

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019**

**SESSION LAW 2019-169  
SENATE BILL 523**

AN ACT TO MAKE VARIOUS CLARIFYING AND ADMINISTRATIVE CHANGES TO  
THE REVENUE LAWS.

The General Assembly of North Carolina enacts:

**PART I. BUSINESS TAX CHANGES**

**SECTION 1.1.(a)** G.S. 105-154(d) reads as rewritten:

"(d) Payment of Tax on Behalf of Nonresident Owner or Partner. – If a business conducted in this State is owned by a nonresident individual or by a partnership having one or more nonresident members, the manager of the business shall report information concerning the earnings of the business in this State, the distributive share of the income of each nonresident owner or partner, and any other information required by the Secretary. The distributive share of the income of each nonresident partner includes any guaranteed payments made to the partner. The manager of the business shall pay with the return the tax on each nonresident owner or partner's share of the income computed at the rate levied on individuals under G.S. 105-153.7. The business may deduct the payment for each nonresident owner or partner from the owner or partner's distributive share of the income of the business in this State. If the nonresident partner is not an individual and the partner has executed an affirmation that the partner will pay the tax with its corporate, partnership, trust, or estate income tax return, the manager of the business is not required to pay the tax on the partner's share. In this case, the manager shall include a copy of the affirmation with the report required by this subsection. Notwithstanding the provisions of G.S. 105-241.7(b), the manager of the business may not request a refund of an overpayment made on behalf of a nonresident owner or partner if the manager of the business has previously filed the return and paid the tax due. The nonresident owner or partner may, on its own income tax return, request a refund of an overpayment made on its behalf by the manager of the business within the provisions of G.S. 105-241.6."

**SECTION 1.1.(b)** This section is effective for taxable years beginning on or after January 1, 2019, and applies to a request for refund filed on or after that date.

**PART II. PERSONAL INCOME TAX CHANGES**

**SECTION 2.1.(a)** G.S. 105-153.8(e) reads as rewritten:

"(e) Joint Returns. – A husband and wife whose adjusted gross income is determined on a joint federal return must file a single income tax return jointly if each spouse either is a resident of this State or has North Carolina taxable income and may file a single income tax return jointly if one spouse is not a resident and has no North Carolina taxable income. Except as otherwise provided in this Part, a wife and husband filing jointly are treated as one taxpayer for the purpose of determining the tax imposed by this Part. A husband and wife filing jointly are jointly and severally liable for the tax imposed by this Part reduced by the sum of all credits allowable including tax payments made by or on behalf of the husband and wife. However, if a spouse qualifies for relief of liability for federal tax ~~attributable to a substantial understatement by the other spouse~~ pursuant to section 6015 of the Code, that spouse is not liable for the corresponding tax imposed by this ~~Part attributable to the same substantial understatement by the other spouse.~~



Part. A wife and husband filing jointly have expressly agreed that if the amount of the payments made by them with respect to the taxes for which they are liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses jointly or, if either is deceased, to the survivor alone."

**SECTION 2.1.(b)** This section is effective for taxable years beginning on or after January 1, 2018.

### **PART III. SALES AND USE TAX CHANGES**

**SECTION 3.1.(a)** G.S. 105-164.3 reads as rewritten:

#### **"§ 105-164.3. Definitions.**

The following definitions apply in this Article:

(1) Advertising and promotional direct mail. – Printed material that meets the definition of "direct mail" and the primary purpose of which is to attract public attention to ~~a product, an item,~~ person, business, or organization, or to attempt to sell, popularize, or secure financial support for ~~a product, an item,~~ person, business, or organization. ~~As used in this subdivision, "product" means tangible personal property, digital property, or a service.~~

...

(1i) Bundled transaction. – A retail sale of two or more distinct and identifiable ~~products, items,~~ at least one of which is taxable and one of which is ~~exempt, nontaxable,~~ for one nonitemized price. The term does not apply to real property ~~and or~~ services to real property. ~~Products-Items~~ are not sold for one nonitemized price if an invoice or another sales document made available to the purchaser separately identifies the price of each ~~product, item.~~ A bundled transaction does not include the retail sale of any of the following:

- a. ~~A product~~ An item and any packaging ~~item~~ that accompanies the ~~product item~~ and is exempt under G.S. 105-164.13(23).
- b. A sale of two or more ~~products items~~ whose combined price varies, or is negotiable, depending on the ~~products items~~ the purchaser selects.
- c. A sale of ~~a product an item~~ accompanied by a transfer of another ~~product item~~ with no additional consideration.
- d. ~~A product~~ An item and the delivery or installation of the ~~product item.~~
- e. ~~A product~~ An item and any service necessary to complete the sale.

...

(2f) Certain digital property. – An item listed in this subdivision that is delivered or accessed electronically is not considered tangible personal property and would be taxable under this Article if sold in a tangible medium. The term does not include an information service. The items are:

- a. An audio work.
- b. An audiovisual work.
- c. A book, magazine, a newspaper, a newsletter, a report, or another publication.
- d. A photograph or a greeting card.

...

(4d) ~~Computer supply. – An item that is considered a "school computer supply" under the Streamlined Agreement.~~

(5) Consumer. – A person who stores, uses, or otherwise consumes in this State ~~tangible personal property, digital property, or a service~~ an item purchased or received from a retailer or supplier either within or without this State.

...

(6) Delivery charges. – Charges imposed by the retailer for preparation and delivery of ~~personal property or services~~ an item to a location designated by the consumer.

...

(9) Engaged in business. – Any of the following:

- a. 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, warehouse or storage place, or other place of business ~~for selling or delivering tangible personal property, digital property, or a service for storage, use, or consumption~~ in this State, or permanently or temporarily, directly or through a subsidiary, having any representative, agent, sales representative, or solicitor operating in this ~~State in the selling or delivering~~ State. 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 is immaterial.
- b. Maintaining in this State, either permanently or temporarily, directly or through a subsidiary, tangible personal property or certain digital property for the purpose of lease or rental.

...

(12) Gross sales. – The sum total of the sales price of all ~~retail~~ sales of tangible personal property, digital property, and services items.

...

(16a) Item. – Tangible personal property, certain digital property, or a service, unless the context requires otherwise.

...

(16e) Landscaping. A service that modifies the living elements of an area of land. Examples include the installation of trees, shrubs, or flowers on land; tree trimming; mowing; and the application of seed, mulch, pine straw, or fertilizer to an area of land. The term does not include services to trees, shrubs, flowers, ~~and or similar items~~ tangible personal property in pots or in buildings.

...

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

...

(33j) Remote sale. – A sale of ~~tangible personal property or digital property~~ an item ordered by mail, ~~by telephone, via the Internet, mobile phone application, or by another similar method, to a purchaser who is in this State at the time the order is remitted, from~~ method by a retailer who receives the order in another state and delivers the property item or makes it accessible to a person in this State or causes it the item to be delivered or made accessible to a person in this State State or performs a service sourced to this State. It is presumed that a resident of this State who ~~remits~~ makes an order was in this State at the time the order was ~~remitted~~ made.

...

(33l) Repair, maintenance, and installation services. – The term includes the activities listed in this subdivision and applies to tangible personal property, motor ~~vehicle, vehicles, certain~~ digital property, and real property. The term does not include ~~services-a service~~ used to fulfill a real property contract taxed in accordance with ~~G.S. 105-164.4H;G.S. 105-164.4H~~. The included activities are:

...

- d. To install, apply, connect, adjust, or set into position tangible personal property or certain digital property. The term includes floor refinishing and the installation of carpet, flooring, floor coverings, windows, doors, cabinets, countertops, and other installations where the item being installed may replace a similar existing item. The replacement of more than one of a like-kind item, such as replacing one or more windows, is repair, maintenance, and installation services. The term does not include an installation defined as a capital improvement under subdivision (2c)d. of this section and substantiated as a capital improvement under G.S. 105-164.4H(a1).
- e. To inspect or monitor property or install, apply, or connect tangible personal property or certain digital property on a motor vehicle or adjust a motor vehicle.

...

(35) Retailer. – Any of the following persons:

- a. A person engaged in business of making sales at retail, offering to make sales at retail, or soliciting sales at retail of ~~tangible personal property, digital property for storage, use, or consumption in this State, or services-items~~ sourced to this State. When the Secretary finds it necessary for the efficient administration of this Article to regard any sales representatives, solicitors, representatives, consignees, peddlers, or truckers as agents of the dealers, distributors, consignors, supervisors, employers, or persons under whom they operate or from whom they obtain the items sold by them regardless of whether they are making sales on their own behalf or on behalf of these 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.
- b. A person, other than a real property contractor, engaged in business of delivering, erecting, installing, or applying tangible personal property or certain digital property for use in this State.
- c. A person engaged in business of making a remote sale, if one of the conditions listed in G.S. 105-164.8(b) is met.
- d. A person, other than a facilitator, required to collect the State tax levied under this Article or the local taxes levied under Subchapter VIII of this Chapter and under Chapter 1096 of the 1967 Session Laws.

(36) Sale or selling. – The transfer for consideration of title, license to use or consume, or possession of tangible personal property or certain digital property or the performance for consideration of a service. The transfer or performance may be conditional or in any manner or by any means. The term applies to the following:

...

- c. A transaction in which the possession of the tangible personal property or certain digital property is transferred but the seller retains title or security for the payment of the consideration.
- ...
- (37) Sales price. – The total amount or consideration for which ~~tangible personal property, digital property, or services are an item~~ is sold, leased, or rented. The consideration may be in the form of cash, credit, property, or services. The sales price must be valued in money, regardless of whether it is received in money.
  - a. The term includes all of the following:
    - 1. The retailer's cost of the ~~property~~ item sold.
    - ...
- (37g) Secondary metals recycler. – A person that gathers and obtains ferrous metals, nonferrous metals, and ~~items~~ products that have served their original economic purpose and that converts them by processes, including sorting, cutting, classifying, cleaning, baling, wrapping, shredding, or shearing into a new or different product for sale consisting of prepared grades.
- ...
- (38b) Service contract. – A contract where the obligor under the contract agrees to maintain, monitor, inspect, repair, or provide another service included in the definition of repair, maintenance, and installation services to certain digital property, tangible personal property, or real property for a period of time or some other defined measure. The term does not include a single service included in repair, maintenance, or installation services, but does include a contract where the obligor may provide a service included in the definition of repair, maintenance, and installation services as a condition of the contract. The term includes a service contract for a pool, fish tank, or similar aquatic feature and a home warranty. Examples include a warranty agreement other than a manufacturer's warranty or dealer's warranty provided at no charge to the purchaser, an extended warranty agreement, a maintenance agreement, a repair agreement, or a similar agreement or contract.
- ...
- (44) Storage. – The keeping or retention in this State for any purpose, except sale in the regular course of business, of tangible personal property or certain digital property for any period of time purchased from a person in business.
- ...
- (45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement as amended as of ~~May 3, 2018~~ December 14, 2018.
- ...
- (48) Telecommunications service. – The electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes any transmission, conveyance, or routing in which a computer processing application is used to act on the form, code, or protocol of the content for purposes of the transmission, conveyance, or routing, regardless of whether it is referred to as voice-over Internet protocol or the Federal Communications Commission classifies it as enhanced or value added. The term does not include the following:
  - ...

- h. ~~Digital property that is delivered or accessed electronically, including an audio work, an audiovisual work, or any other item subject to tax under G.S. 105-164.4(a)(6b).~~ Certain digital property.
- (49) Use. – The exercise of any right, power, or dominion whatsoever over ~~tangible personal property, digital property, or a service-an item~~ by the purchaser of the ~~property or service-item~~. The term includes withdrawal from storage, distribution, installation, affixation to real or personal property, and exhaustion or consumption of the ~~property or service-item~~ by the owner or purchaser. The term does not include a sale of ~~tangible personal property, digital property, or a service-an item~~ in the regular course of business.
- ...
- (51) Wholesale merchant. – A person engaged in the business of any of the following:
- a. Making wholesale sales.
  - b. Buying or manufacturing ~~tangible personal property, digital property, or a service-items~~ and selling ~~it-them~~ to a registered ~~resident-person~~ or nonresident retail or wholesale merchant for resale.
  - c. Manufacturing, producing, processing, or blending any articles of commerce and maintaining a store, warehouse, or any other place that is separate and apart from the place of manufacture or production for the sale or distribution of the articles, other than bakery products, to another for the purpose of resale.
- (52) Wholesale sale. – A sale of ~~tangible personal property, digital property, or a service-an item~~ for the purpose of resale. The term includes a sale of certain digital property for reproduction into certain digital property or tangible personal property offered for sale. The term does not include a sale to a user or consumer not for resale or, in the case of certain digital property, not for reproduction and sale of the reproduced property."

**SECTION 3.1.(b)** G.S. 105-164.3(2f), as enacted by subsection (a) of this section, reads as rewritten:

- "(2f) Certain digital property. – An item listed in this subdivision that is delivered or accessed ~~electronically, electronically and that is not considered tangible personal property, and would be taxable under this Article if sold in a tangible medium-property.~~ The term does not include an information service. The items are:
- a. An audio work.
  - b. An audiovisual work.
  - c. A book, magazine, a newspaper, a newsletter, a report, or another publication.
  - d. A photograph or a greeting card."

**SECTION 3.1.(c)** Subsection (b) of this section becomes effective October 1, 2019, and applies to sales occurring on or after that date. The remainder of this section is effective when it becomes law. The Revisor of Statutes is authorized to renumber the subdivisions of G.S. 105-164.3 to ensure that the subdivisions are listed in alphabetical order and in a manner that reduces the current use of alphanumeric designations, to make conforming changes, and to reserve sufficient space to accommodate future additions to the statutory section.

**SECTION 3.2.** G.S. 105-164.4 reads as rewritten:

**"§ 105-164.4. Tax imposed on retailers and certain facilitators.**

(a) A privilege tax is imposed on a retailer engaged in business in the State at the percentage rates of the retailer's net taxable sales or gross receipts, listed in this subsection. The general rate of tax is four and three-quarters percent (4.75%). The percentage rates are as follows:

- (1) The general rate of tax applies to the ~~sales price of~~ following items sold at retail:
- a. ~~each item or~~ The sales price of each article of tangible personal property that is sold at retail and is not subject to tax under another subdivision in this section. ~~property that is not subject to tax under another subdivision in this section.~~ A sale of a freestanding appliance is a retail sale of tangible personal property.
  - b. The sales price of certain digital property. The tax applies regardless of whether the purchaser of the property has a right to use it permanently or to use it without making continued payments.
  - c. ~~This subdivision applies to the~~ The sales price of or gross receipts derived from repair, maintenance, and installation services to tangible personal property. This subdivision does not apply to repair, property or certain digital property, regardless of whether the tangible personal property or certain digital property is taxed under another subdivision in this section or is subject to a maximum tax under another subdivision in this section. Repair, maintenance, and installation services generally include any tangible personal property or certain digital property that becomes a part of or is applied to a purchaser's property. The use tax exemption in G.S. 105-164.27A(a3) may apply to these services. Repair, maintenance, and installation services for real property; these services are ~~property are~~ taxable under subdivision (16) of this subsection.
- (1a) The general rate applies to the sales price of each of the following items sold at retail, including all accessories attached to the item when it is delivered to the purchaser, ~~and to the sales price of or the gross receipts derived from repair, maintenance, and installation services for each of the following items. The items taxable under this subdivision are as follows:~~ purchaser:
- a. A manufactured home.
  - b. A modular home. The sale of a modular home to a modular homebuilder is considered a retail sale, no matter that the modular home may be used to fulfill a real property contract. A person who sells a modular home at retail is allowed a credit against the tax imposed by this subdivision for sales or use tax paid to another state on tangible personal property incorporated in the modular home. The retail sale of a modular home occurs when a modular home manufacturer sells a modular home to a modular homebuilder or directly to the end user of the modular home.
  - c. An aircraft. The maximum tax is two thousand five hundred dollars (\$2,500) per article. ~~The maximum tax does not apply to the sales price of or gross receipts derived from repair, maintenance, and installation services, but the use tax exemption in G.S. 105-164.27A(a3) may apply to these services.~~
  - d. A qualified jet engine.
- (1b) The rate of three percent (3%) applies to the sales price of each boat sold at retail, including all accessories attached to the boat when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars (\$1,500) per article. ~~The maximum tax does not apply to the sales price of or gross receipts derived from the sales price of or gross receipts derived from repair, maintenance, and installation services, but the use tax exemption in G.S. 105-164.27A(a3) may apply to these services.~~

...

- (6b) ~~The general rate applies to the sales price of digital property that is sold at retail and that is listed in this subdivision, is delivered or accessed electronically, is not considered tangible personal property, and would be taxable under this Article if sold in a tangible medium. The tax applies regardless of whether the purchaser of the item has a right to use it permanently or to use it without making continued payments. This subdivision applies to the sales price of or gross receipts derived from repair, maintenance, and installation services to digital property. The tax does not apply to a service that is taxed under another subdivision of this subsection or to an information service. The following property is subject to tax under this subdivision:~~
- a. ~~An audio work.~~
  - b. ~~An audiovisual work.~~
  - e. ~~A book, a magazine, a newspaper, a newsletter, a report, or another publication.~~
  - d. ~~A photograph or a greeting card.~~

...

- (16) The general rate applies to the sales price of or the gross receipts derived from repair, maintenance, and installation services for real property and generally includes any tangible personal property or certain digital property that becomes a part of or is applied to a purchaser's property. A mixed transaction contract and a real property contract are taxed in accordance with G.S. 105-164.4H."

**SECTION 3.3.(a)** G.S. 105-164.4B reads as rewritten:

**"§ 105-164.4B. Sourcing principles.**

(a) **General Principles.** – The following principles apply in determining where to source the sale of ~~a product~~ an item for the seller's purpose and do not alter the application of the tax imposed under G.S. 105-164.6. Except as otherwise provided in this section, a service is sourced where the purchaser can potentially first make use of the service. These principles apply regardless of the nature of the ~~product, item,~~ except as otherwise noted in this section:

- (1) When a purchaser receives ~~a product~~ an item at a business location of the seller, the sale is sourced to that business location.
- (2) When a purchaser or purchaser's donee receives ~~a product~~ an item at a location specified by the purchaser and the location is not a business location of the seller, the sale is sourced to the location where the purchaser or the purchaser's donee receives the ~~product, item.~~

...

(f) **Certain Digital Property.** – A purchaser receives certain digital property when the purchaser takes possession of the property or makes first use of the property, whichever comes first."

**SECTION 3.3.(b)** G.S. 105-164.4D(a) reads as rewritten:

"(a) **Tax Application.** – Tax applies to the sales price of a bundled transaction unless one of the following applies:

- (1) **Fifty percent (50%) test.** – All of the ~~products~~ items in the bundle are tangible personal property, the bundle includes one or more of the exempt ~~products~~ items listed in this subdivision, and the price of the taxable ~~products~~ items in the bundle does not exceed fifty percent (50%) of the price of the bundle:
  - a. Food exempt under G.S. 105-164.13B.
  - b. A drug exempt under G.S. 105-164.13(13).
  - c. Medical devices, equipment, or supplies exempt under G.S. 105-164.13(12).



- (2) Allocation. – The bundle includes a service, and the retailer determines an allocated price for each ~~product-item~~ in the bundle based on a reasonable allocation of revenue that is supported by the retailer's business records kept in the ordinary course of business. In this circumstance, tax applies to the allocated price of each taxable ~~product-item~~ in the bundle.
- (3) Ten percent (10%) test. – The price of the taxable ~~products-items~~ in the bundle does not exceed ten percent (10%) of the price of the bundle, and no other subdivision in this subsection applies.

...."

**SECTION 3.3.(c)** G.S. 105-164.4G(e) reads as rewritten:

"(e) Exceptions. – The tax imposed by this section does not apply to the following:

...

- (2) Tuition, registration fees, or charges to attend instructional seminars, conferences, or workshops for educational ~~purposes-purposes,~~ notwithstanding that entertainment activity may be offered as an ancillary purpose of an event listed in this subdivision.

...

- (6) An amount paid for the right to participate, other than to be a spectator, in the following activities:
  - a. Rock climbing, skating, skiing, snowboarding, sledding, zip lining, or other similar activities.
  - b. Instruction classes related to the ~~items-activities~~ included in sub-subdivision a. of this subdivision.
  - c. Riding on a carriage, boat, train, plane, horse, chairlift, or other similar rides.
  - d. Amusement rides, including a waterslide."

**SECTION 3.3.(d)** G.S. 105-164.4H reads as rewritten:

**"§ 105-164.4H. Real property contract.**

(a) Applicability. – A real property contractor is the consumer of the tangible personal property or certain digital property that the real property contractor purchases, installs, or applies for others to fulfill a real property contract and that becomes part of real property or used to fulfill the contract. A retailer engaged in business in the State shall collect tax on the sales price of ~~the tangible personal property, digital property, or service-an item~~ sold at retail to a real property contractor unless a statutory exemption in G.S. 105-164.13 or G.S. 105-164.13E applies. Where a real property contractor purchases tangible personal property or certain digital property for storage, use, or consumption in this State, or a service sourced to this State, and the tax due is not paid at the time of purchase, the provisions of G.S. 105-164.6 apply except as provided in subsection (b) of this section.

...

(b) Retailer-Contractor. – This section applies to a retailer-contractor as follows:

- (1) Acting as a real property contractor. – A retailer-contractor acts as a real property contractor when it contracts to perform a real property contract. A retailer-contractor that purchases tangible personal property or certain digital property to be installed or applied to real property to fulfill the contract may purchase those items exempt from tax under a certificate of exemption pursuant to G.S. 105-164.28 provided the retailer-contractor also purchases inventory ~~items~~ or services from the seller for resale. When the property is withdrawn from inventory and installed or applied to real property, use tax must be accrued and paid on the retailer-contractor's purchase price of the property. Property that the retailer-contractor withdraws from inventory for

use that does not become part of real property is also subject to the tax imposed by this Article.

- (2) Acting as a retailer. – A retailer-contractor is acting as a retailer when it makes a sale at retail.

...

- (d) Mixed Transaction Contract. – A mixed transaction contract is taxable as follows:
  - (1) If the allocated sales price of the taxable repair, maintenance, and installation services included in the contract is less than or equal to twenty-five percent (25%) of the contract price, then the repair, maintenance, and installation services portion of the contract, and the ~~tangible personal property, digital property, or service items~~ used to perform those services, are taxable as a real property contract in accordance with this section.
  - (2) If the allocated sales price of the taxable repair, maintenance, and installation services included in the contract is greater than twenty-five percent (25%) of the contract price, then sales and use tax applies to the sales price of or the gross receipts derived from the taxable repair, maintenance, and installation services portion of the contract. The person must determine an allocated price for the taxable repair, maintenance, and installation services in the contract based on a reasonable allocation of revenue that is supported by the person's business records kept in the ordinary course of business. Any purchase of tangible personal property or certain digital property to fulfill the real property contract is taxed in accordance with this section."

**SECTION 3.3.(e)** G.S. 105-164.6 reads as rewritten:

**"§ 105-164.6. Complementary use tax.**

(a) Tax. – An excise tax at the applicable rate and maximum tax, if any, set in G.S. 105-164.4 is imposed on the products listed below. The applicable rate is the rate and maximum tax, if any, that would apply to the sale of the product. A product is subject to tax under this section only if it is subject to tax under G.S. 105-164.4. following items if the item is subject to tax under G.S. 105-164.4:

- (1) Tangible personal property or digital property purchased, leased, or rented inside or outside this State for storage, use, or consumption in this State. This subdivision includes tangible personal property that becomes part of a building or another structure.
- (2) Tangible personal property or Certain digital property leased or rented purchased inside or outside this State for storage, use, or consumption in this State.
- (3) Services sourced to this State.

(b) Liability. – The tax imposed by this section is payable by the person who purchases, leases, or rents ~~tangible personal property or digital property or who purchases a service. the items listed in subdivision (a) of this section. If the property an item~~ purchased becomes a part of real property in the State, the real property contractor, the retailer-contractor, the subcontractor, the lessee, and the owner are jointly and severally liable for the tax, except as provided in G.S. 105-164.4H(a1) regarding receipt of an affidavit of capital improvement. The liability of a real property contractor, a retailer-contractor, a subcontractor, a lessee, or an owner who did not purchase the property item is satisfied by receipt of an affidavit from the purchaser certifying that the tax has been paid.

...

(f) Registration. – A person must obtain a certificate of registration in accordance with G.S. 105-164.29 under any of the following circumstances:

- (1) Before the person engages in business in this State selling or delivering ~~tangible personal property, digital property, or a service items~~ for storage, use, or consumption in this State.
- (2) If the person is a facilitator that is liable for tax under this Article.

...."

**SECTION 3.3.(f)** G.S. 105-164.6A(a) reads as rewritten:

"(a) Voluntary Collection Agreements. – The Secretary may enter into agreements with sellers pursuant to which the seller agrees to collect and remit on behalf of its customers State and local use taxes due on items ~~of tangible personal property, digital property, or services~~ the seller sells. For the purpose of this section, a seller is a person who is engaged in the business of selling ~~tangible personal property, digital property, or services~~ items for use in this State and who does not have sufficient nexus with this State to be required to collect use tax on the sales."

**SECTION 3.3.(g)** G.S. 105-164.7 reads as rewritten:

**"§ 105-164.7. Retailer or facilitator to collect sales tax from purchaser as trustee for State.**

The sales tax imposed by this Article is intended to be passed on to the purchaser of a taxable item ~~or service~~ and borne by the purchaser instead of by the retailer. A retailer must collect the tax due on an item ~~or service~~ when sold at retail. The requirements of this section apply to facilitators liable for tax under this Article. The tax is a debt from the purchaser to the retailer until paid and is recoverable at law by the retailer in the same manner as other debts. A retailer is considered to act as a trustee on behalf of the State when it collects tax from the purchaser on a taxable sale. The tax must be stated and charged separately on the invoices or other documents of the retailer given to the purchaser at the time of the sale except for either of the following:

- (1) Vending machine sales.
- (2) Where a retailer displays a statement indicating the sales price includes the tax."

**SECTION 3.3.(h)** G.S. 105-164.8(a)(2) reads as rewritten:

"(2) That the purchaser's order or the contract of sale is made or closed by acceptance or approval outside this State, or before any tangible personal property or certain digital property that is part of the order or contract enters this State."

**SECTION 3.3.(i)** G.S. 105-164.11B reads as rewritten:

**"§ 105-164.11B. Recover sales tax paid.**

A retailer who pays sales and use tax on ~~property or services~~ an item that is separately stated on an invoice or similar billing document given to the retailer at the time of sale and subsequently resells the ~~property or services~~ item at retail, without the ~~property or service~~ item being used by the retailer, may recover the sales or use tax originally paid to a seller as provided in this section. A retailer entitled to recover tax under this section may reduce taxable receipts by the taxable amount of the purchase price of the ~~property or services~~ item resold for the period in which the retail sale occurs. A recovery of tax allowed under this section is not an overpayment of tax and, where such recovery is taken, a refund of the tax originally paid ~~should~~ may not be requested from the seller pursuant to the authority under G.S. 105-164.11. Any amount for tax recovered under this section in excess of tax due for a reporting period under this Article is not subject to refund. Any tax recovered under this section may be carried forward to a subsequent reporting period and taken as an adjustment to taxable receipts. The records of the retailer must clearly reflect and support the adjustment to taxable receipts for the period in which the adjustment is made."

**SECTION 3.3.(j)** G.S. 105-164.12C reads as rewritten:

**"§ 105-164.12C. Items given away by merchants.**

If a retailer engaged in the business of selling prepared food ~~and or~~ drink for immediate or on-premises consumption also gives prepared food or drink to its patrons or employees free of charge, for the purpose of this Article, the ~~property~~ food or drink given away is considered sold

along with the ~~property~~ food or drink sold. If a retailer gives an item of inventory to a customer free of charge on the condition that the customer purchase a similar or related ~~property, item,~~ the item given away is considered sold along with the item sold. In all other cases, ~~property items~~ given away or used by any retailer or wholesale merchant ~~is~~ are not considered sold, whether or not the retailer or wholesale merchant recovers its cost of the ~~property items~~ from sales of other ~~property items.~~"

**SECTION 3.3.(k)** G.S. 105-164.13 reads as rewritten:

**"§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following ~~tangible personal property, digital property, and services items~~ are specifically exempted from the tax imposed by this Article:

Agricultural Group.

...  
(2b) ~~Tangible personal property, digital property, and services items~~ for a farmer may be exempt as provided in G.S. 105-164.13E.

...  
(5e) Sales of mill machinery or mill machinery parts or accessories to any of the persons listed in this subdivision. For purposes of this subdivision, the term "accessories" does not include electricity. The persons are:  
a. A manufacturing industry or plant. A manufacturing industry or plant does not include (i) a delicatessen, cafe, cafeteria, restaurant, or another similar retailer that is principally engaged in the retail sale of ~~foods~~ food prepared by it for consumption on or off its premises or (ii) a production company.

...  
Medical Group.

(12) Sales of any of the ~~following items:~~ following:  
a. Prosthetic devices for human use.  
b. Mobility enhancing equipment sold on a prescription.  
c. Durable medical equipment sold on prescription.  
d. Durable medical supplies sold on prescription.  
e. Human blood, including whole, plasma, and derivatives.  
f. Human tissue, eyes, DNA, or an organ.

...  
(23) Sales of the following ~~packaging items:~~ packaging:  
a. 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.  
b. A container that is used as packaging by the owner of the container or another person to enclose tangible personal property for delivery to a purchaser of the property and is required to be returned to its owner for reuse.

(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.

...

(26b) Food, prepared food, soft drinks, candy, and other ~~items of~~ tangible personal property sold not for profit for or at an event that is sponsored by an elementary or secondary school when the net proceeds of the sales will be given or contributed to the school or to a nonprofit charitable organization, one of whose purposes is to serve as a conduit through which the net proceeds will flow to the school. For purposes of this exemption, the term "school" is an entity regulated under Chapter 115C of the General Statutes.

...

(38) Food and other ~~items~~ products lawfully purchased under the Supplemental Nutrition Assistance Program, 7 U.S.C. § 2011, and supplemental foods lawfully purchased with a food instrument issued under the Special Supplemental Nutrition Program, 42 U.S.C. § 1786, and supplemental foods purchased for direct distribution by the Special Supplemental Nutrition Program.

...

(43b) Computer software or certain digital property that becomes a component part of other computer software or certain digital property that is offered for sale or of a service that is offered for sale.

...

(61a) The sales price of or the gross receipts derived from the repair, maintenance, and installation services and service contracts listed in this subdivision are exempt from tax. Except as otherwise provided in this subdivision, ~~property and services~~ an item used to fulfill either a ~~repair, maintenance, or~~ and installation ~~service~~ services or a ~~service contract~~ contracts exempt from tax under this subdivision ~~are~~ is taxable. The list of repair, maintenance, and installation services and service contracts exempt from tax under this subdivision is as follows:

a. A service and a service contract for an item exempt from tax under this Article, except as otherwise provided in this subdivision. ~~Property and services~~ Items used to fulfill a service or service contract exempt under this sub-subdivision are exempt from tax under this Article. This exemption does not apply to water for a pool, fish tank, or similar aquatic feature or to a motor vehicle, except as provided under subdivision (62a) of this section and fees under sub-subdivision b. of this subdivision.

...

c. ~~Services~~ A service performed for a person by a related member.

...

e. ~~Services~~ A service on roads, driveways, parking lots, and sidewalks.

f. Removal of waste, trash, debris, grease, snow, and other similar ~~items~~ tangible personal property from property, other than a motor vehicle. The exemption applies to a household and or a commercial trash collection and removal ~~services~~ service. The exemption applies to the removal of septage from property, including motor vehicles, but does not include removal of septage from portable toilets.

...

- i. Pest control service. For purposes of this exemption, the term "pest control service" means the application of pesticides to real property.
- j. ~~Moving services.~~ service. For purposes of this exemption, the term "moving ~~services~~" service" means a service for hire to transport or relocate a person's existing belongings to or from any destination.
- k. Self-service car ~~washes and vacuums.~~ wash or vacuum.
- ...
- n. ~~Funeral-related services, including services~~ service, including a service for the burial of remains. This exemption does not apply to the sale of tangible personal property, such as caskets, headstones, and monuments.
- o. ~~Services~~ A service performed on an animal, such as hoof shoeing and microchipping a pet.
- p. A security or similar monitoring contract for real property. The exemption provided in this subdivision does not apply to charges for repair, maintenance, and installation services to repair security, alarm, and other similar monitoring systems for real property.
- ...
- (61b) ~~Tangible personal property, digital property, and services~~ Items purchased for resale under an exemption certificate in accordance with G.S. 105-164.28 or under a direct pay certificate in accordance with G.S. 105-164.27A.
- ...
- (62) ~~An item or item, including repair, maintenance, and installation services~~ services, purchased or used to fulfill a service contract taxable under this Article if the purchaser of the contract is not charged for the item or services. item. This exemption does not apply to the purchase of tangible personal property or certain digital property used to fulfill a service contract for real property where the charge being covered would otherwise be subject to tax as a real property contract. For purposes of this exemption, the term "item" does not include a tool, equipment, supply, or similar tangible personal property that is not deemed to be a component or repair part of the tangible personal property, real property, or certain digital property for which a service contract is sold to a purchaser.
- ...
- (63) Food and prepared food to be provided to a person entitled to the food and prepared food under a prepaid meal plan subject to tax under G.S. 105-164.4(a)(12). This exemption applies to packaging ~~items~~ including wrapping paper, labels, plastic bags, cartons, packages and containers, paper cups, napkins and drinking straws, and like articles that meet all of the following requirements:
  - a. Used for packaging, shipment, or delivery of the food and prepared food.
  - b. Constitute a part of the sale of the food and prepared food.
  - c. Delivered with the food and prepared food.
- ...
- (65) This subdivision expires January 1, 2020. Sales of the following to a professional motorsports racing team or a related member of a team for use in competition in a sanctioned race series:
  - a. The sale, lease, or rental of an engine.
  - b. The sales price of or gross receipts derived from a service contract on, or repair, maintenance, and installation services for, a transmission, an

engine, rear-end gears, and any ~~other item~~ tangible personal property that is purchased, leased, or rented and that is exempt from tax under this subdivision or that is allowed a sales tax refund under G.S. 105-164.14A(a)(5).

- c. The gross receipts derived from an agreement to provide an engine to a professional motorsports racing team or related member of a team for use in competition in a sanctioned race series, where such agreement does not meet the definition of a "service contract" as defined in G.S. 105-164.3 but may meet the definition of the term "lease or rental" as defined in G.S. 105-164.3.

...

(71) Sales of items to the North Carolina Life and Health Insurance Guaranty Association."

**SECTION 3.3.(l)** G.S. 105-164.13E(a) reads as rewritten:

"(a) Exemption. – A qualifying farmer is a person who has an annual income from farming operations for the preceding taxable year of ten thousand dollars (\$10,000) or more or who has an average annual income from farming operations for the three preceding taxable years of ten thousand dollars (\$10,000) or more. For purposes of this section, the term "income from farming operations" means sales plus any other amounts treated as gross income under the Code from farming operations. A qualifying farmer includes a dairy operator, a poultry farmer, an egg producer, and a livestock farmer, a farmer of crops, a farmer of an aquatic species, as defined in G.S. 106-758, and a person who boards horses. A qualifying farmer may apply to the Secretary for an exemption certificate number under G.S. 105-164.28A. The exemption certificate expires when a person fails to meet the income threshold for three consecutive taxable years or ceases to engage in farming operations, whichever comes first.

Except as otherwise provided in this section, the items exempt under this section must be purchased by a qualifying farmer or conditional farmer and used by the qualifying or conditional farmer primarily in farming operations. For purposes of this section, an item is used by a farmer for farming operations if it is used for the planting, cultivating, harvesting, or curing of farm crops, in the production of dairy products, eggs, or animals, or by a person who boards horses. ~~The following tangible personal property and services items~~ that may be exempt from sales and use tax under this section are as follows:are:

...

- (6) Any of the following substances when purchased for use on animals or plants, as appropriate, held or produced for commercial ~~purposes. This exemption does not apply to any equipment or devices used to administer, release, apply, or otherwise dispense these substances:~~ purposes:

- a. Remedies, vaccines, medications, litter materials, and feeds for animals.
- b. Rodenticides, insecticides, herbicides, fungicides, and pesticides.
- c. Defoliant for use on cotton or other crops.
- d. Plant growth inhibitors, regulators, or stimulators, including systemic and contact or other sucker control agents for tobacco and other crops.
- e. Semen.

...."

**SECTION 3.3.(m)** G.S. 105-164.13E(b)(3)a. reads as rewritten:

- "a. Documents showing that, but for the disaster, the person would have earned ten thousand dollars (\$10,000) or more in gross sales for the year in which the disaster occurred."

**SECTION 3.3.(n)** G.S. 105-164.14(a) reads as rewritten:

"(a) Interstate Carriers. – An interstate carrier is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on the purchase in this State of railway cars and locomotives, and fuel, lubricants, repair parts, accessories, service contracts, and repair, maintenance, and installation services for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. An "interstate carrier" is a person who is engaged in transporting persons or property in interstate commerce for compensation. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following these periods, an application for refund may be made.

An applicant for refund shall furnish the following information and any proof of the information required by the Secretary:

- ...
- (2) The purchase price of the taxable ~~items~~ tangible personal property and services listed in subdivision (1) of this subsection. For purposes of this subdivision, the term "taxable" is based on the imposition of tax on the ~~items~~ tangible personal property and services in the State.
- ...

For each applicant, the Secretary shall compute the amount to be refunded as follows. First, the Secretary shall determine the mileage ratio. The numerator of the mileage ratio is the number of miles the applicant operated all motor vehicles, railroad cars, locomotives, and airplanes in this State during the refund period. The denominator of the mileage ratio is the number of miles the applicant operated all motor vehicles, railroad cars, locomotives, and airplanes both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the ~~items~~ tangible personal property and services identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period."

**SECTION 3.3.(o)** G.S. 105-164.15A(a) reads as rewritten:

"(a) General Rate Items. – The effective date of a tax change for ~~tangible personal property, digital property, or services~~ items taxable under this Article is administered as follows:

- (1) For a taxable item that is provided and billed on a monthly or other periodic basis:
- a. A new tax or a tax rate increase applies to the first billing period that is at least 30 days after enactment and that starts on or after the effective date.
- b. A tax repeal or a tax rate decrease applies to bills rendered on or after the effective date.

...."

**SECTION 3.3.(p)** G.S. 105-164.16 reads as rewritten:

**"§ 105-164.16. Returns and payment of taxes.**

(a) General. – Sales and use taxes are payable when a return is due. A return is due quarterly or monthly as specified in this section. A return must be filed with the Secretary on a form prescribed by the Secretary and in the manner required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

A sales tax return must state 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. A use tax return must state the purchase price of ~~tangible personal property, digital~~



~~property, or services items~~ that were purchased or received during the reporting period and are subject to tax under G.S. 105-164.6, the amount of tax due, and any other information required by the Secretary. Returns that do not contain the required information will not be accepted. When an unacceptable return is submitted, the Secretary will require a corrected return to be filed.

...

(d) Use Tax on Out-of-State Purchases. – Use tax payable by an individual who purchases ~~the items listed in this subsection~~ an item, other than a boat or aircraft, outside the State for a nonbusiness purpose is due on an annual basis. For an individual who is not required to file an individual income tax return under Part 2 of Article 4 of this Chapter, the annual reporting period ends on the last day of the calendar year and a use tax return is due by the following April 15. For an individual who is required to file an individual income tax return, the annual reporting period ends on the last day of the individual's income tax year, and the use tax must be paid on the income tax return as provided in G.S. 105-269.14. ~~The items are:~~

- ~~(1) Tangible personal property other than a boat or an aircraft.~~
- ~~(2) Digital property.~~
- ~~(3) A service.~~

...."

**SECTION 3.3.(q)** G.S. 105-164.26 reads as rewritten:

**"§ 105-164.26. Presumption that sales are taxable.**

For the purpose of the proper administration of this Article and to prevent evasion of the retail sales tax, the following presumptions apply:

- ...
- (4) That certain digital property sold for delivery or access in this State is sold for storage, use, or consumption in this State.

...."

**SECTION 3.3.(r)** G.S. 105-164.27A reads as rewritten:

**"§ 105-164.27A. Direct pay permit.**

(a) General. – A general direct pay permit authorizes its holder to purchase ~~certain tangible personal property, digital property, or service items~~ without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the permit holder. A general direct pay permit may not be used for purposes identified in subsections (a1), (a2), (a3), or (b) of this section. A person who purchases an item under a direct pay permit issued under this subsection is liable for use tax due on the purchase. The tax is payable when the property is placed in use or the service is received. A direct pay permit issued under this subsection does not apply to taxes imposed under G.S. 105-164.4 on sales of electricity, piped natural gas, video programming, spirituous liquor, or the gross receipts derived from rentals of accommodations.

A person who purchases an item for storage, use, or consumption in this State whose tax status cannot be determined at the time of the purchase because of one of the reasons listed below may apply to the Secretary for a general direct pay permit:

- (1) The place of business where the item will be stored, used, or consumed in the State is not known at the time of the purchase and a different tax consequence applies depending on where the item is used in the State.
- (2) The manner in which the item will be stored, used, or consumed in the State is not known at the time of the purchase and one or more of the potential uses is taxable but others are not taxable in the State.

...

(a3) Boat and Aircraft. – A direct pay permit issued under this subsection authorizes its holder to purchase tangible personal property, certain digital property, or repair, maintenance, and installation services for a boat, an aircraft, or a qualified jet engine without paying tax to the seller and authorizes the seller to not collect any tax on the ~~item or services~~ purchased items from the permit holder. A person who purchases the ~~property or services~~ tangible personal property,

certain digital property, or repair, maintenance, and installation services under a direct pay permit must file a return and pay the tax due to the Secretary in accordance with G.S. 105-164.16. A permit holder is allowed a use tax exemption on one or more of the following: (i) the installation charges that are a part of the sales price of tangible personal property or certain digital property purchased by the permit holder for a boat, an aircraft, or a qualified jet engine, provided the installation charges are separately stated and identified as such on the invoice or other documentation given to the permit holder at the time of the sale and (ii) the sales price of or gross receipts derived from repair, maintenance, and installation services provided for a ~~boat, an aircraft, or a qualified jet engine.~~ boat or an aircraft.

In lieu of purchasing under a direct pay permit pursuant to this subsection, a purchaser may elect to have the seller collect and remit the tax due on behalf of the purchaser. Where the purchaser elects for the seller to collect and remit the tax, an invoice given to the purchaser bearing the proper amount of tax on a retail transaction extinguishes the purchaser's liability for the tax on the transaction. Where a seller cannot or does not separately state installation charges that are a part of the sales price of tangible personal property or certain digital property for a boat, an aircraft, or a qualified jet engine on the invoice or other documentation given to the purchaser at the time of the sale, tax is due on the total purchase price.

The amount of the use tax exemption is the amount of the installation charges and the sales price of or gross receipts derived from the repair, maintenance, and installation services that exceed twenty-five thousand dollars (\$25,000).

...."

**SECTION 3.3.(s)** G.S. 105-164.42I(c) reads as rewritten:

"(c) **Liability.** – A seller may contract with a certified service provider to collect and remit sales and use taxes payable to the State on sales made by the seller. A certified service provider with whom a seller contracts is the agent of the seller. As the seller's agent, the certified service provider, rather than the seller, is liable for sales and use taxes due this State on all sales transactions the certified service provider processes for the seller unless the seller misrepresents the type of ~~products-items~~ it sells or commits fraud. A seller that misrepresents the type of ~~products-items~~ it sells or commits fraud is liable for taxes not collected as a result of the misrepresentation or fraud."

**SECTION 3.3.(t)** G.S. 105-467(b) reads as rewritten:

"(b) **Exemptions and Refunds.** – The State exemptions and exclusions contained in Article 5 of Subchapter I of this Chapter, except for the exemption for food in G.S. 105-164.13B, apply to the local sales and use tax authorized to be levied and imposed under this Article. The State refund provisions contained in G.S. 105-164.14 and G.S. 105-164.14A apply to the local sales and use tax authorized to be levied and imposed under this Article. A refund of an excessive or erroneous State sales tax collection allowed under G.S. 105-164.11 and a refund of State sales tax paid on a rescinded sale or cancelled service contract under G.S. 105-164.11A apply to the local sales and use tax authorized to be levied and imposed under this Article. The aggregate annual local refund amount allowed an entity under G.S. 105-164.14(b) for the State's fiscal year may not exceed thirteen million three hundred thousand dollars (\$13,300,000).

Except as provided in this subsection, a taxing county may not allow an exemption, exclusion, or refund that is not allowed under the State sales and use tax. A local school administrative unit and a joint agency created by interlocal agreement among local school administrative units pursuant to G.S. 160A-462 to jointly purchase food service-related materials, supplies, and equipment on their behalf is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of ~~tangible personal property and services.~~ items. Sales and use tax liability indirectly incurred by the entity as part of a real property contract for real property that is owned or leased by the entity and is a capital improvement for use by the entity is considered a sales or use tax liability incurred on direct purchases by the entity for the purpose of this subsection. The refund allowed under this subsection does not apply to purchases of electricity,

telecommunications service, ancillary service, piped natural gas, video programming, or a prepaid meal plan. A request for a refund is due in the same time and manner as provided in G.S. 105-164.14(c). Refunds applied for more than three years after the due date are barred."

**SECTION 3.3.(u)** G.S. 105-468.1 reads as rewritten:

**"§ 105-468.1. Certain building materials exempt from sales and use taxes.**

The provisions of this Article shall not be applicable with respect to any ~~tangible personal property or digital property items~~ purchased for the purpose of fulfilling a real property contract for a capital improvement entered into or awarded, or entered into or awarded pursuant to any bid made, before the effective date of the tax imposed by a taxing county when, absent the provisions of this section, ~~such property the items~~ would otherwise be subject to tax under the provisions of this Article."

**SECTION 3.4.(a)** G.S. 105-164.4(a) reads as rewritten:

**"§ 105-164.4. Tax imposed on retailers and certain facilitators.**

(a) A privilege tax is imposed on a retailer engaged in business in the State at the percentage rates of the retailer's net taxable sales or gross receipts, listed in this subsection. The general rate of tax is four and three-quarters percent (4.75%). The percentage rates are as follows:

...

(4c) The combined general rate applies to the gross receipts derived from providing telecommunications service and ancillary ~~service.~~ service, including any separately stated charges billed to a customer for repair, maintenance, and installation services or a contribution in aid of construction. A person who provides telecommunications service or ancillary service is considered a retailer under this Article. These services are taxed in accordance with G.S. 105-164.4C.

...

(6) The combined general rate applies to the gross receipts derived from providing video programming to a subscriber in this ~~State.~~ State, including any separately stated charges billed to a customer for repair, maintenance, and installation services or a contribution in aid of construction. A cable service provider, a direct-to-home satellite service provider, and any other person engaged in the business of providing video programming is considered a retailer under this Article.

...

(9) The combined general rate applies to the gross receipts derived from sales of electricity and piped natural ~~gas.~~ gas, including any separately stated charges billed to a customer for repair, maintenance, and installation services or a contribution in aid of construction.

...."

**SECTION 3.4.(b)** G.S. 105-164.3(2c) reads as rewritten:

"(2c) Capital improvement. – One or more of the following:

...

c. Installation of ~~utilities~~ a transmission, distribution, or other network asset on utility owned land, right of way, or easement, land owned by a service provider or on a right-of-way or easement in favor of a service provider, notwithstanding that charges for such may be any separately stated charges billed to a customer for repair, maintenance, and installation services or a contribution in aid of construction are included in the gross receipts derived from services subject to the combined general rate under G.S. 105-164.4. For purposes of this sub-subdivision, the term "service provider" means a person, including a governmental entity, who provides any of the services listed in this

sub-subdivision, and the term "governmental entity" means a State agency, the federal government, or a governmental entity listed in G.S. 105-164.14(c). The services are:

1. Telecommunications service or ancillary service.
2. Video programming.
3. Electricity or piped natural gas.
4. Water or sewer service.

...."

**SECTION 3.4.(c)** G.S. 105-164.13(61a), as amended by Section 3.3(k) of this act, reads as rewritten:

"(61a) The sales price of or the gross receipts derived from the repair, maintenance, and installation services and service contracts listed in this subdivision are exempt from tax. Except as otherwise provided in this subdivision, an item used to fulfill either repair, maintenance, and installation services or service contracts exempt from tax under this subdivision is taxable. The list of repair, maintenance, and installation services and service contracts exempt from tax under this subdivision is as follows:

...

1. ~~A~~ Services performed on a transmission, distribution, or other network asset ~~contained on utility-owned land, right-of-way, or easement on land owned by a service provider or on a right-of-way or an easement in favor of a service provider.~~ This exemption does not apply to charges billed to a customer for repair, maintenance, and installation services or a contribution in aid of construction and are included in the gross receipts derived from items subject to the combined general rate under G.S. 105-164.4. The terms "service provider" and "governmental entity" have the same meaning as defined in G.S. 105-164.3(2c).

...."

**SECTION 3.5.(a)** G.S. 105-164.3 is amended by adding two new subdivisions to read:

"(46d) Taxing district. – A county or any other district, by or for which ad valorem taxes or sales taxes are levied, excluding the State.

(46e) Taxing area. – Any of the following specific geographic areas:

- a. A street address.
- b. The area within a nine-digit zip code.
- c. The area within a five-digit zip code."

**SECTION 3.5.(b)** G.S. 105-164.42L reads as rewritten:

"§ **105-164.42L. Liability relief for erroneous information or insufficient notice by Department.**

(a) Boundary and Rate Databases. – The Secretary may develop databases that provide information on the boundaries of taxing ~~jurisdictions~~ districts and the tax rates applicable to those taxing ~~jurisdictions~~ districts. The databases may assign the proper tax rate and taxing district to each taxing area within the State. If more than one tax rate applies within a specific taxing area, the Secretary shall assign the lowest combined tax rate imposed within the specific taxing area. If the Secretary cannot determine the appropriate tax rate for a street address, the Secretary shall assign the lowest combined tax rate imposed within the street address's nine-digit zip code. But, if the Secretary cannot determine the appropriate tax rate for a street address's nine-digit zip code, the Secretary shall assign the lowest combined tax rate imposed within the street address's five-digit zip code.

A person who relies on the information provided in these databases is not liable for underpayments of tax attributable to erroneous information provided by the Secretary in those databases until 10 business days after the date of notification by the Secretary.

(b) Taxability Matrix. – The Secretary may develop a taxability matrix that provides information on the taxability of certain items or certain tax administration practices. A person who relies on the information provided in the taxability matrix is not liable for underpayments of tax attributable to erroneous information provided by the Secretary in the taxability matrix until 10 business days after the date of notification by the Secretary.

(c) Rate Changes. – A retailer is not liable for an underpayment of tax attributable to a rate change when the State fails to provide for at least 30 days between the enactment of the rate change and the effective date of the rate change if the conditions of this subsection are satisfied. However, if the State establishes the retailer fraudulently failed to collect tax at the new rate or solicited customers based on the immediately preceding effective rate, this liability relief does not apply. Both of the following conditions must be satisfied for liability relief:

- (1) The retailer collected tax at the immediately preceding rate.
- (2) The retailer's failure to collect at the newly effective rate does not extend beyond 30 days after the date of enactment of the new rate or the effective date applicable under G.S. 105-164.15A."

**SECTION 3.6.** G.S. 105-244.3 reads as rewritten:

**"§ 105-244.3. Sales tax base expansion protection act.**

(a) Grace Period. – The Department shall take no action to assess any tax due for a filing period beginning on or after March 1, 2016, and ending prior to January 1, 2019, if one or more of the conditions of this subsection apply and the retailer did not receive specific written advice from the Secretary for the transactions at issue for the laws in effect for the applicable periods. Except as otherwise provided, this subsection also applies to use tax liability imposed on a purchaser under G.S. 105-164.6. The conditions are as follows:

- (1) A retailer failed to charge sales tax due on separately stated installation charges that are part of the sales price of tangible personal property or certain digital property sold at retail.
- (2) A person failed to properly classify themselves as a retailer in retail trade for the period beginning March 1, 2016, and ending December 31, 2016, and did not charge sales tax on all retail transactions but rather treated some transactions as real property contracts in error for sales and use tax purposes. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill a transaction erroneously treated as a real property contract.
- (3) A person treated a transaction as a real property contract in error and did not collect sales tax on the transaction as a retail sale. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill a transaction erroneously treated as a real property contract.
- ...
- (8) A person failed to collect sales tax on the taxable portion of a mixed service contract that exceeds ten percent (10%) for a transaction on or after January 1, 2017, and prior to January 1, 2019. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill a mixed contract.
- (8a) A person failed to collect sales tax on the taxable portion of a mixed transaction contract that exceeds twenty-five percent (25%) for a transaction on or after January 1, 2017, and prior to January 1, 2019. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill a mixed transaction contract.
- ...

- (9) A person treats a transaction as a real property contract for remodeling instead of the retail sale of repair, maintenance, and installation services sold at retail prior to January 1, 2019. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill the transaction.
  - (10) A person failed to collect sales tax on repair, maintenance, and installation services for tangible personal property, motor vehicles, ~~and or~~ certain digital property.
- (b) Limitations. – This section does not prohibit the following assessments:
- (1) The assessment of tax collected by a person and not remitted to the Department.
  - (2) The assessment of tax due on an amount included in the definition of sales price where a retailer failed to charge or remit the tax, except as allowed under subsection (a) of this section.
  - (3) ~~The assessment of use tax on purchases as provided in subsection (a) of this section."~~

**SECTION 3.7.** G.S. 105-244.4(a) reads as rewritten:

"(a) Reduction – The Secretary may reduce an assessment against a taxpayer who requests relief for State and local sales and use taxes in the amount as provided in this section and waive any penalties imposed as part of the assessment when the assessment is the result of an audit of the taxpayer by the Department and all of the following apply:

- (1) The taxpayer remitted to the Department during the period under audit all of the sales and use taxes it collected during ~~the audit period~~ that period.
- (2) The taxpayer had not been informed by the Department in a prior audit to collect sales and use taxes in the circumstance that is the basis of the assessment, as reflected in the written audit comments of the prior audit.
- (3) The taxpayer had not requested and received from the Department a private letter ruling advising to collect sales and use taxes in the circumstance that is the basis of the assessment.
- (4) The assessment is based on the incorrect application of one or both of the following areas of the sales and use tax statutes:
  - a. The failure to collect sales tax on separately stated linen charges where the linens are furnished by a facilitator, rental agent, or other person and the charges are part of the gross receipts derived from the rental of the accommodation taxed in accordance with G.S. 105-164.4F.
  - b. The failure to pay sales or use tax to the lessor on the rental of the linens used by a facilitator, rental agent, or other person in providing the rental of an accommodation taxed in accordance with G.S. 105-164.4F where the facilitator, rental agent, or other person issued a certificate of exemption or the required data elements per G.S. 105-164.28 to the lessor."

**SECTION 3.8.(a)** G.S. 105-537(b) reads as rewritten:

"(b) Vote. – The board of county commissioners may direct the county board of elections to conduct an advisory referendum on the question of whether to levy a local sales and use tax in the county as provided in this Article. The election shall be held in accordance with the procedures of ~~G.S. 163A-1592~~ G.S. 163A-1592, except that the election shall not be held within one year from the date of the last preceding election under this section."

**SECTION 3.8.(b)** This section is effective when it becomes law and applies to elections held on or after July 1, 2019.

**SECTION 3.9.(a)** Sections 38.5(x) through 38.5(z) of S.L. 2018-5 are repealed.

**SECTION 3.9.(b)** Section 38.5(aa) of S.L. 2018-5 reads as rewritten:

**"SECTION 38.5.(aa)** Except as otherwise provided, this section is effective when it becomes law.

Subsection (a) of this section is effective retroactively to January 1, 2017. If the amendment to G.S. 105-164.3(20b), as enacted by subsection (a) of this section, increases sales and use tax liability, then it is effective when this section becomes law.

Subsection (g) of this section is effective retroactively to January 1, 2017, and applies to sales and purchases made on or after that date.

Subsection (k) of this section is effective retroactively to July 1, 2014. A person who paid sales and use tax for a return period ending prior to the date this section becomes law on an item exempt from sales and use tax pursuant to G.S. 105-164.13E, as amended by subsection (k) of this section, may apply to the Department of Revenue for a refund of any excess tax paid to the extent the refund is the result of the change in the law enacted by subsection (k) of this section. A request for a refund must be made on or before October 1, 2018. Notwithstanding G.S. 105-241.6, a request for a refund received after this date is barred and the provisions of G.S. 105-164.11 do not apply.

~~Subsections (x) and (y) of this section become effective January 1, 2020."~~

**SECTION 3.9.(c)** G.S. 105-164.3 reads as rewritten:

**"§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...  
( ) Property management contract. – A written contract obligating a person to provide five or more real property management services.

...  
( ) Real property management services. – Any of the following activities:  
a. Hiring and supervising employees for the real property.  
b. Providing a person to manage the real property.  
c. Receiving and applying revenues received from property owners or tenants of the real property.  
d. Providing repair, maintenance, and installation services to comply with obligations of a homeowners' association or a landlord under a lease, rental, or management agreement.  
e. Arranging for a third party to provide repair, maintenance, and installation services.  
f. Incurring and paying expenses for the management, repair, and maintenance of the real property.  
g. Handling administrative affairs for the real property.

( ) Real property manager. – A person that provides real property management services pursuant to a property management contract.

...."

**SECTION 3.9.(d)** G.S. 105-164.4(a)(16) reads as rewritten:

"(a) A privilege tax is imposed on a retailer engaged in business in the State at the percentage rates of the retailer's net taxable sales or gross receipts, listed in this subsection. The general rate of tax is four and three-quarters percent (4.75%). The percentage rates are as follows:

...  
(16) The general rate applies to the sales price of or the gross receipts derived from repair, maintenance, and installation services for real property and generally includes any tangible personal property or certain digital property that becomes a part of or is applied to a purchaser's property. A mixed transaction contract and a real property contract are taxed in accordance with G.S. 105-164.4H. A property management contract is taxable in accordance with G.S. 105-164.4K."

**SECTION 3.9.(e)** Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

**"§ 105-164.4K. Property management contracts.**

(a) Taxability of Services under a Property Management Contract. – Repair, maintenance, and installation services taxable under this Article and provided by a real property manager under a property management contract are subject to sales and use tax in the following circumstances:

- (1) Repair, maintenance, installation services provided by the real property manager for an additional charge.
- (2) The real property manager arranges for a third party to provide the repair, maintenance, and installation services and the real property manager imposes an additional contract amount or charge for the arranging of these services.
- (3) More than twenty-five percent (25%) of the time spent managing the real property for a billing or invoice period is attributable to repair, maintenance, and installation services taxable under this Article and not excluded by subsection (b) of this section. The tax applies to the sales price of or the gross receipts derived from the taxable repair, maintenance, and installation services portion of the property management contract. The real property manager must determine an allocated sales price for the repair, maintenance, and installation services portion of the property management contract based on a reasonable allocation of revenue that is supported by the person's business records kept in the ordinary course of business. The charges for the taxable repair, maintenance, and installation services must be separately stated on the invoice or similar billing document given to the customer at the time of the sale.

(b) Exclusions. – The tax imposed by this Article does not apply to the following repair, maintenance, and installation services if the services are provided by the real property manager pursuant to a property management contract:

- (1) To troubleshoot, identify, or attempt to identify the source of a problem for the purpose of determining what is needed to restore the real property to working order or good condition.
- (2) To inspect or monitor the real property, including the normal operation of all systems that are part of the real property.

(c) Substantiation. – Generally, repair, maintenance, and installation services are subject to tax in accordance with G.S. 105-164.4(a)(16), unless a person substantiates that the services are not taxable as real property management services provided under a property management contract in accordance with subsection (a)(3) of this section, excluded from tax in accordance with subsection (b) of this section, or not subject to tax. A real property manager may substantiate that no more than twenty-five percent (25%) of the time spent managing the real property for a billing or invoice period is attributable to repair, maintenance, and installation services taxable under this Article and not excluded by subsection (b) of this section. The substantiation must be based on a reasonable approximation of the real property management services provided and supported by the person's business records kept in the ordinary course of business. The substantiation must be contemporaneously provided for each billing or invoice period and maintained in the business records.

(d) Real Property Management Services. – This subsection applies when repair, maintenance, and installation services otherwise taxable under this Article are not subject to sales and use tax. A real property manager is the consumer of the items that the real property manager purchases, installs, applies, or otherwise uses to fulfill a property management contract. A retailer engaged in business in the State shall collect tax on the sales price of an item sold at retail to a real property manager unless a statutory exemption in G.S. 105-164.13 applies.



(e) Real Property Manager Acting as Retailer. – This subsection applies when repair, maintenance, and installation services provided by a real property manager are subject to sales and use tax under this section. A real property manager acts as a retailer and makes a sale at retail when it provides repair, maintenance, and installation services taxable under this section unless a statutory exemption in G.S. 105-164.13 applies.

(f) Grace Period. – The Department shall take no action to assess any tax due for a filing period beginning on or after January 1, 2019, and ending prior to January 1, 2021, if the retailer failed to collect sales tax on repair, maintenance, and installation services taxable under this section. This subsection does not apply if the retailer received specific written advice from the Secretary for the transactions at issue for the laws in effect for the applicable period. The limitations in G.S. 105-244.3 apply to this subsection."

**SECTION 3.9.(f)** G.S. 105-237.1(a) reads as rewritten:

"§ 105-237.1. **Compromise of liability.**

(a) Authority. – The Secretary may compromise a taxpayer's liability for a tax that is collectible under G.S. 105-241.22 when the Secretary determines that the compromise is in the best interest of the State and makes one or more of the following findings:

...

(8) The assessment is for sales tax the taxpayer failed to collect or use tax the taxpayer failed to pay on repair, maintenance, and installation services provided by a real property manager under a property management contract. The Secretary must determine that the taxpayer made a good-faith effort to comply with the sales and use tax laws. Absent fraud or other egregious activities, a taxpayer that substantiated the time spent managing real property for a billing or invoice period as provided under G.S. 105-164.4K(c) will be determined to have made a good-faith effort to comply with the sales and use tax laws."

**SECTION 3.9.(g)** This section is effective when it becomes law and applies to property management contracts entered into on or after that date.

**SECTION 3.10.** G.S. 105-164.13(11), as amended by Section 4.9 of S.L. 2019-6, reads as rewritten:

"(11) Any of the following fuel:

- a. Motor fuel, as taxed in Article 36C of this Chapter, except motor fuel for which a refund of the per gallon excise tax is allowed under G.S. 105-449.105A, G.S. 105-449.106(c) or G.S. 105-449.107.
- b. Alternative fuel taxed under Article 36D of this Chapter, unless a refund of that tax is allowed under G.S. 105-449.107."

**SECTION 3.11.(a)** G.S. 105-164.13(61a), as amended by Section 3.3(k) of this act, reads as rewritten:

"(61a) The sales price of or the gross receipts derived from the repair, maintenance, and installation services and service contracts listed in this subdivision are exempt from tax. Except as otherwise provided in this subdivision, property and services used to fulfill either a repair, maintenance, or installation service or a service contract exempt from tax under this subdivision are taxable. The list of repair, maintenance, and installation services and service contracts exempt from tax under this subdivision is as follows:

...

k. Self-service car wash or ~~vacuum~~-vacuum and limited-service vehicle wash. For purposes of this sub-subdivision, the following definitions apply:

1. Limited-service vehicle wash. – The cleaning of a vehicle by mechanical means where the only activities performed by an

employee include one or more of the following: (i) receiving payment for the transaction, (ii) guiding the vehicle into the entrance or exit of a conveyor, (iii) applying low-pressure spray of chemicals to the vehicle prior to the cleaning of the vehicle, or (iv) placing protective tape or covers on the vehicle prior to cleaning. The term does not include any activity whereby an employee physically touches the vehicle for the purpose of cleaning or restoring the vehicle, enters or cleans any part of the interior of the vehicle, or performs an activity on the vehicle other than one of those listed in this sub-sub-subdivision.

2. Self-service vehicle wash or vacuum. – The cleaning of a vehicle by a customer without any cleaning or restoring activity performed by an employee."

**SECTION 3.11.(b)** This section becomes effective October 1, 2019, and applies to sales made on or after that date.

**SECTION 3.12.(a)** G.S. 105-164.13 is amended by adding a new subdivision to read:

"(5p) Sales of equipment, or an attachment or repair part for equipment, which is used in cutting, shaping, polishing, and finishing rough cut slabs and blocks of natural and engineered stone and stone-like products and sold to a company primarily engaged in the business of providing made-to-order countertops, walls, or tubs."

**SECTION 3.12.(b)** This section becomes effective October 1, 2019, and applies to sales made on or after that date.

**SECTION 3.13.(a)** G.S. 105-164.3 reads as rewritten:

**"§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...  
(6b) Diaper. – An absorbent garment worn by humans who are incapable of, or have difficulty, controlling their bladder or bowel movements.

...  
(14a) Incontinence underpad. – An absorbent product, not worn on the body, designed to protect furniture or other tangible personal property from soiling or damage due to human incontinence.

~~(14a)~~(14b) Information service. – A service that generates, acquires, stores, processes, or retrieves data and information and delivers it electronically to or allows electronic access by a consumer whose primary purpose for using the service is to obtain the processed data or information.

...."

**SECTION 3.13.(b)** G.S. 105-164.13 is amended by adding a new subdivision to read:

"(13d) Sales of diapers or incontinence underpads on prescription by an enrolled State Medicaid/Health Choice provider for use by beneficiaries of the State Medicaid program when the provider is reimbursed by the State Medicaid program or a Medicaid managed care organization, as defined in 42 U.S.C. § 1396b(m)."

**SECTION 3.13.(c)** This section becomes effective October 1, 2019, and applies to sales occurring on or after that date.

**PART IV. EXCISE TAX CHANGES**

**SECTION 4.1.(a)** G.S. 105-113.4A reads as rewritten:

**"§ 105-113.4A. Licenses.**

...

(d) Refund. – A refund of a license tax is allowed only when the tax was collected or paid in error. No refund is allowed when a licensee ~~surrenders~~ cancels a license or the Secretary revokes a license.

...

(g) Records. – The Secretary must keep a record of the following:

- (1) Applicants for a license under this Article.
- (2) Persons to whom a license has been issued under this Article.
- (3) Persons that hold a current license issued under this Article, by license category.

(h) Lists. – The Secretary must provide the list required under subdivision (3) of subsection (g) of this section upon request of a manufacturer that is a licensee under this Article. The list must state the name, account number, and business address of each licensee on the list."

**SECTION 4.1.(b)** G.S. 105-113.4B reads as rewritten:

**"§ 105-113.4B. Cancellation or revocation of license.**

(a) Reasons. – The Secretary may cancel a license issued under this Article upon the written request of the ~~licensee~~ licensee and the immediate return of the license to the Secretary. The Secretary may summarily revoke a license issued under this Article when the Secretary finds that the licensee is incurring liability for the tax imposed under this Article after failing to pay a tax when due under this Article. In addition, the Secretary may revoke the license of a licensee that commits one or more of the following acts after holding a hearing on whether the license should be revoked:

...

(b) Procedure. – The Secretary must send a person whose license is summarily revoked a notice of the revocation and must give the person an opportunity to have a hearing on the revocation within 10 days after the revocation. The Secretary must give a person whose license may be revoked after a hearing at least 10 days' written notice of the date, time, and place of the hearing. A notice of a summary license revocation and a notice of hearing must be sent by ~~registered~~ certified mail to the last known address of the licensee.

...."

**SECTION 4.1.(c)** G.S. 105-113.21 reads as rewritten:

**"§ 105-113.21. Discount; refund.**

...

(a1) Discount. – A licensed distributor who files a timely report under G.S. 105-113.18 and who sends a timely payment may deduct from the amount due with the report a discount of two percent (2%). This discount covers expenses incurred in preparing the records and reports required by this Part, and the expense of furnishing a bond.

(b) Refund. – A licensed distributor in possession of packages of stale or otherwise unsalable cigarettes upon which the tax has been paid may return the cigarettes to the manufacturer as provided in this subsection and apply to the Secretary for refund of the tax. The application shall be in the form prescribed by the Secretary and shall be accompanied by an affidavit from the manufacturer stating the number of cigarettes returned to the manufacturer by the applicant. The Secretary shall refund the tax paid, less the discount allowed, on the unsalable cigarettes. The licensed distributor must return the cigarettes to the manufacturer of the cigarettes or to the affiliated manufacturer who is contracted by the manufacturer of the cigarettes to serve as the manufacturer's agent for the purposes of validating quantities and disposing of unsalable cigarettes."

**SECTION 4.1.(d)** G.S. 105-113.10 reads as rewritten:

**"§ 105-113.10. Manufacturers exempt from paying tax.**

(a) Shipping to Other Licensed Distributors. – ~~Any~~ A licensed manufacturer shipping cigarettes to other distributors who are licensed under G.S. 105-113.12 may, upon application to the Secretary and upon compliance with requirements prescribed by the Secretary, be relieved of paying the taxes levied in this Part. ~~Part, but is not relieved from filing a report as required by this Part.~~

(a1) Shipping to Retailers. – No manufacturer may be relieved of the requirement to be licensed as a distributor in order to make shipments, including drop shipments, to a retail dealer or ultimate user.

(b) Shipping for Affiliated Manufacturer. – A manufacturer may, upon application to the Secretary and upon compliance with requirements prescribed by the Secretary, be relieved of paying the taxes levied in this Part on cigarettes that are manufactured by an affiliated manufacturer and temporarily stored at and shipped from its ~~facilities~~ facilities, but is not relieved from filing a report as required by this Part."

**SECTION 4.1.(e)** G.S. 105-113.5 reads as rewritten:

**"§ 105-113.5. Tax on cigarettes.**

(a) Rate. – A tax is levied on the sale or possession for sale in this State, by a licensed distributor, of all cigarettes at the rate of two and one-fourth cents (2.25¢) per individual cigarette.

(b) Primary Liability. – The licensed distributor who first acquires or otherwise handles cigarettes subject to the tax imposed by this section is liable for the tax imposed by this section. A licensed distributor who brings into this State cigarettes made outside the State is the first person to handle the cigarettes in this State. A licensed distributor who is the original consignee of cigarettes made outside the State and is shipped into the State is the first person to handle the cigarettes in this State."

**SECTION 4.2.(a)** G.S. 105-113.4A, as amended by Section 4.1(a) of this act, reads as rewritten:

**"§ 105-113.4A. Licenses.**

(a) General. – To obtain or renew a license required by this Article, an applicant must file an application with the Secretary on a form provided by the Secretary and pay the tax due for the license. An application must include the applicant's name, address, federal employer identification number, and any other information required by the Secretary. A license is not transferable or assignable and must be displayed at the place of business for which it is issued.

(b) Requirements. – An applicant for a license must meet the following requirements:

- (1) If the applicant is a corporation, the applicant must either be incorporated in this State or be authorized to transact business in this State.
- (2) If the applicant for a license is a limited liability company, the applicant must either be organized in this State or be authorized to transact business in this State.
- (3) If the applicant for a license is a limited partnership, the applicant must either be formed in this State or be authorized to transact business in this State.
- (4) If the applicant for a license is an individual or a general partnership, the applicant must designate an agent for service of process and give the agent's name and address.

(c) Denial. – The Secretary may investigate an applicant for a license required under this Article to determine if the information the applicant submits with the application is accurate and if the applicant is eligible to be licensed under this Article. The Secretary may refuse to issue or renew a license to an applicant that has done any of the following:

- (1) Submitted false or misleading information on its application.
- (2) Had a license issued under this Article revoked by the Secretary.
- (3) Had a tobacco products license or registration issued by another state revoked.
- (4) Been convicted of fraud or misrepresentation.

- (5) Been convicted of any other offense that indicates the applicant may not comply with this Article if issued a license.
- (6) Failed to remit payment for a tax debt under this Chapter. The term "tax debt" has the same meaning as defined in G.S. 105-243.1.
- (7) Failed to file a return due under this Chapter.
- (8) Failed to meet the requirements set out in subsection (b) of this section.

...."

**SECTION 4.2.(b)** G.S. 105-113.4B(a), as amended by Section 4.1(b) of this act, reads as rewritten:

"(a) Reasons. – The Secretary may cancel a license issued under this Article upon the written request of the licensee and the immediate return of the license to the Secretary. The Secretary may summarily revoke a license issued under this Article when the Secretary finds that the licensee is incurring liability for the tax imposed under this Article after failing to pay a tax when due under this Article. In addition, the Secretary may revoke the license of a licensee that commits one or more of the following acts after holding a hearing on whether the license should be revoked:

- (1) Fails to obtain a license in a timely manner or for all places of business as required by this Article.
- (2) Willfully fails to file a return required by this Article.
- (3) Willfully fails to pay a tax when due under this Article.
- (4) Makes a false statement in an application or return required under this Article.
- (5) Fails to keep records as required by this Article.
- (6) Refuses to allow the Secretary or a representative of the Secretary to examine the person's books, accounts, and records concerning tobacco product.
- (7) Fails to disclose the correct amount of tobacco product taxable in this State.
- (8) Fails to file a replacement bond or an additional bond if required by the Secretary under this Article.
- (9) Violates G.S. 14-401.18.
- (10) Fails to meet or maintain the requirements set out in G.S. 105-113.4A(b)."

**SECTION 4.2.(c)** G.S. 105-113.12 reads as rewritten:

**"§ 105-113.12. Distributor must obtain license.**

(a) A distributor shall obtain for each place of business a ~~continuing~~-distributor's license and shall pay a tax of twenty-five dollars (\$25.00) for the license. A license is in effect until June 30 of the year following the second calendar year after the date of issuance or renewal. A license for each place of business is renewable upon signed application with no renewal license tax, unless applied for after the June 30 expiration date.

(b) For the purposes of this section, a "place of business" is a place where a distributor receives or stores non-tax-paid cigarettes.

(c) An out-of-state distributor may obtain a distributor's license upon compliance with the provisions of G.S. 105-113.4A and G.S. 105-113.24 and payment of a tax of twenty-five dollars (\$25.00)."

**SECTION 4.2.(d)** G.S. 105-113.36 reads as rewritten:

**"§ 105-113.36. Wholesale dealer and retail dealer must obtain license.**

(a) Required Licenses. – The entities listed in this subsection shall obtain for each place of business a tobacco products license and shall pay a license tax in the amounts listed. As used in this section, a "place of business" is a place where a wholesale dealer makes tobacco products other than cigarettes or where a wholesale dealer or a retail dealer receives or stores non-tax-paid tobacco products other than cigarettes. The entities and license tax amounts are as follows:

- |     |                         |                 |
|-----|-------------------------|-----------------|
| (1) | <u>Wholesale dealer</u> | <u>\$25.00</u>  |
| (2) | <u>Retail dealer</u>    | <u>\$10.00.</u> |

(b) Term of License. – A license is in effect until June 30 of the year following the second calendar year after the date of issuance or renewal, unless cancelled or revoked prior to expiration. A license for each place of business is renewable upon signed application with no renewal license tax, unless applied for after the June 30 expiration date.

(c) Out-of-State Wholesale Dealers. – An out-of-state wholesale dealer of tobacco products other than cigarettes may obtain a wholesale dealer's license upon compliance with the provisions of G.S. 105-113.4A and payment of a tax of twenty-five dollars (\$25.00).

~~A wholesale dealer shall obtain for each place of business a continuing tobacco products license and shall pay a tax of twenty five dollars (\$25.00) for the license. A retail dealer shall obtain for each place of business a continuing tobacco products license and shall pay a tax of ten dollars (\$10.00) for the license. A "place of business" is a place where a wholesale dealer makes tobacco products other than cigarettes or a wholesale dealer or a retail dealer receives or stores non-tax-paid tobacco products other than cigarettes."~~

**SECTION 4.2.(e)** This section becomes effective January 1, 2020. Any license issued under Article 2A of Chapter 105 of the General Statutes on or before January 1, 2020, shall expire on June 30, 2020. As soon as practicable after the effective date of this section, the Department of Revenue shall notify each licensee that he or she must renew the license by filing an application with the Secretary in accordance with G.S. 105-113.4A before June 30, 2020.

**SECTION 4.3.(a)** G.S. 105-113.18 reads as rewritten:

**"§ 105-113.18. Payment of tax; reports.**

The taxes levied in this Part are payable when a report is required to be filed. The following reports are required to be filed with the Secretary:

- (1) Distributor's Report. – A licensed distributor shall file a monthly report in the form prescribed by the Secretary. The report covers sales and other activities occurring cigarettes sold, shipped, delivered, or otherwise disposed of in this State in a calendar month and is due within 20 days after the end of the month covered by the report. The report shall show the quantity of all cigarettes transported or caused to be transported into the State by the licensed distributor or licensed manufacturer in the State for sales in this State and state the amount of tax due and shall identify any transactions to which the tax does not apply.
- (1a) ~~Report of Free Cigarettes.—A manufacturer who distributes cigarettes without charge shall file a monthly report in the form prescribed by the Secretary. The report covers cigarettes distributed without charge in a calendar month and is due within 20 days after the end of the month covered by the report. The report shall state the number of cigarettes distributed without charge and the amount of tax due.~~
- (2) Use Tax Report. – Every other person who has acquired non-tax-paid cigarettes for sale, use, or consumption subject to the tax imposed by this Part shall, within 96 hours after receipt of the cigarettes, file a report in the form prescribed by the Secretary showing the amount of cigarettes so received and any other information required by the Secretary. The report shall be accompanied by payment of the full amount of the tax.
- (3) Shipping Report. – Any person, except a licensed distributor, who transports cigarettes upon the public highways, roads, or streets of this State, upon notice from the Secretary, shall file a report in the form prescribed by the Secretary and containing the information required by the Secretary.
- (4) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1209, s. 1."

**SECTION 4.3.(b)** G.S. 105-113.37 reads as rewritten:

**"§ 105-113.37. Payment of tax.**

(a) ~~Monthly Report. – Except for tax on a designated sale under subsection (b), the taxes~~ Taxes levied by this Article are payable when a report is required to be filed. A report is due on a monthly basis. A monthly report covers ~~sales and other activities~~ tobacco products sold, shipped, delivered, or otherwise disposed of in this State occurring in a calendar month and is due within 20 days after the end of the month covered by the report. A report shall be filed on a form provided by the Secretary and shall contain the information required by the Secretary.

(b) ~~Designation of Exempt Sale. – A wholesale dealer who sells a tobacco product to a person who has notified the wholesale dealer in writing that the person intends to resell the item in a transaction that is exempt from tax under G.S. 105-113.35(a2)(1) or G.S. 105-113.35(a2)(2) may, when filing a monthly report under subsection (a), designate the quantity of tobacco products sold to the person for resale. A wholesale dealer shall report a designated sale on a form provided by the Secretary.~~

~~A wholesale dealer is not required to pay tax on a designated sale when filing a monthly report. The wholesale dealer shall pay the tax due on all other sales in accordance with this section. A wholesale dealer or a customer of a wholesale dealer may not delay payment of the tax due on a tobacco product by failing to pay tax on a sale that is not a designated sale or by overstating the quantity of tobacco products that will be resold in a transaction exempt under G.S. 105-113.35(a2)(1) or G.S. 105-113.35(a2)(2).~~

~~A person who does not sell a tobacco product in a transaction exempt under G.S. 105-113.35(a2)(1) or G.S. 105-113.35(a2)(2) after a wholesale dealer has failed to pay the tax due on the sale of the item to the person in reliance on the person's written notification of intent is liable for the tax and any penalties and interest due on the designated sale. If the Secretary determines that a tobacco product reported as a designated sale is not sold as reported, the Secretary shall assess the person who notified the wholesale dealer of an intention to resell the item in an exempt transaction for the tax due on the sale and any applicable penalties and interest. A wholesale dealer who does not pay tax on a tobacco product in reliance on a person's written notification of intent to resell the item in an exempt transaction is not liable for any tax assessed on the item.~~

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 955, s. 12.

(d) Shipping Report. – Any person who transports other tobacco products upon the public highways, roads, or streets of this State must, upon notice from the Secretary, file a report in a form prescribed by and containing the information required by the Secretary."

**SECTION 4.4.(a)** G.S. 105-113.26 reads as rewritten:

**"§ 105-113.26. Records to be kept.**

Every person required to be licensed under this Article and every person required to make reports under this Article shall keep complete and accurate records of all ~~sales~~ purchases, inventories, sales, shipments, deliveries, and other information as required under this Article. The records shall be in the form prescribed by the ~~Secretary.~~ Secretary and shall be open at all times for inspection by the Secretary or an authorized representative of the Secretary.

These records shall be safely preserved for a period of three years in a manner to ensure their security and accessibility for inspection by the Department. The Secretary may consent to the destruction of any records at any time within this three-year period."

**SECTION 4.4.(b)** G.S. 105-113.40 reads as rewritten:

**"§ 105-113.40. Records of sales, inventories, and purchases to be kept.**

Every ~~wholesale dealer and retail dealer~~ person required to be licensed under this Article shall keep complete and accurate records of the dealer's purchases, inventories, and sales ~~sales, shipments, and deliveries of tobacco products.~~ products, and any other information as required under this Article. These records shall be in the form prescribed by the Secretary, open at all times for inspection by the Secretary or an authorized representative of the Secretary. and safely preserved for a period of three years in a manner to ensure their security and accessibility for inspection by the Department."

**SECTION 4.5.** G.S. 105-113.35 reads as rewritten:

**"§ 105-113.35. Tax on tobacco products other than cigarettes.**

(a) Tax on Tobacco Products. – An excise tax is levied on tobacco products at the rate of twelve and eight-tenths percent (12.8%) of the cost price of the products. The tax rate does not apply to the following:

- (1) Cigarettes subject to the tax in G.S. 105-113.5.
- (2) Vapor products subject to the tax in subsection (a1) of this section.

(a1) Tax on Vapor Products. – An excise tax is levied on vapor products at the rate of five cents (5¢) per fluid milliliter of consumable product. All invoices for vapor products issued by manufacturers must state the amount of consumable product in milliliters.

(a2) Limitation. – The taxes imposed under this section do not apply to the following:

- (1) A tobacco product sold outside the State.
- (2) A tobacco product sold to the federal government.
- (3) A sample tobacco ~~product-product, other than cigarettes,~~ distributed without charge. A sample tobacco product, other than cigarettes, may only be distributed in a "qualified adult-only facility" as that term is defined in 21 C.F.R. § 1140.16(d)(2).

...

(d) Manufacturer's Option. – A manufacturer who is not a retail dealer and who ships tobacco products other than cigarettes to either a wholesale dealer or retail dealer licensed under this Part may apply to the Secretary to be relieved of paying the tax imposed by this section on the tobacco products. A manufacturer who is not a retail dealer and who ships vapor products to either a wholesale dealer or retail dealer licensed under this Part may apply to the Secretary to be relieved of paying the tax imposed by this section on the vapor products shipped to either a wholesale dealer or retail dealer. Once granted permission, a manufacturer may choose not to pay the tax until otherwise notified by the ~~Secretary.~~ Secretary but is not relieved from filing a report as required by this Part. To be relieved of payment of the tax imposed by this section, a manufacturer must comply with the requirements set by the Secretary.

Permission granted under this subsection to a manufacturer to be relieved of paying the tax imposed by this section applies to an integrated wholesale dealer with whom the manufacturer is an affiliate. A manufacturer must notify the Secretary of any integrated wholesale dealer with whom it is an affiliate when the manufacturer applies to the Secretary for permission to be relieved of paying the tax and when an integrated wholesale dealer becomes an affiliate of the manufacturer after the Secretary has given the manufacturer permission to be relieved of paying the tax.

If a person is both a manufacturer of cigarettes and a wholesale dealer of tobacco products other than cigarettes and the person is granted permission under G.S. 105-113.10 to be relieved of paying the cigarette excise tax, the permission applies to the tax imposed by this section on tobacco products other than cigarettes. A cigarette manufacturer who becomes a wholesale dealer after receiving permission to be relieved of the cigarette excise tax must notify the Secretary of the permission received under G.S. 105-113.10 when applying for a license as a wholesale dealer.

(d1) Limitation. – Except as otherwise provided in this Article, a licensed wholesale dealer may not sell, borrow, loan, or exchange non-tax-paid tobacco products other than cigarettes to, from, or with another licensed wholesale dealer, and an integrated wholesale ~~dealers-dealer~~ may not sell, borrow, loan, or exchange non-tax-paid tobacco products other than cigarettes to, from, or with ~~other-another~~ integrated wholesale ~~dealers-dealer~~.

(e) Repealed by Session Laws 2009-451, s. 27A.5(c), effective September 1, 2009."

**SECTION 4.6.(a)** Part 3 of Article 2A of Chapter 105 of the General Statutes is amended by adding a new section to read:

**"§ 105-113.35A. Use tax levied.**



A tax is levied upon the sale or possession for sale by a person other than a licensed wholesale dealer or licensed retail dealer and upon the use, consumption, and possession for use or consumption of tobacco products other than cigarettes within this State at the rate set in G.S. 105-113.35. This tax does not apply to tobacco products other than cigarettes upon which the tax levied in G.S. 105-113.35 has been paid."

**SECTION 4.6.(b)** This section is effective for taxable years beginning on or after January 1, 2019.

**SECTION 4.7.(a)** G.S. 105-113.4 reads as rewritten:

**"§ 105-113.4. Definitions.**

The following definitions apply in this Article:

...

(1n) Consumer. – An individual who purchases, receives, or possesses tobacco products for personal consumption and not for resale.

...

(2d) Delivery sale. – A sale of tobacco products to a consumer in this State in which either of the following apply:

a. The consumer submits the order for the sale by telephone, mail, the Internet or other online service or application, or when the seller is otherwise not in the physical presence of the consumer when the consumer submits the order.

b. The tobacco products are delivered via mail or a delivery service.

(2e) Delivery seller. – A person that makes a delivery sale.

(2f) Delivery service. – A person engaged in the commercial delivery of letters, packages, or other containers.

...."

**SECTION 4.7.(b)** Part 1 of Article 2A of Chapter 105 of the General Statutes is amended by adding a new section to read:

**"§ 105-113.4F. Delivery sales of certain tobacco products; age verification.**

(a) Scope. – This section applies to delivery sales of tobacco products, other than cigars, to consumers in this State regardless of whether the delivery seller is located inside or outside this State. For purposes of this section, the term "tobacco product" is as defined in G.S. 105-113.4, except that it does not include cigars.

(b) Delivery Seller Requirements. – A delivery seller shall do all of the following with respect to a delivery sale:

(1) Obtain a license from the Secretary pursuant to the requirements of this Article before accepting an order.

(2) Comply with the age verification requirements in G.S. 14-313(b2).

(3) Report, collect, and remit to the Secretary all taxes levied on tobacco products as set out in this Article and Article 5 of this Chapter.

(c) Filing Requirement. – A delivery seller who has made a delivery sale, or shipped or delivered tobacco products in connection with a delivery sale, during the previous month shall, not later than the tenth day of each month, file with the Secretary a memorandum or a copy of the invoice for every delivery sale made during the previous month. A delivery seller who complies with 15 U.S.C. § 376 with respect to tobacco products covered by that section is considered to have complied with this subsection. The memorandum or invoice shall contain the following information:

(1) The name, address, telephone number, and e-mail address of the consumer.

(2) The type and the brand, or brands, of tobacco products that were sold.

(3) The quantity of tobacco products that were sold.

(d) Penalties. – A person who violates this section is subject to the following penalties:

(1) For the first violation, a penalty of one thousand dollars (\$1,000).

(2) For a subsequent violation, a penalty not to exceed five thousand dollars (\$5,000), as determined by the Secretary.

(e) Exception. – This section does not apply to sales of tobacco products by a retail dealer who purchased the tobacco products from a licensed distributor or wholesale dealer.

(f) State Laws Apply. – All State laws that apply to tobacco product retailers in this State shall apply to delivery sellers that sell tobacco products into this State."

**SECTION 4.7.(c)** This section is effective October 1, 2019, and applies to delivery sales occurring on or after that date.

**SECTION 4.8.** G.S. 105-113.68 reads as rewritten:

**"§ 105-113.68. Definitions; scope.**

(a) Definitions. – The following definitions apply in this Article:

...

(13) Wholesaler or importer. – When used with reference to ~~wholesalers~~—a wholesaler or importer—an importer of wine or malt beverages, the term includes a resident wineries-winery and a wine producer that sell their wines sells its wines, or wine produced for the permittee under contract, at wholesale to a retailer or at retail and a resident breweries-brewery that produce fewer than 25,000 barrels of malt beverages per year sells its malt beverages, or malt beverages produced for the permittee under contract, at wholesale to a retailer or at retail. This subdivision applies to a person that holds any of the following permits issued by the ABC Commission:

a. Unfortified winery permit under G.S. 18B-1101.

b. Fortified winery permit under G.S. 18B-1102.

c. Brewery permit under G.S. 18B-1104.

d. Wine importer permit under G.S. 18B-1106.

e. Wine wholesaler permit under G.S. 18B-1107.

f. Malt beverages importer permit under G.S. 18B-1108.

g. Malt beverages wholesaler permit under G.S. 18B-1109.

h. Wine producer permit under G.S. 18B-1114.3.

...."

**SECTION 4.9.** G.S. 105-113.84 reads as rewritten:

**"§ 105-113.84. Report of resident brewery, resident winery, resident wine producer, nonresident vendor, or wine shipper permittee.**

(a) A resident brewery, resident winery, resident wine producer, and nonresident vendor must file a monthly informational report with the Secretary.

(b) A wine shipper permittee must file an annual report with the Secretary.

(c) The report required by this section must list the amount of beverages ~~delivered-sold,~~ delivered, or shipped to North Carolina wholesalers, importers, and purchasers under G.S. 18B-1001.1 during the period covered by the report. The report is due by the 15th day of the month following the period covered by the ~~report-report, unless otherwise provided.~~ The report must be filed on a form approved by the Secretary and must contain the information required by the Secretary."

**SECTION 4.10.** G.S. 105-449.47A reads as rewritten:

**"§ 105-449.47A. Denial of license application and decal issuance.**

The Secretary may refuse to license and issue a decal to an applicant that does not meet the requirements set out in G.S. 105-449.69(b) or that has done any of the following:

- (1) Had a license issued under Chapter 105 or Chapter 119 of the General Statutes revoked by the Secretary.
- (2) Had a license issued by another jurisdiction, pursuant to the International Fuel Tax Agreement, revoked.
- (3) Been convicted of fraud or misrepresentation.

- (4) Been convicted of any other offense that indicates that the applicant may not comply with this Article if licensed and issued a decal.
- (5) Failed to remit payment for a tax debt under Chapter 105 or Chapter 119 of the General Statutes. The term "tax debt" has the same meaning as defined in G.S. 105-243.1.
- (6) Failed to file a return due under Chapter 105 or Chapter 119 of the General Statutes.
- (7) Failed to maintain motor vehicle registration on the qualified motor vehicle."

**SECTION 4.11.** G.S. 105-449.60 reads as rewritten:

**"§ 105-449.60. Definitions.**

The following definitions apply in this Article:

- ...
- (8) Bulk end-user. – A person who maintains bulk storage facilities for motor fuel and uses part or all of the stored fuel to operate a highway vehicle.
- ...
- (33) Motor fuel transporter. – A person who transports motor fuel by pipeline, transport truck, tank wagon for hire, railroad tank car, or marine vessel.
- ...
- (48) Tank wagon. – A truck that is not a transport truck and is designed or used to carry at least 1,000 gallons of motor ~~fuel~~ fuel and the motor fuel is owned by the transporter.
- (48a) Tank wagon for hire. – A truck designed or used to carry at least 1,000 gallons of motor fuel and the transporter is compensated for transporting motor fuel owned by another person.
- ...
- (51) Terminal. – A motor fuel storage and distribution facility that ~~has been assigned a terminal control number by the Internal Revenue Service,~~ is supplied by pipeline or marine vessel, and from which motor fuel, jet fuel, or aviation gasoline may be removed at a rack.
- ...
- (55) Transport truck. – A tractor trailer designed or used to transport loads of motor fuel over a highway. For the purposes of this definition, a tank wagon for hire is considered a transport truck.
- ...."

**SECTION 4.12.** G.S. 105-449.115 reads as rewritten:

**"§ 105-449.115. Shipping document required to transport motor fuel by railroad tank car or transport truck.**

(a) Issuance. – A person may not transport motor fuel by railroad tank car or transport truck unless the person has a shipping document for its transportation that complies with this section. A refiner, a terminal operator, a fuel alcohol provider, a biodiesel provider, and the operator of a bulk plant must give a shipping document to the person who operates a railroad tank car or a transport truck into which motor fuel is loaded at the terminal rack or bulk plant rack.

...."

**SECTION 4.13.** G.S. 105-449.115A reads as rewritten:

**"§ 105-449.115A. Shipping document required to transport fuel by tank wagon.**

(a) Issuance. – A person who operates a tank wagon into which motor fuel is loaded at the terminal must comply with the document requirements in G.S. 105-449.115(b). A person who operates a tank wagon into which motor fuel is loaded from some other source must have an invoice, bill of sale, or shipping document containing the following information and any other information required by the Secretary:

- (1) The name and address of the person from whom the motor fuel was received.
- (2) The date the fuel was loaded.
- (3) The type of fuel.
- (4) The gross number of gallons loaded.
- (5) The destination state of the fuel.

...."

**SECTION 4.14.(a)** G.S. 105-113.29 reads as rewritten:

**"§ 105-113.29. Unlicensed place of business.**

It ~~shall be~~ is unlawful for ~~any a~~ person to maintain a place of business within this State required by this Article to be licensed to engage in the business of ~~selling or offering for sale~~ selling, offering for sale, or possessing with the intent to sell cigarettes or other tobacco products without first obtaining ~~such the~~ licenses."

**SECTION 4.14.(b)** This section becomes effective December 1, 2020, and applies to offenses committed on or after that date.

## **PART V. TAX COMPLIANCE CHANGES**

**SECTION 5.1.(a)** G.S. 105-243.1(d) reads as rewritten:

"(d) Fee. – A collection assistance fee is imposed on an overdue tax debt that remains unpaid ~~30-60~~ days or more after the ~~fee notice required by this subsection is mailed to the taxpayer.~~ tax debt is deemed collectible under G.S. 105-241.22. In order to impose a collection assistance fee on a tax debt, the Department must notify the taxpayer that the fee will be imposed if the tax debt is not paid in full within ~~30-60~~ days after the date the ~~fee notice~~ notice of collection was mailed to the taxpayer. ~~The Department may not mail the fee notice earlier than 60 days after the tax debt becomes collectible under G.S. 105-241.22.~~ The fee is collectible as part of the debt. The Secretary may waive the fee pursuant to G.S. 105-237 to the same extent as if it were a penalty."

**SECTION 5.1.(b)** This section becomes effective January 1, 2020, and applies to tax debts that become collectible on or after that date.

**SECTION 5.2.(a)** G.S. 105-236(a) reads as rewritten:

"(a) Penalties. – The following civil penalties and criminal offenses apply:

...

- (10) Penalties Regarding Informational Returns. – The following penalties apply with regard to an informational return required by Article 2A, 2C, 4, 4A, 5, 9, 36C, or 36D of this Chapter:

...

- c. For failure to file with the Secretary by the date the return is due, the Secretary shall assess a penalty of fifty dollars (\$50.00) per day, up to a maximum penalty of one thousand dollars (\$1,000).
- d. For failure to file in the format prescribed by the Secretary, the Secretary shall assess a penalty of two hundred dollars (\$200.00).

...."

**SECTION 5.2.(b)** This section becomes effective January 1, 2020, and applies to informational returns due to be filed on or after that date.

**SECTION 5.3.** The Revenue Laws Study Committee is directed to study issues associated with the underreporting of sales and use tax by franchisees, including whether franchisors should be required to annually report certain information about their franchisees to the Department of Revenue, such as their legal business name, location, and gross sales for each location. The Committee shall report its findings and any legislative recommendations on or before the convening of the 2020 Regular Session of the 2019-2020 General Assembly.

## **PART VI. GENERAL TAX ADMINISTRATION CHANGES**

**SECTION 6.1.(a)** G.S. 105-241.6 reads as rewritten:

**"§ 105-241.6. Statute of limitations for refunds.**

(a) General. – The general statute of limitations for obtaining a refund of an overpayment applies unless a different period applies under subsection (b) of this section. The general statute of limitations for obtaining a refund of an overpayment is the later of the following:

- (1) Three years after the due date of the return.
- (2) Two years after payment of the tax.

(b) Exceptions. – The exceptions to the general statute of limitations for obtaining a refund of an overpayment are as follows:

...

(5) Contingent Event. – The period to request a refund of an overpayment may be extended once as provided in this subdivision if an event or condition prevents the taxpayer from possessing the information necessary to file an accurate and definite request for a refund of an overpayment under this Chapter:subdivision:

a. Litigation or a State Tax Audit. – If a taxpayer is subject to a contingent event and files written notice with the Secretary, litigation or a state tax audit that prevents the taxpayer from filing an accurate and definite request for a refund of an overpayment within the period under this section, the period to request a refund of an overpayment is six months after the contingent event—litigation or state tax audit concludes. For purposes of this subdivision, a "contingent event" means litigation or a state tax audit initiated prior to the expiration of the statute of limitations under subsection (a) of this section, the pendency of which prevents the taxpayer from possessing the information necessary to file an accurate and definite request for a refund of an overpayment under this Chapter. The taxpayer must file written notice to the Secretary must be filed prior to expiration of the statute of limitations under subsection (a) of this section for a return or payment in which a contingent event prevents a taxpayer from filing a definite request for a refund of an overpayment. section. The notice must identify and describe the contingent event, litigation or state tax audit, identify the type of tax, list the return or payment affected by the contingent event, affected, and state in clear terms the basis for and an estimated amount of the overpayment.

b. Other Event. – If a taxpayer contends that an event or condition other than a contingent event, as defined in this subdivision, has occurred that prevents the taxpayer from filing an accurate and definite request for a refund of an overpayment within the period under subsection (a) of this section, the taxpayer may submit a written request to the Secretary seeking an extension of the statute of limitations allowed under this subdivision. limitations. The taxpayer must file a written request to the Secretary prior to expiration of the statute of limitations under this section. The request must establish by clear, convincing proof that the event or condition is beyond the taxpayer's control and that it prevents the taxpayer's taxpayer from timely filing of an accurate and definite request for a refund of an overpayment. The request must be filed within the period under subsection (a) of this section. The Secretary's decision on the request is final and is not subject to administrative or judicial review.

...."

**SECTION 6.1.(b)** This section becomes effective when it becomes law and applies to a request for a refund of an overpayment of tax filed on or after that date.

**SECTION 6.2.(a)** G.S. 105-241.8(b)(1a) reads as rewritten:

"(1a) Federal amended return. – If a taxpayer files a return as a result of filing a federal amended return and the return is filed within the time required by this Subchapter, the period for proposing an assessment of any tax due is one year after the return is filed or three years after the original return was filed or due to be filed, whichever is later. If the taxpayer does not file the return within the required time, the period for proposing an assessment of any tax due is three years after the date the federal amended return was filed with the Commissioner of Internal Revenue. The date the federal amended return was filed is presumed to be the date recorded by the Internal Revenue Service."

**SECTION 6.2.(b)** This section becomes effective when it becomes law and applies to an assessment proposed on or after that date.

**SECTION 6.3.(a)** G.S. 105-228.90(b)(3a) reads as rewritten:

"(3a) Federal determination. – A change or correction ~~of the amount of a federal tax due~~ arising from an audit by the Commissioner of Internal Revenue, ~~Revenue~~ or an agreement of the U.S. competent authority, and the change or correction has become final. A federal determination is final when the determination is not subject to administrative or judicial review. Additionally, audit findings made by the Internal Revenue Service are deemed final in the following circumstances:

- a. The taxpayer has received audit findings from the Internal Revenue Service for the tax period and the taxpayer does not timely file an administrative appeal with the Internal Revenue Service.
- b. The taxpayer consented to any of the audit findings for the tax period through a form or other written agreement with the Internal Revenue Service."

**SECTION 6.3.(b)** G.S. 105-130.20(a) reads as rewritten:

"(a) Federal Determination. – If a taxpayer's federal taxable income or a federal tax credit is changed or corrected by the Commissioner of Internal Revenue ~~or other officer of the United States or other~~ an agreement of the U.S. competent authority, and the change or correction affects the amount of State tax payable, the taxpayer must file an income tax return reflecting each change or correction from a federal determination within six months after being notified of each change or correction. The Secretary must propose an assessment for any additional tax due from the taxpayer as provided in Article 9 of this Chapter. The Secretary must refund any overpayment of tax as provided in Article 9 of this Chapter. A federal determination has the same meaning as defined in G.S. 105-228.90."

**SECTION 6.3.(c)** G.S. 105-159(a) reads as rewritten:

"(a) Federal Determination. – If a taxpayer's adjusted gross income, filing status, personal exemptions, standard deduction, itemized deductions, or federal tax credit are changed or corrected by the Commissioner of Internal Revenue ~~or other officer of the United States or an~~ agreement of the U.S. competent authority, and the change or correction affects the amount of State tax payable, the taxpayer must file an income tax return reflecting each change or correction from a federal determination within six months after being notified of each change or correction. The Secretary must propose an assessment for any additional tax due from the taxpayer as provided in Article 9 of this Chapter. The Secretary must refund any overpayment of tax as provided in Article 9 of this Chapter. A federal determination has the same meaning as defined in G.S. 105-228.90."

**SECTION 6.3.(d)** This section becomes effective when it becomes law and applies to a federal determination on or after that date.

**SECTION 6.4.(a)** G.S. 105-163.1 reads as rewritten:

**"§ 105-163.1. Definitions.**

The following definitions apply in this Article:

- (1) Compensation. – Consideration a payer pays to ~~any of the following:~~ a payee.
  - a. ~~A nonresident individual or nonresident entity for personal services performed in this State.~~
  - b. ~~An ITIN holder who is a contractor and not an employee for services performed in this State.~~
- (2) Repealed by Session Laws 2009-476, s. 1, effective for taxable years beginning on or after January 1, 2010.
- (3) Repealed by Session Laws 2014-3, s. 14.4(a), effective for taxable years beginning on or after January 1, 2014.
- (4) Employee. – An individual, whether a resident or a nonresident of this State, who performs services in this State for wages or an individual who is a resident of this State and performs services outside this State for wages. The term includes an ordained or licensed member of the clergy who elects to be considered an employee under G.S. 105-163.1A, an officer of a corporation, and an elected public official.
- (5) Employer. – A person for whom an individual performs services for wages. In applying the requirements to withhold income taxes from wages and pay the withheld taxes, the term includes a person who:
  - a. Controls the payment of wages to an individual for services performed for another.
  - b. Pays wages on behalf of a person who is not engaged in trade or business in this State.
  - c. Pays wages on behalf of a unit of government that is not located in this State.
  - d. Pays wages for any other reason.
- (6) Individual. – Defined in G.S. 105-153.3.
- (6a) Individual Taxpayer Identification Number (ITIN). – A taxpayer identification number issued by the Internal Revenue Service to an individual who is required to have a U.S. taxpayer identification number but who does not have, or is not eligible to obtain, a Social Security number (SSN) from the Social Security Administration.
- ~~(6a)~~(6b) ITIN contractor. – An ITIN holder who performs services in this State for compensation other than wages.
- ~~(6b)~~(6c) ITIN holder. – A person whose taxpayer identification number is an Individual Taxpayer Identification Number ~~(ITIN)~~(ITIN), including applied for and expired numbers.
- (7) Miscellaneous payroll period. – A payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.
- (7a) Nonresident contractor. – Either of the following:
  - a. A nonresident individual who performs in this State for compensation other than wages any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.
  - b. A nonresident entity that provides for the performance in this State for compensation of any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.

- (8) Nonresident entity. – Any of the following:
- a. A foreign limited liability company, defined using the same definition for the term "foreign LLC" in G.S. 57D-1-03, that has not obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57D of the General Statutes.
  - b. A foreign limited partnership as defined in G.S. 59-102 or a general partnership formed under the laws of any jurisdiction other than this State, unless the partnership maintains a permanent place of business in this State.
  - c. A foreign corporation, as defined in G.S. 55-1-40, that has not obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes.
- (9) Pass-through entity. – Defined in G.S. 105-228.90.
- (9a) Payee. – Any of the following:
- a. A nonresident contractor.
  - b. An ITIN contractor.
  - c. A person who performs services in this State for compensation that fails to provide the payer a taxpayer identification number.
  - d. A person who performs services in this State for compensation that fails to provide the payer a valid taxpayer identification number. The Secretary must notify a payer that a taxpayer identification number is not valid.
- (10) Payer. – A person who, in the course of a trade or business, pays ~~compensation to any of the following:~~ compensation.
- a. ~~A nonresident individual or a nonresident entity compensation for personal services performed in this State.~~
  - b. ~~An ITIN holder who is a contractor and not an employee for services performed in this State.~~
- (11) Payroll period. – A period for which an employer ordinarily pays wages to an employee of the employer.
- (11a) Pension payer. – A payor or a plan administrator with respect to a pension payment under section 3405 of the Code.
- (11b) Pension payment. – A periodic payment or a nonperiodic distribution as those terms are defined in section 3405 of the Code.
- (12) Taxable year. – Defined in section 441(b) of the Code.
- (12a) Taxpayer Identification Number (TIN). – An identification number issued by the Social Security Administration or the Internal Revenue Service excluding Taxpayer Identification Number for Pending U.S. Adoptions (ATIN) and Preparer Taxpayer Identification Number (PTIN).
- (13) Wages. – The term has the same meaning as in section 3401 of the Code.
- (14) Withholding agent. – An employer, a pension payer, or a payer."

**SECTION 6.4.(b)** G.S. 105-163.3 reads as rewritten:

**"§ 105-163.3. Certain payers must withhold taxes.**

(a) Requirement. – Every payer who pays more than one thousand five hundred dollars (\$1,500) during a calendar year to ~~either a nonresident contractor or an ITIN contractor a payee~~ must deduct and withhold from compensation paid to the ~~contractor payee~~ the State income taxes payable by the ~~contractor payee~~ on the compensation as provided in this section. The amount of taxes to be withheld is four percent (4%) of the compensation paid to the ~~contractor payee~~. The taxes a payer withholds are held in trust for the Secretary.

...



(d) Returns, Annual Statement, and Report. – A payer required to deduct and withhold from a ~~contractor's payee's~~ compensation under this section must file a return, pay the withheld taxes, and report the amount withheld in the time and manner required under G.S. 105-163.6 and G.S. 105-163.7 as if the compensation were wages.

...

(f) Payer May Repay Amounts Withheld Improperly. – A payer may refund to a person any amount the payer withheld improperly from the person under this section, if the refund is made before the end of the calendar year and before the payer furnishes the person the annual statement required by subsection (d) of this section. An amount is withheld improperly if it is withheld from a payment to a person who is not a ~~nonresident contractor or an ITIN contractor,~~ payee, if it is withheld from a payment that is not compensation, or if it is in excess of the amount required to be withheld under this section. A payer who makes a refund under this section must take the following actions:

- (1) Not report the amount refunded on the annual statement required by subsection (d) of this section.
- (2) Either not pay to the Secretary the amount refunded or, if the amount refunded has already been paid to the Secretary, reduce by the amount refunded the next payments to the Secretary of taxes withheld from the person."

**SECTION 6.4.(c)** This section becomes effective January 1, 2020.

**SECTION 6.5.** G.S. 105-241.20(a) reads as rewritten:

"(a) Scope. – This section applies to the following notices:

- (1) A proposed denial of a ~~refund~~ refund or a denial of a refund.
- (2) A proposed assessment.
- (3) A notice of collection.
- (4) A final determination."

**SECTION 6.6.(a)** G.S. 105-128 is recodified as G.S. 105-258.3.

**SECTION 6.6.(b)** G.S. 105-128, recodified as G.S. 105-258.3 by subsection (a) of this section, reads as rewritten:

"§ 105-258.3. Power of attorney.

The Secretary of Revenue ~~shall have the authority to~~ may require a proper power of attorney of each and every agent for any ~~taxpayer under this Article~~ taxpayer."

**SECTION 6.7.** G.S. 105-241.22 reads as rewritten:

"§ 105-241.22. Collection of tax.

The Department may collect a tax in the following circumstances:

...

- (6) When a petition for a contested case at the Office of Administrative Hearings dismisses a petition for a contested case for lack of jurisdiction because the sole issue is the constitutionality of a statute and not the application of a statute is dismissed and the period for timely filing a petition has expired."

**SECTION 6.8.(a)** G.S. 105-236(b) reads as rewritten:

"(b) Situs. – ~~Civily, a~~ A violation of a tax law is considered an act committed in part at the office of the Secretary in Raleigh. ~~Criminally, a violation of a tax law shall not be considered an act committed at the office of the Secretary in Raleigh. The District Attorney of the county where the charged offense occurred shall have sole jurisdiction to prosecute violations of tax law, but the Attorney General shall have concurrent jurisdiction in such prosecutions if the District Attorney requests, in writing, that the Attorney General prosecute the violation.~~ The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied."

**SECTION 6.8.(b)** This section becomes effective December 1, 2018, and applies to offenses committed on or after that date.

**PART VII. OTHER CHANGES**

**SECTION 7.** G.S. 66-252(b) reads as rewritten:

"(b) Compliance. – The requirement that a certificate of registration be displayed is satisfied if the vendor displays either of the following:

- (1) A copy of the certificate.
- (2) Evidence that the certificate has been applied for ~~and the applicable registration fee has been paid~~ within 30 days before the date the certificate was required to be displayed."

**PART VIII. EFFECTIVE DATE**

**SECTION 8.** Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16<sup>th</sup> day of July, 2019.

s/ Ralph E. Hise  
Presiding Officer of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

s/ Roy Cooper  
Governor

Approved 12:07 p.m. this 26<sup>th</sup> day of July, 2019