CASE NOTES

Right to Appeal. — The plain intent and thrust of subsection (b) of this section and §§ 105-322 and 105-324 is to permit a property owner, as a matter of right, to appeal to the Property Tax Commission upon a county or municipal board denying its application for an exemption. In re K-Mart Corp., 79 N.C. App. 725, 340 S.E.2d 752, cert. granted, 317 N.C. 334, 346 S.E.2d 500 (1986).

Although the decision of the county board to grant or deny an exemption is a discretionary one, it is reviewable by the Property Tax Commission. In re K-Mart Corp., — N.C. —, 354 S.E.2d 468 (1987).

While it is true that the 1987 amendment to subsection (c) made the decisions of the county boards discretionary, it did not make those decisions unreviewable. Rather, the legislature has placed the duty upon the Property Tax Commission to hear appeals from decisions of the county boards arising under the provisions of § 105-312 and other sections Chapter 105. In re K-Mart Corp., — N.C. —, 354 S.E.2d 468 (1987).

Article 13.

Standards for Appraisal and Assessment.

§ 105-283. Uniform appraisal standards.

CASE NOTES

To find the true value of property subject to conservation easements, the Commission must determine the market value prior to the granting of the easements and then reduce that value by applying a damage factor caused by

the granting of the conservation easements. Determining the highest and best use of the property prior to the granting of the easement is a critical part of the appraisal process. Rainbow Springs Partnership v. County of Macon, 79 N.C. App. 335, 339 S.E.2d 681, cert. denied, 316 N.C. 736, 345 S.E.2d 392 (1986).

Applied in In re Duke Power Co., 82 N.C. App. 492, 347 S.E.2d 54 (1986).

Stated in In re Colonial Pipeline Co., 318 N.C. 224, 347 S.E.2d 382 (1986).

§ 105-284. Uniform assessment standard.

Editor's Note. — Session Laws 1987, c. 830, s. 84(d), provides: "The enactment of the School Facilities Finance Act of 1987 has created the need for a statistical adjustment of the assessed value of taxable real property in each county in light of the staggered real property revaluation cycle. This adjustment is necessary for the allocation of the proceeds of the Critical School Facility Needs Fund. This need is in addition to the adjustments required by the 1985 legislation that equalized the property tax burden of public service companies.

"For the purpose of determining net collections under G.S. 105-213 for the fiscal year ending June 30, 1987, the sum of seventy-two thousand three hundred forty-five dollars ($72,345) shall be deducted, in addition to the amounts specified by the second paragraph of G.S. 105-213(a), to fund the cost to the Department of Revenue for the 1987-88 fiscal year of making the sales-assessment ratio studies required by G.S. 105-284 and G.S. 105-289. Such deduction shall be expended as follows:

PURPOSE	1987-88
Property Valuation Specialists	$ 46,828
Accounting Clerk	12,267
Additional Travel Expense	6,000
Total Recurring	65,095
Furniture and Equipment	2,250
Data Processing Equipment	5,000
Total Nonrecurring	7,250
Total Expenditures	$ 72,345"

CASE NOTES

Rebuttable Presumption of Correctness. — Ad valorem tax assessments are presumed correct. However, this presumption of correctness is only one of fact and is therefore rebuttable. In re Duke Power Co., 82 N.C. App. 492, 347 S.E.2d 54 (1986), cert. denied, 318 N.C. 694, 351 S.E.2d 744 (1987).

Article 14.

Time for Listing and Appraising Property for Taxation.

§ 105-285. (See note) Date as of which property is to be listed and appraised.

(c) Repealed by Session Laws 1987, c. 813, s. 12, effective for taxable years beginning on or after January 1, 1988.

(1939, c. 310, s. 302; 1945, c. 973; 1971, c. 806, s. 1; 1973, c. 735; 1985, c. 656, s. 21; 1987, c. 813, s. 12.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. —

Session Laws 1987, c. 813, s. 25 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — Session Laws 1987, c. 777, s. 2, effective August 12, 1987, rewrote the first sentence of subsection (c) to read: "The value, ownership, and place of taxation of inventories held and used in connection with the mercantile, manufacturing, producing, processing, or other business enterprise of a taxpayer who has a place of business in this State and whose fiscal year ends on a date other than December 31 shall be determined annually as of the ending date of the taxpayer's latest completed fiscal year."

Session Laws 1987, c. 813, s. 12, effective for taxable years beginning on or after January 1, 1988, deleted subsection (c), relating to business inventories.

Legal Periodicals. — For comment, "Offer to Purchase and Contract: Buyer Beware," see 8 Campbell L. Rev. 473 (1986).

CASE NOTES

Application of North Carolina's ad valorem property tax to imported tobacco destined for domestic markets does not violate the import-export clause or the due process clause of the federal Constitution. R.J. Reynolds Tobacco Co. v. Durham County, — U.S. —, 107 S. Ct. 499, 93 L. Ed. 2d 449 (1986).

Consistent with the supremacy clause, a State may impose a nondiscriminatory ad valorem property tax on imported goods stored in a customs-bonded warehouse and destined for domestic manufacture and sale. R.J. Reynolds Tobacco Co. v. Durham County, — U.S. —, 107 S. Ct. 499, 93 L. Ed. 2d 449 (1986).

Stated in In re Bassett Furn. Indus., Inc., 79 N.C. App. 258, 339 S.E.2d 16 (1986).

§ 105-286. Time for general reappraisal of real property.

(b) Fourth-Year Horizontal Adjustments. — As of January 1 of the fourth year following a reappraisal of real property conducted under the provisions of subsection (a), above, each county shall review the appraised values of all real property and determine whether changes should be made to bring those values into line with then current true value. If it is determined that the appraised value of all real property or of defined types or categories of real property require such adjustment, the assessor shall revise the values accordingly by horizontal adjustments rather than by actual appraisal of individual properties: That is, by uniform application of percentages of increase or reduction to the appraised values of properties within defined types or categories or within defined geographic areas of the county.

(1939, c. 310, s. 300; 1941, c. 282, ss. 1, 1½; 1943, c. 634, s. 1; 1945, c. 5; 1947, c. 50; 1949, c. 109; 1951, c. 847; 1953, c. 395; 1955,

c. 1273; 1957, c. 1453, s. 1; 1959, c. 704, s. 1; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 1987, c. 45, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective April 3, 1987, substituted "assessor" for "tax supervisor" in the second sentence of subsection (b).

CASE NOTES

Cited in In re Butler, — N.C. App. —, 352 S.E.2d 232 (1987).

§ 105-287. Changing appraised value of real property in years in which general reappraisal or horizontal adjustment is not made.

(a) In a year in which a general reappraisal or horizontal adjustment of real property in the county is not made, the assessor shall increase or decrease the appraised value of real property, as determined under G.S. 105-286, to:

(1) Correct a clerical or mathematical error;

(2) Correct an appraisal error resulting from a misapplication of the schedules, standards, and rules used in the county's most recent general reappraisal or horizontal adjustment; or

(3) Recognize an increase or decrease in the value of the property resulting from a factor other than one listed in subsection (b).

(b) In a year in which a general reappraisal or horizontal adjustment of real property in the county is not made, the assessor may not increase or decrease the appraised value of real property, as determined under G.S. 105-286, to recognize a change in value caused by:

(1) Normal, physical depreciation of improvements;

(2) Inflation, deflation, or other economic changes affecting the county in general; or

(3) Betterments to the property made by:

a. Repainting buildings or other structures;

b. Terracing or other methods of soil conservation;

c. Landscape gardening;

d. Protecting forests against fire; or

e. Impounding water on marshland for non-commercial purposes to preserve or enhance the natural habitat of wildlife.

(c) An increase or decrease in the appraised value of real property authorized by this section shall be made in accordance with the schedules, standards, and rules used in the county's most recent general reappraisal or horizontal adjustment. An increase or decrease in appraised value made under this section is effective as of January 1 of the year in which it is made and is not retroactive. This section does not modify or restrict the provisions of G.S. 105-312 concerning the appraisal of discovered property.

(d) Notwithstanding subsection (a), if a tract of land has been subdivided into lots and more than five acres of the tract remain unsold by the owner of the tract, the assessor may appraise the unsold portion as land acreage rather than as lots. A tract is considered subdivided into lots when the lots are located on streets laid out and open for travel and the lots have been sold or offered for sale as lots since the last appraisal of the property. (1939, c. 310, ss. 301, 500; 1953, c. 970, s. 5; 1955, c. 901; c. 1100, s. 2; 1959, c. 682; c. 704, s. 2; 1963, c. 414; 1967, c. 892, s. 7; 1969, c. 945, s. 1; 1971, c. 806, s. 1; 1973, c. 695, s. 10; c. 790, s. 2; 1987, c. 655.)

Effect of Amendments. — The 1987 amendment, effective January 1, 1988, rewrote this section.

CASE NOTES

This section imposes upon the county an affirmative duty to reappraise property in a non-appraisal year whenever it determines that any of the enumerated circumstances exists. In re Butler, — N.C. App. —, 352 S.E.2d 232 (1987).

Only one of the nine grounds for reappraisal enumerated in this section need exist in order for a county to lawfully conduct a reappraisal in a non-appraisal year. In re Butler, — N.C. App. —, 352 S.E.2d 232 (1987).

Burden on Taxpayer to Prove Lack of Authority. — A county is not required to bear a particular burden of establishing its authority to reappraise in off years. To the contrary, the burden of proof is on the taxpayer. In re Butler, — N.C. App. —, 352 S.E.2d 232 (1987).

Due Process Requirements Regarding Notice to Taxpayer. — Due process merely requires that notice to a taxpayer whose property is reappraised pursuant to this section, considering the time, the general wording, and the method of publication, be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and to afford them an opportunity to present their objections. In re Butler, — N.C. App. —, 352 S.E.2d 232 (1987).

Reappraisal Supported By Substantial Evidence. —

Under the "whole record" test, land pricing maps and other exhibits and the expert testimony of the appraisal supervisor provided competent, material, and substantial evidence in support of the commission's conclusion that county's reappraisal was lawful because a clerical error caused an undervaluation. In re Butler, — N.C. App. —, 352 S.E.2d 232 (1987).

Article 15.

Duties of Department and Property Tax Commission as to Assessments.

§ 105-288. Functions of Department and Property Tax Commission; oath; expenses.

CASE NOTES

Applied in In re Duke Power Co., 82 N.C. App. 492, 347 S.E.2d 54 (1986).

§ 105-289. Duties of Department of Revenue.

(d) In exercising general and specific supervision over the valuation and taxation of property, the Department shall provide the following:

(1) A continuing program of education and training for local tax officials in the conduct of their duties;

(2) A program for testing the qualifications of an assessor and other persons engaged in the appraisal of property for a county or municipality; and

(3) A certification program for an assessor and other persons engaged in the appraisal of property for a county or municipality.

The Department shall promulgate regulations to carry out its duties under this subsection.

(e) The Department of Revenue may furnish the following information to a local tax official:

(1) Information contained in a report to it or to any other State department; and

(2) Information the Department has in its possession that may assist a local tax official in securing complete tax listings, appraising or assessing taxable property, collecting taxes, or presenting information in administrative or judicial proceedings involving the listing, appraisal, or assessment of property.

A local tax official may use information obtained from the Department under this subsection only for the purposes stated in subdivision (2). A local tax official may not divulge or make public this information except as required in administrative or judicial proceedings under this Subchapter. A local tax official who makes improper use of or discloses information obtained from the Department under this subsection is punishable as provided in G.S. 105-259.

The Department may not furnish information to a local tax official pursuant to this subsection unless it has obtained a written certification from the official stating that he is familiar with the provisions of both this subsection and G.S. 105-259 and that information obtained from the Department under this subsection will be used only for the purposes stated in subdivision (2).

(f) To advise local tax officials of their duties concerning the listing, appraisal, and assessment of property and the levy and collection of property taxes.

(h) To make annual studies of the ratio of the appraised value of real property to its true value and to establish for each county the median ratio as determined by the studies for each calendar year. The studies for each calendar year shall be completed by April 15 of the following calendar year. The studies shall be conducted in accordance with generally accepted principles and procedures for sales assessment ratio studies.

(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 assessor; 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

assessor 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; 1983, c. 813, s. 1; 1985, c. 601, s. 3; c. 628, s. 3; 1987, c. 45, s. 1; c. 46, s. 1; c. 440, s. 1; c. 830, s. 84(a).)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. — Session Laws 1987, c. 830, s. 1.1 provides: "This act shall be known as 'The State Aid For Nonstate Agencies Act of 1987.'"

Session Laws 1987, c. 830, s. 84(d), provides: "The enactment of the School Facilities Finance Act of 1987 has created the need for a statistical adjustment of the assessed value of taxable real property in each county in light of the staggered real property revaluation cycle. This adjustment is necessary for the allocation of the proceeds of the Critical School Facility Needs Fund. This need is in addition to the adjustments required by the 1985 legislation that equalized the property tax burden of public service companies.

"For the purpose of determining net collections under G.S. 105-213 for the fiscal year ending June 30, 1987, the sum of seventy-two thousand three hundred forty-five dollars ($72,345) shall be deducted, in addition to the amounts specified by the second paragraph of G.S. 105-213(a), to fund the cost to the Department of Revenue for the 1987-88 fiscal year of making the sales-assessment ratio studies required by G.S. 105-284 and G.S. 105-289. Such deduction shall be expended as follows:

PURPOSE	1987-88
Property Valuation Specialists	$ 46,828
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Data Processing Equipment	5,000
Total Nonrecurring	7,250
Total Expenditures	$ 72,345"

Session Laws 1987, c. 830, s. 121 is a severability clause.

Effect of Amendments. —

Session Laws 1987, c. 45, s. 1, effective April 3, 1987, substituted "assessor" for "tax supervisor" in two places in the first sentence of subsection (i).

Session Laws 1987, c. 46, s. 1, effective April 3, 1987, rewrote subdivisions (d)(2) and (d)(3).

Session Laws 1987, c. 440, s. 1, effective June 22, 1987, substituted "local" for "county and municipal" in subdivision (d)(1), and rewrote subsections (e) and (f).

Session Laws 1987, c. 830, s. 84(a), effective August 14, 1987, and applicable to studies for the 1988 and subsequent calendar years, rewrote the first sentence of subsection (h), which read "To make studies of the ratio of the appraised value of real property to its true value in money in each county in the years in which the county conducts a general reappraisal of real property under G.S. 105-286(a) and in the fourth and seventh years thereafter," and inserted the present second sentence of that subsection.

§ 105-289.1: (See note) Repealed by Session Laws 1987, c. 813, s. 12, effective for taxable years beginning on or after January 1, 1988.

Editor's Note. — Session Laws 1987, c. 440, s. 3, effective June 22, 1987, substituted "local tax official" for "local taxing authority (as defined in G.S. 105-289(e))" in the first sentence of subsection (b).

Session Laws 1987, c. 295, s. 7, effective January 1, 1988, substituted "stating the grounds for appeal" for "and a written statement of the grounds of appeal" in the first sentence of subsection (c). However, subsection (c) was repealed by Session Laws 1987, c. 813, s. 12, effective for taxable years beginning on or after January 1, 1988. Therefore, the amendment by c. 295, s. 7 never went into effect.

Session Laws 1987, c. 813, s. 25 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

§ 105-290. Appeals to Property Tax Commission.

(b) Appeals from Appraisal and Listing Decisions. — The Property Tax Commission shall hear and decide appeals from decisions concerning the listing, appraisal, or assessment of property made by county boards of equalization and review and boards of county commissioners. Any property owner of the county may except to an order of the county board of equalization and review or the board of county commissioners concerning the listing, appraisal, or assessment of property and appeal the order to the Property Tax Commission.

(1) In such cases, taxpayers and persons having ownership interests in the property subject to taxation may file separate appeals or joint appeals at the election of one or more of the taxpayers. It is the intent of this provision that all owners of a single item of personal property or tract or parcel of real property be allowed to join in one appeal and also that any taxpayer be allowed to include in one appeal all objections timely presented regardless of the fact that the listing or valuation of more than one item of personal property or tract or parcel of real property is the subject of the appeal.

(2) When an appeal is filed, the Property Tax Commission shall provide a hearing before representatives of the Commission or the full Commission as specified in this subdivision.

a. Hearing by Commission Representatives. — The Commission is empowered to authorize any member or members of the Commission or employee of the Department of Revenue to hear an appeal, to make examinations and investigations, to have made from stenographic notes a full and complete record of the evidence offered at the hearing, and to make recommended findings of fact and conclusions law. Should the Commission elect to follow this procedure, it shall fix the time and place at which its representative or representatives will hear the appeal and, at least 10

days before the hearing, give written notice thereof to the appellant and to the clerk of the board of commissioners of the county from which the appeal is taken. At the hearing the Commission's representative or representatives shall hear all evidence and affidavits offered by the appellant and appellee county and may exercise the authority granted by subsection (d), below, to obtain information pertinent to decision of the appeal. The representative or representatives conducting the hearing shall submit to the Commission and to the appellant and appellee a full record of the proceeding and his or their recommended findings of fact and conclusions of law. The Commission shall review the record, the recommended findings of fact and conclusions of law, and any written arguments that may be submitted to the Commission by the appellant or appellee within 15 days following the date on which the findings and conclusions were submitted to the parties and shall take one of the following actions:

1. Accept the recommended findings of fact and conclusions of law and issue an appropriate order as provided in subdivision (b)(3), below.
2. Make new findings of fact of conclusions of law based upon the record submitted by the Commission's representative or representatives and issue an appropriate order as provided in subdivision (b)(3), below.
3. Rehear the appeal under the procedure provided in subdivision (b)(2)b, below, with respect to any portion of the record or recommended findings of fact or conclusions of law.

b. Hearing by Full Commission. — Should the Commission elect not to employ the procedure provided in subdivision (b)(2)a, above, it shall fix a time and place at which the Commission shall hear the appeal and, at least 10 days before the hearing, give written notice thereof to the appellant and to the clerk of the board of commissioners of the county from which the appeal is taken. At the hearing the Commission shall hear all evidence and affidavits offered by the appellant and appellee county and may exercise the authority granted by subsection (d), below, to obtain information pertinent to decision of the appeal. The Commission shall make findings of fact and conclusions of law and issue an appropriate order as provided in subdivision (b)(3), below.

(3) On the basis of the findings of fact and conclusions of law made after any hearing provided for by this subsection (b), the Property Tax Commission shall enter an order (incorporating the findings and conclusions) reducing, increasing, or confirming the valuation or valuations appealed or listing or removing from the tax lists the property whose listing has been appealed. A certified copy of the order shall be delivered to the appellant and to the clerk of the board of commissioners of the county from which the ap-

peal was taken, and the abstracts and tax records of the county shall be corrected to reflect the Commission's order.

(c) Appeals from Adoption of Schedules, Standards, and Rules. — It shall be the duty of the Property Tax Commission to hear and to adjudicate appeals from orders of boards of county commissioners adopting schedules of values, standards, and rules under the provisions of G.S. 105-317 as prescribed in this subsection (c), and the adoption of such schedules, standards, and rules shall not be subject to appeal under any other provision of this Subchapter.

(1) A property owner of the county who, either separately or in conjunction with other property owners of the county, asserts that the schedules of values, standards, and rules adopted by order of the board of county commissioners do not meet the true value or present-use value appraisal standards established by G.S. 105-283 and G.S. 105-277.2(5), respectively, may appeal the order to the Property Tax Commission within 30 days of the date when the order adopting the schedules, standards, and rules was first published, as required by G.S. 105-317(c).

(2) Upon such an appeal the Property Tax Commission shall proceed to hear the appeal in accordance with the procedures provided in subdivisions (b)(1) and (b)(2), above, and in scheduling the hearing upon such an appeal, the Commission shall give it priority over appeals that may be pending before the Commission under the provisions of subsection (b), above. The decision of the Commission upon such an appeal shall be embodied in an order as provided in subdivision (c)(3), below.

(3) On the basis of the findings of fact and conclusions of law made after any hearing provided for by this subsection (c), the Property Tax Commission shall enter an order (incorporating the findings and conclusions):

a. Modifying or confirming the order adopting the schedules, standards, and rules challenged, or

b. Requiring the board of county commissioners to revise or modify its order of adoption in accordance with the instructions of the Commission and to present the order as thus revised or modified for approval by the Commission under rules and regulations prescribed by the Commission.

(e) Time Limits for Appeals. — A notice of appeal from an order of a board of equalization and review shall be filed with the Property Tax Commission within 30 days after the board of equalization and review has mailed a notice of its decision to the property owner. A notice of appeal from an order of a board of commissioners concerning the listing, appraisal, or assessment of property shall be filed with the Property Tax Commission within 30 days after the board of county commissioners enters the order.

(f) Notice of Appeal. — A notice of appeal filed with the Property Tax Commission shall be in writing and shall state the grounds for the appeal. A property owner who files a notice of appeal shall send a copy of the notice to the appropriate county assessor.

(g) What Constitutes Filing. — A notice of appeal is considered to be filed with the Property Tax Commission when it is received in

the office of the Commission. (1939, c. 310, ss. 202, 1107, 1109; 1955, c. 1350, s. 10; 1967, c. 1196, s. 3; 1969, c. 7, ss. 1, 2; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 1987, c. 295, ss. 3, 9; c. 680, ss. 4, 5.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. — Session Laws 1987, c. 295, ss. 3 and 9, effective January 1, 1988, inserted the present second sentence of subsection (b), rewrote subdivision (c)(1), and added subsections (e), (f) and (g).

Session Laws 1987, c. 680, ss. 4 and 5, effective January 1, 1988, rewrote the introductory language of subsection (b) and the introductory language of subdivision (b)(2).

CASE NOTES

Decision Regarding Exemption. — Although the decision of the county board to grant or deny an exemption is a discretionary one, it is reviewable by the Property Tax Commission. In re K-Mart Corp., — N.C. —, 354 S.E.2d 468 (1987).

Showing Required to Have Valuation Set Aside. — In order for a taxpayer to have valuation set aside, he must show more than a failure to follow the statutory procedures. It is not enough for the taxpayer to show that the means adopted by the tax supervisor were wrong; he must also show that the result arrived at is substantially greater than the true value in money of the property assessed, i.e., that the valuation was unreasonably high. In re Highlands Dev. Corp., 80 N.C. App. 544, 342 S.E.2d 588 (1986).

Where taxpayers failed to show how they were aggrieved by the valuation of other owners' property, the Commission properly refused to allow them to appeal those valuations as a class action. In re Highlands Dev. Corp., 80 N.C. App. 544, 342 S.E.2d 588 (1986).

Article 16.

County Listing, Appraisal, and Assessing Officials.

§ 105-294. County assessor.

(b) Persons who held the position of assessor on July 1, 1971, and continue to hold the position, and persons who have been certified for appointment as assessor by the Department of Revenue between July 1, 1971, and July 1, 1983, are deemed to be qualified to serve as county assessor. Any other person selected to serve as county assessor must meet the following requirements:

(1) Be at least 21 years of age as of the date of appointment;

(2) Hold a high school diploma or certificate of equivalency, or in the alternative, have five years employment experience in a vocation which is reasonably related to the duties of a county assessor;

(3) Within two years of the date of appointment, achieve a passing score in courses of instruction approved by the Department of Revenue covering the following topics:

a. The laws of North Carolina governing the listing, appraisal, and assessment of property for taxation;

b. The theory and practice of estimating the fair market value of real property for ad valorem tax purposes;

c. The theory and practice of estimating the fair market

value of tangible and intangible personal property for ad valorem tax purposes; and

d. Property assessment administration.

(4) Upon completion of the required four courses, achieve a passing grade in a comprehensive examination in property tax administration conducted by the Department of Revenue.

(1939, c. 310, ss. 400, 401; 1953, c. 970, ss. 1, 2; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 1983, c. 813, s. 2; 1987, c. 45, ss. 1, 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. —

Session Laws 1987, c. 45, ss. 2 and 3, provide: "All sections of the North Carolina General Statutes that are not listed in Section 1 of this act and that contain the words "tax supervisor" or "tax supervisors" are amended by deleting the words "tax supervisor" or "tax supervisors" and substituting the words "assessor" or "assessors", as appropriate.

"A reference in a local act to the county tax supervisor shall be construed as a reference to the county assessor.

Effect of Amendments. — The 1987 amendment, effective April 3, 1987, substituted "assessor" for "tax supervisor" in the catchline and in two places in the first sentence of subsection (b).

§ 105-295. Oath of office for assessor.

Before entering upon his duties, the assessor shall take and subscribe the following oath and file it with the clerk of the board of county commissioners:

I, ..., do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as assessor of ..... County, North Carolina, and that I will not allow my actions as assessor to be influenced by personal or political friendships or obligations, so help me God.

.....
(Signature)

(1939, c. 310, s. 402; 1971, c. 806, s. 1; 1987, c. 45, s. 1.)

Effect of Amendments. — The 1987 amendment, effective April 3, 1987, substituted "assessor" for "tax supervisor" in the catchline and throughout the section.

§ 105-296. Powers and duties of assessor.

(a) The county assessor shall have general charge of the listing, appraisal, and assessment of all property in the county in accordance with the provisions of law. He shall perform the duties imposed upon him by law, and he shall have and exercise all powers reasonably necessary in the performance of his duties not inconsistent with the Constitution of the laws of this State.

(b) Within budgeted appropriations, he shall employ listers, appraisers, and clerical assistants necessary to carry out the listing, appraisal, assessing, and billing functions required by law. The assessor may allocate responsibility among such employees by territory, by subject matter, or on any other reasonable basis. Each person employed by the assessor as a real property appraiser or

personal property appraiser shall during the first year of employment and at least every other year thereafter attend a course of instruction in his area of work. At the end of the first year of their employment, such persons shall also achieve a passing score on a comprehensive examination in property tax administration conducted by the Department of Revenue.

(c) At least 10 days before the date as of which property is to be listed, he shall advertise in a newspaper having general circulation in the county and post in at least five public places in each township in the county a notice containing at least the following:

(1) The date as of which property is to be listed.
(2) The date on which listing will begin.
(3) The date on which listing will end.
(4) The times between the date mentioned in subdivision (c)(2), above, and the date mentioned in subdivision (c)(3), above, during which lists will be accepted.
(5) The place or places at which lists will be accepted at the times established under subdivision (c)(4), above.
(6) A statement that all persons who, on the date as of which property is to be listed, own property subject to taxation must list such property within the period set forth in the notice and that any person who fails to do so will be subject to the penalties prescribed by law.

If the listing period is extended in any county by the board of county commissioners, the assessor shall advertise in the newspaper in which the original notice was published and post in the same places a notice of the extension and of the times during which and the place or places at which lists will be accepted during the extended period.

(d) to (f) Repealed by Session Laws 1987, c. 43, s. 2, effective April 2, 1987.

(h) Only after the abstract has been carefully reviewed can the assessor require any person operating a business enterprise in the county to submit a detailed inventory, statement of assets and liabilities, or other similar information pertinent to the discovery or appraisal of property taxable in the county. Inventories, statements of assets and liabilities, or other information secured by the assessor under the terms of this subsection, but not expressly required by this Subchapter to be shown on the abstract itself, shall not be open to public inspection but shall be made available, upon request, to representatives of the Department of Revenue. Any assessor or other official or employee disclosing information so obtained, except as such disclosure may be necessary in listing or appraising property in the performance of official duties, or in the administrative or judicial proceedings relating to listing, appraising, or other official duties, shall be guilty of a misdemeanor and punishable by fine of not exceeding fifty dollars ($50.00).

(i) Repealed by Session Laws 1987, c. 43, s. 2, effective April 2, 1987.

(k) He shall furnish information to the Department of Revenue as required by the Department to conduct studies in accordance with G.S. 105-289(h). (1939, c. 310, ss. 403, 404; 1953, c. 970, s. 3; 1955, c. 1012, s. 1; 1957, c. 202; 1959, c. 740, s. 3; 1963, c. 302; 1971, c. 806, s. 1; 1973, c. 560; 1983, c. 813, s. 3; 1985, c. 518, s. 2; 1987, c. 43, s. 2; c. 45, ss. 1, 2; c. 830, s. 84 (b).)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. — Session Laws 1987, c. 830, s. 1.1 provides: "This act shall be known as 'The State Aid For Nonstate Agencies Act of 1987.'"

Session Laws 1987, c. 830, s. 121 is a severability clause.

Effect of Amendments. —

Session Laws 1987, c. 43, s. 2, effective April 2, 1987, substituted "appraisal, and assessment" for "and appraising" in the first sentence of subsection (a), deleted "or she" following "he" in the first sentence of subsection (b), deleted "or her respective" following "in his" in the third sentence of subsection (b), and deleted subsections (d), (e), (f), and (i), relating to list takers.

Session Laws 1987, c. 45, ss. 1 and 2, effective April 3, 1987, substituted reference to assessors for reference to tax supervisors in the catchline and in subsections (a), (c) and (h).

Session Laws 1987, c. 830, s. 84 (b), effective August 14, 1987, and applicable to studies for the 1988 and subsequent calendar years, added subsection (k).

CASE NOTES

Stated in In re Bassett Furn. Indus., Inc., 79 N.C. App. 258, 339 S.E.2d 16 (1986).

§ 105-297. Assistant assessors.

The board of county commissioners may, upon the recommendation of the assessor, appoint one or more assistant assessors. The board may delegate to assistant assessors appointed under this section responsibility for the appraisal of real property, the listing and appraisal of business property, or such other duties as the board deems advisable. Pursuant to Article VI, Sec. 9, of the North Carolina Constitution, the office of assistant assessor is hereby declared to be an office that may be held concurrently with any other appointive office. (1939, c. 310, s. 409; 1955, c. 866; 1963, c. 625; 1967, cc. 59, 293; 1971, c. 802, s. 11; c. 806, s. 1; 1987, c. 45, s. 1.)

Effect of Amendments. — The 1987 amendment, effective April 3, 1987, substituted reference to assessors for reference to tax supervisors in the catchline and throughout this section.

§ 105-298: Repealed by Session Laws 1987, c. 43, s. 3, effective April 2, 1987.

Article 17.

Administration of Listing.

§ 105-302. In whose name real property is to be listed.

(c) For purposes of this Subchapter:

(1) The owner of the equity of redemption in real property subject to a mortgage or deed of trust shall be considered the owner of the property, and such real property shall be listed in the name of the owner of the equity of redemption.

(2) Real property owned by a corporation shall be listed in the name of the corporation.

(3) Real property owned by an unincorporated association shall be listed in the name of the association.

(4) Real property owned by a partnership shall be listed in the name of the partnership.

(5) Real property held in connection with a sole proprietorship shall be listed in the name of the owner, and the name and address of the proprietorship shall be noted on the abstract.

(6) Real property of which a decedent died possessed, if not under the control of an executor or administrator, shall be listed in the names of the heirs or devisees if known, but such property may be listed as property of "the heirs" or "the devisees" of the decedent, without naming them, until they have given the assessor notice of their names and of the division of the estate. It shall be the duty of an executor or administrator having control of real property to list it in his fiduciary capacity, as required by subdivision (c)(7), below, until he is divested of control of the property. However, the right of an administrator or executor of a deceased person to petition for the sale of real property to make assets shall not be considered control of the real property for the purposes of this subdivision.

(7) Real property, the title to which is held by a trustee, guardian, or other fiduciary, shall be listed by the fiduciary in his fiduciary capacity except as otherwise provided in this section.

(8) A life tenant or tenant for the life of another shall be considered the owner of real property, and it shall be his duty to list the property for taxation, indicating on the abstract that he is a life tenant or tenant for the life of another named individual.

(9) Upon request to and with the approval of the assessor, undivided interests in real property owned by tenants in common who are not copartners may be listed by the respective owners in accordance with their respective undivided interests. Otherwise, real property held by tenants in common shall be listed in the names of all the owners.

(10) Real property owned by husband and wife as tenants by the entirety shall be listed on a single abstract in the names of both tenants, and the nature of their ownership shall be indicated thereon.

(11) When land is owned by one party and improvements thereon or special rights (such as mineral, timber, quarry, waterpower, or similar rights) therein are owned by another party, the parties shall list their interests separately unless, in accordance with contractual relations between them, both the land and the improvements and special rights are listed in the name of the owner of the land.

(12) If the person in whose name real property should be listed is unknown, or if title to real property is in dispute, the property shall be listed in the name of the occupant or, if there be no occupant, in the name of "unknown owner." Such a listing shall not affect the validity of the lien for taxes created by G.S. 105-355. When the name of the owner is later ascertained, the provisions of subsection (b), above, shall apply.

(13) Real property, owned under a time-sharing arrangement but managed by a homeowners association or other managing entity, shall be listed in the name of the managing entity. (1939, c. 310, s. 701; 1971, c. 806, s. 1; 1983, c. 785, s. 1; 1987, c. 45, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective April 3, 1987, substituted reference to assessors for reference to tax supervisors in subdivisions (c)(6) and (c)(9).

§ 105-302.1. Reports on properties listed in name of unknown owner.

In order to promote the discovery of "State lands" as defined by G.S. 146-64(6), it shall be the duty of all assessors upon request to furnish the State of North Carolina a report on all properties listed in the name of "unknown owner" pursuant to G.S. 105-302(c)(12) in their respective tax jurisdictions. Such report shall be forwarded to the Secretary of the North Carolina Department of Administration. The report shall contain all information available to the assessor concerning the location and identification of the properties in question. (1979, c. 45, s. 1; 1987, c. 45, s. 1.)

Effect of Amendments. — The 1987 amendment, effective April 3, 1987, substituted reference to assessors for reference to tax supervisors in this section.

§ 105-303. Obtaining information on real property transfers; permanent listing.

(a) To facilitate the accurate listing of real property for taxation, the board of county commissioners may require the register of deeds to comply with the provisions of subdivision (a)(1), below, or it may require him to comply with the provisions of subdivision (a)(2), below:

(1) When any conveyance of real property (other than a deed of trust or mortgage) is recorded, the board of county commissioners may require the register of deeds to certify to the assessor:
   a. The name of the person conveying the property.
   b. The name and address of the person to whom the property is being conveyed.
   c. A description of the property sufficient to locate and identify it.
   d. A statement as to whether the parcel is conveyed in whole or in part.

(2) When any conveyance of real property (other than a deed of trust or mortgage) is submitted for recordation, the board of county commissioners may require the register of deeds to refuse to record it unless it has been presented to the assessor and the assessor has noted thereon that he has obtained the information he desires from the conveyance and from the person recording it.

(b) With the approval of the Department of Revenue, the board of county commissioners may install a permanent listing system. (The

Department's approval shall not, however, be required for any such system installed prior to April 3, 1939.) Under such a system the provisions of subdivisions (b)(1) through (b)(4), below, shall apply.

(1) The assessor shall be responsible for listing all real property on the abstracts and tax records each year in the name of the owner of record as of the day as of which property is to be listed under G.S. 105-285.

(2) Persons whose duty it is to list real property under the provisions of G.S. 105-302 shall be relieved of that duty, but annually, during the listing period established by G.S. 105-307, such persons shall furnish the assessor with the information concerning improvements on and separate rights in real property required by G.S. 105-309(c)(3) through (c)(5).

(3) The penalties imposed by G.S. 105-308 and 105-312 shall not be imposed for failure to list real property for taxation, but they shall be imposed for failure to comply with the provisions of subdivision (b)(2), above, with respect to reporting the construction or acquisition of improvements on and separate rights in real property. In such a case, the penalty prescribed by G.S. 105-312 shall be computed on the basis of the tax imposed on the improvements and separate rights.

(4) The Department of Revenue may authorize the board of county commissioners to make additional modifications of the listing requirements of this Subchapter, but no such modification shall conflict with the provisions of subdivisions (b)(1) through (b)(3), above. (1939, c. 310, s. 701; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 789; 1987, c. 43, s. 4; c. 45, s. 1.)

Effect of Amendments. — Session Laws 1987, c. 43, s. 4, effective April 2, 1987, deleted "(or proper list taker)" following "tax supervisor" in subdivision (b)(2).

Session Laws 1987, c. 45, s. 1, effective April 3, 1987, substituted reference to assessors for reference to tax supervisors in this section.

§ 105-304. Place for listing tangible personal property.

CASE NOTES

III. SITUS.

A. In General.

Situs is an absolute essential, etc. —

Taxable tangible personal property must have acquired a tax situs in this State, for situs is an absolute essential for tax exaction. In re Bassett Furn. Indus., Inc., 79 N.C. App. 258, 339 S.E.2d 16, appeal dismissed, 316 N.C. 553, 344 S.E.2d 4 (1986).

When Personal Property of Nonresident May Be Taxed. — When personal property belonging to a nonresident has acquired a taxable situs in this State, this State may tax that nonresident's property without violating the provisions of the Fourteenth Amendment of the United States Constitution. In re Bassett Furn. Indus., Inc., 79 N.C. App. 258, 339 S.E.2d 16, appeal dismissed, 316 N.C. 553, 344 S.E.2d 4 (1986).

It is for the legislature to determine, etc. —

The situs of personal property for purposes of taxation is determined by the legislature, and the legislature may pro-

vide different rules for different kinds of property and may change the rules from time to time. In re Bassett Furn. Indus., Inc., 79 N.C. App. 258, 339 S.E.2d 16, appeal dismissed, 316 N.C. 553, 344 S.E.2d 4 (1986).

A jet aircraft hangared in Rockingham County, North Carolina, for approximately one year by a nonresident corporation having no principal place of business in this State, under the stipulated facts and evidence, was "situated" or "more or less permanently located" in Rockingham County on January 1, 1984, and therefore had a tax situs in Rockingham County on that date. The fact that the airplane happened to be physically located at a Virginia airport on January 1, 1984, did not defeat taxation by Rockingham County. In re Bassett Furn. Indus., Inc., 79 N.C. App. 258, 339 S.E.2d 16, appeal dismissed, 316 N.C. 553, 344 S.E.2d 4 (1986).

§ 105-306. In whose name personal property is to be listed.

(c) For purposes of this Subchapter:

(1) The owner of the equity of redemption in personal property subject to a chattel mortgage shall be considered the owner of the property.

(2) The vendee of personal property under a conditional bill of sale, or under any other sale contract through which title to the property is retained by the vender as security for the payment of the purchase price, shall be considered the owner of the property if he has possession of or the right to use the property.

(3) Personal property owned by a corporation, partnership, or unincorporated association shall be listed in the name of the corporation, partnership, or unincorporated association.

(4) Personal property held in connection with a sole proprietorship shall be listed in the name of the owner, and the name and address of the proprietorship shall be noted on the abstract.

(5) Personal property of which a decedent died possessed, if not under the control of an executor or administrator, shall be listed in the names of the next of kin or legatees if known, but such property may be listed as property of "the next of kin" or "the legatees" of the decedent, without naming them, until they have given the assessor notice of their names and of the division of the estate. It shall be the duty of an executor or administrator having control of personal property to list it in his fiduciary capacity, as required by subdivision (c)(6), below, until he is divested of control of the property.

(6) Personal property, the title to which is held by a trustee, guardian, or other fiduciary, shall be listed by the fiduciary in his fiduciary capacity except as otherwise provided in this section.

(7) If personal property is owned by two or more persons who are joint owners, each owner shall list the value of his interest. However, if the joint owners are husband and wife, the property owned jointly shall be listed on a single abstract in the names of both the husband and the wife.

(8) If the person in whose name personal property should be listed is unknown, or if the ownership of the property is in dispute, the property shall be listed in the name of the

person in possession of the property, or if there appears to be no person in possession, in the name of "unknown owner." When the name of the owner is later ascertained, the provisions of subsection (b), above, shall apply.

(9) Personal property, owned under a time-sharing arrangement but managed by a homeowners association or other managing entity, shall be listed in the name of the managing entity. (1939, c. 310, s. 802; 1971, c. 806, s. 1; 1983, c. 785, s. 2; 1987, c. 45, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective April 3, 1987, substituted "assessor" for "tax supervisor" in the first sentence of subdivision (c)(5).

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

The period during which property is to be listed for taxation each year shall begin on the first business day of the month of January and, unless extended as herein provided shall continue through the month of January. The board of county commissioners may, in any nonrevaluation year, extend the time during which property is to be listed for taxation for a period not to exceed 30 additional days; in years of octennial appraisal of real property, the board may extend the time for listing for a period not to exceed 60 additional days. Any action by the board of county commissioners extending the listing period shall be recorded in the minutes of the board, and notice thereof shall be published as required by G.S. 105-296(c). The entire period for listing, including any extension of time granted, shall be considered the regular listing period for the particular year within the meaning of this Subchapter.

The board of county commissioners shall grant individual extensions of time for the listing of real and personal property upon written request and for good cause shown. The request must be filed with the assessor no later than the ending date of the regular listing period. The board may delegate the authority to grant extensions to the assessor. Extensions granted under this paragraph shall not extend beyond April 15.

The assessor may conduct preparatory work before the listing period begins, but he may not make a final appraisal of property before the day as of which the value of the property is to be determined under G.S. 105-285. (1939, c. 310, s. 905; 1971, c. 806, s. 1; 1973, cc. 141, 706; 1975, c. 49; 1977, c. 360; 1987, c. 43, s. 5; c. 45, s. 1.)

Effect of Amendments. — Session Laws 1987, c. 43, s. 5, effective April 2, 1987, rewrote the final paragraph of this section, which read "Nothing in this section shall be construed to prevent the tax supervisor, list takers, assistants and experts employed under G.S. 105-299 from conducting preparatory work prior to the opening of the listing period, but no final appraisal shall be made before the day as of which the value of property is to be determined under the provisions of G.S. 105-285."

Session Laws 1987, c. 45, s. 1, effective April 3, 1987, substituted "assessor" for "tax supervisor" in the next-to-last paragraph.

§ 105-308. Duty to list; penalty for failure.

Every person in whose name any property is to be listed under the terms of this Subchapter shall list the property with the assessor within the time allowed by law on an abstract setting forth the information required by this Subchapter.

In addition to all other penalties prescribed by law, any person whose duty it is to list any property who willfully fails or refuses to list the same within the time prescribed by law shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars ($500.00) or imprisonment not to exceed six months. The failure to list shall be prima facie evidence that the failure was willful.

Any person who willfully attempts, or who willfully aids or abets any person to attempt, in any manner to evade or defeat the taxes imposed under this Subchapter, whether by removal or concealment of property or otherwise, shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars ($500.00) or imprisonment not to exceed six months or by both such fine and imprisonment. (1939, c. 310, s. 901; 1957, c. 848; 1971, c. 806, s. 1; 1977, c. 92; 1987, c. 43, s. 4; c. 45, s. 1.)

Effect of Amendments. — Session Laws 1987, c. 43, s. 4, effective April 2, 1987, deleted "(or proper list taker)" following "tax supervisor" in the first paragraph.

Session Laws 1987, c. 45, s. 1, effective April 3, 1987, substituted "assessor" for "tax supervisor" in the first paragraph.

Legal Periodicals. — For comment, "Offer to Purchase and Contract: Buyer Beware," see 8 Campbell L. Rev. 473 (1986).

§ 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 assessor 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 assessor 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 assessor, 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 assessor 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 assessor 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. Personal property shall also be listed to indicate which property, if any, is subject to a tax credit under Division IV of Article 4 of this Chapter.

(1) If the assessor considers it necessary to obtain a complete listing of personal property, he may require a taxpayer to submit additional information, inventories, or itemized lists of personal property.

(2) At the request of the assessor, 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 assessor below the notice required by this subsection):

"PROPERTY TAX RELIEF FOR ELDERLY AND PERMANENTLY DISABLED PERSONS.

North Carolina excludes from property taxes the first twelve thousand dollars ($12,000) 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 eleven thousand dollars ($11,000). The exclusion covers real property, or a mobile home, occupied by the owner as his 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 (assessor insert previous year), you do not need to apply again unless you have changed your permanent residence. If you received the exclusion in (assessor insert previous year) and your disposable income in (assessor insert previous year) was above eleven thousand dollars ($11,000), you must notify the assessor. If you received the exclusion in (assessor insert previous year) because you were totally and permanently disabled and you are no longer totally and permanently disabled, you must notify the assessor. If the person receiving the exemption in (assessor insert previous year) has died, the person required by law to list the property must notify the assessor. Failure to make any of the notices required by this paragraph before April 15 will result in penalties and interest.

If you did not receive the exclusion in (assessor insert previous year) but are now eligible, you may obtain a copy of an application from the assessor. It must be filed by 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. 105-277.1 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 assessor 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; 1985, c. 656, ss. 47, 51; 1985 (Reg. Sess., 1986), c. 947, s. 9; c. 982, s. 23; 1987, c. 43, s. 6; c. 45, s. 1.)

Effect of Amendments. —

Session Laws 1985 (Reg. Sess., 1986), c. 947, s. 9, effective for taxable years beginning on or after January 1, 1986, added the second sentence of subsection (d).

Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 23, effective for taxable years beginning on or after January 1, 1987, rewrote subsection (f), relating to notice regarding property tax relief for elderly and permanently disabled persons.

Session Laws 1987, c. 43, s. 6, effective April 2, 1987, deleted "or proper list taker" following "assessor" in the first sentence of the introductory paragraph of subsection (a), deleted "or list taker" following "assessor" in the introductory language of subsection (b) and in subdivision (d)(2), and rewrote subdivision (d)(1), which read "Whenever the tax supervisor or list taker shall deem it necessary to obtain complete listings, they may require taxpayers to submit additional information, inventories, and itemized lists of personal property."

Session Laws 1987, c. 45, s. 1, effective April 3, 1987, substituted reference to assessors for reference to tax supervisors throughout this section.

§ 105-311. Duty to appear for purposes of listing and signing affirmation; use of agents and mail.

(a) Except as otherwise provided in this section, the person whose duty it is to list property for taxation shall appear before the assessor for purposes of listing and shall sign the affirmation required by G.S. 105-310 to be annexed to the completed abstract on which the property is listed.

(1) In the case of an individual taxpayer who is unable to list his property, a guardian, authorized agent, or other person having knowledge of and charged with the care of the person and property of the taxpayer shall appear for purposes of listing and shall sign the required affirmation in the name of the taxpayer, noting thereon the capacity in which he signs.

(2) In the case of a corporation, partnership, or unincorporated association, a person specified in subdivision a or subdivision b, below, shall appear for purposes of listing the taxpayer's property and shall sign the required affirmation in the name of the taxpayer, noting thereon the capacity in which he signs, and no other agent shall be permitted to sign the affirmation required on such a taxpayer's abstract:

a. A principal officer of the taxpayer or

b. A full-time employee of the taxpayer who has been officially empowered by a principal officer of the taxpayer in his behalf to list the taxpayer's property for taxation in the county and to sign the affirmation annexed

to the abstract or abstracts on which its property is listed.

(3) In the case of an individual who is not a resident of the county in which his property is to be listed, the taxpayer shall sign the affirmation required on the abstract on which his property is listed, but he may submit the completed abstract by mail or by an authorized agent.

(b) Any abstract submitted by mail may be accepted or rejected by the assessor in his discretion. However, the board of county commissioners, with the approval of the Department of Revenue, may by resolution provide for the general acceptance of completed abstracts submitted by mail. In no event shall an abstract submitted by mail be accepted unless the affirmation thereon is signed by the individual prescribed in subsection (a), above.

For the purpose of this Subchapter, abstracts submitted by mail shall be deemed to be filed as of the date shown on the postmark affixed by the United States Postal Service. If no date is shown on the postmark, or if the postmark is not affixed by the United States Postal Service, the abstracts shall be deemed to be filed when received in the office of the assessor. In any dispute arising under this Subchapter, the burden of proof shall be on the taxpayer to show that the abstract was timely filed. (1939, c. 310, ss. 901, 903, 904; 1957, c. 848; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 1977, c. 327, s. 1; 1987, c. 43, s. 7; c. 45, s. 1.)

Effect of Amendments. — Session Laws 1987, c. 43, s. 7, effective April 2, 1987, deleted "or proper list taker" following "assessor" in the introductory paragraph of subsection (a).

Session Laws 1987, c. 45, s. 1, effective April 3, 1987, substituted "assessor" for "tax supervisor" in the introductory language of subsection (a) and in subsection (b).

§ 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 measure-

ment of taxable property; the determination of materiality in each case shall be made by the assessor, subject to the taxpayer's right to review of the determination by the county board of equalization and review or board of commissioners and appeal to the Property Tax Commission.

(b) Duty to Discover and Assess Unlisted Property. — It shall be the duty of the assessor to see that all property not properly listed during the regular listing period be listed, assessed and taxed as provided in this Subchapter. The assessor 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 assessor 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 G.S. 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 assessor in the name of the person required by G.S. 105-302 or G.S. 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 assessor 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 assessor 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 assessor within 30 days from date of the notice.

Upon receipt of a timely exception to the notice of discovery, the assessor 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 assessor 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 assessor 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 assessor. Upon receipt of a timely request for review, the provisions of G.S. 105-322 or G.S. 105-325, as appropriate, shall be followed.

(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 G.S. 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 assessor first listed it.

(h1) If the discovered property is a motor vehicle and the county accessor [assessor] determines from records of the Division of Motor Vehicles that the owner of the vehicle falsely certified that he listed the vehicle for property taxes in violation of G.S. 20-50.2(a)(1), the county assessor shall add a penalty of one hundred dollars ($100.00) for failure to list that vehicle in that county, which penalty shall be in addition to the penalties imposed by subsection (h). This penalty shall be imposed only for the year in which the discovery is made, regardless of the number of listing periods that elapsed before the motor vehicle was discovered, and regardless of whether the owner of the vehicle falsely certified that he paid taxes on the vehicle in previous years. The civil penalty in this subsection shall not be imposed if the owner of the vehicle has been criminally punished under G.S. 20-50.2(c) with regard to the same failure to list.

(*l*) Except for the provision in subsection (h1) which imposes an additional penalty for false certification of motor-vehicle listing, 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 assessor, and the powers and duties assigned to the board of county commissioners shall be exercised by the governing body of the unit. When the assessor 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; 1987, c. 45, s. 1; c. 743, ss. 1, 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. — Session Laws 1987, c. 45, s. 1, effective April 3, 1987, substituted reference to assessors to reference to tax supervisors throughout subsections (a) through (d), (f) and (*l*).

Session Laws 1987, c. 743, ss. 1 and 2,

effective for the taxable years beginning on or after January 1, 1988, added subsection (h1) and added "except for the provision in subsection (h1) which imposes an additional penalty for false certification of motor-vehicle listing" at the beginning of subsection (*l*).

CASE NOTES

Right to Review. — While it is true that the 1987 amendment to § 150-282.1(c) made the decisions of the county boards discretionary, it did not make those decisions unreviewable. Rather, the legislature has placed the duty upon the Property Tax Commission to hear appeals from decisions of the county boards arising under the provisions of this section and other sections of Chapter 105. In re K-Mart Corp., — N.C. —, 354 S.E.2d 468 (1987).

Article 18.

Reports in Aid of Listing.

§ 105-313. Report of property by multi-county business.

A taxpayer who is engaged in business in more than one county in this State and who owns real property or tangible personal property in connection with his multi-county business shall, upon the request of the Department of Revenue or the assessor of a county in which part of this business property is situated, file a report with the Department of Revenue stating, as of the dates specified in G.S. 105-285 of any year, the following information:

(1) The counties in this State in which the taxpayer's business property is situated;

(2) The taxpayer's investment, on a county by county basis, in his business property situated in this State, categorized as the Department of Revenue or the assessor may require; and

(3) The taxpayer's total investment in his business property situated in this State, categorized as the Department of Revenue or the assessor may require.

This report shall be subscribed and sworn to by the owner of the property. If the owner is a corporation, partnership, or unincorporated association, the report shall be subscribed and sworn to by a principal officer of the owner who has knowledge of the facts contained in the report. (1971, c. 806, s. 1; 1973, c. 476, s. 193; 1987, c. 777, s. 3.)

Local Modification. — (As to Article 18) Forsyth and Pasquotank: 1979 (2nd Sess., 1980), c. 1110; 1987, c. 602, s. 3.

Effect of Amendments. — The 1987 amendment, effective August 12, 1987, rewrote this section.

§ 105-314. Information concerning tax situs of motor vehicles.

(b) Upon request from any county, the Commissioner of Motor Vehicles shall send to the assessor of the county a list of motor vehicles subject to ad valorem taxation in that county as shown by the Commissioner's record of applications filed during the year preceding the day as of which property is to be listed. As compensation, the Commissioner shall charge the county the actual cost incurred in the preparation of this list. (1939, c. 310, s. 1000; 1941, c. 36, s. 4; 1955, c. 98; 1971, c. 806, s. 1; 1975, c. 716, s. 5; 1987, c. 45, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective April 3, 1987, substituted "assessor" for "tax supervisor" in the first sentence of subsection (b).

§ 105-315. Reports by persons having custody of tangible personal property of others.

(a) As of January 1, every person having custody of taxable tangible personal property that has been entrusted to him by another for storage, sale, renting, or any other business purpose shall furnish the appropriate assessor the reports required by subdivision (a)(2), below:

(1) Repealed by Session Laws 1987, c. 813, s. 14, effective for taxable years beginning on or after January 1, 1988.

(2) For all tangible personal property, except inventories exempt under G.S. 105-275(33) and (34), there shall be furnished to the assessor of the county in which the property is situated a statement showing the name of the owner of the property, a description of the property, the quantity of the property, and the amount of money, if any, advanced against the property by the person having custody of it.

(3) For purposes of illustration, but not by way of limitation, the term "person having custody of taxable tangible personal property" as used in this subsection (a) shall include warehouses, cooperative growers' and marketing associations, consignees, factors, commission merchants, and brokers.

(1939, c. 310, ss. 1001, 1002; 1955, c. 1069, ss. 2, 3; 1965, c. 592; 1971, c. 806, s. 1; 1987, c. 45, s. 1; c. 813, s. 14.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1987, c. 813, s. 25 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — Session Laws 1987, c. 45, s. 1, effective April 3, 1987, substituted "assessor" for "tax supervisor" throughout subsection (a).

Session Laws 1987, c. 813, s. 14, effective for taxable years beginning on or after January 1, 1988, in subsection (a) as amended by Session Laws 1987, c. 45, substituted "subdivisions (a)(2)" for "subdivisions (a) and (a2)" near the end of the introductory language of subsection (a), deleted subdivision (a)(1), relating to certain farm products, substituted "For all tangible personal property, ex-

cept inventories exempted under G.S. 1050-275(33) and (34)" for "For all other tangible personal property" at the beginning of subdivision (a)(2), and inserted "having" preceding "custody" in subdivision (a)(2).

§ 105-316. Reports by house trailer park, marina, and aircraft storage facility operators.

(a) As of January 1 each year:

(1) Every operator of a park or storage lot renting or leasing space for three or more house trailers or mobile homes shall furnish to the assessor of the county in which the park or lot is located the name of the owner of and a description of each house trailer or mobile home situated thereon.

(2) Every operator of a marina or comparable facility renting, leasing, or otherwise providing dockage or storage space for three or more boats, vessels, floating homes, or floating structures shall furnish to the assessor of the county in which the marina or comparable facility is located the name of the owner of and a description of each boat, vessel, floating home, or floating structure for which dockage or storage space is rented, leased, or otherwise provided.

(3) Every operator of a storage facility renting or leasing space for three or more airplanes or other aircraft shall furnish to the assessor of the county in which the storage facility is located the name of the owner of and a description of each airplane or aircraft for which space is rented or leased.

(1939, c. 310, s. 1002; 1955, c. 1069, s. 3; 1965, c. 592; 1971, c. 806, s. 1; 1985, c. 378, ss. 1, 2; 1987, c. 45, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective April 3, 1987, substituted "assessor" for "tax supervisor" in subdivisions (a)(1) and (a)(3).

§ 105-316.7. Mobile home defined.

For the purpose of G.S. 105-316.1 through 105-316.8, "mobile home" means a structure that (i) is designed, constructed, and intended for use as a dwelling house, office, place of business, or similar place of habitation and (ii) is capable of being transported from place to place on wheels attached to its frame. It also means a manufactured home as described in G.S. 105-273(13). This definition does not include trailers and vehicles required to be registered annually pursuant to Part 3, Article 3 of Chapter 20 of the General Statutes. (1975, c. 881, s. 1; 1987, c. 805, s. 4.)

Effect of Amendments. — The 1987 amendment, effective for tax years beginning on and after January 1, 1988, inserted the second sentence.

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; dedication as a nature preserve; mineral, quarry, or other valuable deposits; fertility; adaptability for agricultural, timber-producing, commercial, industrial, or other uses; past income; probable future income; and any other factors that may affect its value except growing crops of a seasonal or annual nature.

(2) In determining the true value of a building or other improvement, to consider at least its location; type of construction; age; replacement cost; cost; adaptability for residence, commercial, industrial, or other uses; past income; probable future income; and any other factors that may affect its value.

(3) To appraise partially completed buildings in accordance with the degree of completion on January 1.

(b) In preparation for each revaluation of real property required by G.S. 105-286, it shall be the duty of the assessor to see that:

(1) Uniform schedules of values, standards, and rules to be used in appraising real property at its true value and at its present-use value are prepared and are sufficiently detailed to enable those making appraisals to adhere to them in appraising real property.

(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, 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 values, standards, and rules required by subdivision (b)(1) shall be reviewed and approved by the board of county commissioners before January 1 of the year they are applied. The board of county commissioners may approve the schedules of values, standards, and rules to be used in appraising real property at its true value and at its present-use value either separately or simultaneously. Notice of the receipt and adoption by the board of county commissioners of either or both the true value and present-use value schedules, standards, and rules, and notice of a property owner's right to comment on and contest the schedules, standards, and rules shall be given as follows:

(1) The assessor shall submit the proposed schedules, standards, and rules to the board of county commissioners not less than 21 days before the meeting at which they will be considered by the board. On the same day that they are submitted to the board for its consideration, the assessor shall file a copy of the proposed schedules, standards, and rules in his office where they shall remain available for public inspection.

(2) Upon receipt of the proposed schedules, standards, and rules, the board of commissioners shall publish a statement in a newspaper having general circulation in the county stating:

a. That the proposed schedules, standards, and rules to be used in appraising real property in the county have been submitted to the board of county commissioners and are available for public inspection in the assessor's office; and

b. The time and place of a public hearing on the proposed schedules, standards, and rules that shall be held by the board of county commissioners at least seven days before adopting the final schedules, standards, and rules.

(3) When the board of county commissioners approves the final schedules, standards, and rules, it shall issue an order adopting them. Notice of this order shall be published once a week for four successive weeks in a newspaper having general circulation in the county, with the last publication being not less than seven days before the last day for challenging the validity of the schedules, standards, and rules by appeal to the Property Tax Commission. The notice shall state:

a. That the schedules, standards, and rules to be used in the next scheduled reappraisal of real property in the county have been adopted and are open to examination in the office of the assessor; and

b. That a property owner who asserts that the schedules, standards, and rules are invalid may except to the

order and appeal therefrom to the Property Tax Commission within 30 days of the date when the notice of the order adopting the schedules, standards, and rules was first published.

(d) Before the board of county commissioners adopts the schedules of values, standards, and rules, the assessor may collect data needed to apply the schedules, standards, and rules to each parcel in the county. (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; 1985, c. 216, s. 2; c. 628, s. 4; 1987, c. 45, s. 1; c. 295, s. 1.)

Effect of Amendments. —

Session Laws 1987, c. 45, s. 1, effective April 3, 1987, substituted "assessor" for "tax supervisor" in the introductory paragraph of subsection (b).

Session Laws 1987, c. 295, s. 1, effective January 1, 1988, rewrote subdivision (b)(1), deleted "adopted pursuant to subsection (b)" following "values, standards, and rules" in subdivision (b)(4), rewrote subsection (c), and added subsection (d).

CASE NOTES

To find the true value of property subject to conservation easements, the Commission must determine the market value prior to the granting of the easements and then reduce that value by applying a damage factor caused by the granting of the conservation easements. Determining the highest and best use of the property prior to the granting of the easement is a critical part of the appraisal process. Rainbow Springs Partnership v. County of Macon, 79 N.C. App. 335, 339 S.E.2d 681, cert. denied, 316 N.C. 736, 345 S.E.2d 392 (1986).

Failure to consider, etc. —

Subdivision (a)(1) of this section is directory, and failure to consider each and every indicia of value recited in the statute does not vitiate the appraisal. In re Highlands Dev. Corp., 80 N.C. App. 544, 342 S.E.2d 588 (1986).

Cited in In re Parker, 76 N.C. App. 477, 333 S.E.2d 749 (1985); In re Butler, — N.C. App. —, 352 S.E.2d 232 (1987).

§ 105-317.1. Appraisal of personal property; elements to be considered.

(b) In determining the true value of taxable tangible personal property held and used in connection with the mercantile, manufacturing, producing, processing, or other business enterprise of any taxpayer, the persons making the appraisal shall consider any information as reflected by the taxpayer's records and as reported by the taxpayer to the North Carolina Department of Revenue and to the Internal Revenue Service for income tax purposes, taking into account the accuracy of the taxpayer's records, the taxpayer's method of accounting, and the level of trade at which the taxpayer does business. (1971, c. 806, s. 1; 1987, c. 813, s. 15.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1987, c. 813, s. 25 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right of any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — The 1987 amendment, effective for taxable years beginning on or after January 1, 1988, substituted "taxable tangible personal property" for "inventories and other goods and materials" and "any informa-

tion" for "the valuation of such property" in subsection (b).

Article 20.

Approval, Preparation, and Disposition of Records.

§ 105-320. Tax receipts; preparation.

(a) No taxing unit shall adopt a tax receipt form until it has been approved by the Department of Revenue, and no tax receipt form shall be approved unless it shows at least the following information:

(1) The name and mailing address of the taxpayer charged with taxes.

(2) The assessment of the taxpayer's real property listed for unit-wide taxation.

(3) The assessment of the taxpayer's personal property listed for unit-wide taxation.

(4) The total assessed value of the taxpayer's real and personal property listed for unit-wide taxation.

(5) The total assessed value of the taxpayer's real and personal property listed for taxation in any special district or subdivision of the unit.

(6) The rate of tax levied for each unit-wide purpose, the total rate levied for all unit-wide purposes, and the rate levied by or for any special district or subdivision of the unit in which the taxpayer's property is subject to taxation. (In lieu of showing this information on the tax receipt, it may be furnished on a separate sheet of paper, properly identified, at the time the official receipt is delivered upon payment).

(7) The amount of ad valorem tax due by the taxpayer for unit-wide purposes.

(8) The amount of ad valorem tax due by the taxpayer to any special district or subdivision of the unit.

(9) The amount of dog license tax due by the taxpayer.

(10) The amount of penalties, if any, imposed under the provisions of G.S. 105-312.

(11) The total amount of all taxes and penalties due by the taxpayer to the unit and to special districts and subdivisions of the unit.

(12) The amount of discount allowed for prepayment of taxes under the provisions of G.S. 105-360.

(13) The amount of interest charged for late payment of taxes under the provisions of G.S. 105-360.

(14) Repealed by Session Laws 1987, c. 813, s. 16, effective for taxable years beginning on or after January 1, 1988.

(15) The total assessed value of livestock and poultry of a producer subject to the income tax credit in G.S. 105-163.05 and the amount of ad valorem taxes due by the producer on its livestock and poultry subject to that credit.

(16) The total assessed value of farm machinery, attachments, and repair parts of individual owners and Subchapter "S" corporations engaged in farming subject to the income tax credit in G.S. 105-163.07 and the amount of ad valorem

taxes due by an individual farmer or a Subchapter "S" corporation engaged in farming on farm machinery, attachments, and repair parts subject to that credit.

(b) Instead of being shown on the tax receipt, the information required in subdivisions (15) and (16) of subsection (a) may be shown on a separate sheet furnished to the affected taxpayers.

(c) The governing body of the county or municipality shall designate the person or persons who shall compute and prepare the tax receipt for all taxes charged upon the tax records. (1939, c. 310, s. 1102; 1961, c. 380; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 1985, c. 656, s. 23; 1985 (Reg. Sess., 1986), c. 947, s. 6; 1987, c. 813, ss. 16, 17.)

Editor's Note. —

Session Laws 1987, c. 813, s. 25 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment, effective for taxable years beginning on or after January 1, 1986, rewrote subdivisions (a)(14) and (a)(15), added subdivision (a)(16), inserted a new subsection (b), and redesignated former subsection (b) as subsection (c).

The 1987 amendment, effective for taxable years beginning on or after January 1, 1988, deleted subdivision (a)(14), which read "The total assessed value of the inventory of manufacturer subject to the income tax credit in G.S. 105-163.06 and the amount of ad valorem taxes due by the manufacturer on its inventory subject to that credit," and deleted a reference to subdivision (a)(14) in subsection (b).

§ 105-321. Disposition of tax records and receipts; order of collection.

(a) County tax records shall be filed in the office of the assessor unless the board of county commissioners shall require them to be filed in some other public office of the county. City and town tax records shall be filed in some public office of the municipality designated by the governing body of the city or town. In the discretion of the governing body, a duplicate copy of the tax records may be delivered to the tax collector at the time he is charged with the collection of taxes.

(1939, c. 310, s. 1103; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 615; 1987, c. 45, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective April 3, 1987, substituted "assessor" for "tax supervisor" in the first sentence of subsection (a).

Article 21.

Review and Appeals of Listings and Valuations.

§ 105-322. County board of equalization and review.

(d) Clerk and Minutes. — The assessor shall serve as clerk to the board of equalization and review, shall be present at all meetings, shall maintain accurate minutes of the actions of the board, and shall give to the board such information as he may have or can obtain with respect to the listing and valuation of taxable property in the county.

(g) Powers and Duties. —

(1) It shall be the duty of the board of equalization and review to examine and review the tax lists of the county for the current year to the end that all taxable property shall be listed on the abstracts and tax records of the county and appraised according to the standard required by G.S. 105-283, and the board shall correct the abstracts and tax records to conform to the provisions of this Subchapter. In carrying out its responsibilities under this subdivision (g)(1), the board, on its own motion or on sufficient cause shown by any person, shall:

a. List, appraise, and assess any taxable real or personal property that has been omitted from the tax lists.

b. Correct all errors in the names of persons and in the description of properties subject to taxation.

c. Increase or reduce the appraised value of any property that, in the board's opinion, shall have been listed and appraised at a figure that is below or above the appraisal required by G.S. 105-283; however, the board shall not change the appraised value of any real property from that at which it was appraised for the preceding year except in accordance with the terms of G.S. 105-286 and 105-287.

d. Cause to be done whatever else shall be necessary to make the lists and tax records comply with the provisions of this Subchapter.

e. Embody actions taken under the provisions of subdivisions (g)(1)a through (g)(1)d, above, in appropriate orders and have the orders entered in the minutes of the board.

f. Give written notice to the taxpayer at his last-known address in the event the board shall, by appropriate order, increase the appraisal of any property or list for taxation any property omitted from the tax lists under the provisions of this subdivision (g)(1).

(2) On request, the board of equalization and review shall hear any taxpayer who owns or controls property taxable in the county with respect to the listing or appraisal of his property or the property of others.

a. A request for a hearing under this subdivision (g)(2) shall be made in writing to or by personal appearance before the board prior to its adjournment. However, if

the taxpayer requests review of a decision made by the board under the provisions of subdivision (g)(1), above, notice of which was mailed fewer than 15 days prior to the board's adjournment, the request for a hearing thereon may be made within 15 days after the notice of the board's decision was mailed.

b. Taxpayers may file separate or joint requests for hearings under the provisions of this subdivision (g)(2) at their election.

c. At a hearing under provisions of this subdivision (g)(2), the board, in addition to the powers it may exercise under the provisions of subdivision (g)(3), below, shall hear any evidence offered by the appellant, the assessor, and other county officials that is pertinent to the decision of the appeal. Upon the request of an appellant, the board shall subpoena witnesses or documents if there is a reasonable basis for believing that the witnesses have or the documents contain information pertinent to the decision of the appeal.

d. On the basis of its decision after any hearing conducted under this subdivision (g)(2), the board shall adopt and have entered in its minutes an order reducing, increasing, or confirming the appraisal appealed or listing or removing from the tax lists the property whose omission or listing has been appealed. The board shall notify the appellant by mail as to the action taken on his appeal not later than 30 days after the board's adjournment.

(3) In the performance of its duties under subdivisions (g)(1) and (g)(2), above, the board of equalization and review may exercise the following powers:

a. It may appoint committees composed of its own members or other persons to assist it in making investigations necessary to its work. It may also employ expert appraisers in its discretion. The expense of the employment of committees or appraisers shall be borne by the county. The board may, in its discretion, require the taxpayer to reimburse the county for the cost of any appraisal by experts demanded by him if the appraisal does not result in material reduction of the valuation of the property appraised and if the appraisal is not subsequently reduced materially by the board or by the Department of Revenue.

b. The board, in its discretion, may examine any witnesses and documents. It may place any witnesses under oath administered by any member of the board. It may subpoena witnesses or documents on its own motion, and it must do so when a request is made under the provisions of subdivision (g)(2)c, above.

A subpoena issued by the board shall be signed by the chairman of the board, directed to the witness or to the person having custody of the document, and served by an officer authorized to serve subpoenas. Any person who willfully fails to appear or to produce documents in response to a subpoena or to testify when appearing in response to a subpoena shall be guilty of

a misdemeanor and punished by a fine or by imprisonment or by both in the discretion of the court. (1939, c. 310, s. 1105; 1965, c. 191; 1967, c. 1196, s. 6; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 1977, c. 863; 1987, c. 45, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Local Modification. — Cumberland: 1987, c. 161.

Effect of Amendments. — The 1987 amendment, effective April 3, 1987, substituted "assessor" for "tax supervisor" in subsection (d) and in subdivision (g)(2)c.

CASE NOTES

Right to Appeal. — The plain intent and thrust of this section and § 105-282.1(b) and former § 105-324 is to permit a property owner, as a matter of right, to appeal to the Property Tax Commission upon a county or municipal board denying its application for an exemption. In re K-Mart Corp., 79 N.C. App. 725, 340 S.E.2d 752, cert. granted, 317 N.C. 334, 346 S.E.2d 500 (1986).

§ 105-324: Repealed by Session Laws 1987, c. 295, s. 4, effective January 1, 1988.

§ 105-325. Powers of board of county commissioners to change abstracts and tax records after board of equalization and review has adjourned.

(a) After the board of equalization and review has finished its work and the changes it effected or ordered have been entered on the abstracts and tax records as required by G.S. 105-323, the board of county commissioners shall not authorize any changes to be made on the abstracts and tax records except as follows:

(1) To give effect to decisions of the Property Tax Commission on appeals taken under G.S. 105-290.

(2) To add to the tax records any valuation certified by the Department of Revenue for property appraised in the first instance by the Department or to give effect to corrections made in such appraisals by the Department.

(3) Subject to the provisions of subdivisions (a)(3)a and (a)(3)b, below, to correct the name of any taxpayer appearing on the abstract or tax records erroneously; to substitute the name of the person who should have listed property for the name appearing on the abstract or tax records as having listed the property; and to correct an erroneous description of any property appearing on the abstract or tax records.

a. Any correction or substitution made under the provisions of this subdivision (a)(3) shall have the same force and effect as if the name of the taxpayer or description of the property had been correctly listed in the first instance, but the provisions of this subdivision (a)(3)a shall not be construed as a limitation on the taxation and penalization of discovered property required by G.S. 105-312.

b. If a correction or substitution under this subdivision (a)(3) will adversely affect the interests of any taxpayer, he shall be given written notice thereof and an opportunity to be heard before the change is entered on the abstract or tax records.

(4) To correct appraisals, assessments, and amounts of taxes appearing erroneously on the abstracts or tax records, as the result of clerical or mathematical errors. (If the clerical or mathematical error was made by the taxpayer, his agent, or an officer of the taxpayer and if the correction demonstrates that the property was listed at a substantial understatement of value, quantity, or other measurement, the provisions of G.S. 105-312 shall apply.)

(5) To add to the tax records and abstracts or to correct the tax records and abstracts to include property discovered under the provisions of G.S. 105-312 or property exempted or excluded from taxation pursuant to G.S. 105-282.1(a)(4).

(6) Subject to the provisions of subdivisions (a)(6)a, (a)(6)b, (a)(6)c, and (a)(6)d, below, to appraise or reappraise property when the assessor reports to the board that, since adjournment of the board of equalization and review, facts have come to his attention that render it advisable to raise or lower the appraisal of some particular property of a given taxpayer in the then current calendar year.

a. The power granted by this subdivision (a)(6) shall not authorize appraisal or reappraisal because of events or circumstances that have taken place or arisen since the day as of which property is to be listed.

b. No appraisal or reappraisal shall be made under the authority of this subdivision (a)(6) unless it could have been made by the board of equalization and review had the same facts been brought to the attention of that board.

c. If a reappraisal made under the provisions of this subdivision (a)(6) demonstrates that the property was listed at a substantial understatement of value, quantity, or other measurement, the provisions of G.S. 105-312 shall apply.

d. If an appraisal or reappraisal made under the provisions of this subdivision (a)(6) will adversely affect the interests of any taxpayer, he shall be given written notice thereof and an opportunity to be heard before the appraisal or reappraisal shall become final.

(b) The board of county commissioners may give the assessor general authority to make any changes authorized by subsection (a), above, except those permitted under subdivision (a)(6), above.

(c) Orders of the board of county commissioners and actions of the assessor upon delegation of authority to him by the board that are made under the provisions of this section may be appealed to the Property Tax Commission under the provisions of G.S. 105-290. (1939, c. 310, s. 1108; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 1987, c. 45, s. 1; c. 295, s. 8; c. 680, s. 6.)

Effect of Amendments. — Session Laws 1987, c. 45, s. 1, effective April 3, 1987, substituted "assessor" for "tax supervisor" in the introductory language of subdivision (a)(6) and in subsections (b) and (d).

Session Laws 1987, c. 295, s. 8, effective January 1, 1988, substituted "G.S. 105-290" for "G.S. 105-324" at the end of subdivision (a)(1) and substituted "G.S. 105-290" for "G.S. 105-324(c)" at the end of subsection (c).

Session Laws 1987, c. 680, s. 6, effective January 1, 1988, added "or property exempted or excluded from taxation pursuant to G.S. 105-282.1(a)(4)" at the end of subdivision (a)(5).

Article 22.

Listing, Appraising, and Assessing by Cities and Towns.

§ 105-326. Listing property for city and town taxation; duty of owner; authority of governing body to obtain lists from county.

(b) Regardless of whether a city or town adopts the alternative provided in the second sentence of subsection (a), above, the provisions of G.S. 105-311 and 105-312 shall apply to the listing of property for municipal taxation, as shall the penalties imposed by G.S. 105-308 and 105-312 for failure to list. In the preparation of abstracts, tax records, and tax receipts the city or town shall be governed by the provisions of G.S. 105-318, 105-319, 105-320, and 105-321. The powers and duties assigned to the assessor by the statutes cited as being applicable to municipalities shall be imposed upon and exercised by some official designated by the governing body of the city or town, and the powers and duties assigned therein to the board of county commissioners shall be imposed upon and exercised by the governing body of the city or town. (1939, c. 310, s. 1201; 1971, c. 806, s. 1; 1987, c. 45, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective April 3, 1987, substituted "tax supervisor" for "assessor" in the third sentence of subsection (b).

§ 105-328. Listing, appraisal, and assessment of property subject to taxation by cities and towns situated in more than one county.

(b) Should the governing body of a city or town situated in two or more counties not adopt the procedure provided in subsection (a), above, all property subject to taxation by the municipality shall be listed, appraised, and assessed as provided in subdivisions (b)(1) through (b)(6), below.

(1) The governing body of the city or town shall appoint a municipal assessor on or before the first Monday in July in each odd-numbered year. The governing body may remove the municipal assessor from office during his term for good cause after giving him notice in writing and an opportunity to appear and be heard at a public session of the appointing body. Whenever a vacancy occurs in the office, the governing body shall appoint a qualified person to serve as

municipal assessor for the period of the unexpired term. A person appointed as a municipal assessor shall meet the qualifications and requirements set for a county assessor under G.S. 105-294. Pursuant to Article VI, Sec. 9, of the North Carolina Constitution, the office of municipal assessor is hereby declared to be an office that may be held concurrently with any other appointive office.

(2) With the approval of the governing body, a municipal assessor may employ listers, appraisers, and clerical assistants necessary to carry out the listing, appraisal, assessing, and billing functions required by law.

(3) A municipal assessor and the persons employed by him have the same powers and duties as their county equivalents with respect to property subject to taxation by a city or town.

(4) The governing body shall, with respect to property subject to city or town taxation, be vested with the powers and duties vested by this Subchapter in boards of county commissioners and boards of equalization and review. Appeals may be taken from the municipal board of equalization and review or governing body to the Property Tax Commission in the manner provided in this Subchapter for appeals from county boards of equalization and review and boards of county commissioners.

(5) All expenses incident to the listing, appraisal, and assessment of property for the purpose of city or town taxation shall be borne by the municipality for whose benefit the work is undertaken.

(6) The intent of this subsection (b) is to provide cities and towns that are situated in two or more counties with machinery for listing, appraising, and assessing property for municipal taxation equivalent to that established by this Subchapter for counties. The powers to be exercised by, the duties imposed on, and the possible penalties against municipal governing bodies, boards of equalization and review, assessors, and persons employed by an assessor shall be the same as those provided in this Subchapter by, on, or against county boards of commissioners, boards of equalization and review, assessors, and persons employed by an assessor. (1939, c. 310, s. 1202; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 695, s. 13; 1987, c. 43, s. 8; c. 45, s. 1; c. 46, s. 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — Session Laws 1987, c. 43, s. 8, effective April 2, 1987, rewrote subdivision (b)(2), which read "With the approval of the governing body, the municipal tax supervisor may appoint such list takers and assistants as may be required to perform the work assigned by law", rewrote subdivision (b)(3), which read "The municipal tax supervisor, list takers, and assistants shall, with respect to property subject to city or town taxation, have the powers and duties accorded the city tax supervisor, list takers, and assistants by the Subchapter", and substituted "and persons employed by an assessor" for "list takers, and assistants" in two places in the second sentence of subdivision (b)(6).

Session Laws 1987, c. 45, s. 1, effective April 3, 1987, substituted references to assessors for reference to tax supervisors throughout subdivisions (b)(1) and (b)(6).

Session Laws 1987, c. 46, s. 2, effective April 3, 1987, rewrote the fourth and fifth sentences of subdivision (b)(1),

which read "Persons holding the position of municipal tax supervisor on July 1, 1971, shall be deemed qualified to fill the position. Any other person selected thereafter shall be one whose experience in the appraisal of real and personal property is satisfactory to the governing body and whose qualifications has been certified by the Department of Revenue as provided in G.S. 105-289(d)."

Article 23.

Public Service Companies.

§ 105-333. Definitions.

CASE NOTES

Applied in In re Duke Power Co., 82 N.C. App. 492, 347 S.E.2d 54 (1986).

Cited in In re Colonial Pipeline Co., 318 N.C. 224, 347 S.E.2d 382 (1986).

§ 105-335. Appraisal of property of public service companies.

CASE NOTES

Applied in In re Duke Power Co., 82 N.C. App. 492, 347 S.E.2d 54 (1986).

Stated in In re Colonial Pipeline Co., 318 N.C. 224, 347 S.E.2d 382 (1986).

§ 105-336. Methods of appraising certain properties of public service companies.

CASE NOTES

Commission erred in approving Department's use of pipeline company's imbedded, historical cost of debt rather than current market cost in arriving at a proper capitalization rate under the income approach to value. In re Colonial Pipeline Co., 318 N.C. 224, 347 S.E.2d 382 (1986).

Inclusion of Future Investment Tax Credits in Projected Future Income Stream Not Supported by Record. — Where there was a stipulation in the record that pipeline company's last major construction program ended in 1980 and that since termination of this project in 1980, it had had no major construction plans or programs in effect, there was no factual basis in the record for including in the company's projected future income stream amounts attributable to future investment tax credits, for there was no evidence to support the fact that there would be such credits in the future. In re Colonial Pipeline Co., 318 N.C. 224, 347 S.E.2d 382 (1986).

Department's refusal to deduct from valuations of the Federal Energy Regulatory Commission (FERC) an amount attributable to "economic obsolescence" because the FERC had limited pipeline company's rate of return to a rate below the market rate was not error. In re Colonial Pipeline Co., 318 N.C. 224, 347 S.E.2d 382 (1986).

§ 105-337. Apportionment of taxable values to this State.

CASE NOTES

Cited in In re Colonial Pipeline Co., 318 N.C. 224, 347 S.E.2d 382 (1986).

§ 105-338. Allocation of appraised valuation of system property among local taxing units.

CASE NOTES

Applied in In re Duke Power Co., 82 N.C. App. 492, 347 S.E.2d 54 (1986).

Cited in In re Colonial Pipeline Co., 318 N.C. 224, 347 S.E.2d 382 (1986).

§ 105-341. Certification of public service company system appraised valuations.

CASE NOTES

Applied in In re Duke Power Co., 318 N.C. App. 224, 347 S.E.2d 54 (1986).

§ 105-342. Notice, hearing, and appeal.

CASE NOTES

Discriminatory Taxation of Railroads. — In suits alleging discriminatory taxation of real and personal property in violation of § 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 (the 4-R Act), codified at 49 U.S.C. § 11503 (1982), the counties had the burden of establishing facts sufficient for the court to find levels of assessment for business personal property different from the levels stipulated for real property. Clinchfield R.R. v. Lynch, 784 F.2d 545 (4th Cir. 1986).

In suits alleging discriminatory taxation of real and personal property in violation of § 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 (the 4-R Act), codified at 49 U.S.C. § 11503 (1982), the trial court was correct in considering as a factor in its finding of tax discrimination the fact that under § 105-277 stored tobacco inventories were taxed at only 60% of fair market value. Clinchfield R.R. v. Lynch, 784 F.2d 545 (4th Cir. 1986).

Once North Carolina is shown to have discriminated with respect to real property assessment, the burden shifts to the State and counties to establish facts sufficient to warrant a different conclusion with respect to personal property. In re Duke Power Co., 82 N.C. App. 492, 347 S.E.2d 54 (1986), cert. denied, 319 N.C. 694, 351 S.E.2d 744 (1987).

Article 24.

Review and Enforcement of Orders.

§ 105-345.2. Record on appeal; extent of review.

CASE NOTES

Applied in In re Parker, 76 N.C. App. 477, 333 S.E.2d 749 (1985); Rainbow Springs Partnership v. County of Macon, 79 N.C. App. 335, 339 S.E.2d 681 (1986); In re Duke Power Co., 82 N.C. App. 492, 347 S.E.2d 54 (1986).

Quoted in In Re Butler, — N.C. App. —, 352 S.E.2d 232 (1987).

Article 26.

Collection and Foreclosure of Taxes.

§ 105-357. Payment of taxes.

(c) Small Underpayments and Overpayments. — The governing body of a taxing unit may, by resolution, permit its tax collector to treat small underpayments of taxes as fully paid and to not refund small overpayments of taxes unless the taxpayer requests a refund before the end of the fiscal year in which the small overpayment is made. A "small underpayment" is a payment made, other than in person, that is no more than one dollar ($1.00) less than the taxes due on a tax receipt. A "small overpayment" is a payment made, other than in person, that is no more than one dollar ($1.00) greater than the taxes due on a tax receipt.

The tax collector shall keep records of all underpayments and overpayments of taxes by receipt number and amount and shall report these payments to the governing body as part of his settlement.

A resolution authorizing adjustments of underpayments and overpayments as provided in this subsection shall:

(1) Be adopted on or before June 15 of the year to which it is to apply;

(2) Apply to taxes levied for all previous fiscal years; and

(3) Continue in effect until repealed or amended by resolution of the taxing unit. (1939, c. 310, s. 1710; 1971, c. 806, s. 1; 1987, c. 661.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Local Modification. — Durham: 1985 (Reg. Sess., 1986), c. 910; city of Salisbury: 1985 (Reg. Sess., 1986), c. 910; city of Wilmington: 1985 (Reg. Sess., 1986), c. 910; town of Ahoskie: 1987, c. 262, s. 2; town of Elkin: 1987, c. 740, s. 1; town of Farmville: 1985 (Reg. Sess., 1986), c. 910.

Effect of Amendments. — The 1987 amendment, effective July 23, 1987, added subsection (c).

§ 105-360. Due date; interest for nonpayment of taxes; discounts for prepayment.

(a) Taxes levied under this Subchapter by a taxing unit are due and payable on September 1 of the fiscal year for which the taxes are levied. Taxes are payable at par or face amount if paid before January 6 following the due date. Taxes paid on or after January 6 following the due date are delinquent and are subject to interest charges. Interest accrues on taxes paid on or after January 6 as follows:

(1) For the period January 6 to February 1, interest accrues at the rate of two percent (2%); and

(2) For the period February 1 until the principal amount of the taxes, the accrued interest, and any penalties are paid, interest accrues at the rate of three-fourths of one percent (3/4%) a month or fraction thereof.

(b) Repealed by Session Laws 1987, c. 93, s. 2, effective April 24, 1987.

(1939, c. 310, s. 1403; 1943, c. 667; 1945, c. 247, s. 3; c. 1041; 1947, c. 888, s. 1; 1969, c. 921, s. 1; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 1977, c. 327, s. 2; c. 630; 1979, c. 233, ss. 1, 2; 1987, c. 93, ss. 1, 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective April 24, 1987, rewrote subsection (a), and deleted former subsection (b), relating to persons on active duty as members of the armed forces of the United States during World War II, the Korean Conflict or the Vietnam Era.

§ 105-363. Remedies of cotenants and joint owners of real property.

CASE NOTES

Contention of Exclusive Possession Rejected. — Trial judge properly ordered reimbursement under this section, despite contention of one cotenant that the other, her ex-husband, was in sole possession of the property. A cotenant's mere presence on the property does not amount to a prima facie showing of exclusive possession. Consequently, the trial judge did not, and was not required to, make findings on that issue. Knotts v. Hall, — N.C. App. —, 355 S.E.2d 237 (1987).

§ 105-366. Remedies against personal property.

(a) Authority to Proceed against Personal Property; Relation between Remedies against Personal Property and Remedies against Real Property. — All tax collectors shall have authority to proceed against personal property to enforce the collection of taxes as provided in this section and in G.S. 105-367 and 105-368. Any tax collector may, in his discretion, proceed first against personal property before employing the remedies for enforcing the lien for taxes against real property, and he shall proceed first against personal property:

(1) When directed to do so by the governing body of the taxing unit; or

(2) When requested to do so by the taxpayer or by a mortgagee or other person holding a lien upon the real property subject to the lien for taxes if the person making the request furnishes the tax collector with a written statement describing the personal property to be proceeded against and giving its location.

No foreclosure of a tax lien on real property may be attacked as invalid on the ground that payment of the tax should have been procured from personal property.

(b) Remedies after Taxes Are Delinquent. — At any time after taxes are delinquent and before the filing of a tax foreclosure complaint under G.S. 105-374 or the docketing of a judgment for taxes under G.S. 105-375, and subject to the provisions of G.S. 105-356 governing the priority of liens, the tax collector may levy upon and sell or attach the following property for failure to pay taxes:

(1) Any personal property owned by the taxpayer, regardless of the time at which it was acquired and regardless of the existence or date of creation of mortgages or other liens thereon.

(2) Any personal property transferred by the taxpayer to a relative (which shall mean any parent, grandparent, child, grandchild, brother, sister, aunt, uncle, niece, or nephew, or their spouses, of the taxpayer or his spouse).

(3) Personal property in the hands of a receiver for the taxpayer. (It shall not be necessary for the tax collector to apply for an order of the court directing payment or authorizing the levy or attachment, but he may proceed as though the property were not in the hands of the receiver, and the tax collector's filing of a claim in a receivership proceeding shall not preclude him from proceeding to levy under G.S. 105-367 or to attach under G.S. 105-368.)

(4) Personal property of a deceased taxpayer if the levy or attachment is made before final settlement of the estate.

(5) The stock of goods or fixtures of a wholesale or retail merchant (as defined in Schedule E of the Revenue Act) in the hands of a purchaser or transferee thereof, or any other personal property of the purchaser or transferee of such property, if the taxes on the goods or fixtures remain unpaid 30 days after the date of the sale or transfer, but in such a case the levy or attachment must be made within six months of the sale or transfer.

(6) Personal property of the taxpayer that has been repossessed by one having a security interest therein so long as the property remains in the hands of the person who has repossessed it or the person to whom it has been transferred other than by bona fide sale for value.

(7) Personal property due the taxpayer or to become due to him within the calendar year.

(8) Personal property of a partner in satisfaction of taxes on partnership property, but only after the tax collector:

a. Has sold the taxing unit's lien for taxes against the partnership real property, if any; and

b. Exhausted the partnership's personal property through the use of levy and attachment and garnishment; and

c. Exercised the authority granted him by G.S. 105-364 in an effort to collect the tax due on the partnership's property.

(9) Personal property transferred by the taxpayer by any type of transfer other than those mentioned in this subsection (b) and other than by bona fide sale for value if the levy or attachment is made within six months of the transfer.

(c) Remedies Before Taxes Are Delinquent. — If between the date as of which property is to be listed and January 6 of the fiscal year for which the taxes are imposed the tax collector has reasonable grounds for believing that the taxpayer is about to remove his property from the taxing unit or transfer it to another person or is in imminent danger of becoming insolvent, the tax collector may levy on or attach that property or any other personal property of the taxpayer, in the manner provided in G.S. 105-367 and 105-368. If the amount of taxes collected under this subsection has not yet been determined, these taxes shall be computed in accordance with G.S. 105-359 and any applicable discount shall be allowed.

(d) Remedies against Sellers and Purchasers of Stocks of Goods or Fixtures of Wholesale or Retail Merchants. —

(1) Any wholesale or retail merchant (as defined in Schedule E of the Revenue Act) who sells or transfers the major part of his stock of goods, materials, supplies, or fixtures, other than in the ordinary course of business or who goes out of business, shall:

a. At least 48 hours prior to the date of the pending sale, transfer, or termination of business, give notice thereof to the assessors and tax collectors of the taxing units in which his business is located; and

b. Within 30 days of the sale, transfer, or termination of business, pay all taxes due or to become due on the transferred property on the first day of September of the current calendar year.

(2) Any person to whom the major part of the stock of goods, materials, supplies, or fixtures of a wholesale or retail merchant (as defined in Schedule E of the Revenue Act) is sold or transferred, other than in the ordinary course of business, or who becomes the successor in business of a wholesale or retail merchant shall withhold from the purchase money paid to the merchant an amount sufficient to pay the taxes due or to become due on the transferred property on the first day of September of the current calendar year until the former owner or seller produces either a receipt from the tax collector showing that the taxes have been paid or a certificate that no taxes are due. If the purchaser or successor in business fails to withhold a sufficient amount of the purchase money to pay the taxes as required by this subsection (d) and the taxes remain unpaid after the 30-day period allowed, he shall be personally liable for the amount of the taxes unpaid, and his liability may be enforced by means of a civil action brought in the name of the taxing unit against him in an appropriate trial division of the General Court of Justice in the county in which the taxing unit is located.

(3) Whenever any wholesale or retail merchant (as defined in Schedule E of the Revenue Act) sells or transfers the major

part of his stock of goods, materials, supplies, or fixtures, other than in the ordinary course of business, or goes out of business, and the taxes due or to become due on the transferred property on the first day of September of the current calendar year are unpaid, the tax collector, to enforce collection of the unpaid taxes, may:

a. Levy on or attach any personal property of the seller; or

b. If the taxes remain unpaid 30 days after the date of the transfer or termination of business, levy on or attach any of the property transferred in the hands of the transferee or successor in business, or any other personal property of the transferee or successor in business, but in either case the levy or attachment must be made within six months of the transfer or termination of business.

(4) In using the remedies provided in this subsection (d), the amount of taxes not yet determined shall be computed in accordance with G.S. 105-359, and any applicable discount shall be allowed. (1939, c. 310, s. 1713; 1951, c. 1141, s. 1; 1955, cc. 1263, 1264; 1957, c. 1414, ss. 2-4; 1969, c. 305, c. 1029, s. 1; 1971, c. 806, s. 1; 1973, c. 564, s. 1; 1987, c. 45, s. 1; c. 93, s. 3.)

Effect of Amendments. — Session Laws 1987, c. 45, s. 1, effective April 3, 1987, substituted "assessors" for "tax supervisors" in subdivision (d)(1)a.

Session Laws 1987, c. 93, s. 3, effective April 24, 1987, deleted "sale of a tax lien or" following "No" in the last paragraph of subsection (a), substituted "Delinquent" for "Due" in the subsection catchlines to subsections (b) and (c), substituted "delinquent" for "due" near the beginning of the introductory language of subsection (b), substituted "January 6" for "the first day of September" near the beginning of the first sentence of subsection (c), deleted "prior to the first day of September for the taxes to become due on that date" at the end of the first sentence of subsection (c), and rewrote that last sentence of subsection (c), which formerly read "When collected under this subsection (c), the amount of taxes not yet determined shall be computed under the provisions of G.S. 105-359, and any applicable discount shall be allowed."

§ 105-368. Procedure for attachment and garnishment.

(i)(1) Any person who, after written demand therefor, refuses to give the tax collector or assessor 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 assessor 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 assessor 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; 1987, c. 45, s. 1.)

Effect of Amendments. — The 1987 amendment, effective April 3, 1987, substituted "assessor" for "tax supervisor" throughout subsection (i).

§ 105-369. Advertisement of tax liens on real property for failure to pay taxes.

Editor's Note. — By virtue of Session Laws 1987, c. 602, s. 2, the local modification note for Session Laws 1973, c. 557 under this section should be deleted.

§ 105-373. Settlements.

(a) Annual Settlement of Tax Collector. —

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

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

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

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

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

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

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

c. All other sums collected by him.

The tax collector shall be credited with:

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

b. Releases duly allowed by the governing body;

c. The principal amount of taxes constituting liens on real property;

d. The principal amount of taxes included in the insolvent list determined in accordance with subdivision (a)(2), above;

e. Discounts allowed by law; and

f. Commissions (if any) lawfully payable to the tax collector as compensation.

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

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

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

a. Give bond satisfactory to the governing body;

b. Receive the tax receipts and tax records representing the uncollected taxes;

c. Have and exercise all powers and duties conferred or imposed by law upon tax collectors; and

d. Receive compensation as determined by the governing body.

(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; 1983, c. 670, s. 22; c. 808, ss. 5-7; 1987, c. 16.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective March 16, 1987, inserted the language "After July 1 and before he is charged with taxes for the current fiscal year" at the beginning of the introductory language of subdivision (a)(1); in paragraph (a)(1)a inserted "for the preceding fiscal year" and substituted "owed by each person" for "due"; at the end of the first sentence of paragraph (a)(1)b added "for the preceding fiscal year remain unpaid and the principal amount owed by each person"; and in the first sentence of subdivision (a)(3) substituted "After July 1 and before he is charged with taxes for the current fiscal year" for "On the first Monday of July."

§ 105-374. Foreclosure of tax lien by action in nature of action to foreclose a mortgage.

CASE NOTES

I. GENERAL CONSIDERATION.

Purported Adverse Possessor Not Entitled To Personal Notice. — Where a city, in a foreclosure action, gave personal notice to all the record owners of the property in question and notice by publication to all others having an interest in the disputed property who could not with due diligence be located, it was not required to give personal notice to a purported adverse possessor whose purported interest was not recorded. Overstreet v. City of Raleigh, 75 N.C. App. 351, 330 S.E.2d 643 (1985).

And Judgment Foreclosing Tax Lien Extinguish All Rights. — The effect of a judgment foreclosing a tax lien on real property was to extinguish all rights, title and interests in the property subject to foreclosure, including a claim based on adverse possession. The interest in the disputed property acquired by the purchaser at the tax foreclosure sale was fee simple and the purchaser's title defeated the claims of ownership based on adverse possession. Overstreet v. City of Raleigh, 75 N.C. App. 351, 330 S.E.2d 643 (1985).

§ 105-375. In rem method of foreclosure.

(c) Notice Listing Taxpayer and Others. — The tax collector filing the certificate provided for in subsection (b), above, shall, at least 30 days prior to docketing the judgment, send a registered or certified letter, return receipt requested, to the listing taxpayer at his last known address, and to all lienholders of record who have filed with the office of the tax collector of the taxing unit or units in which the real property subject to his lien is located a request that he be notified of the docketing of a judgment under the procedure set forth in this section, stating that the judgment will be docketed and that execution will be issued thereon in the manner provided by law. A notice stating that the judgment will be docketed and that execution will be issued thereon shall also be mailed by certified or registered mail, return receipt requested, to the current owner of the property (if different from the listing owner) if: (i) a deed or other instrument transferring title to and containing the name of the current owner was recorded in the office of the register of deeds or filed or docketed in the office of the clerk of superior court after January 1 of the first year in which the property was listed in the name of the listing owner, and (ii) the tax collector can obtain the current owner's mailing address through the exercise of due diligence. The request from the lienholder shall be made on a form supplied by the tax collector and shall describe the real property, indicate whose name it is listed in for taxation, and state the name and mailing address of the lienholder. If within 10 days following the mailing of said letters of notice, a return receipt has not been received by the tax collector indicating receipt of the letter, then the tax collector shall have a notice published in a newspaper of general circulation in said county once a week for two consecutive weeks directed to, and naming, all unnotified lienholders and the listing taxpayer that a judgment will be docketed against the listing taxpayer. The notice shall contain the proposed date of such docketing, that execution will issue thereon as provided by law, a brief description of the real property affected, and notice that the

lien may be paid off prior to judgment being entered. All costs of mailing and publication, plus a charge of fifty dollars ($50.00) to defray administrative costs, shall be added to those set forth in subsection (b).

(d) Effect of Docketing Certificate of Taxes Due. — Immediately upon the docketing and indexing of a certificate as provided in subsection (b), above, the taxes, penalties, interest, and costs shall constitute a valid judgment against the real property described therein, with the priority provided for tax liens in G.S. 105-356. The judgment, except as expressly provided in this section, shall have the same force and effect as a duly rendered judgment of the superior court directing sale of the property for the satisfaction of the tax lien, and it shall bear interest at an annual rate of eight percent (8%).

(1939, c. 310, s. 1720; 1945, c. 646; 1957, cc. 91, 1262; 1971, c. 806, s. 1; 1973, c. 108, s. 52; c. 681, ss. 1, 2; 1983, c. 808, s. 9; c. 855, ss. 1, 2; 1987, c. 450.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, and applicable to tax liens docketed on or after that date, inserted "plus a charge of fifty dollars ($50.00) to defray administrative costs" in the last sentence of subsection (c), and substituted "an annual rate of eight percent (8%)" for "the rate of six percent (6%) per annum" at the end of subsection (d).

CASE NOTES

Judgment Foreclosing Tax Lien Extinguish All Rights. — The effect of a judgment foreclosing a tax lien on real property was to extinguish all rights, title and interests in the property subject to foreclosure, including a claim based on adverse possession. The interest in the disputed property acquired by the purchaser at the tax foreclosure sale was fee simple and the purchaser's title defeated the claims of ownership based on adverse possession. Overstreet v. City of Raleigh, 75 N.C. App. 351, 330 S.E.2d 643 (1985).

§ 105-377. Time for contesting validity of tax foreclosure title.

CASE NOTES

Where city became record owner of property pursuant to tax foreclosure sale, and while purported adverse possessors brought their action to quiet title beyond the one year statute of limitation contained in this section, there were no genuine issues of material fact and the city was entitled to summary judgment. Overstreet v. City of Raleigh, 75 N.C. App. 351, 330 S.E.2d 643 (1985).

Article 27.

Refunds and Remedies.

§ 105-381. Taxpayer's remedies.

(a) Statement of Defense. — Any taxpayer asserting a valid defense to the enforcement of the collection of a tax assessed upon his property shall proceed as hereinafter provided.

(1) For the purpose of this subsection, a valid defense shall include the following:
a. A tax imposed through clerical error;
b. An illegal tax;
c. A tax levied for an illegal purpose.

(2) If a tax has not been paid, the taxpayer may make a demand for the release of the tax claim by submitting to the governing body of the taxing unit a written statement of his defense to payment or enforcment of the tax and a request for release of the tax at any time prior to payment of the tax.

(3) If a tax has been paid, the taxpayer, at any time within five years after said tax first became due or within six months from the date of payment of such tax, whichever is the later date, may make a demand for a refund of the tax paid by submitting to the governing body of the taxing unit a written statement of his defense and a request for refund thereof.

(1901, c. 558, s. 30; Rev., s. 2855; C. S., s. 7979; 1971, c. 806, s. 1; 1973, c. 564, s. 3; 1977, c. 946, s. 2; 1985, c. 150, s. 1; 1987, c. 127.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1987, c. 127, s. 2 provides that a taxpayer may make a demand for a refund of taxes levied for the year 1982 and thereafter, whether or not the taxpayer had demanded a refund under subdivision (a)(3) of this section before the effective date of the act (July 1, 1987).

Effect of Amendments. —

The 1987 amendment, effective July 1, 1987, and applicable to taxes levied on or after January 1, 1982, substituted "five years" for "three years" in subdivision (a)(3).

Article 29.

Validations.

§§ 105-387 to 105-392: Recodified as §§ 47-108.21 to 47-108.26 by Session Laws 1987, c. 777, s. 4(1), effective August 12, 1987.

§ 105-393: Repealed by Session Laws 1987, c. 777, s. 4(2), effective August 12, 1987.

Article 30.

General Provisions.

§ 105-395.1. Applicable date when due date falls on weekend or holiday.

When the last day for doing an act required or permitted by this Subchapter falls on a Saturday, Sunday, or holiday, the act is considered to be done within the prescribed time limit if it is done on the next business day. (1987, c. 777, s. 5.)

Editor's Note. — Session Laws 1987, c. 777, s. 8 makes this section effective upon ratification. The act was ratified August 12, 1987.

§§ 105-397, 105-398: Repealed by Session Laws 1971, c. 806, s. 1, effective July 1, 1971.

SUBCHAPTER V. GASOLINE TAX.

Article 36.

Gasoline Tax.

§ 105-431. Purpose of Article.

The purpose of this Article is to provide for the payment and collection of a tax on the first sale of motor fuels when sold, or the use, when used, in this State. (1927, c. 93, s. 2; 1931, c. 145, s. 24; 1985 (Reg. Sess., 1986), c. 937, s. 1.)

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 8, 1986, deleted "double taxation not intended" at the end of the catchline, deleted "double taxation is not intended" following "in this State", and deleted a former second sentence, which read "Motor fuels manufactured, produced, or sold for exportation, and exported are not taxable and should not be included in the reports hereinafter required to be made by distributors."

§ 105-432. Sales from pipeline or seaport terminals not first sales.

The sale, consummated by delivery to a licensed distributor in that State, of motor fuel from a pipeline or seaport terminal in transport truck or railroad tank car shipments is not considered the first sale of the motor fuel. (1927, c. 93, s. 2½; 1931, c. 145, s. 24; 1985 (Reg. Sess., 1986), c. 937, s. 4.)

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 8, 1986, rewrote this section, which formerly related to sales in tank car shipments.

§ 105-433. Application for license as distributor.

Any distributor engaged in business on April 1, 1931, shall, within 30 days thereafter, and any other distributor shall, prior to the commencement of doing business, file a duly acknowledged application for a license with the Secretary of Revenue on a form prescribed and furnished by him setting forth the name under which such distributor transacts or intends to transact business within this State, the address of each place of business and a designation of the principal place of business. If such distributor is a firm or association, the application shall set forth the name and address of each person constituting the firm or association, and if a corporation, the names and addresses of the principal officers and such other information as the Secretary of Revenue may require. Each distributor shall at the same time file a bond in such amount, not exceeding forty thousand dollars ($40,000) in such form and with such surety or sureties as may be required by the Secretary of Revenue, conditioned upon the rendition of the reports and the payment of the tax hereinafter provided for. A distributor who is also required to be bonded under G.S. 105-449.5 as a supplier of special fuels may file a single bond, under either this section or under G.S. 105-449.5, for the combined amount required under these sections but not exceeding eighty thousand dollars ($80,000) and conditioned upon compliance with the requirements of Article 36 and Article 36A of this Subchapter. A distributor required to file a bond under this section shall, within 30 days after receiving a notice from the Secretary of Revenue, file an additional bond in the amount requested by the Secretary. The amount of the initial bond and any additional bonds filed by the distributor, however, may not exceed the limits set in this section. Upon approval of the application and bond, the Secretary of Revenue shall issue to the distributor a nonassignable license with a duplicate copy for each place of business of said distributor in this State, which shall be displayed in a conspicuous place at each such place of business and shall continue in force until surrendered or canceled. No distributor shall sell, offer for sale, or use any motor fuels within this State until such license has been issued. Any distributor failing to comply with or violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars ($100.00), nor more than five thousand dollars ($5,000), or imprisonment for not more than 24 months, or both. (1927, c. 93, s. 3; 1931, c. 145, s. 24; 1973, c. 476, s. 193; 1983, c. 220, s. 2; 1985 (Reg. Sess., 1986), c. 937, s. 5.)

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 8, 1986, inserted the present fifth and sixth sentences.

§ 105-434. Excise tax on motor fuel; payment of tax.

(a) Tax. — An excise tax is levied on motor fuel sold, distributed, or used by a distributor within this State at the rate of fourteen cents (14¢) per gallon plus three percent (3%) of the average wholesale price of motor fuel, as determined semiannually by the Secretary of Revenue from information on refiner and gas plant operator sales prices of finished motor gasoline and No. 2 diesel fuel for resale, published by the United States Department of Energy in the "Monthly Energy Review," or on equivalent data. The Secretary shall determine the average wholesale price of motor fuel by computing the average sales price of finished motor gasoline for the base period, computing the average sales price for No. 2 diesel fuel for the base period, and then computing a weighted average of the results of the first two computations based on the proportion of tax collected under this Article on motor fuel and Article 36A on fuel for the base period. The Secretary shall notify affected taxpayers of the tax rate to be in effect for each six-month period.

To facilitate collection of the motor fuel tax, the Secretary shall convert the percentage rate to a cents-per-gallon rate to be in effect during the six-month period beginning each January 1 and July 1. The rate to be in effect during the six-month period beginning January 1 shall be computed from data published for the six-month base period ending on the preceding September 30, and the rate to be in effect during the six-month period beginning July 1 shall be computed from data published for the six-month base period ending on the preceding March 31. The cents-per-gallon rate computed by the Secretary shall be rounded to the nearest one-tenth of a cent ($^1/_{10}$¢). If the cents-per-gallon rate computed by the Secretary is exactly between two tenths of a cent, the rate shall be rounded up to the higher of the two.

(b) Payment. — The tax levied under this Article is due when a return is required to be filed. Each distributor shall, within 20 days after the end of each month, submit a return to the Secretary of Revenue, on a form prescribed by the Secretary, stating the quantity of motor fuel sold, distributed, or used by him within the State during the preceding calendar month. Each return shall be accompanied by a payment to the Secretary for the amount of tax shown to be due on the return and shall be signed by the distributor or his agent.

In reporting the amount of tax due, a distributor may elect to calculate the tax on adjusted monthly receipts less a tare of two percent (2%) on the first 150,000 gallons, one and one-half percent ($1^1/_2$%) on the next 100,000 gallons, and one percent (1%) on the excess over 250,000 gallons. "Adjusted monthly receipts" means the quantity of motor fuel purchased, produced, refined, or compounded during the month plus the quantity of untaxed motor fuel on hand at the beginning of the month and less the quantity of motor fuel transported out-of-state during the month or lost during the month due to damage to a conveyance transporting the motor fuel, fire, a natural disaster, an act of war, or an accident. The Secretary of Revenue may, in accordance with rules adopted by him, refund to a nonlicensed distributor the tax on motor fuel that is purchased and delivered to him taxpaid and that is lost due to fire, a natural

disaster, an act of war, or an accident after it is delivered to him and before it is sold.

(c) Exception. — The tax levied by subsection (a) does not apply to nonanhydrous ethanol that is not sold or distributed.

(d) Local Tax Prohibited. — No county, city, town, or other political subdivision of the State may levy or collect any tax upon the sale, distribution, or use of motor fuel. (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; 1985, c. 261, s. 3; 1985 (Reg. Sess., 1986), c. 937, s. 2; c. 982, s. 3.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 26 provides: "Notwithstanding G.S. 105-434 and G.S. 105-449.16, the percentage wholesale component of the excise tax levied under those sections shall be one and one-half cents (1½¢) from July 15, 1986, to January 1, 1987. The 1987 Session of the General Assembly will examine the question of having a different computation of the wholesale tax for motor fuel and special fuel."

Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 31 provides: "Notwithstanding G.S. 105-434 and G.S. 105-449.19, distributors of motor fuel and suppliers of special fuels shall file a report in accordance with those sections for the period July 1, 1986, through July 14, 1986, and a report for the period July 15, 1986, through July 31, 1986. Each report by a distributor of motor fuel shall be considered separately in applying the tare allowance under G.S. 105-434."

Effect of Amendments. — Session Laws 1985 (Reg. Sess., 1986), c. 937, s. 2, effective July 8, 1986, deleted a proviso at the end of subsection (a) as it read prior to amendment by Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 3, and substituted the following language therefor:

"A distributor may elect to calculate the tax on adjusted monthly receipts less a tare of two percent (2%) on the first 150,000 gallons, one and one-half percent (1½%) on the next 100,000 gallons, and one percent (1%) on the excess over 250,000 gallons. 'Adjusted monthly receipts' means the quantity of motor fuel purchased, produced, refined, or compounded during the month plus the quantity of untaxed motor fuel on hand at the beginning of the month and less the quantity of motor fuel transported out-of-state during the month or lost during the month due to damage to a conveyance transporting the motor fuel, fire, a natural disaster, an act of war, or an accident. The Secretary of Revenue may, in accordance with rules adopted by him, refund to a nonlicensed distributor the tax on motor fuel that is purchased and delivered to him taxpaid and that is lost due to fire, a natural disaster, an act of war, or an accident after it is delivered to him and before it is sold."

Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 3, effective July 15, 1986, rewrote this section.

The section is set out above as rewritten by Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 3, at the direction of the Revisor of Statutes.

§ 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 at the rate established pursuant to G.S. 105-434(a) on the fuel used in such vehicle upon the highways of this State.

(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; 1985 (Reg. Sess., 1986), c. 982, s. 4.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 15, 1986, substituted "at the rate established pursuant to G.S. 105-434(a)" for "of twelve cents (12¢) per gallon" in subsection (a).

§ 105-440. Applications for and administration of tax refunds; penalty.

(a) Annual Refunds. — An application for an annual refund of tax permitted by this Article shall be filed with the Secretary of Revenue on or before April 15th following the end of the calendar year for which the refund is claimed. The application shall state whether or not the applicant has filed a North Carolina income tax return for the preceding taxable year, and shall state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.

(b) Quarterly Refunds. — An application for a quarterly refund of tax permitted by this Article shall be filed with the Secretary of Revenue on or before the last day of the month following the end of the calendar quarter for which the refund is claimed. The application shall state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.

(c) Late Applications. — Applications filed with the Secretary within six months of the date the application is due shall be accepted, but the amount of the refund shall be reduced by twenty-five percent (25%) if the application is filed within 30 days after the date the application is due, and shall be reduced by fifty percent (50%) if the application is filed more than 30 days but within six months after the date the application is due. An application filed more than six months after the date the application is due shall not be accepted.

(d) Approval of Refund. — If the Secretary of Revenue determines that an application for refund is correct, he shall issue the applicant a warrant upon the State Treasurer for the amount of the refund. If the Secretary determines that an application for refund is incorrect, he shall send a written notice of his determination to the applicant, stating a time and place for a hearing. If, upon holding the hearing, the Secretary finds the applicant has collected or sought to collect a refund to which he is not entitled, he shall reject the application and the applicant shall be required to pay back the tax, if any, refunded to him on the basis of the rejected application. The applicant may seek review of the Secretary's decision under G.S. 105-241.2, 105-241.3, and 105-241.4.

(e) Penalty. — A person who knowingly makes a false application for refund to obtain a refund to which he is not entitled is guilty of a misdemeanor and is punishable by a fine of up to five hundred dollars ($500.00), imprisonment for up to two years, or both. (1927, c. 93, s. 10; 1931, c. 145, s. 24; 1985 (Reg. Sess., 1986), c. 982, s. 6.)

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 15, 1986, rewrote this section, which formerly related to a penalty for making a false claim for a rebate.

§ 105-441. Enumeration of acts constituting misdemeanor; cancellation of license and bond.

Any distributor who shall fail, neglect, or refuse to make the reports herein required or pay the taxes herein imposed, or who shall refuse to permit the Secretary of Revenue or any agent appointed by him, to examine the books and records of such distributor pertaining to the motor fuels made taxable by this Article or who shall make any false, or fraudulent report or statement hereunder, or who does, or attempts to do, anything whatsoever to avoid a full disclosure of the quantity of motor fuels sold, distributed or used within this State, or who fails to file an additional bond required under G.S. 105-433 shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than one hundred dollars ($100.00) and not more than five thousand dollars ($5,000) or, in the case of an individual or the officer or employee charged with the duty of making such report for a corporation, to be imprisoned not exceeding 24 months, or both; and the Secretary of Revenue may forthwith cancel the license of such distributor and notify him in writing of such cancellation by registered mail to be sent to his last known address. In the event that the license of any distributor is cancelled as above provided, and in the event such distributor shall have paid to the State of North Carolina all the taxes due and payable by him under this Article, together with any and all penalties accruing under the provisions of this Article, then the Secretary of Revenue shall cancel and surrender the bond theretofore filed by said distributor. (1927, c. 93, s. 11; 1931, c. 145, s. 24; 1933, c. 544, s. 10; 1973, c. 476, s. 193; 1985 (Reg. Sess., 1986), c. 937, s. 6.)

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 8, 1986, inserted "or who fails to file an additional bond required under G.S. 105-433" near the middle of the first sentence.

§ 105-446. Refund for tax on motor fuel used other than to propel a motor vehicle.

A person who purchases and uses motor fuel for a purpose other than to operate a licensed motor vehicle may receive an annual refund, for the tax paid during the preceding calendar year, at a rate equal to fourteen cents (14¢) per gallon plus the average of the two wholesale cents-per-gallon rates of tax in effect during the year for which refund is claimed, less one cent (1¢) per gallon. An application for a refund allowed under this section shall be made in accordance with G.S. 105-440. (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; 1985 (Reg. Sess., 1986), c. 982, s. 5.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 29 provides: "Notwithstanding G.S. 105-446, G.S. 105-446.5, and G.S. 105-449.24, the annual refund rate for tax paid on motor fuel or special fuels for calendar year

1986 shall be twelve and six-tenths cents ($12\frac{6}{10}$¢) per gallon."

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 15, 1986, rewrote this section.

§ 105-446.1. Refunds of taxes paid by counties and municipalities.

The following entities shall be entitled to reimbursement for 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, volunteer rescue squads, 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, volunteer rescue squad or "sheltered workshop" organization. Reimbursement shall be at a rate equal to fourteen cents (14¢) per gallon plus the wholesale cents-per-gallon rate of tax in effect during the quarter for which the refund is claimed, less one cent (1¢) per gallon. An application for a refund under this section shall be made in accordance with G.S. 105-440. (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; 1981 (Reg. Sess., 1982), c. 1246, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 982, s. 7.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 30 provides: "Notwithstanding G.S. 105-446.1, G.S. 105-446.3, and G.S. 105-449.24, the quarterly refund rate for tax paid on motor fuel or special fuels for the quarter ending June 30, 1986, shall be eleven cents (11¢) per gallon, and the quarterly refund rate for tax paid on motor fuel or special fuels for the quarter ending September 30, 1986, shall be fourteen cents (14¢) per gallon."

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 15, 1986, substituted "reimbursement for" for "be reimbursed at the rate of eleven cents (11¢) per gallon of" following "The following entities shall be entitled to" at the beginning of the first sentence and rewrote the last two sentences.

§ 105-446.2. Wildlife Resources Commission entitled to partial net proceeds of gasoline taxes.

(a) The North Carolina Wildlife Resources Commission shall receive one eighth of one percent (1/8 of 1%) of the net proceeds of the taxes on motor fuels levied under G.S. 105-434 and the same shall be paid in accordance with the accounting periods as set forth under G.S. 105-440(a). As used in this section "net proceeds" shall mean the entire tax collected less one cent (1¢) per gallon nonrebatable tax required to be segregated by Chapter 1250 of the Session Laws

of 1949, as amended by Chapter 46 of the Session Laws of 1965. (1967, c. 1161, s. 1; 1969, c. 1201; 1987, c. 299.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective June 8, 1987, substituted "G.S. 105-440(a)" for "G.S. 105-446(1)" at the end of the first sentence of subsection (a).

§ 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 reimbursement for the 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. Reimbursement shall be at a rate equal to fourteen cents (14¢) per gallon plus the wholesale cents-per-gallon rate of tax in effect during the quarter for which the refund is claimed, less one cent (1¢) per gallon. An application for a refund allowed under this section shall be made in accordance with G.S. 105-440.

(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(1); provided, however, that a city transit system as defined herein shall not include limousine operations.

(c) to (h) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 8, effective July 15, 1986. (1971, c. 1221, s. 1; 1973, c. 476, s.

193; c. 1287, s. 14; 1977, 2nd Sess., c. 1215; 1981, c. 690, s. 1; 1985 (Reg. Sess., 1986), c. 826, s. 10; c. 982, s. 8.)

Editor's Note. —

Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 30 provides: "Notwithstanding G.S. 105-446.1, G.S. 105-446.3, and G.S. 105-449.24, the quarterly refund rate for tax paid on motor fuel or special fuels for the quarter ending June 30, 1986, shall be eleven cents (11¢) per gallon, and the quarterly refund rate for tax paid on motor fuel or special fuels for the quarter ending September 30, 1986, shall be fourteen cents (14¢) per gallon."

Effect of Amendments. — Session Laws 1985 (Reg. Sess., 1986), c. 826, s. 10, effective June 30, 1986, substituted "20-87(1)" for "20-87(2)" in the last sentence of subsection (b).

Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 8, effective July 15, 1986, substituted "reimbursement for the" for "be reimbursed at the rate of eleven cents (11¢) per gallon of" preceding "tax levied by this Article upon filing" in the first sentence of subsection (a), rewrote the last two sentences of subsection (a), and deleted subsections (c), (d), (e), (f), (g), and (h).

§ 105-446.5. Refund of taxes paid on motor fuel used by concrete mixing vehicles, solid waste compacting vehicles, and certain agricultural delivery vehicles.

(a) Refund. — A person who purchases and uses motor fuel in one of the vehicles listed below may receive a refund for the amount of fuel consumed by the vehicle:

(1) A concrete mixing vehicle;

(2) A solid waste compacting vehicle;

(3) A bulk feed vehicle that delivers feed to poultry or livestock and uses a power take-off to unload the feed; and

(4) A vehicle that delivers lime or fertilizer in bulk to farms and uses a power take-off to unload the lime or fertilizer.

The refund rate shall be computed by subtracting one cent (1¢) from fourteen cents (14¢) per gallon plus the average of the two wholesale cents-per-gallon rates of tax in effect during the year for which the refund is claimed, and multiplying the difference by thirty-three and one-third percent (33 1/3%). An application for a refund allowed under this section shall be made in accordance with G.S. 105-440. This refund is allowed for the amount of fuel consumed by the vehicle in its mixing, compacting, or unloading operations, as distinguished from propelling the vehicle, which amount is considered to be one third of the amount of fuel consumed by the vehicle.

(b), (c) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 9, effective July 15, 1986. (1979, c. 801, s. 92; 1981, c. 690, s. 1; 1983 (Reg. Sess., 1984), c. 1025; 1985, c. 656, s. 54; 1985 (Reg. Sess., 1986), c. 982, s. 9.)

Editor's Note. —

Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 29 provides: "Notwithstanding G.S. 105-446, G.S. 105-446.5, and G.S. 105-449.24, the annual refund rate for tax paid on motor fuel or special fuels for calendar year 1986 shall be twelve and six-tenths cents (12 6/10¢) per gallon."

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment, effective July 15, 1986, deleted "of thirty-three and one-third percent (33 1/3%) of eleven cents (11¢) per gallon of the tax levied under this Article" at the end of the introductory language of subsection (a), added the two sentences

at the end of subsection (a), following subdivision (4), and deleted subsection (b), relating to application for reimbursement, and subsection (c), relating to administration.

§ 105-446.6. Refund on taxpaid motor fuel transported to another state.

Upon application to the Secretary, any person, association or corporation who purchases motor fuel upon which the tax imposed by this Article has been paid, and who transports the fuel to another state for sale or use in that state may be reimbursed at a rate equal to fourteen cents (14¢) per gallon plus the wholesale cents-per-gallon rate of tax paid on the fuel, less one cent (1¢) per gallon. The refund application shall require the claimant to furnish evidence satisfactory to the Secretary that the motor fuel for which the refund is claimed has been reported for taxation in the state to which it was transported. As used in this section, to "transport" means to carry motor fuel in a cargo tank, tank car, barge or barrel and does not include carrying fuel in a tank connected with or attached to the engine of a motor vehicle. (1981 (Reg. Sess., 1982), c. 1219, s. 1; 1985 (Reg. Sess., 1986), c. 937, s. 3; c. 982, s. 10.)

Effect of Amendments. — Session Laws 1985 (Reg. Sess., 1986, c. 937, s. 3, effective July 8, 1986, inserted the present second sentence.

Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 10, effective July 15, 1986, substituted "a rate equal to fourteen cents (14¢) per gallon plus the wholesale cents-per-gallon rate of tax paid on the fuel, less one cent (1¢) per gallon" for "the rate of eleven cents (11¢) per gallon for the amount of tax paid" at the end of the first sentence.

§ 105-449. Exemption of motor fuel used in public school transportation; false returns, etc.

(a) Motor fuel purchased by a local board of education for use in public school transportation in this State is exempt from the excise tax levied by this Article provided an invoice for the fuel stating the board of education to whom the fuel was delivered, the price per gallon of the fuel excluding the tax, and the kind and quantity of fuel sold is furnished to the Secretary of Revenue. To implement this exemption, a person who holds a State contract for the sale of motor fuel to be used in public school transportation shall invoice motor fuel sold to a local board of education for this purpose at the prevailing contract price, excluding the tax, and a person who does not hold a State contract for the sale of motor fuel to be used in public school transportation but who sells motor fuel for this purpose in quantities not sufficient to require a State contract shall invoice motor fuel sold to a local board of education at the lowest informal bid price, excluding the tax.

(b) A person authorized to sell motor fuel to a local board of education who paid the tax levied by this Article on fuel sold to the local board for public school transportation may obtain a refund of the tax paid on the fuel upon filing an application for refund with the Secretary of Revenue and attaching an invoice, containing the information required in subsection (a), to the refund application. Upon receipt of a proper application and invoice, the Secretary

shall issue a warrant upon the State Treasurer for the amount of tax paid.

(c) It is the intent and purpose of this section to relieve motor fuel used in the public school system of North Carolina from the tax levied by this Article and thereby to that extent reduce the cost of public school transportation.

(d) The motor fuel tax exemption provided by this section shall include motor fuel 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 motor fuel sold for use in school service trucks used to service school buses.

(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; 1985 (Reg. Sess., 1986), c. 937, s. 9; c. 982, s. 11.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — Session Laws 1985 (Reg. Sess., 1986), c. 937, s. 9, effective July 8, 1986, substituted "motor fuel" for "gasoline" throughout subsections (c) and (d), and rewrote subsections (a) and (b) to read as follows:

"(a) Motor fuel purchased by a local board of education and used in public school transportation in this State is exempt from the per gallon tax levied by this Article provided an invoice for the fuel stating the board of education to whom the fuel was delivered, the price per gallon of the fuel excluding the per gallon tax, and the kind and quantity of fuel sold is furnished to the Secretary of Revenue. To implement this exemption, a person who holds a State contract for the sale of motor fuel to be used in public school transportation shall invoice motor fuel sold to a local board of education for this purpose at the prevailing contract price, excluding the per gallon tax, and a person who does not hold a State contract for the sale of motor fuel to be used in public school transportation but who sells motor fuel for this purpose in quantities not sufficient to require a State contract shall invoice motor fuel sold to a local board of education at the lowest informal bid price, excluding the per gallon tax.

"(b) A person authorized to sell motor fuel to a local board of education who paid the per gallon tax levied by this Article on fuel sold to the local board for public school transportation may obtain a refund of the tax paid on the fuel upon filing an application for refund with the Secretary of Revenue and attaching an invoice, containing the information required in subsection (a), to the refund application. Upon receipt of a proper application and invoice, the Secretary shall issue a warrant upon the State Treasurer for the amount of the per gallon tax paid."

Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 11, effective July 15, 1986, also rewrote subsections (a) and (b), in subsection (c) substituted "tax levied by this Article" for "twelve cents (12¢) gasoline tax now imposed by the State", and in subsections (c) and (d) substituted "motor fuel" for "gasoline."

Subsections (a) and (b) are set out above as rewritten by Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 11, at the direction of the Revisor of Statutes.

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:

(2) "Motor vehicle" means a self-propelled vehicle that is designed for use on a highway.

(3) "Fuel" means combustible gases and liquids, other than those subject to tax under Article 36, that are or can be used to generate power to propel a motor vehicle.

(7) "User" means a person who owns or operates a fuel-propelled motor vehicle licensed under Chapter 20 and who does not maintain storage facilities for fueling the vehicle.

(9) "Supplier" means a person who:

a. Sells or delivers fuel to a user-seller; or

b. Maintains an inventory of fuel, part or all of which he uses or sells for use in a motor vehicle, and is not required to be licensed as a user-seller; or

c. Imports fuel, other than in the usual tank or receptacle connected with the engine of a motor vehicle, into the State for his own use.

(10) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 937, s. 14, effective July 8, 1986.

(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; 1985, c. 413, s. 2; c. 528, s. 2; c. 602, s. 1; 1985 (Reg. Sess., 1986), c. 826, s. 12; c. 937, ss. 10, 13, 14, 16.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. — Session Laws 1985 (Reg. Sess., 1986), c. 826, s. 12, effective June 30, 1986, deleted "and licensed" following "designed" in subdivision (2).

Session Laws 1985 (Reg. Sess., 1986), c. 937, ss. 10, 13, 14 and 16, effective July 8, 1986, rewrote subdivisions (3), (7), and (9), and deleted subdivision (10), defining the term "Peddler."

§ 105-449.3. License required of supplier.

Every supplier shall obtain a license from the Secretary. (1955, c. 822, s. 1; 1973, c. 476, s. 193; 1985 (Reg. Sess., 1986), c. 937, s. 15.)

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 8, 1986, rewrote this section.

§ 105-449.5. Supplier to file bond.

A supplier's license shall not be issued until the applicant has filed with the Secretary a bond in the approximate sum of three times the average monthly tax due to be paid by such supplier, but the amount of the bond shall in no case be less than five hundred dollars ($500.00) nor more than forty thousand dollars ($40,000). Such bond shall be in such form and with such surety or sureties as may be required by the Secretary, conditioned upon making proper reports and paying the tax provided for in this Article, and otherwise complying with the provisions of this Article. A supplier who is also required to be bonded under G.S. 105-433 as a distributor of motor fuels may file a single bond, under either this section or under G.S. 105-433 for the combined amount required under these sections but not exceeding eighty thousand dollars ($80,000), and conditioned upon compliance with the requirements of Article 36 and Article 36A of this Subchapter. A supplier required to file a bond under this section shall, within 30 days after receiving a notice from the Secretary, file an additional bond in the amount requested by the Secretary. The amount of the initial bond and any additional bonds filed by the supplier, however, may not exceed the limits set in this section. (1955, c. 822, s. 1; 1973, c. 476, s. 193; 1983, c. 220, s. 3; 1985 (Reg. Sess., 1986), c. 937, s. 7.)

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 8, 1986, added the last two sentences.

§ 105-449.9. License required of user and user-seller.

Every user, except a user whose use of fuel is limited to private passenger motor vehicles and other motor vehicles licensed under Chapter 20 at 6,000 pounds or less, and every user-seller shall obtain a license from the Secretary. When issued, a user's or a user-seller's license is effective until it is cancelled. (1955, c. 822, s. 1; 1973, c. 476, s. 193; 1985 (Reg. Sess., 1986), c. 937, s. 11.)

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 8, 1986, rewrote this section.

§ 105-449.10. Records and reports required of user-seller or user.

(b) A user shall pay the tax levied by this Article on any nontaxpaid fuel acquired by him. A licensed user shall pay the tax due on nontaxpaid fuel acquired during a reporting period when filing a report for that period. An unlicensed user who acquires nontaxpaid fuel shall report the fuel and pay the tax due on the fuel in the same manner as a licensed user. (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; 1985 (Reg. Sess., 1986), c. 937, s. 12.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 8, 1986, rewrote subsection (b).

§ 105-449.11. Display of license.

Suppliers' and user-sellers' licenses so issued shall be displayed conspicuously by the licensee at his principal place of business. (1955, c. 822, s. 1; 1985 (Reg. Sess., 1986), c. 937, s. 21.)

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 8, 1986, deleted a former second sentence, which read "Each peddler shall display his license or an official duplicate thereof on each motor vehicle used by him for the sale or delivery of fuel."

§ 105-449.14. Power of Secretary to cancel licenses.

If a licensee shall at any time file a false report of any data or information required by this Article, or shall fail, refuse or neglect to file any report as required by this Article, or to pay the full amount of any tax required by this Article, or if a supplier fails to file an additional bond required under G.S. 105-449.5 or fails to keep accurate records of quantities of fuel received, produced, refined, manufactured, compounded, sold or used in this State, or if a user-seller fails to maintain accurately any required records, the Secretary may forthwith cancel his license and notify him in writing of such cancellation by registered mail sent to his last address appearing on the files of the Secretary.

The Secretary may cancel any license upon the written request of the licensee. (1955, c. 822, s. 1; 1973, c. 476, s. 193; 1985 (Reg. Sess., 1986), c. 937, s. 8.)

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 8, 1986, inserted "fails to file an additional bond required under G.S. 105-449.5 or" in the first sentence.

§ 105-449.16. Levy of tax; purposes; special provision for certain nonanhydrous ethanol.

(a) A tax at the rate established pursuant to G.S. 105-434 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. A supplier who consigns fuel to a reseller may elect to report and pay the tax due on the fuel when the reseller sells or dispenses the fuel instead of when the supplier delivers the fuel to the reseller. 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 tax levied in this section 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¢) of the amount of tax levied on each 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.

(1955, c. 822, s. 1; 1969, c. 600, s. 21; 1979, 2nd Sess., c. 1187, ss. 3, 6; 1981, c. 690, s. 2; 1983, c. 591, ss. 2, 4; 1983 (Reg. Sess., 1984), c. 1003, s. 2; 1985, c. 261, s. 1; c. 413, s. 1; 1985 (Reg. Sess., 1986), c. 982, s. 12.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. —

Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 26 provides: "Notwithstanding G.S. 105-434 and G.S. 105-449.16, the percentage wholesale component of the excise tax levied under those sections shall be one and one-half cents (1½¢) from July 15, 1986, to January 1, 1987. The 1987 Session of the General Assembly will examine the question of having a different computation of the wholesale tax for motor fuel and special fuel."

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment, effective July 15, 1986, substituted "established pursuant to G.S. 105-434" for "of twelve cents (12¢) per gallon" in the first sentence of subsection (a), substituted "tax levied in this section" for "twelve cents (12¢) per gallon tax, hereinabove provided for" in the last sentence of subsection (a), and substituted "of the amount of tax levied on each gallon" for "out of every said twelve cents (12¢) tax per gallon" in that sentence.

§ 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 or delivered into motor vehicles; 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, sold to user-sellers, or delivered into motor vehicles owned by others and pay a tax thereon which as calculated by the Secretary, would be equivalent to the 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; 1985 (Reg. Sess., 1986), c. 937, s. 17; c. 982, s. 13.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 31 provides: "Notwithstanding G.S. 105-434 and G.S. 105-449.19, distributors of motor fuel and suppliers of special fuels shall file a report in accordance with those sections for the period July 1, 1986, through July 14, 1986, and a report for the period July 15, 1986, through July 31, 1986. Each report by a distributor of motor fuel shall be considered separately in applying the fare allowance under G.S. 105-434."

Effect of Amendments. — Session Laws 1985 (Reg. Sess., 1986), c. 937, s. 17, effective July 8, 1986, inserted "or delivered into motor vehicles" following "quantity sold to user-sellers" and substituted "sold to user-sellers, or delivered into motor vehicles owned by others" for "or sold to user-sellers" in the first sentence.

Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 13, effective July 15, 1986, deleted "twelve cents (12¢) per gallon" preceding "tax levied on liquid fuel" at the end of the first sentence.

§ 105-449.22. Leased motor vehicles.

(b) A lessor of a motor vehicle who gives written notice, by filing a report or otherwise, to the Secretary that the lessor desires to be taxed as a user, user-seller or supplier may be treated by the Secretary as a user, user-seller, or supplier with respect to a motor vehicle leased to another by him as well as fuel consumed by the leased motor vehicle when the lessor supplies or pays for the fuel consumed by the motor vehicle or makes rental or other charges calculated to include the cost of the fuel. A lessee may exclude from reports made pursuant to this Article a motor vehicle of which he is the lessee if that motor vehicle is leased from a lessor who is a user, user-seller, or supplier pursuant to this section.

(1955, c. 822, s. 1; 1983, c. 29, s. 1; 1985 (Reg. Sess., 1986), c. 826, s. 11.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective June 30, 1986, substituted "Secretary" for "secretary" in two places in the first sentence of subsection (b).

§ 105-449.24. Exemptions and refunds.

The exemptions from and the refunds of the tax levied by Article 36 on motor fuel apply to the tax levied by this Article on fuel, except the exemption and refund for losses in G.S. 105-434(a). (1967, c. 1110, s. 15; 1971, c. 1221, s. 2; 1979, c. 801, s. 93; 1979, 2nd Sess., c. 1187, ss. 4-6; 1981, c. 690, s. 2; 1983, c. 591, ss. 3, 4; 1983 (Reg. Sess., 1984), c. 1003, ss. 1, 2; 1985, c. 261, s. 2; 1985 (Reg. Sess., 1986), c. 937, s. 18; c. 982, s. 14.)

Editor's Note. —

Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 29 provides: "Notwithstanding G.S. 105-446, G.S. 105-446.5, and G.S. 105-449.24, the annual refund rate for tax paid on motor fuel or special fuels for calendar year 1986 shall be twelve and six-tenths cents ($12^{6}/_{10}$¢) per gallon."

Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 30 provides: "Notwithstanding G.S. 105-446.1, G.S. 105-446.3, and G.S. 105-449.24, the quarterly refund rate for tax paid on motor fuel or special fuels for the quarter ending June 30, 1986, shall be eleven cents (11¢) per gallon, and the quarterly refund rate for tax paid on motor fuel or special fuels for the quarter ending September 30, 1986, shall be fourteen cents (14¢) per gallon."

Effect of Amendments. —

Session Laws 1985 (Reg. Sess., 1986), c. 937, s. 18, effective July 8, 1986, rewrote this section to read as follows:

"**§ 105-449.24. Exemptions, rebates, and refunds.**

"The exemptions from and the rebates

and refunds of the tax levied by Article 36 on motor fuel apply to the tax levied by this Article on fuel, except the exemption and refund for losses in G.S. 105-434(a)."

Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 14, effective July 15, 1986, also rewrote this section.

The section is set out above as rewritten by Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 14, at the direction of the Revisor of Statutes.

§§ 105-449.30, 105-449.31: Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 937, s. 19, effective July 8, 1986.

Editor's Note. — Sections 105-449.30 and 105-449.31 were also repealed by Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 15, effective July 15, 1986.

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 established by the Secretary pursuant to G.S. 105-434. 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; 1985 (Reg. Sess., 1986), c. 982, s. 16.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 32 provides: "Notwithstanding G.S. 105-449.45, a motor carrier shall file a report in accordance with that section for the period July 1, 1986, through July 14, 1986, and a report for the period July 15, 1986, through September 30, 1986. Notwithstanding G.S. 105-449.38 and G.S. 105-449.39, a motor carrier may elect to file a single report for the quarter ending September 30, 1986, reporting fuel use at the rate of fifteen cents (15¢) per gallon and claiming credit for fuel purchased at the rate of fifteen cents (15¢) per gallon."

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 15, 1986, rewrote the second sentence.

§ 105-449.39. Credit for payment of motor fuel tax.

Every motor carrier subject to the tax levied by this Article is entitled to a credit for tax paid on fuel purchased in the State. The credit shall be allowed at a rate equal to fourteen cents (14¢) per gallon plus the wholesale cents-per-gallon rate of tax in effect during the quarter for which the credit is claimed. 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; 1985 (Reg. Sess., 1986), c. 982, s. 17; 1987, c. 315.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 32 provides: "Notwithstanding G.S. 105-449.45, a motor carrier shall file a report in accordance with that section for the period July 1, 1986, through July 14, 1986, and a report for the period July 15, 1986, through September 30, 1986. Notwithstanding G.S. 105-449.38 and G.S. 105-449.39, a motor carrier may elect to file a single report for the quarter ending September 30, 1986, reporting fuel use at the rate of fifteen cents (15¢) per gallon and claiming credit for fuel purchased at the rate of fifteen cents (15¢) per gallon."

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 15, 1986, substituted a single sentence for the former first and second sentences.

The 1987 amendment, effective July 1, 1987, substituted the present first and second sentences of the first paragraph for a former first sentence thereof, which read "Every motor carrier subject to the tax levied by this Article is entitled to a credit against this tax for the amount of tax paid by the carrier under Articles 36 and 36A of this Subchapter on motor fuel or special fuel purchased in this State and used by the carrier in its operations either inside or outside this State."

§ 105-449.42A. Leased motor vehicles.

(b) A lessor of a motor vehicle who gives written notice, by filing a report or otherwise, to the Secretary that the lessor desires to be taxed as a motor carrier may be treated by the Secretary as a motor carrier with respect to a motor vehicle leased to another by him as well as motor fuel consumed by the leased motor vehicle when the lessor supplies or pays for the motor fuel consumed by the motor vehicle or makes rental or other charges calculated to include the cost of the fuel. A lessee motor carrier may exclude from reports made pursuant to this Article a motor vehicle of which he is the lessee if that motor vehicle is leased from a lessor who is a motor carrier pursuant to this section.

(1983, c. 29, s. 3; 1985 (Reg. Sess., 1986), c. 826, s. 11.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective June 30, 1986, substituted "Secretary" for "secretary" in two places in subsection (b).

§ 105-449.45. Reports of carriers.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 32 provides: "Notwithstanding G.S. 105-449.45, a motor carrier shall file a report in accordance with that section for the period July 1, 1986, through July 14, 1986, and a report for the period July 15, 1986, through September 30, 1986. Notwithstanding G.S. 105-449.38 and G.S. 105-449.39, a motor carrier may elect to file a single report for the quarter ending September 30, 1986, reporting fuel use at the rate of fifteen cents (15¢) per gallon and claiming credit for fuel purchased at the rate of fifteen cents (15¢) per gallon."

§ 105-449.47. Registration of vehicles.

A motor carrier may not operate or cause to be operated in this State any vehicle listed in the definition of motor carrier unless the motor carrier has registered the vehicle for purposes of the tax imposed by this Article with the Commissioner of Motor Vehicles or the Secretary, as appropriate. All vehicles required to be registered under this section that are registered in this State under G.S. 20-87 or G.S. 20-88 shall be registered with the Commissioner of Motor Vehicles pursuant to G.S. 20-88.01 for the purposes of the tax imposed by this Article. All other vehicles required to be registered under this section shall be registered with the Secretary.

Upon application and payment of a fee of ten dollars ($10.00), the Secretary shall issue a registration card and identification marker for a vehicle. The registration card shall be carried in the vehicle for which it was issued when the vehicle is in this State. The identification marker shall be clearly displayed at all times and shall be affixed to the vehicle for which it was issued in the place and manner designated by the Secretary. Every identification marker issued shall bear a number that corresponds to the number on the registration card issued for the same vehicle. Registration cards and identification markers required by this section shall be issued on a calendar year basis. The Secretary may renew registration cards and identification markers without issuing new cards and markers. All identification markers issued by the Secretary remain the property of the State. The Secretary may withhold or revoke a registration card and identification marker when a motor carrier fails to comply with this Article or Article 36A of this Subchapter. (1955, c. 823, s. 11; 1973, c. 746, s. 193; 1983, c. 713, s. 56; 1985 (Reg. Sess., 1986), c. 937, s. 20.)

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 8, 1986, added the last sentence of the second paragraph.

SUBCHAPTER VI. TAX RESEARCH.

ARTICLE 37.

Tax Research.

§ 105-455. Submission of proposed amendments and information to Advisory Budget Commission; continuing study of economic conditions.

The Secretary of Revenue shall prepare and submit to the Advisory Budget Commission such amendments to the Revenue and Machinery Acts as the survey made by the Secretary indicates should be made, for their consideration in preparing amendatory Revenue and Machinery Acts for the General Assembly.

The Advisory Budget Commission is hereby authorized, empowered and directed to call upon the Secretary for such amendments and such recommendations as the Secretary shall make with respect to any needed changes in the Revenue and Machinery Acts. The Advisory Budget Commission is authorized, empowered and directed to consider such a report and shall make to the next session of the General Assembly a report on its findings with respect to such recommendations as it shall see fit to make and shall also report to the General Assembly the content of the report filed with it by the Department of Revenue.

It shall be the duty of the Secretary of Revenue to make a continuing study of economic conditions, and to evaluate the effect of these conditions on the tax bases and prospective collections therefrom. The Secretary shall submit estimates of revenue to the Advisory Budget Commission for its information. (1941, c. 327, s. 7; 1953, c. 1125, s. 2; 1973, c. 476, s. 193; 1985 (Reg. Sess., 1986), c. 955, s. 8.)

Editor's Note. — Section 1 of Session Laws 1985 (Reg. Sess., 1986), c. 955 provides: "This act may be cited as the Separation of Powers Act of 1986."

Section 127 of Session Laws 1985 (Reg. Sess., 1986), c. 955 provides: "If any part of this act shall be declared invalid by any court, this shall not affect any other part of this act."

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 1, 1986, substituted "preparing" for "repairing" in the first paragraph.

SUBCHAPTER VIII. LOCAL GOVERNMENT SALES AND USE TAX.

ARTICLE 39.

Local Government Sales and Use Tax.

§ 105-463. Short title.

Editor's Note. — Session Laws 1987, c. 832, ss. 9 to 13 provide: "Sec. 9. The board of commissioners of any county may, by resolution, after 10 days' public notice and a public hearing held pursuant thereto, adopt the expansion of the local sales tax levy provided in this act. Upon adoption of such a resolution, the board of commissioners shall forward a copy of the resolution to the Secretary of Revenue. Pursuant to the provisions of G.S. 105-483, 105-490, and 105-498, adoption of the expansion of the Local Government Sales and Use Act provided in Section 4 of this act constitutes adoption of an equivalent expansion of the local sales taxes levied under Articles 40, 41, and 42 of Chapter 105 of the General Statutes.

"Sec. 10. If a county fails to adopt the expansion of the Local Government Sales and Use Tax Act provided in Section 4 of this act on or before February 1, 1988, the sales and use taxes levied by the county pursuant to Articles 39, 40, 41, and 42 are repealed effective March 1, 1988, because they will be inconsistent with the scope of the levies authorized by those Articles as amended effective March 1, 1988. If Mecklenburg County fails to adopt the expansion of Section 4 of Chapter 1096 of the 1967 Session Laws provided in Section 5 of this act on or before February 1, 1988, the sales and use tax levied by Mecklenburg County pursuant to Chapter 1096 of the 1967 Session Laws is repealed effective March 1, 1988, because it will be inconsistent with the scope of the levy authorized by that Chapter as amended effective March 1, 1988, and the sales and use taxes levied by Mecklenburg County pursuant to Articles 40, 41, and 42 are repealed effective March 1, 1988, because those Articles will no longer apply to Mecklenburg County, as provided in G.S. 105-482, 105-489, and 105-497. If the sales and use taxes levied by a county are repealed as provided in this section because the county failed to adopt the expansion of the local sales tax levy, the county may, on or after March 1, 1988, levy local sales and use taxes in accordance with the provisions of Articles 39, 40, 41, and 42 of Chapter 105 of the General Statutes and Chapter 1096 of the 1967 Session Laws, as applicable.

"Sec. 11. This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"Sec. 12. It is the intent of the General Assembly that a Select Committee composed of members of the General Assembly shall be appointed to study the impact on local sales and use tax revenue and the administrative cost savings to the State of consolidating the local sales and use taxes levied under Articles 39, 40, 41, and 42 of Chapter 105 of the General Statutes and under Chapter 1096 of the 1967 Session Laws, as amended, with the State sales and use tax levied under Article 5 of Chapter 105 of the General Statutes. It is further intended that the Select Committee shall report to the 1987 General Assembly on the first day of the 1988 Regular Session.

"Sec. 13. It is the intent of the General Assembly that if the local sales and use taxes levied under Articles 39, 40, 41, and 42 of Chapter 105 of the General Statutes and under Chapter 1096 of the 1967 Session Laws, as amended, are at a later date consolidated with the State sales and use taxes levied under Article 5 of Chapter 105 of the General Statutes, then the legislation enacting the consolidation shall also change the method of distributing the proceeds of the excise tax on liquor levied under G.S. 105-113.80(c) from the current formulation to a new method that would distribute one-eighth (1/8) of the total

proceeds of that excise tax to local governments in the same manner as the State sales and use tax proceeds that are distributed to local governments under the legislation that consolidates the local sales taxes with the State sales tax."

§ 105-467. (Effective March 1, 1988 to January 1, 1989) Sales tax imposed; limited to items on which the State now imposes a three percent sales tax.

The sales tax which may be imposed under this Article is limited to a tax at the rate of one percent (1%) of:

(1) The sales price of those articles of tangible personal property now subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(1);

(2) The gross receipts derived from the lease or rental of tangible personal property where the lease or rental of such property is an established business now subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(2);

(3) The gross receipts derived from the rental of any room or lodging furnished by any hotel, motel, inn, tourist camp or other similar accommodations now subject to the three percent (3%) sales tax imposd by the State under G.S. 105-164.4(3); and

(4) The gross receipts derived from services rendered by laundries, dry cleaners, cleaning plants and similar type businesses now subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(4).

The sales tax authorized by this Article does not apply to sales by a utility of electricity, piped natural gas, or intrastate telephone service.

The exemptions and exclusions contained in G.S. 105-164.13 and the refund provisions contained in G.S. 105-164.14 shall apply with equal force and in like manner to the local sales and use tax authorized to be levied and imposed under this Article. A taxing county shall have no authority, with respect to the local sales and use tax imposed under this Article to change, alter, add to or delete any refund provisions contained in G.S. 105-164.14, or any exemptions or exclusions contained in G.S. 105-164.13 or which are elsewhere provided for.

The local sales tax authorized to be imposed and levied under the provisions of this Article shall be applicable to such retail sales, leases, rentals, rendering of services, furnishing of rooms, lodgings or accommodations and other taxable transactions which are made, furnished or rendered by retailers whose place of business is located within the taxing county. The tax imposed shall apply to the furnishing of rooms, lodging or other accommodations within the county which are rented to transients. For the purpose of this Article, the situs of a transaction is the location of the retailer's place of business. (1971, c. 77, s. 2; 1983 (Reg. Sess., 1984), c. 1097, s. 9; 1987, c. 832, s. 4.)

§ 105-467 is set out twice. See headings for effective dates.

For this section as in effect until March 1, 1988, see the main volume.

Section Set Out Twice. — The section above is effective March 1, 1988 to January 1, 1989. For this section as in effect until March 1, 1988, see the main volume. For this section as amended effective January 1, 1989, see the following section, also numbered § 105-467.

Editor's Note. — For the provisions of Session Laws 1987, c. 832, ss. 9 to 13, see the Editor's note under § 105-463.

Effect of Amendments. —

The 1987 amendment, effective March 1, 1988, and applicable to sales made on or after that date, rewrote the last sentence of the final paragraph, which read "However no tax shall be imposed where the tangible personal property sold is delivered to the purchaser at a point outside the taxing county by the retailer or his agent, or by a common carrier."

§ 105-467. (Effective January 1, 1989) Sales tax imposed; limited to items on which the State now imposes a three percent sales tax.

The sales tax which may be imposed under this Article is limited to a tax at the rate of one percent (1%) of:

(1) The sales price of those articles of tangible personal property now subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(1);

(2) The gross receipts derived from the lease or rental of tangible personal property where the lease or rental of such property is an established business now subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(2);

(3) The gross receipts derived from the rental of any room or lodging furnished by any hotel, motel, inn, tourist camp or other similar accommodations now subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(3); and

(4) The gross receipts derived from services rendered by laundries, dry cleaners, cleaning plants and similar type businesses now subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(4).

The sales tax authorized by this Article does not apply to sales by a utility of electricity, piped natural gas, local, toll, or private telecommunications services as defined by G.S. 105-120(a).

The exemptions and exclusions contained in G.S. 105-164.13 and the refund provisions contained in G.S. 105-164.14 shall apply with equal force and in like manner to the local sales and use tax authorized to be levied and imposed under this Article. A taxing county shall have no authority, with respect to the local sales and use tax imposed under this Article to change, alter, add to or delete any refund provisions contained in G.S. 105-164.14, or any exemptions or exclusions contained in G.S. 105-164.13 or which are elsewhere provided for.

The local sales tax authorized to be imposed and levied under the provisions of this Article shall be applicable to such retail sales, leases, rentals, rendering of services, furnishing of rooms, lodgings or accommodations and other taxable transactions which are made, furnished or rendered by retailers whose place of business is located within the taxing county. The tax imposed shall apply to the furnishing of rooms, lodging or other accommodations within the

county which are rented to transients. For the purpose of this Article, the situs of a transaction is the location of the retailer's place of business. (1971, c. 77, s. 2; 1983 (Reg. Sess., 1984), c. 1097, s. 9; 1987, c. 557, s. 7; c. 832, s. 4.)

Section Set Out Twice. — The section above is effective January 1, 1989. For this section as in effect from March 1, 1988 to January 1, 1989, see the preceding section, also numbered § 105-467. For this section as in effect until March 1, 1988, see the main volume.

Editor's Note. — For the provisions of Session Laws 1987, c. 832, ss. 9 to 13, see the Editor's note under § 105-463.

Effect of Amendments. —

Session Laws 1987, c. 832, s. 4, effective March 1, 1988, rewrote the last sentence of the final paragraph, which read "However no tax shall be imposed where the tangible personal property sold is delivered to the purchaser at a point outside the taxing county by the retailer or his agent, or by a common carrier."

Session Laws 1987, c. 557, s. 7, effective January 1, 1989, substituted "local, toll, or private telecommunications services as defined by G.S. 105-120(a)" for "or intrastate telephone service" at the end of the sentence following subdivision (4).

§ 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 cities as defined by G.S. 153A-1(1).

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

§ 105-467 is set out twice. See headings for effective dates.

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; 1985 (Reg. Sess., 1986), c. 934, s. 2.)

Editor's Note. — Session Laws 1987, c. 622, s. 15.1, as rewritten by Session Laws 1987, c. 813, s. 23, provides:

"There is created in the Department of Revenue the Inventory Tax Reimbursement Fund to partially fund the 1989 reimbursement to taxing units under G.S. 105-277A. Notwithstanding any other provision of law, for distributions of local sales and use taxes made on or after October 1, 1987, and before March 31, 1988, the Secretary of Revenue shall withhold from the net proceeds, as defined in G.S. 105-472, to be distributed to the taxing counties pursuant to G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws, an amount equal to three and one-half percent (3.5%) of such net proceeds. For distributions of local sales and use taxes made on or after April 1, 1988, and before June 30, 1988, the Secretary shall withhold from such net proceeds an amount equal to twenty million four hundred thousand dollars ($20,400,000) minus the amounts withheld between October 1, 1987, and March 31, 1988, under this section. This amount shall be deducted proportionally from such net proceeds to the distributed pursuant to G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws. The amounts withheld shall be deposited in the Inventory Tax Reimbursement Fund to be distributed in accordance with G.S. 105-277A. Notwithstanding the provisions of G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws, the Secretary of Revenue shall reduce each taxing county's net proceeds to be distributed under those provisions by the amounts withheld therefrom under this section.

"In addition, as soon as practicable after November 1, 1988, the Secretary of Revenue shall deposit in the Inventory Tax Reimbursement Fund the sum of seven million one hundred thousand dollars ($7,100,000), which shall be drawn from State sales and use tax collections received by the Department during October of 1988 under Article 5 of Chapter 105 of the General Statutes. These funds shall be distributed in 1989 as provided in G.S. 105-277A."

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective September 1, 1986, substituted "cities as defined by G.S. 153A-1(1)" for "incorporated cities and towns" at the end of the first paragraph.

Article 40.

Supplemental Local Government Sales and Use Taxes.

§ 105-480. Short title.

Editor's Note. — For the provisions of Session Laws 1987, c. 832, ss. 9 to 13, see the Editor's note under § 105-463.

§ 105-482. Definitions.

Editor's Note. — For the provisions of Session Laws 1987, c. 832, ss. 9 to 13, see the Editor's note under § 105-463.

§ 105-483. Levy and collection of additional taxes.

Editor's Note. — For the provisions of Session Laws 1987, c. 832, ss. 9 to 13, see the Editor's note under § 105-463.

§ 105-486. (Effective until March 1, 1988) Distribution of additional taxes.

The Secretary shall, on a quarterly basis, distribute the net proceeds of the additional one-half percent (1/2%) sales and use taxes levied under this Article to the taxing counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Budget Officer. The amount distributed to a taxing county shall then be divided among the county and its municipalities in accordance with the method by which the one percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096 of the 1967 Session Laws are distributed. If any taxes levied under this Article by a county have not been collected in that county for a full quarter because of the levy or repeal of the taxes, the Secretary shall distribute a pro rata share to that county for that quarter based on the number of months the taxes were collected in that county during the quarter. (1983, c. 908, s. 1; 1985 (Reg. Sess., 1986), c. 906, s. 2.)

Section Set Out Twice. — The section above is effective until March 1, 1988. For this section as amended effective March 1, 1988, see the following section, also numbered § 105-486.

Editor's Note. — Session Laws 1987, c. 622, s. 15.1, as rewritten by Session Laws 1987, c. 813, s. 23, provides:

"There is created in the Department of Revenue the Inventory Tax Reimbursement Fund to partially fund the 1989 reimbursement to taxing units under G.S. 105-277A. Notwithstanding any other provision of law, for distributions of local sales and use taxes made on or after October 1, 1987, and before March 31, 1988, the Secretary of Revenue shall withhold from the net proceeds, as defined in G.S. 105-472, to be distributed to the taxing counties pursuant to G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws, an amount equal to three and one-half percent (3.5%) of such net proceeds. For distributions of local sales and use taxes made on or after April 1, 1988, and be-

§ 105-486 is set out twice. See headings for effective dates.

fore June 30, 1988, the Secretary shall withhold from such net proceeds an amount equal to twenty million four hundred thousand dollars ($20,400,000) minus the amounts withheld between October 1, 1987, and March 31, 1988, under this section. This amount shall be deducted proportionally from such net proceeds to be distributed pursuant to G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws. The amounts withheld shall be deposited in the Inventory Tax Reimbursement Fund to be distributed in accordance with G.S. 105-277A. Notwithstanding the provisions of G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws, the Secretary of Revenue shall reduce each taxing county's net proceeds to be distributed under those provisions by the amounts withheld therefrom under this section.

"In addition, as soon as practicable after November 1, 1988, the Secretary of Revenue shall deposit in the Inventory Tax Reimbursement Fund the sum of seven million one hundred thousand dollars ($7,100,000), which shall be drawn from State sales and use tax collections received by the Department during October of 1988 under Article 5 of Chapter 105 of the General Statutes. These funds shall be distributed in 1989 as provided in G.S. 105-277A."

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 7, 1986, deleted "and use" following "Distribution" in the catchline to this section.

§ 105-486. (Effective March 1, 1988) Distribution of additional taxes.

(a) County Allocation. — The Secretary shall, on a quarterly basis, allocate the net proceeds of the additional one-half percent (1/2%) sales and use taxes levied under this Article to the taxing counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Budget Officer.

(b) Adjustment. — The Secretary shall then adjust the amount allocated to each county under subsection (a) by multiplying the amount by the appropriate adjustment factor set out in the table below:

County	Adjustment Factor
Dare	1.49
Brunswick	1.17
Orange	1.15
Carteret and Durham	1.14
Avery	1.12
Moore	1.11
Transylvania	1.10
Chowan, McDowell, and Richmond	1.09
Pitt and New Hanover	1.07
Beaufort, Perquimans, Buncombe, and Watauga	1.06
Cabarrus, Jackson, and Surry	1.05
Alleghany, Bladen, Robeson, Washington, Craven, Henderson, Onslow, and Vance	1.04
Gaston, Granville, and Martin	1.03
Alamance, Burke, Caldwell, Chatham, Duplin, Edgecombe, Haywood, Swain, and Wilkes	1.02
Hertford, Union, Stokes, Yancey, Halifax, Rockingham, and Cleveland	1.01

§ 105-486 is set out twice. See headings for effective dates.

County	Adjustment Factor
Alexander, Anson, Johnston, Northampton, Pasquotank, Person, Polk, and Yadkin	1.00
Catawba, Harnett, Iredell, Pamlico, Pender, Randolph, Stanly, and Tyrrell	0.99
Cherokee, Cumberland, Davidson, Graham, Hyde, Macon, Rutherford, Scotland, and Wilson	0.98
Ashe, Bertie, Franklin, Hoke, Lincoln, Montgomery, and Warren	0.97
Wayne, Clay, Madison, Sampson, Wake, Lee, and Forsyth	0.96
Caswell, Gates, Mitchell, and Greene	0.95
Currituck and Guilford	0.94
Davie and Nash	0.93
Rowan and Camden	0.92
Jones	0.90
Mecklenburg	0.89
Lenoir	0.88
Columbus	0.81

(c) Distribution Between Counties and Cities. — The amount allocated to each taxing county shall then be divided among the county and its municipalities in accordance with the method by which the one percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096 of the 1967 Session Laws are distributed. If any taxes levied under this Article by a county have not been collected in that county for a full quarter because of the levy or repeal of the taxes, the Secretary shall distribute a pro rata share to that county for that quarter based on the number of months the taxes were collected in that county during the quarter. (1983, c. 908, s. 1; 1985 (Reg. Sess., 1986), c. 906, s. 2; 1987, c. 832, s. 6.)

Section Set Out Twice. — The section above is effective March 1, 1988. For this section as in effect until March 1, 1988, see the preceding section, also numbered § 105-486.

Editor's Note. — Session Laws 1987, c. 622, s. 15.1, as rewritten by Session Laws 1987, c. 813, s. 23, provides:

"There is created in the Department of Revenue the Inventory Tax Reimbursement Fund to partially fund the 1989 reimbursement to taxing units under G.S. 105-277A. Notwithstanding any other provision of law, for distributions of local sales and use taxes made on or after October 1, 1987, and before March 31, 1988, the Secretary of Revenue shall withhold from the net proceeds, as defined in G.S. 105-472, to be distributed to the taxing counties pursuant to G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws, an amount equal to three and one-half percent (3.5%) of such net proceeds. For distributions of local sales and use taxes made on or after April 1, 1988, and before June 30, 1988, the Secretary shall withhold from such net proceeds an amount equal to twenty million four hundred thousand dollars ($20,400,000) minus the amounts withheld between October 1, 1987, and March 31, 1988, under this section. This amount shall be deducted proportionally from such net proceeds to the distributed pursuant to G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws. The amounts withheld shall be deposited in the Inventory Tax Reimbursement Fund to be distributed in accordance with G.S. 105-277A. Notwithstanding the provisions of G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws, the Sec-

§ 105-486 is set out twice. See headings for effective dates.

retary of Revenue shall reduce each taxing county's net proceeds to be distributed under those provisions by the amounts withheld therefrom under this section.

"In addition, as soon as practicable after November 1, 1988, the Secretary of Revenue shall deposit in the Inventory Tax Reimbursement Fund the sum of seven million one hundred thousand dollars ($7,100,000), which shall be drawn from State sales and use tax collections received by the Department during October of 1988 under Article 5 of Chapter 105 of the General Statutes. These funds shall be distributed in 1989 as provided in G.S. 105-277A."

For the provisions of Session Laws 1987, c. 832, ss. 9 to 13, see the Editor's note under § 105-463.

Effect of Amendments. —

The 1987 amendment, effective March 1, 1988, and applicable to sales made on or after that date, designated the first paragraph as subsection (a), inserted the catchline to subsection (a), substituted "allocate" for "distribute" near the beginning of subsection (a), added subsection (b), designated the final paragraph as subsection (c), inserted the catchline to subsection (c), and substituted "allocated to each" for "distributed to a" near the beginning of subsection (c).

Article 41.

Alternative Local Government Sales and Use Taxes.

§ 105-488. Short title.

Editor's Note. — For the provisions of Session Laws 1987, c. 832, ss. 9 to 13, see the Editor's note under § 105-463.

§ 105-489. Limitations.

Editor's Note. — For the provisions of Session Laws 1987, c. 832, ss. 9 to 13, see the Editor's note under § 105-463.

§ 105-490. Levy and collection of taxes.

Editor's Note. — For the provisions of Session Laws 1987, c. 832, ss. 9 to 13, see the Editor's note under § 105-463.

§ 105-493. (Effective until March 1, 1988) Distribution of taxes.

The Secretary shall, on a quarterly basis, distribute the net proceeds of any one-half percent (1/2%) sales and use taxes levied under this Article in accordance with G.S. 105-486. For purposes of the distribution under G.S. 105-486, a county that levies one-half percent (1/2%) sales and use taxes under this Article is considered a taxing county under that section. To make the distribution required by G.S. 105-486 and this section, the Secretary shall add the net proceeds of local sales and use taxes levied under Article 40 of this Chapter and under this Article, and shall then distribute this amount to the taxing counties on a per capita basis as provided in G.S. 105-486. The amount distributed to a county that levies one-half percent (1/2%) sales and use taxes under this Article shall be

§ 105-493 is set out twice. See headings for effective dates.

divided among the county and its municipalities on either a per capita or an ad valorem tax basis, as designated by the board of county commissioners in a resolution adopted pursuant to G.S. 105-472. If any taxes levied under this Article by a county have not been collected in that county for a full quarter because of the levy or repeal of the taxes, the Secretary shall distribute a pro rata share to that county for that quarter based on the number of months the taxes were collected in that county during the quarter.

(1983, c. 908, s. 1; 1985 (Reg. Sess., 1986), c. 906, s. 2.)

Section Set Out Twice. — The section above is effective until March 1, 1988. For this section as amended effective March 1, 1988, see the following section, also numbered § 105-493.

Editor's Note. — Session Laws 1987, c. 622, s. 15.1, as amended by Session Laws 1987, c. 813, s. 23, provides:

"There is created in the Department of Revenue the Inventory Tax Reimbursement Fund to partially fund the 1989 reimbursement to taxing units under G.S. 105-277A. Notwithstanding any other provision of law, for distributions of local sales and use taxes made on or after October 1, 1987, and before March 31, 1988, the Secretary of Revenue shall withhold from the net proceeds, as defined in G.S. 105-472, to be distributed to the taxing counties pursuant to G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws, an amount equal to three and one-half percent (3.5%) of such net proceeds. For distributions of local sales and use taxes made on or after April 1, 1988, and before June 30, 1988, the Secretary shall withhold from such net proceeds an amount equal to twenty million four hundred thousand dollars ($20,400,000) minus the amounts withheld between October 1, 1987, and March 31, 1988, under this section. This amount shall be deducted proportionally from such net proceeds to be distributed pursuant to G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws. The amounts withheld shall be deposited in the Inventory Tax Reimbursement Fund to be distributed in accordance with G.S. 105-277A. Notwithstanding the provisions of G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws, the Secretary of Revenue shall reduce each taxing county's net proceeds to be distributed under those provisions by the amounts withheld therefrom under this section.

"In addition, as soon as practicable after November 1, 1988, the Secretary of Revenue shall deposit in the Inventory Tax Reimbursement Fund the sum of seven million one hundred thousand dollars ($7,100,000), which shall be drawn from State sales and use tax collections received by the Department during October of 1988 under Article 5 of Chapter 105 of the General Statutes. These funds shall be distributed in 1989 as provided in G.S. 105-277A."

For the provisions of Session Laws 1987, c. 832, ss. 9 to 13, see the Editor's note under § 105-463.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 7, 1986, deleted "and use" following "Distribution" in the catchline to this section.

§ 105-493. (Effective March 1, 1988) Distribution of taxes.

The Secretary shall, on a quarterly basis, allocate the net proceeds of any one-half percent (1/2%) sales and use taxes levied under this Article in accordance with G.S. 105-486. For purposes of the allocation under G.S. 105-486, a county that levies one-half percent (1/2%) sales and use taxes under this Article is considered a taxing county under that section. To make the allocation required by G.S. 105-486 and this section, the Secretary shall add the net proceeds of local sales and use taxes levied under Article 40 of this Chapter and under this Article, and shall then allocate this amount to the taxing counties on a per capita basis as provided in G.S. 105-486. The

§ 105-493 is set out twice. See headings for effective dates.

amount allocated to a county that levies one-half percent (1/2%) sales and use taxes under this Article shall be adjusted by multiplying it by the appropriate adjustment factor set out in the table in G.S. 105-486(b) and then divided among the county and its municipalities on either a per capita or an ad valorem tax basis, as designated by the board of county commissioners in a resolution adopted pursuant to G.S. 105-472. If any taxes levied under this Article by a county have not been collected in that county for a full quarter because of the levy or repeal of the taxes, the Secretary shall distribute a pro rata share to that county for that quarter based on the number of months the taxes were collected in that county during the quarter. (1983, c. 908, s. 1; 1985 (Reg. Sess., 1986), c. 906, s. 2; 1987, c. 832, s. 7.)

Section Set Out Twice. — The section above is effective March 1, 1988. For this section as in effect until March 1, 1988, see the preceding section, also numbered § 105-493.

Editor's Note. — Session Laws 1987, c. 622, s. 15.1, as rewritten by Session Laws 1987, c. 813, s. 23, provides:

"There is created in the Department of Revenue the Inventory Tax Reimbursement Fund to partially fund the 1989 reimbursement to taxing units under G.S. 105-277A. Notwithstanding any other provision of law, for distributions of local sales and use taxes made on or after October 1, 1987, and before March 31, 1988, the Secretary of Revenue shall withhold from the net proceeds, as defined in G.S. 105-472, to be distributed to the taxing counties pursuant to G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws, an amount equal to three and one-half percent (3.5%) of such net proceeds. For distributions of local sales and use taxes made on or after April 1, 1988, and before June 30, 1988, the Secretary shall withhold from such net proceeds an amount equal to twenty million four hundred thousand dollars ($20,400,000) minus the amounts withheld between October 1, 1987, and March 31, 1988, under this section. This amount shall be deducted proportionally from such net proceeds to be distributed pursuant to G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws. The amounts withheld shall be deposited in the Inventory Tax Reimbursement Fund to be distributed in accordance with G.S. 105-277A. Notwithstanding the provisions of G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws, the Secretary of Revenue shall reduce each taxing county's net proceeds to be distributed under those provisions by the amounts withheld therefrom under this section.

"In addition, as soon as practicable after November 1, 1988, the Secretary of Revenue shall deposit in the Inventory Tax Reimbursement Fund the sum of seven million one hundred thousand dollars ($7,100,000), which shall be drawn from State sales and use tax collections received by the Department during October of 1988 under Article 5 of Chapter 105 of the General Statutes. These funds shall be distributed in 1989 as provided in G.S. 105-277A."

For the provisions of Session Laws 1987, c. 832, ss. 9 to 13, see the Editor's note under § 105-463.

Effect of Amendments. —

The 1987 amendment, effective March 1, 1988, and applicable to sales made on or after that date, substituted "allocate" for "distribute" in the first and third sentences, substituted "allocation" for "distribution" in the second and third sentences, substituted "allocated" for "distributed" in the fourth sentence, and inserted "adjusted by multiplying it by the appropriate adjustment factor set out in the table in G.S. 105-486(b) and then" in the fourth sentence.

§ 105-493 is set out twice. See headings for effective dates.

Article 42.

Additional Supplemental Local Government Sales and Use Taxes.

§ 105-495. Short title.

This Article shall be known as the Additional Supplemental Local Government Sales and Use Tax Act. (1985 (Reg. Sess., 1986), c. 906, s. 1.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 906, s. 3 makes this Article effective upon ratification. The act was ratified July 7, 1986.

For the provisions of Session Laws 1987, c. 832, ss. 9 to 13, see the Editor's note under § 105-463.

§ 105-496. Purpose and intent.

It is the purpose of this Article to afford the counties and cities of this State an opportunity to obtain an added source of revenue with which to meet their growing financial needs, and to reduce their reliance on other revenues, such as the property tax and federal revenue sharing, by providing all counties of the State that are subject to this Article with authority to levy one-half percent (1/2%) sales and use taxes. (1985 (Reg. Sess., 1986), c. 906, s. 1.)

§ 105-497. Limitations.

This Article applies only to counties that levy one percent (1%) sales and use taxes under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws and also levy one-half percent (1/2%) local sales and use taxes under Article 40 of this Chapter. (1985 (Reg. Sess., 1986), c. 906, s. 1.)

Editor's Note. — For the provisions of Session Laws 1987, c. 832, ss. 9 to 13, see the Editor's note under § 105-463.

§ 105-498. Levy and collection of additional taxes.

Any county subject to this Article may levy one-half percent (1/2%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law. Except as provided in this Article, the adoption, levy, collection, distribution, administration, and repeal of these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this Article, references to "this Article" mean Article 42 of Chapter 105. All taxes levied pursuant to this Article shall be collected by the Secretary and may not be collected by a taxing county. The exemption for building materials in G.S. 105-468.1 does not apply to taxes levied under this Article. (1985 (Reg. Sess., 1986), c. 906, s. 1.)

Editor's Note. — For the provisions of Session Laws 1987, c. 832, ss. 9 to 13, see the Editor's note under § 105-463.

§ 105-499. Form of ballot.

(a) The form of the question to be presented on a ballot for a special election concerning the additional taxes authorized by this Article shall be: "FOR one-half percent (1/2%) local sales and use taxes in addition to the current one and one-half percent (1 1/2%) local sales and use taxes" or "AGAINST one-half percent (1/2%) local sales and use taxes in addition to the current one and one-half percent (1 1/2%) local sales and use taxes."

(b) The form of the question to be presented on a ballot for a special election concerning the repeal of any additional taxes levied pursuant to this Article shall be: "FOR repeal of the additional one-half percent (1/2%) local sales and use taxes, thus reducing local sales and use taxes to one and one-half percent (1 1/2%)" or "AGAINST repeal of the additional one-half percent (1/2%) local sales and use taxes, thus reducing local sales and use taxes to one and one-half percent (1 1/2%)." (1985 (Reg. Sess., 1986), c. 906, s. 1.)

§ 105-500. Retail collection bracket.

The following bracket applies to collections by retailers in a county that levies additional sales and use taxes under this Article:

(1) No amount on sales of less than 9¢;
(2) 1¢ on sales of 9¢ to 23¢;
(3) 2¢ on sales of 24¢ to 48¢;
(4) 3¢ on sales of 49¢ to 67¢;
(5) 4¢ on sales of 68¢ to 85¢;
(6) 5¢ on sales of 86¢ to $1.09; and
(7) Sales of over $1.09 — straight five percent (5%) with major fractions governing. (1985 (Reg. Sess., 1986), c. 906, s. 1.)

§ 105-501. (Effective until March 1, 1988) Distribution of additional taxes.

The Secretary shall, on a quarterly basis, distribute the net proceeds of the additional one-half percent (1/2%) sales and use taxes levied under this Article to the taxing counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Budget Officer. The amount distributed to a taxing county shall then be divided among the county and the municipalities located in the county in accordance with the method by which the one percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096 of the 1967 Session Laws are distributed.

If any taxes levied under this Article by a county have not been collected in that county for a full quarter because of the levy or repeal of the taxes, the Secretary shall distribute a pro rata share to that county for that quarter based on the number of months the taxes were collected in that county during the quarter. (1985 (Reg. Sess., 1986), c. 906, s. 1.)

§ 105-501 is set out twice. See headings for effective dates.

Section Set Out Twice. — The section above is effective until March 1, 1988. For this section as amended effective March 1, 1988, see the following section, also numbered § 105-501.

Editor's Note. — Session Laws 1987, c. 622, s. 15.1, as amended by Session Laws 1987, c. 813, s. 23, provides:

"There is created in the Department of Revenue the Inventory Tax Reimbursement Fund to partially fund the 1989 reimbursement to taxing units under G.S. 105-277A. Notwithstanding any other provision of law, for distributions of local sales and use taxes made on or after October 1, 1987, and before March 31, 1988, the Secretary of Revenue shall withhold from the net proceeds, as defined in G.S. 105-472, to be distributed to the taxing counties pursuant to G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws, an amount equal to three and one-half percent (3.5%) of such net proceeds. For distributions of local sales and use taxes made on or after April 1, 1988, and before June 30, 1988, the Secretary shall withhold from such net proceeds an amount equal to twenty million four hundred thousand dollars ($20,400,000) minus the amounts withheld between October 1, 1987, and March 31, 1988, under this section. This amount shall be deducted proportionally from such net proceeds to be distributed pursuant to G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws. The amounts withheld shall be deposited in the Inventory Tax Reimbursement Fund to be distributed in accordance with G.S. 105-277A. Notwithstanding the provisions of G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws, the Secretary of Revenue shall reduce each taxing county's net proceeds to be distributed under those provisions by the amounts withheld therefrom under this section.

"In addition, as soon as practicable after November 1, 1988, the Secretary of Revenue shall deposit in the Inventory Tax Reimbursement Fund the sum of seven million one hundred thousand dollars ($7,100,000), which shall be drawn from State sales and use tax collections received by the Department during October of 1988 under Article 5 of Chapter 105 of the General Statutes. These funds shall be distributed in 1989 as provided in G.S. 105-277A."

For the provisions of Session Laws 1987, c. 832, ss. 9 to 13, see the Editor's note under § 105-463.

§ 105-501. (Effective March 1, 1988) Distribution of additional taxes.

The Secretary shall, on a quarterly basis, allocate the net proceeds of the additional one-half percent (1/2%) sales and use taxes levied under this Article to the taxing counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Budget Officer. The Secretary shall then adjust the amount allocated to each county by multiplying the amount by the appropriate adjustment factor set out in the table in G.S. 105-486(b). The amount allocated to each taxing county shall then be divided among the county and the municipalities located in the county in accordance with the method by which the one percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096 of the 1967 Session Laws are distributed.

If any taxes levied under this Article by a county have not been collected in that county for a full quarter because of the levy or repeal of the taxes, the Secretary shall distribute a pro rata share to that county for that quarter based on the number of months the taxes were collected in that county during the quarter. (1985 (Reg. Sess., 1986), c. 906, s. 1; 1987, c. 832, s. 8.)

§ 105-501 is set out twice. See headings for effective dates.

Section Set Out Twice. — The section above is effective March 1, 1988. For this section as in effect until March 1, 1988, see the preceding section, also numbered § 105-501.

Editor's Note. — Session Laws 1987, c. 622, s. 15.1, as amended by Session Laws 1987, c. 813, s. 23, provides:

"There is created in the Department of Revenue the Inventory Tax Reimbursement Fund to partially fund the 1989 reimbursement to taxing units under G.S. 105-277A. Notwithstanding any other provision of law, for distributions of local sales and use taxes made on or after October 1, 1987, and before March 31, 1988, the Secretary of Revenue shall withhold from the net proceeds, as defined in G.S. 105-472, to be distributed to the taxing counties pursuant to G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws, an amount equal to three and one-half percent (3.5%) of such net proceeds. For distributions of local sales and use taxes made on or after April 1, 1988, and before June 30, 1988, the Secretary shall withhold from such net proceeds an amount equal to twenty million four hundred thousand dollars ($20,400,000) minus the amounts withheld between October 1, 1987, and March 31, 1988, under this section. This amount shall be deducted proportionally from such net proceeds to be distributed pursuant to G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws. The amounts withheld shall be deposited in the Inventory Tax Reimbursement Fund to be distributed in accordance with G.S. 105-277A. Notwithstanding the provisions of G.S. 105-472, 105-486, 105-493, 105-501, and Chapter 1096 of the 1967 Session Laws, the Secretary of Revenue shall reduce each taxing county's net proceeds to be distributed under those provisions by the amounts withheld therefrom under this section.

"In addition, as soon as practicable after November 1, 1988, the Secretary of Revenue shall deposit in the Inventory Tax Reimbursement Fund the sum of seven million one hundred thousand dollars ($7,100,000), which shall be drawn from State sales and use tax collections received by the Department during October of 1988 under Article 5 of Chapter 105 of the General Statutes. These funds shall be distributed in 1989 as provided in G.S. 105-277A."

For the provisions of Session Laws 1987, c. 832, ss. 9 to 13, see the Editor's note under § 105-463.

Effect of Amendments. — The 1987 amendment, effective March 1, 1988, and applicable to sales made on or after that date, substituted "allocate" for "distribute" in the first sentence of the first paragraph, inserted the second sentence of the first paragraph, and substituted "allocated to each" for "distributed to a" in the third sentence of the first paragraph.

§ 105-502. Use of additional tax revenue by counties.

(a) Sixty percent (60%) of the revenue received by a county under this Article during the first 11 fiscal years in which the tax is in effect may be used by the county only for public school capital outlay purposes or to retire any indebtedness incurred by the county for these purposes during the period beginning five years prior to the date the taxes took effect.

(b) The Local Government Commission may, upon petition by a county, authorize a county to use part or all of its tax revenue, otherwise required by subsection (a) to be used for public school capital outlay purposes, for any lawful purpose. The petition shall be in the form prescribed by the Local Government Commission and shall demonstrate that the county can provide for its public school capital needs without restricting the use of part or all of the designated amount of the additional one-half percent (1/2%) sales and use tax revenue for these purposes.

In making its decision, the Local Government Commission may consider information from sources other than the petition. The

Commission shall issue a written decision on each petition stating the findings of the Commission concerning the public school capital needs of the petitioning county and the percentage of revenue otherwise restricted by subsection (a) that may be used by the petitioning county for any lawful purpose.

Decisions of the Commission allowing counties to use a percentage of their tax revenue that would otherwise be restricted under subsection (a) for any lawful purpose are final and shall continue in effect until the restrictions imposed by those subsections expire. A county whose petition is denied, in whole or in part, by the Commission may subsequently submit a new petition to the Commission.

(c) A county may expend part or all of the revenue restricted for public school capital needs pursuant to subsection (a) in the fiscal year in which the revenue is received, or the county may place part or all of this revenue in a capital reserve fund and shall specifically identify this revenue in accordance with Chapter 159 of the General Statutes.

(d) For purposes of this section in determining the number of fiscal years in which one-half percent (½%) sales and use taxes levied under this Article have been in effect in a county, these taxes are considered to be in effect only from the effective date of the levy of these taxes and are considered to be in effect for a full fiscal year during the first year in which these taxes were in effect, regardless of the number of months in that year in which the taxes were actually in effect. (1985 (Reg. Sess., 1986), c. 906, s. 1; 1987, c. 622, s. 11.)

Editor's Note. — Session Laws 1987, c. 622, s. 1, provides that the act shall be known as the "School Facilities Finance Act of 1987."

Session Laws 1987, c. 622, s. 16 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — The 1987 amendment, effective July 16, 1987, rewrote subsection (a).

§ 105-503. Report on county spending on public school capital outlay.

(a) It is the purpose of this Article for counties to appropriate funds generated under this Article to increase the level of county spending for public elementary and secondary school capital outlay (including retirement of indebtedness incurred by the county for this purpose) above and beyond the level of spending prior to the levy of the additional tax authorized under this Article.

(b) On or before February 15 of each year the Local Government Commission shall furnish to the General Assembly a report of the level of each county's appropriations for public school capital outlay (including retirement of indebtedness incurred and monies reserved for this purpose). The report shall include the amount each county has provided for public school capital outlay for a period including at a minimum the most recent five fiscal years, estimates of public school facility needs, the proportion of revenue from taxes collected under Article 40 of this Chapter that has been provided for public school capital outlay purposes (including retirement of indebted-

ness incurred and monies reserved for these purposes), the proportion of revenue collected under this Article that has been expended for a public school capital outlay purposes (including retirement of indebtedness incurred and monies reserved for these purposes), and any other factors it deems relevant to carrying out the intent stated in subsection (a) of this section.

(c) Any local board of education may petition the Local Government Commission to make a finding that the funds provided by a county for public school capital outlay purposes are, within the financial resources available and consistent with the fiscal policies of the Board of County Commissioners, inadequate to meet the public school capital outlay needs within that county and that the Board of County Commissioners has not complied with the requirements or intent of this Article. The petition shall be in the form prescribed by the Commission. In making its finding, the Commission shall consider the facts it is required to report under G.S. 105-503, as well as any other information it deems necessary. The Commission shall report its findings on such petition, together with any recommendations it deems appropriate, to the Joint Legislative Commission on Governmental Operations. (1985 (Reg. Sess., 1986), c. 906, s. 1.)

§ 105-504. Use of additional tax revenue by municipalities.

(a) Except as provided in subsection (b) or (e), forty percent (40%) of the revenue received by a municipality from additional one-half percent (1/2%) sales and use taxes levied under this Article during the first five fiscal years in which the additional taxes are in effect in the municipality and thirty percent (30%) of the revenue received by a municipality from these taxes in the second five fiscal years in which the taxes are in effect in the municipality may be used by the municipality only for water and sewage capital outlay purposes or to retire any indebtedness incurred by the municipality for these purposes.

(b) The Local Government Commission may, upon petition by a municipality, authorize a municipality to use part or all its tax revenue, otherwise required by subsection (a) to be used for water and sewage capital needs, for any lawful purpose. The petition shall be in the form prescribed by the Local Government Commission and shall demonstrate that the municipality can provide for its water and sewage capital needs without restricting the use of part or all of the designated amount of the additional one-half percent (1/2%) sales and use tax revenue for these purposes.

In making its decision, the Local Government Commission may consider information from sources other than the petition. The Commission shall issue a written decision on each petition stating the findings of the Commission concerning the water and sewage capital needs of the petitioning municipality and the percentage of revenue otherwise restricted by subsection (a) that may be used by the petitioning municipality for any lawful purpose.

Decisions of the Commission allowing municipalities to use a percentage of their tax revenue that would otherwise be restricted under subsection (a) for any lawful purpose are final and shall continue in effect until the restriction imposed by that subsection expires. A municipality whose petition is denied, in whole or in

part, by the Commission may subsequently submit a new petition to the Commission.

(c) For purposes of determining the number of fiscal years in which one-half percent (1/2%) sales and use taxes levied under this Article have been in effect in a municipality, these taxes are considered to be in effect only from the effective date of the levy of these taxes and are considered to be in effect for a full fiscal year during the first year in which these taxes were in effect, regardless of the number of months in that year in which the taxes were actually in effect.

(d) A municipality may expend part or all of the revenue restricted for water and sewage capital needs pursuant to subsection (a) in the fiscal year in which the revenue is received, or the municipality may place part or all of this revenue in a capital reserve fund and shall specifically identify this revenue in accordance with Chapter 159 of the General Statutes.

(e) An authorization received by a municipality under G.S. 105-487(c) to use all or part of its tax revenue for any lawful purpose, which is still in effect during any period during which revenues are received under this Article shall, to the extent and duration of its applicability, also apply to the use of revenues received under this Article. (1985 (Reg. Sess., 1986), c. 906, s. 1; 1987, c. 282, s. 15.)

Effect of Amendments. — The 1987 amendment, effective June 4, 1987, substituted "or" for "of" following "A municipality may extend part" at the beginning of subsection (d).

Chapter 105A.

Setoff Debt Collection Act.

Article 1.

In General.

Article 1.

In General.

§ 105A-2. (For effective date see note) 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 108A, Article 2, Part 6, 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 and Title IV, Part D of the Social Security Act to obtain indemnification for past paid public assistance or to collect child support arrearages owed to an individual receiving program services and any county operating the program at the local level, when and only to the extent that the county is engaged in the performance of those same 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;

§ 105A-2 is set out twice. See notes for effective dates.

i. The State Board of Community Colleges through community colleges as enabled by Chapter 115D in the conduct of their financial affairs and operations;

j. State facilities as listed in G.S. 122C-181(a), 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;

l. The Administrative Office of the Courts;

m. The Division of Forest Resources of the Department of Natural Resources and Community Development;

n. The Administrator of the Teachers' and State Employees' Comprehensive Major Medical Plan, established in Article 3 of General Statutes Chapter 135;

o. The State Board of Education through the Superintendent of Public Instruction when in the performance of his duties of administering the Scholarship Loan Fund for Prospective Teachers enabled by Chapter 115C, Article 32A and the scholarship loan and grant programs enabled by Chapter 115C, Article 24C, Part 1.

p. The Board of Trustees of the Teachers' and State Employees' Retirement System and the Board of Trustees of the Local Governmental Employees' Retirement System in the performance of their duties pursuant to Chapters 120, 128, 135 and 143 of the General Statutes.

q. The North Carolina Teaching Fellows Commission in the performance of its duties pursuant to Chapter 115C, Article 24C, Part 2.

r. The North Carolina Department of Human Resources when in the performance of its intentional program violation collection duties under the Food Stamp Program enabled by Chapter 108A, 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 Food Stamp Program intentional program violation collection functions.

(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.

§ 105A-2 is set out twice. See notes for effective dates.

(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; 1983, c. 922, s. 21.11; 1983 (Reg. Sess., 1984), c. 1034, s. 10.2; 1985, c. 589, s. 33; c. 649, s. 6; c. 747; 1985 (Reg. Sess., 1986), c. 1014, s. 63(e), (f); 1987, c. 564, s. 18; c. 578, ss. 1, 2.)

Section Set Out Twice. — The section above is effective until the amendment by Session Laws 1987, c. 856, s. 12 becomes effective. For the section as amended effective at that time, see the following section, also numbered § 105A-2, and the note thereunder.

Editor's Note. —

Session Laws 1985 (Reg. Sess., 1986), c. 1014, s. 243, contains a severability clause.

Chapter 122, referred to in this section, was repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986. See now Chapter 122C.

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment, effective July 15, 1986, inserted "and the scholarship loan and grant programs enabled by Chapter 115C, Article 24C, Part 1" at the end of subdivision (1)o and added subdivision (1)q.

Session Laws 1987, c. 564, s. 18, effective July 6, 1987, substituted "State Board of Community Colleges through community colleges" for "State Board of Education through community colleges, technical institutes, and industrial education centers."

Session Laws 1987, c. 578, ss. 1 and 2, effective January 1, 1988, substituted "Chapter 108A, Article 2, Part 6" for "Chapter 108, Article 2, Part 5" in paragraph (1)c, and added paragraph (1)r.

§ 105A-2. (For effective date see note) 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 108A, Article 2, Part 6, 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 and Title IV, Part D of the Social Security Act to obtain indemnification for past paid public assistance or to collect child support arrearages owed to an individual receiving program services and any county operating the program at the local level, when and only to the extent that the county is engaged in the performance of those same duties.

§ 105A-2 is set out twice. See notes for effective dates.

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 Community Colleges through community colleges as enabled by Chapter 115D in the conduct of their financial affairs and operations;
j. State facilities as listed in G.S. 122C-181(a), 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; and these same institutions by any other names by which they may be known in the future.
k. The North Carolina Department of Revenue;
l. The Administrative Office of the Courts;
m. The Division of Forest Resources of the Department of Natural Resources and Community Development;
n. The Administrator of the Teachers' and State Employees' Comprehensive Major Medical Plan, established in Article 3 of General Statutes Chapter 135;
o. The State Board of Education through the Superintendent of Public Instruction when in the performance of his duties of administering the Scholarship Loan Fund for Prospective Teachers enabled by Chapter 115C, Article 32A and the scholarship loan and grant programs enabled by Chapter 115C, Article 24C, Part 1.
p. The Board of Trustees of the Teachers' and State Employees' Retirement System and the Board of Trustees of the Local Governmental Employees' Retirement System in the performance of their duties pursuant to Chapters 120, 128, 135 and 143 of the General Statutes.
q. The North Carolina Teaching Fellows Commission in the performance of its duties pursuant to Chapter 115C, Article 24C, Part 2.
r. The North Carolina Department of Human Resources when in the performance of its intentional program violation collection duties under the Food Stamp Program enabled by Chapter 108A, Article 2, Part 5, and any county operating the same Program at the local

§ 105A-2 is set out twice. See notes for effective dates.

level, when and only to the extent such a county is in the performance of Food Stamp Program intentional program violation collection functions.

(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; 1983, c. 922, s. 21.11; 1983 (Reg. Sess., 1984), c. 1034, s. 10.2; 1985, c. 589, s. 33; c. 649, s. 6; c. 747; 1985 (Reg. Sess., 1986), c. 1014, s. 63(e), (f); 1987, c. 564, s. 18; c. 578, ss. 1, 2; c. 856, s. 12.)

Section Set Out Twice. — The section above is effective when the amendment by Session Laws 1987, c. 856, s. 12 becomes effective. For this section as in effect until that time, see the preceding section, also numbered § 105A-2.

Effective Date of Session Laws 1987, c. 856. — Session Laws 1987, c. 856, s. 20 provides that ss. 1 through 19 of the act are effective only upon agreement by Duke University to the terms of ss. 21 through 26 of the act and certification of that fact by the Secretary of the Department of Human Resources to the Governor, and that ss. 12 to 17 are then effective on the date of the transfer. Section 20 further provides that any disputes arising out of the transfer shall be resolved by the Director of the Budget.

Sections 21 through 26 of the act provide terms for the transfer of the Lenox Baker Hospital to Duke University.

Editor's Note. — Chapter 122, referred to in this section, was repealed by Session Laws 1985, c. 589, s. 1, effective January 1, 1986. See now Chapter 122C.

Effect of Amendments. —

Session Laws 1987, c. 564, s. 18, effective July 6, 1987, substituted "State Board of Community Colleges through community colleges" for "State Board of Education through community colleges, technical institutes, and industrial education centers."

Session Laws 1987, c. 578, ss. 1 and 2, effective January 1, 1988, substituted "Chapter 108A, Article 2, Part 6" for "Chapter 108, Article 2, Part 5" in paragraph (1)c, and added paragraph (1)r.

Session Laws 1987, c. 856, s. 12 deleted "the Lenox Baker Children's Hospital under Chapter 131, Article 14" preceding "and these same institutions" near the end of paragraph (1)j. For the effective date of this amendment, see the note above.

§ 105A-7. Notification of intention to set off and right to hearing.

(b) The contents of the written notification to the debtor (and the Department's copy) of the setoff claim shall clearly set forth the basis for the claim to the refund, the intention to apply the refund against the debt to the claimant agency, the debtor's opportunity to give written notice of intent to contest the validity of the claim within 30 days of the date of the mailing of the notice, the mailing address to which the application for a hearing must be sent, and the

§ 105A-2 is set out twice. See notes for effective dates.

fact that failure to apply for a hearing in writing within the 30-day period will be deemed a waiver of the opportunity to contest the claim causing final setoff by default.

(1979, c. 801, s. 94; 1987, c. 827, s. 15.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, deleted "before the claimant agency" following "contests the validity of the claim" in subsection (b).

§ 105A-8. Hearing procedure.

(a) A hearing on a contested claim, other than a claim of a constituent institution of The University of North Carolina, shall be conducted in accordance with Article 3 of Chapter 150B of the General Statutes. A hearing on a contested claim of a constituent institution of The University of North Carolina shall be conducted in accordance with administrative procedures approved by the Attorney General. Additionally, it shall be determined at the hearing whether the claimed sum asserted as due and owing is correct, and if not, an adjustment to the claim shall be made.

(1979, c. 801, s. 94; 1983, c. 419; 1987, c. 827, s. 16.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, rewrote the first two sentences of subsection (a).

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1987

I, Lacy H. Thornburg, Attorney General of North Carolina, do hereby certify that the foregoing 1987 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of Department of Justice of the State of North Carolina.

LACY H. THORNBURG

Attorney General of North Carolina