

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 1085
Finance Committee Substitute Adopted 6/20/89

Short Title: General Fund Revenues.

(Public)

Sponsors:

Referred to:

May 1, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO RAISE REVENUE FOR THE GENERAL FUND.

3 The General Assembly of North Carolina enacts:

4 Section 1. Effective for taxable years beginning on or after January 1, 1990,
5 G.S. 105-163.15 reads as rewritten:

6 "**§ 105-163.15. Failure by individual to pay estimated income tax; penalty.**

7 (a) In the case of any underpayment of the estimated tax by an individual, there
8 shall be added to the tax imposed under Article 4 for the taxable year an amount
9 determined by applying the applicable annual rate established under G.S. 105-241.1(i)
10 to the amount of the underpayment for the period of the underpayment.

11 (b) For purposes of subsection (a), the amount of the underpayment shall be the
12 excess of the required installment, over the amount, if any, of the installment paid on or
13 before the due date for the installment. The period of the underpayment shall run from
14 the due date for the installment to whichever of the following dates is the earlier: (i) the
15 fifteenth day of the fourth month following the close of the taxable year, or (ii) with
16 respect to any portion of the underpayment, the date on which such portion is paid. A
17 payment of estimated tax shall be credited against unpaid required installments in the
18 order in which such installments are required to be paid.

19 (c) For purposes of this section there shall be four required installments for each
20 taxable year with the time for payment of the installments as follows:

- 21 (1) First installment – April 15 of taxable year;
22 (2) Second installment – June 15 of taxable year;
23 (3) Third installment – September 15 of taxable year; and

1 (4) Fourth installment – January 15 of following taxable year.

2 (d) Except as provided in subsection ~~(e)~~–(e), the amount of any required
3 installment shall be twenty-five percent (25%) of the required annual payment. The
4 term ‘required annual payment’ means the lesser of:

5 (1) ~~Eighty percent (80%)~~–Ninety percent (90%) of the tax shown on the
6 return for the taxable year, or, if no return is filed, ~~eighty percent (80%)~~
7 ninety percent (90%) of the tax for that year; or

8 (2) One hundred percent (100%) of the tax shown on the return of the
9 individual for the preceding taxable year, if the preceding taxable year
10 was a taxable year of 12 months and the individual filed a return for
11 that year.

12 (e) In the case of any required installment, if the individual establishes that the
13 annualized income installment is less than the amount determined under subsection (d),
14 the amount of the required installment shall be the annualized income installment, and
15 any reduction in a required installment resulting from the application of this subsection
16 shall be recaptured by increasing the amount of the next required installment determined
17 under subsection (d) by the amount of the reduction and by increasing subsequent
18 required installments to the extent that the reduction has not previously been recaptured.

19 In the case of any required installment, the annualized income installment is the
20 excess, if any, of (i) an amount equal to the applicable percentage of the tax for the
21 taxable year computed by placing on an annualized basis the taxable income for months
22 in the taxable year ending before the due date for the installment, over (ii) the aggregate
23 amount of any prior required installments for the taxable year. The taxable income shall
24 be placed on an annualized basis under rules prescribed by the Secretary. The applicable
25 percentages for the required installments are as follows:

26 (1) First installment – ~~twenty percent (20%)~~; twenty-two and one-half
27 percent (22.5%);

28 (2) Second installment – ~~forty percent (40%)~~; forty-five percent (45%);

29 (3) Third installment – ~~sixty percent (60%)~~; sixty-seven and one-half
30 percent (67.5%); and

31 (4) Fourth installment – ~~eighty percent (80%)~~–ninety percent (90%).

32 (f) No addition to the tax shall be imposed under subsection (a) if the tax shown
33 on the return for the taxable year reduced by the tax withheld under Article 4A is less
34 than forty dollars (\$40.00) or if the individual did not have any liability for tax under
35 Division II of Article 4 for the preceding taxable year.

36 (g) For purposes of this section, the term ‘tax’ means the tax imposed by Division
37 II of Article 4 minus the credits against the tax allowed by Article 4. The amount of the
38 credit allowed under Article 4A for withheld income tax for the taxable year is
39 considered a payment of estimated tax, and an equal part of that amount is considered to
40 have been paid on each due date of the taxable year, unless the taxpayer establishes the
41 dates on which all amounts were actually withheld, in which case the amounts so
42 withheld are considered payments of estimated tax on the dates on which such amounts
43 were actually withheld.

1 (h) If, on or before January 31 of the following taxable year, the taxpayer files a
2 return for the taxable year and pays in full the amount computed on the return as
3 payable, no addition to tax shall be imposed under subsection (a) with respect to any
4 underpayment of the fourth required installment for the taxable year.

5 (i) Notwithstanding the other provisions of this section, an individual who is a
6 farmer or fisherman for a taxable year is required to make only one installment payment
7 of tax for that year. This installment is due on or before January 15 of the following
8 taxable year but may be paid without penalty or interest on or before March 1 of that
9 year. The amount of the installment payment shall be the lesser of:

- 10 (1) Sixty-six and two-thirds percent (66 2/3%) of the tax shown on the
11 return for the taxable year, or, if no return is filed, sixty-six and two-
12 thirds percent (66 2/3%) of the tax for that year; or
13 (2) One hundred percent (100%) of the tax shown on the return of the
14 individual for the preceding taxable year, if the preceding taxable year
15 was a taxable year of 12 months and the individual filed a return for
16 that year.

17 An individual is a farmer or fisherman for any taxable year if the individual's gross
18 income from farming or fishing, including oyster farming, for the taxable year is at least
19 sixty-six and two-thirds percent (66 2/3%) of the total gross income from all sources for
20 the taxable year, or the individual's gross income from farming or fishing, including
21 oyster farming, shown on the return of the individual for the preceding taxable year is at
22 least sixty-six and two-thirds percent (66 2/3%) of the total gross income from all
23 sources shown on the return.

24 (j) In applying this section to a taxable year beginning on any date other than
25 January 1, there shall be substituted, for the months specified in this section, the months
26 that correspond thereto. This section shall be applied to taxable years of less than 12
27 months in accordance with rules prescribed by the Secretary.

28 (k) This section shall not apply to any estate or trust."

29 Sec. 2. G.S. 105-164.3 reads as rewritten:

30 "§ 105-164.3. Definitions. ~~The words, terms and phrases when used in this Article shall~~
31 ~~have the meanings ascribed to them in this section~~ **following definitions apply**
32 **in this Article, except when the context clearly indicates a different**
33 **meaning:**

- 34 (1) 'Business' shall include any activity engaged in by any person or
35 caused to be engaged in by him with the object of gain, profit, benefit
36 or advantage, either direct or indirect. The term 'business' shall not be
37 construed in this Article to include occasional and isolated sales or
38 transactions by a person who does not hold himself out as engaged in
39 business.
- 40 (2) ~~" Secretary" shall mean the Secretary of Revenue of the State of North~~
41 ~~Carolina.~~ **'Commercial motor vehicle' means a motor vehicle that is:**
42 **a. A passenger motor vehicle and is to be used only as an**
43 **ambulance or fire or rescue vehicle, or a for-hire passenger**
44 **vehicle, as defined in G.S. 20-4.01;**

- 1 b. A self-propelled property hauling vehicle licensable under G.S.
2 20-88 whose empty weight and heaviest load to be transported
3 is at least 5,000 pounds; or
4 c. A semitrailer, as defined in G.S. 20-4.01, and is not a house
5 trailer.
- 6 (3) 'Consumer' shall mean and include every person storing, using or
7 otherwise consuming in this State tangible personal property
8 purchased or received from a retailer either within or without this
9 State.
- 10 (4) 'Cost price' means the actual cost of articles of tangible personal
11 property without any deductions therefrom on account of the cost of
12 materials used, cash discounts, labor or service costs, transportation
13 charges or any expenses whatsoever.
- 14 (5) 'Engaged in business' shall mean maintaining, occupying or using
15 permanently or temporarily, directly or indirectly, or through a
16 subsidiary or agent, by whatever name called, any office, place of
17 distribution, sales or sample room or place, warehouse or storage
18 place, or other place of business, for the selling or delivering of
19 tangible personal property for storage, use or consumption in this
20 State, or permanently or temporarily, directly or through a subsidiary,
21 having any representative, agent, salesman, canvasser or solicitor
22 operating in this State in such selling or delivering, and the fact that
23 any corporate retailer, agent or subsidiary engaged in business in this
24 State may not be legally domesticated or qualified to do business in
25 this State shall be immaterial. It shall also mean the maintaining in this
26 State, either permanently or temporarily, directly or through a
27 subsidiary, tangible personal property for the purpose of lease or
28 rental. It shall also mean making a mail order sale, as defined in
29 subdivision (8a) of this section, if one of the conditions listed in G.S.
30 105-164.8(b) is met.
- 31 (6) 'Gross sales' means the sum total of all retail sales of tangible personal
32 property as defined herein, whether for cash or credit without
33 allowance for cash discount and without any deduction on account of
34 the cost of the property sold, the cost of materials used, labor or
35 service costs, interest paid or any other expenses whatsoever and
36 without any deductions of any kind or character except as provided in
37 this Article.
- 38 (7) 'In this (the) State' means within the exterior limits of the State of
39 North Carolina and includes all territory within such limits owned by
40 or ceded to the United States of America.
- 41 ~~(8)~~(7a) 'Lease or rental' means the leasing or renting of tangible personal
42 property and the possession or use thereof by the lessee or ~~rentee~~ renter
43 for a consideration without transfer of the title of such property.

- 1 ~~(8a)~~(8) 'Mail order sale' means a sale of tangible personal property, ordered by
 2 mail, telephone, computer link, or other similar method, to a purchaser
 3 who is in this State at the time the order is remitted, from a retailer
 4 who receives the order in another state and transports the property or
 5 causes it to be transported to a person in this State. It is presumed that
 6 a resident of this State who remits an order was in this State at the time
 7 the order was remitted.
- 8 (8a) 'Manufactured home' means a structure that is designed to be used as a
 9 dwelling and:
- 10 a. Is built on a permanent chassis;
 11 b. Is transportable in one or more sections;
 12 c. When transported, is at least eight feet wide or forty feet long;
 13 and
 14 d. When erected on a site, has at least 320 square feet.
- 15 (8b) 'Motor vehicle' means any vehicle which is self-propelled and
 16 designed primarily for use upon the highways, any vehicle which is
 17 propelled by electric power obtained from trolley wires but not
 18 operated upon rails, and any vehicle designed to run upon the
 19 highways which is propelled by a self-propelled vehicle, but shall not
 20 include any implement of husbandry, farm tractor, road construction or
 21 maintenance machinery or equipment, special mobile equipment as
 22 defined in G.S. 20-4.01, ~~or~~ any vehicle designed primarily for use in
 23 work off the ~~highway~~ highway, or a manufactured home.
- 24 (9) 'Net taxable sales' shall mean and include the gross retail sales of the
 25 business of the retailer taxed under this Article after deducting
 26 ~~therefrom~~ exempt sales and nontaxable sales.
- 27 (10) 'Nonresident retail or wholesale merchant' means a person who does
 28 not have a place of business in this State, is engaged in the business of
 29 acquiring, by purchase, consignment, or otherwise, tangible personal
 30 property and selling the property outside the State, and is registered for
 31 sales and use tax purposes in a taxing jurisdiction outside the State.
- 32 (11) 'Person' includes any individual, firm, copartnership, joint venture,
 33 association, corporation, estate, trust, business trust, receiver, syndicate
 34 or other group, or combination acting as a unit, body politic, or
 35 political subdivision, whether public or private or quasi-public and the
 36 plural as well as the singular number.
- 37 (12) 'Purchase' means acquired for a consideration whether
 38 a. ~~Such~~ The acquisition was effected by a transfer of title or
 39 possession, or both, or a license to use or consume;
 40 b. ~~Such transfer shall have been~~ The transfer was absolute or
 41 conditional ~~and by whatever means it shall have been~~ regardless of
 42 the means by which it was effected; and
 43 c. ~~Such~~ The consideration ~~be~~ is a price or rental in money or by
 44 way of exchange or barter.

- 1 It shall also include the procuring of a retailer to erect, install or apply
2 tangible personal property for use in this State.
- 3 (13) 'Retail' shall mean the sale of any tangible personal property in any
4 quantity or quantities for any use or purpose on the part of the
5 purchaser other than for resale.
- 6 (14) 'Retailer' means and includes every person engaged in the business of
7 making sales of tangible personal property at retail, either within or
8 without this State, or peddling the same or soliciting or taking orders
9 for sales, whether for immediate or future delivery, for storage, use or
10 consumption in this State and every manufacturer, producer or
11 contractor engaged in business in this State and selling, delivering,
12 erecting, installing or applying tangible personal property for use in
13 this State notwithstanding that said property may be permanently
14 affixed to a building or realty or other tangible personal property.
15 'Retailer' also means a person who makes a mail order sale, as defined
16 in ~~subdivision (8a) of this section~~, if one of the conditions listed in G.S.
17 105-164.8(b) is met. Provided, however, that when in the opinion of
18 the Secretary it is necessary for the efficient administration of this
19 Article to regard any salesmen, solicitors, representatives, consignees,
20 peddlers, truckers or canvassers as agents of the dealers, distributors,
21 consignors, supervisors, employers or persons under whom they
22 operate or from whom they obtain the tangible personal property sold
23 by them regardless of whether they are making sales on their own
24 behalf or on behalf of such dealers, distributors, consignors,
25 supervisors, employers or persons, the Secretary may so regard them
26 and may regard the dealers, distributors, consignors, supervisors,
27 employers or persons as 'retailers' for the purpose of this Article.
- 28 (15) 'Sale' or 'selling' shall mean any transfer of title or possession, or both,
29 exchange, barter, lease, license to use or consume, or rental of tangible
30 personal property, conditional or otherwise, in any manner or by any
31 means whatsoever, however effected and by whatever name called, for
32 a consideration paid or to be paid, and includes the fabrication of
33 tangible personal property for consumers by persons engaged in
34 business who furnish either directly or indirectly the materials used in
35 the fabrication work, and the furnishing, preparing, or serving for a
36 consideration of any tangible personal property consumed on the
37 premises of the person furnishing, preparing, or serving such tangible
38 personal property or consumed at the place at which such property is
39 prepared, served or sold. A transaction whereby the possession of the
40 property is transferred but the seller retains title or security for the
41 payment of the price shall be deemed a sale.
- 42 (16) Except as provided in paragraph f., 'sales price' means the total
43 amount for which tangible personal property is sold including charges
44 for any services that go into the fabrication, manufacture or delivery of

1 such tangible personal property and that are a part of the sale valued in
2 money whether paid in money or otherwise and includes any amount
3 for which credit is given to the purchaser by the seller without any
4 deduction therefrom on account of the cost of the property sold, the
5 cost of materials used, labor or service costs, interest charged, losses or
6 any other expenses whatsoever. Provided, however, that where a
7 manufacturer, producer or contractor erects, installs or affixes tangible
8 personal property upon real property pursuant to a construction or
9 performance-type contract with or for the benefit of the owner of such
10 real property, the sales price shall be the cost of such property to the
11 manufacturer, producer or contractor performing the contract.
12 Provided, further:

- 13 a. The cost for labor or services rendered in erecting, installing or
14 applying property sold when separately charged shall not be
15 included as a part of the 'sales price';
- 16 b. Finance charges, service charges or interest from credit
17 extended under conditional sales contracts or other conditional
18 contracts providing for deferred payments of the purchase price
19 shall not be considered a part of the 'sales price' when
20 separately charged;
- 21 c. 'Sales price' shall not include the amount of any tax imposed by
22 the United States upon or with respect to retail sales whether
23 imposed upon the retailer or consumer except that any
24 manufacturers' or importers' excise tax shall be included in the
25 term.
- 26 d. 'Sales price' shall not include any amounts charged as deposits
27 on beverage containers which are returnable to vendors for
28 reuse and which amounts are refundable or creditable to
29 vendees, whether or not said deposits are separately charged.
- 30 e. 'Sales price' shall not include amounts charged as deposits on
31 automotive, industrial, marine and farm replacement parts
32 which are returnable to vendors for rebuilding or
33 remanufacturing and which amounts are refundable or
34 creditable to vendees, whether or not such deposits are
35 separately charged. This subsection shall not be construed to
36 include tires and batteries.
- 37 f. The sales price of tangible personal property sold through a
38 coin-operated vending machine, other than closed-container soft
39 drinks subject to excise tax under Article 2B of this Chapter or
40 tobacco products, is considered to be fifty percent (50%) of the
41 total amount for which the property is sold in the vending
42 machine.

43 (16a) 'Secretary' means the Secretary of the North Carolina Department of
44 Revenue.

- 1 (17) 'Storage' means and includes any keeping or retention in this State for
2 any purpose by the purchaser thereof, except sale in the regular course
3 of business, of tangible personal property purchased from a retailer.
- 4 (18) 'Use' means and includes the exercise of any right or power or
5 dominion whatsoever over tangible personal property by a purchaser
6 thereof and includes, but is not limited to, any withdrawal from
7 storage, installation, affixation to real or personal property, exhaustion
8 or consumption of tangible personal property by the owner or
9 purchaser thereof, but shall not include the sale of tangible personal
10 property in the regular course of business.
- 11 (19) 'Storage' and 'Use'; Exclusion. – 'Storage' and 'use' do not include the
12 keeping, retaining or exercising of any right or power over tangible
13 personal property by the purchaser thereof for the original purpose of
14 subsequently transporting it outside the State for use by said purchaser
15 thereafter solely outside the State and which purpose is consummated,
16 or for the purpose of being processed, fabricated or manufactured into,
17 attached to or incorporated into, other tangible personal property to be
18 transported outside the State and thereafter used by the purchaser
19 thereof solely outside the State.
- 20 (20) 'Tangible personal property' means and includes personal property
21 which may be seen, weighed, measured, felt or touched or is in any
22 other manner perceptible to the senses. The term 'tangible personal
23 property' shall not include stocks, bonds, notes, insurance or other
24 obligations or securities, nor shall it include water delivered by or
25 through main lines or pipes either for commercial or domestic use or
26 consumption. The term includes all 'canned' or prewritten computer
27 programs, either in the form of written procedures or in the form of
28 storage media on which or in which the program is recorded, held, or
29 existing for general or repeated sale, lease, or license to use or
30 consume. The term does not include the design, development, writing,
31 translation, fabrication, lease, license to use or consume, or transfer for
32 a consideration of title or possession of a custom computer program,
33 other than a basic operational program, either in the form of written
34 procedures or in the form of storage media on which or in which the
35 program is recorded, or any required documentation or manuals
36 designed to facilitate the use of the custom computer program.

37 As used in this subdivision:

- 38 a. 'Basic operational program' or 'control program' means a
39 computer program that is fundamental and necessary to the
40 functioning of a computer. A basic operational program is that
41 part of an operating system, including supervisors, monitors,
42 executives, and control or master programs, which consists of
43 the control program elements of that system. A control or
44 master program, as opposed to a processing program, controls

- 1 the operation of a computer by managing the allocation of all
2 system resources, including the central processing unit, main
3 storage, input/output devices, and processing programs. A
4 processing program is used to develop and implement the
5 specific applications the computer is to perform.
- 6 b. 'Computer program' means the complete plan for the solution
7 of a problem, such as the complete sequence of automatic data-
8 processing equipment instructions necessary to solve a problem,
9 and includes both systems and application programs and
10 subdivisions, such as assemblers, compilers, routines,
11 generators, and utility programs.
- 12 c. 'Custom computer program' means a computer program
13 prepared to the special order of the customer. Custom computer
14 programs include one of the following elements:
- 15 1. Preparation or selection of the programs for the
16 customer's use requires an analysis of the customer's
17 requirements by the vendor; or
 - 18 2. The program requires adaptation by the vendor to be
19 used in a particular make and model of computer
20 utilizing a specified output device.
- 21 d. 'Storage media' means punched cards, tapes, disks, diskettes, or
22 drums.
- 23 (21) 'Taxpayer' means any person liable for taxes under this Article.
- 24 (22) 'Use tax' means and includes the tax imposed by Part 3 in Division II
25 of this Article.
- 26 (23) 'Wholesale merchant' shall mean every person who engages in the
27 business of buying or manufacturing any tangible personal property
28 and selling same to registered retailers, wholesalers and nonresident
29 retail or wholesale merchants for resale. It shall also include persons
30 making sales of tangible personal property which are defined herein as
31 wholesale sales. For the purposes of this Article any person, firm,
32 corporation, estate or trust engaged in the business of manufacturing,
33 producing, processing or blending any articles of commerce and
34 maintaining a store or stores, warehouse or warehouses, or any other
35 place or places, separate and apart from the place of manufacture or
36 production, for the sale or distribution of its products (other than
37 bakery products) to other manufacturers or producers, wholesale or
38 retail merchants, for the purpose of resale shall be deemed a
39 'wholesale merchant.'
- 40 (24) 'Wholesale sale' shall mean a sale of tangible personal property by a
41 wholesale merchant to a manufacturer, or registered jobber or dealer,
42 or registered wholesale or retail merchant, for the purpose of resale but
43 does not include a sale to users or consumers not for resale.

1 (25) 'Utility' means an electric power company, a gas company, or a
2 telephone company that is subject to a privilege tax based on gross
3 receipts under G.S. 105-116 or 105-120, a business entity that provides
4 local, toll or private telecommunications service as defined by G.S.
5 105-120(a) or a municipality that sells electric power, other than a
6 municipality whose only wholesale supplier of electric power is a
7 federal agency and who is required by a contract with that federal
8 agency to make payments in lieu of taxes."

9 Sec. 3. G.S. 105-164.4 reads as rewritten:

10 **~~§ 105-164.4. Imposition of tax; retailer. Tax imposed on retailers.~~**

11 There is hereby levied and imposed, in addition to all other taxes of every kind now
12 imposed by law, a privilege or license tax upon every person who engages in the
13 business of selling tangible personal property at retail, renting or furnishing tangible
14 personal property or the renting and furnishing of rooms, lodgings and accommodations
15 to transients, in this State, the same to be collected and the amount to be determined by
16 the application of the following rates against gross sales and rentals, to wit:

17 (1) ~~At the rate of three percent (3%) of the sales price of each item or~~
18 ~~article of tangible property when sold at retail in this State, the tax to~~
19 ~~be computed on total net taxable sales as defined herein but for the~~
20 ~~purpose of computing the amount due the State each and every taxable~~
21 ~~retail sale, or retail sales upon which the tax has been collected, or the~~
22 ~~amount of tax actually collected, whichever be greater and whether or~~
23 ~~not erroneously collected, shall be included in the computation of tax~~
24 ~~due the State. Provided, however, that in the case of the sale of any~~
25 ~~aircraft, railway locomotive, railway car or the sale of any motor~~
26 ~~vehicle or boat, the tax shall be only at the rate of two percent (2%) of~~
27 ~~the sales price, but at no time shall the maximum tax with respect to~~
28 ~~any one such aircraft, railway locomotive, railway car or motor vehicle~~
29 ~~or boat, including all accessories attached thereto at the time of~~
30 ~~delivery thereof to the purchaser, be in excess of three hundred dollars~~
31 ~~(\$300.00).~~

32 ~~The separate sale of a new motor vehicle chassis and a new motor vehicle~~
33 ~~body to be installed thereon, whether by the same retailer or by~~
34 ~~different retailers shall be subject only to the tax herein prescribed with~~
35 ~~respect to a single motor vehicle. No tax shall be imposed upon a body~~
36 ~~mounted on the chassis of a motor vehicle which temporarily enters~~
37 ~~the State for the purpose of having such body mounted thereon by the~~
38 ~~manufacturer thereof.~~

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

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

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

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

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

30 (a) A privilege tax is imposed on a retailer at the following percentage rates of the
31 retailer's net taxable sales, or gross receipts from the lease or rental of tangible personal
32 property, as appropriate:

33 (1) At the rate of three percent (3%) of the sales price of each item or
34 article of tangible personal property that is sold at retail and is not
35 subject to tax under another subdivision in this section.

36 (1a) At the rate of two percent (2%) of the sales price of each manufactured
37 home sold at retail, including all accessories attached to the
38 manufactured home when it is delivered to the purchaser, not to
39 exceed three hundred dollars (\$300.00). Each section of a
40 manufactured home that is transported separately to the site where it is
41 to be erected is a separate article.

42 (1b) At the rate of two percent (2%) of the sales price of each aircraft, boat,
43 railway car, or locomotive sold at retail, including all accessories
44 attached to the item when it is delivered to the purchaser. If the item is

1 to be used principally for the production of income or in connection
2 with a business, the tax on the item may not exceed one thousand five
3 hundred dollars (\$1,500). For the purpose of this subdivision, an item
4 is to be used principally for the production of income or in connection
5 with a business if at least eighty-five percent (85%) of its use will be
6 for the production of income or in connection with a business. In
7 order to receive the benefit of the maximum tax of one thousand five
8 hundred dollars (\$1,500), the seller must obtain from the purchaser and
9 furnish to the Secretary on a form provided by the Secretary an
10 affidavit signed by the purchaser and containing the following: (i) the
11 name and address of the purchaser; (ii) information identifying the
12 item sold; (iii) a statement that at least eighty-five percent (85%) of the
13 item's use will be for the production of income or in connection with a
14 business; and (iv) such other information as the Secretary may require.
15 This affidavit must be filed with the seller's sales and use tax report for
16 the month in which the sale is made or within 90 days after the sale is
17 made, whichever is later.

18 (1c) At the rate of three percent (3%) of the sales price of each motor
19 vehicle sold at retail, including all accessories attached to the vehicle
20 when it is delivered to the purchaser. If the motor vehicle is a
21 commercial motor vehicle, the tax under this subdivision may not
22 exceed one thousand five hundred dollars (\$1,500).

23 Notwithstanding G.S. 105-164.3(16) and regardless whether the
24 seller is a retailer, the sales price of a motor vehicle is the gross sales
25 price of the motor vehicle less any allowance given for a motor vehicle
26 taken in trade as part of the consideration for the purchased motor
27 vehicle. Further, the gross sales price of a motor vehicle sold by a
28 seller who is not a retailer is the value of the vehicle set in a schedule
29 of values adopted by the Commissioner of Motor Vehicles. In
30 adopting a schedule of values for motor vehicles, the Commissioner
31 shall adopt a schedule whose values do not exceed the wholesale
32 values of motor vehicles as published in a recognized automotive
33 reference manual.

34 The separate sale of a motor vehicle chassis and a motor vehicle
35 body to be installed on the chassis, whether by the same or different
36 retailers, is subject to the tax imposed by this subdivision on a single
37 motor vehicle. The tax imposed by this subdivision does not apply to
38 the sale of a motor vehicle body that is mounted on a motor vehicle
39 chassis that enters the State so the body can be mounted on the chassis
40 by the manufacturer of the body.

41 The tax imposed under this subdivision applies to all retail sales
42 of motor vehicles regardless whether the seller is engaged in
43 business as a retailer of motor vehicles or whether a tax on the sale
44 of the vehicle has previously been paid under this Article. When, as

1 an incident to the organization of a partnership or a corporation,
2 property is transferred by an individual to the partnership or
3 corporation and no gain or loss arises on the transfer under section
4 351 or section 721 of the Code, the transfer is not a retail sale under
5 this subdivision.

6 A purchaser of a motor vehicle from a retailer shall pay the tax
7 imposed under this subdivision to the retailer, who is liable for
8 collecting and remitting the tax to the Secretary. A purchaser of a
9 motor vehicle from a person who is not a retailer is liable for payment
10 of the tax imposed by this subdivision; the purchaser shall pay the tax
11 to the Commissioner of Motor Vehicles when applying for a certificate
12 of title for the vehicle.

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

18 ~~Provided further, the tax shall be only at~~

19 (1d) At the rate of one percent (1%) of the sales price on the following
20 items:

- 21 a. Horses or mules by whomsoever sold.
22 b. Semen to be used in the artificial insemination of animals.
23 c. Sales of fuel, other than electricity or piped natural gas, to
24 farmers to be used by them for any farm purposes other than
25 preparing food, heating dwellings and other household
26 purposes. The quantity of fuel purchased or used at any one
27 time shall not in any manner be a determinative factor as to
28 whether any sale or use of fuel is or is not subject to the one
29 percent (1%) rate of tax imposed herein.
30 d. Sales of fuel, other than electricity or piped natural gas, to
31 manufacturing industries and manufacturing plants for use in
32 connection with the operation of such industries and plants
33 other than sales of fuels to be used for residential heating
34 purposes. The quantity of fuel purchased used at any one time
35 shall not in any manner be a determinative factor as to whether
36 any sale or use of fuel is or is not subject to the one percent
37 (1%) rate of tax imposed herein.
38 e. Sales of fuel, other than electricity or piped natural gas, to
39 commercial laundries or to pressing and dry-cleaning
40 establishments for use in machinery used in the direct
41 performance of the laundering or the pressing and cleaning
42 service.
43 f. Sales to freezer locker plants of wrapping paper, cartons and
44 supplies consumed directly in the operation of such plant.

- 1 have contracts with manufacturing industries and plants.
 2 As used in this paragraph, the term 'manufacturing
 3 industries and plants' does not include delicatessens, cafes,
 4 cafeterias, restaurants, and other similar retailers that are
 5 principally engaged in the retail sale of foods prepared by
 6 them for consumption on or off their premises.
- 7 i.c. Sales of central office equipment and switchboard and
 8 private branch exchange equipment to telephone
 9 companies regularly engaged in providing telephone
 10 service to subscribers on a commercial basis, and sales to
 11 these companies of prewritten computer programs used in
 12 providing telephone service to their subscribers.
- 13 j.d. Sales to commercial laundries or to pressing and dry
 14 cleaning establishments of machinery used in the direct
 15 performance of the laundering or the pressing and cleaning
 16 service and of parts and accessories thereto.
- 17 k.e. Sales to freezer locker plants of machinery used in the
 18 direct operation of said freezer locker plant and of parts
 19 and accessories thereto.
- 20 l.f. Sales of broadcasting equipment and parts and accessories
 21 thereto and towers to commercial radio and television
 22 companies which are under the regulation and supervision
 23 of the Federal Communications Commission.
- 24 m.g. Sales to farmers of bulk tobacco barns and racks and all
 25 parts and accessories thereto and similar apparatus used for
 26 the curing and drying of any farm produce.
- 27 n. ~~Repealed by Session Laws 1983, c. 805, s. 2, effective July~~
 28 ~~1, 1983.~~
- 29 o.h. Sales to farmers of grain, feed or soybean storage facilities
 30 and accessories thereto, whether or not dryers are attached,
 31 and all similar apparatus and accessories thereto for the
 32 storage of grain, feed or soybeans.
- 33 p. ~~Repealed by Session Laws 1983, c. 805, s. 2, effective July~~
 34 ~~1, 1983.~~
- 35 q.i. Sales of containers to farmers or producers for use in the
 36 planting, producing, harvesting, curing, marketing,
 37 packaging, sale, or transporting or delivery of their
 38 products when such containers do not go with and become
 39 part of the sale of their products at wholesale or retail.
- 40 (2) ~~At the rate of three percent (3%) of the gross proceeds derived from~~
 41 ~~the lease or rental of tangible personal property as defined herein,~~
 42 ~~where the lease or rental of such property is an established business, or~~
 43 ~~the same is incidental or germane to said business; except that~~
 44 ~~whenever a rate of less than three percent (3%) is applicable to a sale~~

1 of property which is leased or rented, the lower rate of tax shall be due
2 on such lease or rental proceeds. ~~applicable percentage rate of the~~
3 ~~gross receipts derived from the lease or rental of tangible personal~~
4 ~~property by a person who is engaged in the business of leasing or~~
5 ~~renting tangible personal property, or is a retailer and leases or rents~~
6 ~~property of the type sold by the retailer. For the lease or rental of a~~
7 ~~motor vehicle, the applicable percentage rate is eight percent (8%),~~
8 ~~except that if the motor vehicle is rented or leased to the same person~~
9 ~~for a period of more than 90 continuous days, for the period of the~~
10 ~~continuous rental or lease to that person in excess of the first 90 days,~~
11 ~~the applicable percentage rate is the rate and the maximum tax, if any,~~
12 ~~that would apply to a sale of the motor vehicle to that person. For all~~
13 ~~other leases and rentals, the applicable percentage rate is the rate and~~
14 ~~the maximum tax, if any, that applies to a sale of the property that is~~
15 ~~leased or rented. A person who leases or rents property shall also~~
16 ~~collect the tax imposed by this section on the separate retail sale of the~~
17 ~~property.~~

- 18 (3) Operators of hotels, motels, tourist homes, tourist camps, and similar
19 type businesses and persons who rent private residences and cottages
20 to transients are considered retailers under this Article. There is levied
21 upon every such retailer a tax of three percent (3%) of the gross
22 receipts derived from the rental of any ~~room or~~ rooms, lodgings, or
23 accommodations furnished to transients for a consideration. This tax
24 does not apply to any private residence or cottage that is rented for less
25 than 15 days in a calendar year or to any room, lodging, or
26 accommodation supplied to the same person for a period of 90 or more
27 continuous days.

28 As used in this subdivision, the term 'persons who rent to
29 transients' means (i) owners of private residences and cottages who
30 rent to transients and (ii) rental agents, including 'real estate brokers'
31 as defined in G.S. 93A-2, who rent private residences and cottages to
32 transients on behalf of the owners. If a rental agent is liable for the tax
33 imposed by this subdivision, the owner is not liable.

- 34 (4) Every person, firm or corporation engaged in the business of operating
35 a pressing club, cleaning plant, hat-blocking establishment, dry-
36 cleaning plant, laundry (including wet or damp wash laundries and
37 businesses known as laundrettes and laundralls), or any ~~similar type~~
38 ~~similar~~ business, or engaged in the business of renting clean linen or
39 towels or wearing apparel, or any ~~similar type~~ ~~similar~~ business, or
40 engaged in the business of soliciting cleaning, pressing, hat blocking,
41 laundering or rental business for any of the aforementioned businesses,
42 shall be considered 'retailers' for the purposes of this Article. There is
43 hereby levied upon every such person, firm or corporation a tax of
44 three percent (3%) of the gross receipts derived from services rendered

1 in engaging in any of the occupations or businesses named in this
2 subdivision, and every person, firm or corporation subject to the
3 provisions of this subdivision shall register and secure a license in the
4 manner hereinafter provided in this section, and, insofar as practicable,
5 all other provisions of this Article shall be applicable with respect to
6 the tax herein provided for. The tax imposed by this subdivision does
7 not apply to receipts derived from coin or token-operated washing
8 machines, extractors, and dryers. The taxes levied in this subdivision
9 are additional privilege or license taxes for the privilege of engaging in
10 the occupations or businesses named herein. Any person, firm or
11 corporation engaged in cleaning, pressing, hat blocking, laundering
12 for, or supplying clean linen or towels or wearing apparel to, another
13 person, firm or corporation engaged in soliciting shall not be required
14 to pay the three percent (3%) tax on its gross receipts derived through
15 such solicitor, if the soliciting person, firm or corporation has
16 registered with the Department, secured the license hereinafter
17 required and has paid the tax at the rate of three percent (3%) of the
18 total gross receipts derived from business solicited.

19 (4a) At the rate of three percent (3%) of the gross receipts derived by a
20 utility from sales of electricity, piped natural gas, or local
21 telecommunications service as defined by G.S. 105-120(a). A person
22 who operates a utility is considered a retailer under this Article.

23 (4b) A person who sells tangible personal property at a flea market, other
24 than his own household personal property, is considered a retailer
25 under this Article. A tax is levied on that person at the rate of three
26 percent (3%) of the sales price of each article sold by him at the flea
27 market. A person who leases or rents space at a flea market may not
28 lease or rent this space unless the retailer requesting to rent or lease the
29 space furnishes evidence that he has obtained the license required by
30 this Article. A person who leases or rents space at a flea market shall
31 keep records of retailers to whom he has leased or rented space at the
32 market. As used in this subdivision, the term 'flea market' means a
33 place where space is rented to a person for the purpose of selling
34 tangible personal property.

35 (4c) At the rate of six and one-half percent (6 1/2%) of the gross receipts
36 derived from providing toll telecommunications services or private
37 telecommunications services as defined by G.S. 105-120(a) that both
38 originate from and terminate in the State which are not subject to the
39 privilege tax under G.S. 105-120. Any business entity that provides
40 the service outlined above is considered a retailer under this Article.
41 This subdivision shall not apply to telephone membership corporations
42 as described in Chapter 117 of the General Statutes.

43 ~~(5)~~ (b) ~~The said tax levied in this section shall be collected from the retailer as~~
44 ~~defined herein and paid by him at the time and in the manner as hereinafter provided.~~

1 Provided, however, that any person engaging or continuing in business as a retailer shall
2 pay the tax required on the net taxable sales of such business at the rates specified when
3 proper books are kept showing separately the gross proceeds of taxable and nontaxable
4 sales of tangible personal property in such form as may be accurately and conveniently
5 checked by the Secretary or his duly authorized agent. If such records are not kept
6 separately the tax shall be paid as a retailer on the gross sales of business and the
7 exemptions and exclusions provided by this Article shall not be allowed. ~~(6) The tax so~~
8 ~~levied in this section is and shall be~~ in addition to all other taxes whether levied in the
9 form of excise, license or privilege or other taxes.

10 ~~(7)~~ (c) Any person who ~~shall engage or continue engages or continues~~ in any
11 business for which a privilege tax is imposed by this Article shall immediately after July
12 1, 1979, apply for and obtain from the Secretary upon payment of the sum of five
13 dollars (\$5.00) a license to engage in and conduct such business upon the condition that
14 ~~such the~~ person shall pay the tax accruing to the State of North Carolina ~~under the~~
15 ~~provisions of this Article and he~~ under this Article; the person shall thereby be duly
16 licensed and registered to engage in and conduct such business. Except as hereinafter
17 provided, a license issued under this subsection shall be a continuing license until
18 revoked for failure to comply with the provisions of this Article. However, any person
19 who has heretofore applied for and obtained ~~such the~~ license, ~~and such if the~~ license was
20 in force and effect as of July 1, 1979, shall not be required to apply for and obtain a new
21 license.

22 Any person who ~~shall cease ceases~~ to be engaged in any business for which a
23 privilege tax is imposed by this Article, and who ~~shall remain remains~~ continuously out
24 of business for a period of five years shall apply for and obtain a new license from the
25 Secretary upon the payment of a tax of five dollars (\$5.00), and any license previously
26 issued under this section shall be ~~null, void and of no effect. void.~~ The burden of proof
27 after such period shall be upon the taxpayer to show that he did engage in such ~~activity~~
28 business within the period, and that no new license is required.

29 A retailer who sells tangible personal property at a flea market shall conspicuously
30 display his sales tax license when making sales at the flea market."

31 Sec. 4. G.S. 105-164.6 reads as rewritten:

32 **"§ 105-164.6. Imposition of tax.**

33 ~~An excise tax is hereby levied and imposed on the storage, use or consumption in~~
34 ~~this State of tangible personal property purchased within and without this State for~~
35 ~~storage, use or consumption in this State, the same to be collected and the amount to be~~
36 ~~determined by the application of the following rates:~~

- 37 (1) ~~At the rate of three percent (3%) of the cost price of each item or~~
38 ~~article of tangible personal property when the same is not sold but~~
39 ~~used, consumed, distributed or stored for use or consumption in this~~
40 ~~State; except that, whenever a rate of less than three percent (3%) is~~
41 ~~applicable under the sales tax schedule set out in G.S. 105-164.4 to the~~
42 ~~sale at retail of an item or article of tangible personal property, the~~
43 ~~same rate, and maximum tax if any, shall be used in computing any~~
44 ~~use tax due under this subdivision. The separate sale of a new motor~~

1 ~~vehicle chassis and a new motor vehicle body to be installed thereon,~~
2 ~~whether by the same retailer or by different retailers, shall be subject~~
3 ~~only to the tax herein prescribed with respect to a single motor~~
4 ~~vehicle.~~

5 (a) An excise tax at the following percentage rates is imposed on the storage, use,
6 or consumption in this State of tangible personal property purchased inside or outside
7 the State for storage, use, or consumption in the State:

8 (1) At the applicable percentage rate of the cost price of each item or
9 article of tangible personal property that is stored, used, or consumed
10 in this State. The applicable percentage rate is the rate and the
11 maximum tax, if any, that applies to a sale of the property that is
12 stored, used, or consumed.

13 The tax imposed by this subdivision on a motor vehicle applies to
14 all owners of motor vehicles, regardless whether the owner or
15 purchaser acquired the vehicle from a retailer of motor vehicles and
16 regardless whether a tax has been paid under this Article on a previous
17 sale of the motor vehicle. The tax imposed on a motor vehicle is
18 payable to the Commissioner of Motor Vehicles when applying for a
19 certificate of title and shall be collected by the Commissioner in the
20 same manner and in accordance with the same restrictions that apply to
21 the tax imposed by G.S. 105-164.4(a) on the sale of a motor vehicle by
22 a person who is not a retailer.

23 (2) ~~At the rate of three percent (3%) of the monthly lease or rental price~~
24 ~~paid by the lessee or rentee, or contracted or agreed to be paid by the~~
25 ~~lessee or rentee, to the owner of the tangible personal property; except~~
26 ~~that, whenever a rate of less than three percent (3%) is applicable~~
27 ~~under the sales tax schedule set out in G.S. 105-164.4 to the sale at~~
28 ~~retail of an item or article of tangible personal property, then the same~~
29 ~~rate, and maximum tax if any, shall be used in computing any use tax~~
30 ~~due under this subdivision.~~ applicable percentage rate of the monthly
31 lease or rental price paid, contracted, or agreed to be paid by the lessee
32 or renter to the owner of tangible personal property that is stored, used,
33 or consumed in this State. The applicable percentage rate is the rate
34 and the maximum tax, if any, that applies to a lease or rental of the
35 property that is stored, used, or consumed.

36 (3) (b) There is hereby levied and there shall be collected from every person,
37 firm, or corporation, an excise tax of three percent (3%) of the purchase price of all
38 tangible personal property purchased or used which shall enter into or become a part of
39 any building or other kind of structure in this State, including all materials, supplies,
40 fixtures and equipment of every kind and description which shall be annexed thereto or
41 in any manner become a part thereof. ~~Said~~ The tax shall be levied against the purchaser
42 of such property. Provided, that where the purchaser is a contractor, the contractor and
43 owner shall be jointly and severally liable for said ~~the~~ tax, but the liability of the owner
44 shall be deemed satisfied if before final settlement between them the contractor

1 furnishes to the owner an affidavit certifying that ~~said~~the tax has been paid. Provided
2 further, that where the purchaser is a subcontractor, the contractor and subcontractor
3 shall be jointly and severally liable for ~~said~~the tax, but the liability of the contractor
4 shall be deemed satisfied if before final settlement between them the subcontractor
5 furnishes to the contractor an affidavit certifying that ~~said~~the tax has been paid.

6 (3a) ~~Every person, firm, or corporation that purchases or acquires a motor vehicle~~
7 ~~shall pay a tax at the rate of two percent (2%) of the sales price of the vehicle, not to~~
8 ~~exceed three hundred dollars (\$300.00) per vehicle. This tax shall be paid to the~~
9 ~~Commissioner of Motor Vehicles when applying for a certificate of title or registration~~
10 ~~plate for the vehicle. A purchaser who furnishes to the Commissioner of Motor~~
11 ~~Vehicles a certificate from a retailer of motor vehicles engaged in business in this State~~
12 ~~stating that the purchaser has paid the tax levied on the vehicle by this Article to the~~
13 ~~retailer is relieved of liability for the tax. No certificate of title, or registration and~~
14 ~~license plate or plates shall be issued for any motor vehicle purchased or acquired for~~
15 ~~use on the streets and highways of this State unless and until the tax provided for under~~
16 ~~this Article on motor vehicles has been paid. Nothing herein is intended to relieve any~~
17 ~~retailer of motor vehicles engaged in business in this State from his liability for~~
18 ~~collecting and remitting sales or use tax on his sales of motor vehicles for use by the~~
19 ~~purchasers thereof in this State and no retailer shall be absolved of this liability for his~~
20 ~~failure to collect the tax from such purchasers. The Commissioner of Motor Vehicles~~
21 ~~shall remit use taxes collected by him under this subdivision to the Secretary.~~

22 ~~The tax levied under this section applies to all owners of motor vehicles,~~
23 ~~regardless whether the owner purchased or acquired the vehicle from a retailer of motor~~
24 ~~vehicles and regardless whether a tax has previously been paid under this Article with~~
25 ~~respect to the vehicle.~~

26 ~~An owner of a motor vehicle acquired from a seller who is not a retailer shall~~
27 ~~certify the sales price of the vehicle as provided in G.S. 105-164.4(1).~~

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

31 (4) (c) ~~Where a retail sales tax has already been paid with respect to said~~tangible
32 personal property in this State by the purchaser thereof, saidthe tax shall be credited
33 upon the tax imposed by this Part. Where a retail sales and use tax is due and has been
34 paid with respect to ~~said~~tangible personal property in another state by the purchaser
35 ~~thereof~~ for storage, use or consumption in this State, ~~said~~the tax shall be credited upon
36 the tax imposed by this Part. If the amount of tax paid to another state is less than the
37 amount of tax imposed by this Part, the purchaser shall pay to the Secretary an amount
38 sufficient to make the tax paid to the other state and this State equal to the amount
39 imposed by this Part. The Secretary of Revenue shall require such proof of payment of
40 tax to another state as he deems ~~to be necessary and proper.~~necessary. No credit shall be
41 given under this ~~subdivision~~subsection for sales or use taxes paid in another state if that
42 state does not grant similar credit for sales taxes paid in North Carolina.

43 (5) (d) ~~Every person storing, using or otherwise consuming in this State tangible~~
44 ~~personal property purchased or received at retail either within or without this State shall~~

1 be liable for the tax imposed by this Article and the liability shall not be extinguished
2 until the tax has been paid to this State. Provided, however, that a receipt from a
3 registered retailer engaged in business in this State given to the purchaser in accordance
4 with the provisions of this Article shall be **prima facie** sufficient to relieve the
5 purchaser from liability for the tax to which such receipt may refer and the liability of
6 the purchaser shall be extinguished upon payment of the tax by any retailer from whom
7 he has purchased ~~said~~ the property.

8 ~~(6)~~ (e) Except as provided herein the tax so levied is and shall be in addition to
9 all other taxes whether levied in the form of excise, license, privilege or other taxes.

10 ~~(7)~~ (f) Every retailer engaged in business in this State selling or delivering
11 tangible personal property for storage, use or consumption in this State shall
12 immediately after July 1, 1979, apply for and obtain from the Secretary upon the
13 payment of the sum of five dollars (\$5.00) a license to engage in and conduct such
14 business upon the condition that such person shall pay the tax accruing to the State of
15 North Carolina under the provisions of this Article, and he shall thereby be duly
16 licensed and registered to engage in and conduct such business. Except as hereinafter
17 provided, a license issued under this subsection shall be a continuing license until
18 revoked for failure to comply with the provisions of this Article. However, any person
19 who has heretofore applied for and obtained such license, and such license was in force
20 and effect as of July 1, 1979, shall not be required to apply for and obtain a new license.

21 Any person who ~~shall cease~~ ceases to be engaged in any business for which a tax is
22 imposed by this Article, and who ~~shall remain~~ remains continuously out of business for a
23 period of five years shall apply for and obtain a new license from the Secretary upon the
24 payment of a tax of five dollars (\$5.00), and any license previously issued under this
25 section shall be ~~null, void and of no effect.~~ void. The burden of proof after such period
26 shall be upon the taxpayer to show that he did engage in such activity within the period,
27 and that no new license is required.

28 ~~(8)~~ (g) Notwithstanding any other provisions of this Article, a use tax, at the
29 applicable use tax rate, as hereinbefore provided, is hereby levied upon the storage or
30 use in this State of any motor vehicles, machines, machinery, tools or other equipment
31 brought, imported or caused to be brought into this State for use in constructing,
32 building or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or
33 water system, drainage or dredging system, railway system, reservoir or dam, hydraulic
34 or power plant, transmission line, tower, dock, wharf, excavation, grading or other
35 improvement or structure, or any part thereof. The owner or, if the property is leased
36 the lessee of any such motor vehicle, machine, machinery, tools or other equipment
37 shall be liable for the tax provided for in this paragraph, to be computed as set out
38 below. The useful life of such motor vehicles, machines, tools or other equipment shall
39 be determined by the Secretary in accordance with the experience and practices of the
40 building and construction trades. ~~Said~~ The use tax shall be computed on the basis of
41 ~~such~~ that proportion of the original purchase price of such property as the duration of
42 time of use in this State bears to the total useful life thereof. ~~Such~~ The tax shall become
43 due immediately upon such property being brought into this State, and in the absence of

1 satisfactory evidence as to the period of use intended in this State, it shall be presumed
2 that such property will remain in this State for the remainder of its useful life.

3 All provisions of this Article not directly in conflict with this subsection shall apply
4 in this subsection. This subsection does not apply to sales of property in this State or to
5 the use, storage, or consumption of property when purchased for use in this State. In
6 these cases, the full sales or use tax shall be paid. All provisions of this Article,
7 including the administrative provisions, apply to the tax imposed by this subsection
8 unless they directly conflict with this subsection. the provisions of this paragraph shall be
9 applicable with respect to the matters herein set forth. The provisions of this paragraph shall not
10 be applicable with respect to sales of such property within this State or to the use, storage or
11 consumption of such property when purchased for use in this State, and in such cases the full
12 sales or use tax shall be paid as in all other cases, irrespective of the period of intended use in
13 this State."

14 Sec. 5. G.S. 105-164.13(16) reads as rewritten:

15 "(16) Sales of used ~~articles~~ articles, other than motor ~~vehicles~~ vehicles,
16 taken in trade, or a series of trades, as a credit or part payment on
17 the sale of a new article, provided the tax levied in this Article is paid
18 on the gross sales price of the new article. In the interpretation of this
19 subsection, new article shall be taken to mean article. 'New article'
20 means the original stock in trade of the ~~merchant~~ merchant, and
21 shall is not be limited to newly manufactured articles. The resale of
22 ~~articles~~ articles, other than motor ~~vehicles~~ vehicles, repossessed by
23 the vendor shall likewise be exempt from gross sales taxable under
24 this Article."

25 Sec. 6. G.S. 105-164.13(40) reads as rewritten:

26 "(40) Sales-Tangible personal property, other than a motor vehicle, sold
27 to the Department of Transportation."

28 Sec. 7. G.S. 105-164.14 reads as rewritten:

29 **"§ 105-164.14. Certain refunds authorized.**

30 (a) Any person engaged in transporting persons or property in interstate
31 commerce for compensation who is subject to regulation by, and to the jurisdiction of,
32 the Interstate Commerce Commission or the United States Department of
33 Transportation and who is required by either such federal agency to keep records
34 according to its standard classification of accounting or, in the case of a small
35 certificated air carrier, is required by the U.S. Department of Transportation to make
36 reports of financial and operating statistics, may secure a refund from the Secretary of
37 Revenue with respect to sales or use tax paid by such person on purchases or
38 acquisitions of lubricants, repair parts and accessories in this State for motor vehicles,
39 railroad cars, locomotives, and airplanes operated by such person, upon the conditions
40 described below. The Secretary of Revenue shall prescribe the periods of time, whether
41 monthly, quarterly, semiannually or otherwise, with respect to which refunds may be
42 claimed, and shall prescribe the time within which, following such periods, an
43 application for refund may be made. An applicant for refund shall furnish such
44 information as the Secretary may require, including detailed information as to

1 lubricants, repair parts and accessories wherever purchased, whether within or without
2 the State, acquired during the period with respect to which a refund is sought, and the
3 purchase price thereof, detailed information as to sales and use tax paid in this State
4 thereon, and detailed information as to the number of miles such motor vehicles,
5 railroad cars, locomotives, and airplanes were operated both within this State, and
6 without this State, during such period, together with satisfactory proof thereof. The
7 Secretary shall thereupon compute the tax which would be due with respect to all
8 lubricants, repair parts and accessories acquired during the refund period as though all
9 such purchases were made in this State, but only on such proportion of the total
10 purchase prices thereof as the total number of miles of operation of such applicants'
11 motor vehicles, railroad cars, locomotives, and airplanes within this State bears to the
12 total number of miles of operation of such applicants' motor vehicles, railroad cars,
13 locomotives and airplanes within and without this State, and such amount of sales and
14 use tax as the applicant has paid in this State during said refund period in excess of the
15 amounts so computed shall be refunded to the applicant.

16 (b) The Secretary of Revenue shall make refunds semiannually to hospitals not
17 operated for profit (including hospitals and medical accommodations operated by an
18 authority created under the Hospital Authorities Law, Article 2 of Chapter 131E),
19 educational institutions not operated for profit, ~~churches, orphanages and churches,~~
20 orphanages, and other charitable or religious institutions and organizations not operated
21 for profit of sales and use taxes paid by them under this Article, ~~except under G.S. 105-~~
22 ~~164.4(4a) and G.S. 105-164.4(4c), by such institutions and organizations~~ Article on direct
23 purchases of tangible personal property for use in carrying on ~~the work of such institutions~~
24 ~~or organizations~~ their work, except for sales and use taxes paid on:

25 (1) Motor vehicles under G.S. 105-164.4(a)(1c) or (a)(2) or 105-164.6(a);

26 (2) Electricity, piped natural gas, or telecommunications services under
27 G.S. 105-164.4(a)(4a) or (4b).

28 Sales and use tax liability indirectly incurred by such institutions and organizations
29 on building materials, supplies, fixtures and equipment which shall become a part of or
30 annexed to any building or structure being erected, altered or repaired for such
31 institutions and organizations for carrying on their nonprofit activities shall be construed
32 as sales or use tax liability incurred on direct purchases by such institutions and
33 organizations, and such institutions and organizations may obtain refunds of such taxes
34 indirectly paid. The Secretary of Revenue shall also make refunds semiannually to all
35 other hospitals (not specifically excluded herein) of sales and use tax paid by them on
36 medicines and drugs purchased for use in carrying out the work of such hospitals. This
37 subsection does not apply to organizations, corporations, and institutions that are owned
38 and controlled by the United States, the State, or a unit of local government, except
39 hospital facilities created under Article 2 of Chapter 131E of the General Statutes and
40 nonprofit hospitals owned and controlled by a unit of local government that elect to
41 receive semiannual refunds under this subsection instead of annual refunds under
42 subsection (c). In order to receive the refunds herein provided for, such institutions and
43 organizations shall file a written request for refund covering the first six months of the
44 calendar year on or before the fifteenth day of October next following the close of said

1 period, and shall file a written request for refund covering the second six months of the
2 calendar year on or before the fifteenth day of April next following the close of that
3 period. Such requests for refund shall be substantiated by such proof as the Secretary of
4 Revenue may require, and no refund shall be made on applications not filed within the
5 time allowed by this section and in such manner as the Secretary may require.

6 (c) Upon receipt of timely applications for refund, the Secretary of Revenue shall
7 make refunds annually to all governmental entities, as hereinafter defined, of sales and
8 use tax paid by them under this Article, ~~except under G.S. 105-164.4(4a) and 105-164.4(4c),~~
9 ~~by said governmental entities~~ Article on direct purchases of tangible personal property
10 property, except for sales and use tax paid on:

11 (1) Motor vehicles under G.S. 105-164.4(a)(1c) or (a)(2) or 105-164.6(a);

12 (2) Electricity, piped natural gas, or telecommunications services under
13 G.S. 105-164.4(a)(4a) or (4b).

14 Sales and use tax liability indirectly incurred by such governmental entities on
15 building materials, supplies, fixtures and equipment which shall become a part of or
16 annexed to any building or structure being erected, altered or repaired which is owned
17 or leased by such governmental entities shall be construed as sales or use tax liability
18 incurred on direct purchases by such governmental entities, and such entities may obtain
19 refunds of such taxes indirectly paid. The refund provisions contained in this subsection
20 shall not apply to any governmental entities not specifically named herein. In order to
21 receive the refund herein provided for, governmental entities shall file a written request
22 for said refund within six months of the close of the fiscal year of the governmental
23 entities seeking said refund, and such request for refund shall be substantiated by such
24 records, receipts and information as the Secretary may require. No refunds shall be
25 made on applications not filed within the time allowed by this section and in such
26 manner as the Secretary may otherwise require. The term 'governmental entities,' for
27 the purposes of this subsection, shall mean all counties, incorporated cities and towns,
28 water and sewer authorities created and existing under the provisions of Chapter 162A
29 of the General Statutes, lake authorities created by a board of county commissioners
30 pursuant to an act of the General Assembly, sanitary districts, regional councils of
31 governments created pursuant to G.S. 160A-470, area mental health, mental retardation,
32 and substance abuse authorities (other than single-county area authorities) established
33 pursuant to Article 4 of Chapter 122C of the General Statutes, district health
34 departments, regional planning and economic development commissions created
35 pursuant to G.S. 158-14, regional economic development commissions created pursuant
36 to G.S. 158-8, regional planning commissions created pursuant to G.S. 153A-391,
37 metropolitan sewerage districts and metropolitan water districts in this State, and the
38 North Carolina Low-Level Radioactive Waste Management Authority created pursuant
39 to Chapter 104G of the General Statutes.

40 (d) Refunds made pursuant to applications filed after the dates specified in
41 subsections (b) and (c) above shall be subject to the following penalties for late filing:
42 applications filed within 30 days after said dates, twenty-five percent (25%);
43 applications filed after 30 days but within six months after said dates, fifty percent

1 (50%). However, refunds which are applied for after six months following said dates
2 shall be barred."

3 Sec. 8. Effective July 1, 1991, G.S. 105-164.44A reads as rewritten:

4 **"§ 105-164.44A. Tax on motor ~~vehicle items transferred to Highway Fund.~~ vehicles**
5 **credited to Highway Trust Fund and part of tax transferred to General**
6 **Fund.**

7 ~~Sales and use taxes collected on motor vehicle items and accessories shall be~~
8 ~~transferred from the general fund to the Highway Fund as follows:~~

9 ~~On a quarterly basis during the fiscal year ending June 30, 1984, the State Treasurer~~
10 ~~shall transfer from the general fund to the Highway Fund the amount of twenty-five~~
11 ~~million eight hundred thousand dollars (\$25,800,000), which represents fifteen percent~~
12 ~~(15%) of the estimated 1983-84 fiscal year sales and use tax collections from motor~~
13 ~~vehicles, motor vehicle parts, supplies, and accessories, and other transportation items.~~
14 ~~The quarterly transfers required by this section shall be made during September,~~
15 ~~December, March, and June of the fiscal year. Sales and use tax revenue collected on~~
16 ~~the sale of motor vehicles shall be deposited in the North Carolina Highway Trust Fund.~~
17 ~~Any refunds of sales and use taxes paid on motor vehicles shall be charged against the~~
18 ~~revenue deposited in the Highway Trust Fund. Each fiscal year, the State Treasurer~~
19 ~~shall transfer from the Highway Trust Fund to the General Fund the sum of one hundred~~
20 ~~seventy million dollars (\$170,000,000) in quarterly, equal installments."~~

21 Sec. 9. G.S. 105-467 reads as rewritten:

22 **"§ 105-467. ~~Sales tax imposed; limited to items on which the State now imposes a~~**
23 **~~three percent sales tax.~~ Scope of sales tax.**

24 The sales tax which may be imposed under this Article is limited to a tax at the rate
25 of one percent (1%) of:

- 26 (1) The sales price of those articles of tangible personal property now
27 subject to the three percent (3%) sales tax imposed by the State under
28 G.S. ~~105-164.4(1)~~105-164.4(a)(1) and (4b);
- 29 (2) The gross receipts derived from the lease or rental of tangible personal
30 property ~~where~~ when the property is not a motor vehicle and the lease
31 or rental of ~~such~~ the property is ~~an established business now~~ subject to
32 the three percent (3%) sales tax imposed by the State under G.S. ~~105-~~
33 ~~164.4(2);~~ 105-164.4(a)(2);
- 34 (3) The gross receipts derived from the rental of any room or lodging
35 furnished by any hotel, motel, inn, tourist camp or other similar
36 accommodations now subject to the three percent (3%) sales tax
37 imposed by the State under G.S. ~~105-164.4(3);~~ 105-164.4(a)(3); and
- 38 (4) The gross receipts derived from services rendered by laundries, dry
39 cleaners, cleaning plants and similar type businesses now subject to the
40 three percent (3%) sales tax imposed by the State under G.S. ~~105-~~
41 ~~164.4(4);~~ 105-164.4(a)(4).

42 The sales tax authorized by this Article does not apply to sales ~~by a utility of electricity,~~
43 ~~piped natural gas, local, toll, or private telecommunications services as defined by G.S.~~

1 ~~105-120(a)~~ that are taxable by the State under G.S. 105-164.4 but are not specifically
2 included in subdivisions (1) through (4) of this section.

3 The exemptions and exclusions contained in G.S. 105-164.13 and the refund
4 provisions contained in G.S. 105-164.14 shall apply with equal force and in like manner
5 to the local sales and use tax authorized to be levied and imposed under this Article. A
6 taxing county shall have no authority, with respect to the local sales and use tax
7 imposed under this Article to change, alter, add to or delete any refund provisions
8 contained in G.S. 105-164.14, or any exemptions or exclusions contained in G.S. 105-
9 164.13 or which are elsewhere provided for.

10 The local sales tax authorized to be imposed and levied under the provisions of this
11 Article shall ~~be applicable~~ apply to such retail sales, leases, rentals, rendering of services,
12 furnishing of rooms, lodgings or accommodations and other taxable transactions which
13 are made, furnished or rendered by retailers whose place of business is located within
14 the taxing county. The tax imposed shall apply to the furnishing of rooms, lodging or
15 other accommodations within the county which are rented to transients. For the purpose
16 of this Article, the situs of a transaction is the location of the retailer's place of
17 business."

18 Sec. 10. G.S. 105-468 reads as rewritten:

19 "**§ 105-468. Use tax imposed; limited to items upon which the State now imposes a**
20 **three percent use tax. Scope of use tax.**

21 The use tax which may be imposed under this Article shall be at the rate of one
22 percent (1%) of the cost price of each item or article of tangible personal property when
23 ~~the same~~ it is not sold but used, consumed or stored for use or consumption in the taxing
24 county, except that no tax shall be imposed upon ~~such~~ tangible personal property when;
25 ~~if the property were subject to the use tax imposed by G.S. 105-164.6, such property would be~~
26 ~~taxed by the State of North Carolina at a rate less than three percent (3%).~~ the property is a
27 motor vehicle or the property would be taxed by the State at a rate of other than three
28 percent (3%) if it were taxable under G.S. 105-164.6.

29 Every retailer engaged in business in this State and in the taxing county and required
30 to collect the use tax levied by G.S. 105-164.6 shall also collect the one percent (1%)
31 use tax when such property is to be used, consumed or stored in the taxing county, ~~said~~
32 one percent (1%) use tax to be collected concurrently with the State's use tax; but no
33 retailer not required to collect the use tax levied by G.S. 105-164.6 shall be required to
34 collect the one percent (1%) use tax. The use tax contemplated by this section shall be
35 levied against the purchaser, and ~~his~~ the purchaser's liability for ~~such~~ the use tax shall be
36 extinguished only upon ~~his~~ payment of the use tax to the retailer, where the retailer is
37 required to collect the tax, or to the Secretary of Revenue, or to the taxing county, as
38 appropriate, where the retailer is not required to collect the tax.

39 Where a local sales or use tax has been paid with respect to ~~said~~ tangible personal
40 property by the ~~purchaser thereof,~~ purchaser, either in another taxing county within the
41 State, or in a taxing jurisdiction outside the State where the purpose of the tax is similar
42 in purpose and intent to the tax which may be imposed pursuant to this Article, ~~said tax~~
43 the tax paid may be credited against the tax imposed under this section by a taxing
44 county upon the same property. If the amount of sales or use tax so paid is less than the

1 amount of the use tax due the taxing county under this section, the purchaser shall pay
2 to the Secretary of Revenue or to the taxing county, as appropriate, an amount equal to
3 the difference between the amount so paid in the other taxing county or jurisdiction and
4 the amount due in the taxing ~~county hereunder~~-county. The Secretary of Revenue or the
5 taxing county, as appropriate, may require such proof of payment in another taxing
6 county or jurisdiction as is deemed to be ~~necessary and proper~~-necessary. The use tax
7 levied ~~hereunder shall not be~~-under this Article is not subject to credit for payment of any
8 State sales or use tax not imposed for the benefit and use of counties and municipalities.
9 No credit shall be given under this section for sales or use taxes paid in a taxing
10 jurisdiction outside this State if that taxing jurisdiction does not grant similar credit for
11 sales taxes paid under this Article."

12 Sec. 11. Section 4 of Chapter 1096 of the 1967 Session Laws, as amended, is
13 amended as follows:

- 14 (1) By rewriting the heading to the section to read: "Scope of Sales Tax.";
- 15 (2) By deleting the reference "105-164.4(1)" and substituting the reference
16 "105-164.4(a)(1) and (4b)";
- 17 (3) By rewriting subpart (2) of the first paragraph to read:
18 "(2) the gross receipts derived from the lease or rental of tangible personal
19 property when the property is not a motor vehicle and the lease or
20 rental of the property is subject to the three percent (3%) sales tax
21 imposed by the State under G.S. 105-164.4(a)(2)";
- 22 (4) By deleting the references "105-164.4(3)" and "105-164.4(4)" and
23 substituting the references "105-164.4(a)(3)" and "105-
24 164.4(a)(4)" respectively; and
- 25 (5) By rewriting the last sentence of the first paragraph of that section to
26 read:

27 "The taxes authorized by this division do not apply to sales that are taxable by the
28 State under G.S. 105-164.4 but are not specifically listed in this section."

29 Sec. 12. Section 5 of Chapter 1096 of the 1967 Session Laws, as amended, is
30 amended in the first sentence by deleting the phrase "when, if the property were subject
31 to the use tax imposed by G.S. 105-164.6, such property would be taxed by the State of
32 North Carolina at a rate less than three percent (3%)" and substituting the phrase "when
33 the property is a motor vehicle or the property would be taxable by the State at a rate of
34 other than three percent (3%) if it were taxable under G.S. 105-164.6".

35 Sec. 13. This act does not affect the rights or liabilities of the State, a
36 taxpayer, or another person arising under a statute amended or repealed by this act
37 before its amendment or repeal; nor does it affect the right to any refund or credit of a
38 tax that would otherwise have been available under the amended or repealed statute
39 before its amendment or repeal.

40 Sec. 14. Section 1 of this act is effective for taxable years beginning on or
41 after January 1, 1990. Section 8 of this act shall become effective July 1, 1991, and
42 shall apply to sales made on or after that date. The remainder of this act shall become
43 effective August 1, 1989, and shall apply to sales made on or after that date other than a

- 1 sale of a motor vehicle made pursuant to a written contract entered into on or after that
- 2 date.