

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 45
HOUSE BILL 61

AN ACT TO MAKE TECHNICAL CHANGES TO THE REVENUE LAWS AND
RELATED STATUTES.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-33.1. Definitions.

The following definitions apply in this Article:

- (1) Code. The Internal Revenue Code as enacted as of January 1, 1991, including any provisions enacted as of that date which become effective either before or after that date.
- (2) Municipality. A municipal corporation organized under the laws of this State.
- (3) Person. An individual, a firm, a partnership, an association, a corporation, or another organization or group acting as a unit.
- (4) Secretary. The Secretary of Revenue."

Sec. 2. G.S. 105-37.1(d) reads as rewritten:

"(d) It is not the purpose of this Article to discourage agricultural fairs in the State, and to further this cause, no carnival company taxable under this section ~~will be allowed to~~ may play a 'still date' in any county where there is a regularly advertised agricultural fair, 30 days prior to the dates of the fair. ~~Nothing contained in this section shall prevent veterans' organizations and posts chartered by Congress or organized and operated on a statewide or nationwide basis from holding fairs or tobacco festivals on any dates which they may select, provided such fairs or festivals have been held as annual events prior to 1 July 1988. This subsection does not restrict the date on which a fair or tobacco festival may be held if (i) it is held by a veteran's organization or post chartered by Congress or organized and operated on a statewide or nationwide basis and (ii) the organization or post has held the fair or festival annually since before July 1, 1988."~~

Sec. 3. G.S. 105-83(d) reads as rewritten:

"(d) This section ~~shall~~ does not apply to corporations ~~organized under the State or national banking laws~~ liable for the tax levied under G.S. 105-102.3."

Sec. 4. G.S. 105-88(b) reads as rewritten:

"(b) Nothing in this section shall be construed to apply to banks, industrial banks, trust companies, building and loan associations, ~~cooperative credit unions, nor installment paper dealers defined and taxed under other sections of this Article,~~ or

cooperative credit unions, nor shall it apply to the business of negotiating loans on real estate as described in G.S. 105-41, nor to pawnbrokers lending or advancing money on specific articles of personal property, nor to insurance premium finance companies licensed under Article 35 of Chapter 58 of the General Statutes. It shall apply to those persons or concerns operating what are commonly known as loan companies or finance companies and whose business is as hereinbefore described, and those persons, firms, or corporations pursuing the business of lending money and taking as security for the payment of such loan and interest an assignment of wages or an assignment of wages with power of attorney to collect same, or other order or chattel mortgage or bill of sale upon household or kitchen furniture. No real estate mortgage broker shall be required to obtain a privilege license under this section merely because he advances his own funds and takes a security interest in real estate to secure such advances and when, at the time of such advance of his own funds, he has already made arrangements with others for the sale or discount of the obligation at a later date and does so sell or discount such obligation within the period specified in said arrangement or extensions thereof; or when, at the time of the advance of his own funds, he intends to sell the obligation to others at a later date and does, within 12 months from date of initial advance, make arrangements with others for the sale of said obligation and does sell the obligation within the period specified in said arrangement or extensions thereof; or because he advances his own funds in temporary financing directly involved in the production of permanent-type loans for sale to others; and no real estate mortgage broker whose mortgage lending operations are essentially as described above shall be required to obtain a privilege license under this section."

Sec. 5. G.S. 105-102.5(b)(10) reads as rewritten:

"(10) Manufacturing ice cream using counter freezer equipment and selling the ice cream at retail; and selling at retail ice cream purchased from a manufacturer other than a manufacturer who has paid the tax imposed in G.S. 105-97(a). For the purpose of this subdivision, 'ice cream' means ice cream, frozen custards, sherbets, water ices, yogurt, and/or similar frozen products."

Sec. 6. G.S. 105-130.27(f) and G.S. 105-151.6(f) are repealed.

Sec. 7. G.S. 105-131.8(b) reads as rewritten:

"(b) Each shareholder of an S Corporation ~~shall be~~ is allowed as a credit against the tax imposed by Division II of this Article ~~in~~ an amount equal to the shareholder's pro rata share of the tax credits for which the S Corporation is eligible."

Sec. 8. G.S. 105-134.2(b) reads as rewritten:

"(b) In lieu of the tax imposed by subsection (a) of this section, there is imposed for each taxable year upon the North Carolina taxable income of every individual a tax determined under tables, applicable to the taxable year, which may be prescribed by the ~~Secretary of Revenue. Secretary.~~ The tables prescribed under this subsection shall be in the form the Secretary deems appropriate, and the ~~The~~ amounts of the tax determined under the tables shall be computed on the basis of the rates prescribed by subsection (a) of this section. This subsection does not apply to an individual making a return under section 443(a)(1) of the Code for a period of less than 12 months on account of a change

in the individual's annual accounting period, or to an estate or trust. The tax imposed by this subsection shall be treated as the tax imposed by subsection (a) of this section."

Sec. 9. G.S. 105-134.6(c)(2) reads as rewritten:

"(2) Any amount allowed as a deduction from gross income under the Code that is taxed under the Code by a separate tax other than the tax imposed in section 1 of the Code. ~~The Secretary shall report to the 1991 General Assembly all provisions under the Code for taxing certain amounts separately and shall recommend whether those amounts should be taxed separately under this Division or should be added to taxable income in calculating North Carolina taxable income.~~"

Sec. 10. G.S. 105-151.12(e) reads as rewritten:

"(e) In the case of marshland for which a claim has been filed pursuant to G.S. 113-205, the offer of donation must be made before ~~31 December 1994~~ December 31, 1994, to qualify for the credit allowed by this section."

Sec. 11. G.S. 105-151.20 reads as rewritten:

"§ 105-151.20. Credit for tax paid on certain government retirement benefits.

A taxpayer who received government retirement benefits during the 1988 tax year may claim a credit against the tax imposed by this Division equal to the amount by which the tax under this Division paid by the taxpayer for the 1988 tax year would have been reduced if none of the taxpayer's government retirement benefits had been included in the taxpayer's taxable income. If a taxpayer received a refund of any tax paid under this Division on government retirement benefits for the 1988 tax year, the amount of the refund reduces the amount of the credit allowed under this section.

As used in this section, the term 'government retirement benefits' means retirement benefits received from one or more state, local, or federal government retirement plans. As used in this section, the term '1988 tax year' means the taxpayer's taxable year beginning on a day in 1988.

The credit allowed under this section shall ~~shall~~ be taken in equal installments over the taxpayer's first three taxable years beginning on or after January 1, 1990. The credit allowed under this section may not exceed the amount of tax imposed by this Division reduced by the sum of all credits allowed against the tax, except payments of tax made by or on behalf of the taxpayer."

Sec. 12. G.S. 105-155(c) reads as rewritten:

"(c) There shall be annexed to the return the affirmation of the taxpayer making the return in the following form: 'Under penalties prescribed by law, I hereby affirm that to the best of my knowledge and belief this return, including any accompanying schedules and statements, is true and complete.' ~~complete. (If the return was prepared by a person other than the taxpayer, that the preparer's affirmation shall state that it is based on all information of which the preparer has any knowledge.)~~ knowledge. The Secretary shall prepare blank forms for the returns, distribute them throughout the State, and furnish them upon application; but failure to receive or secure the form shall not relieve any taxpayer from the obligation of filing a return required by this Division."

Sec. 13. G.S. 105-159.1(a) reads as rewritten:

"(a) Every individual whose income tax liability for the taxable year is one dollar (\$1.00) or more may designate on his or her income tax return that one dollar (\$1.00) of the amount of tax paid by him or her to the Department tax shall be paid to the State Treasurer for the use of all political parties. In the case of a married couple filing a joint return whose income tax liability for the taxable year is two dollars (\$2.00) or more, each spouse may designate on the income tax return that one dollar (\$1.00) of the tax shall be paid to the State Treasurer for the use of all political parties. ~~by the Secretary~~ The Secretary shall credit all amounts so designated to the State Treasurer for the use of all political parties upon a pro rata basis according to their respective party voter registrations according to the most recent certification of the State Board of Elections. Elections; Provided, however, that no political party with less than one percent (1%) of the total number of registered voters in the State shall receive any of these funds, and the registration of such a party shall not be included in calculating the pro rata distribution.—As used in this section, the term 'political party' means one of the following that has at least one percent (1%) of the total number of registered voters in the State:

- (1) ~~a—A political party which—that~~ at the last preceding general State election received at least ten percent (10%) of the entire vote cast in the State for Governor or for presidential ~~electors, electors.~~
- (2) ~~a—A~~ group of voters who by July 1 of the preceding calendar year, by virtue of a petition as a new political party, had duly qualified as a new political party within the meaning of Chapter 163 of the General Statutes."

Sec. 14. (a) G.S. 105-163.07 is recodified as G.S. 105-151.21 and reads as rewritten:

~~"§ 105-163.07. Income tax credit fro property taxes paid on farm machinery by individuals and certain corporations.~~ **105-151.21. Credit for property taxes paid on farm machinery.**

(a) Credit. ~~An individual farmer, or a corporation that is engaged in the business of farming and has elected to be treated as an "S corporation" under the Code, that pays property taxes on farm machinery, or attachments and repair parts for farm machinery,~~ is allowed a credit against the tax imposed by this Division equal to the amount of property taxes the individual paid at par during the taxable year on farm machinery and on attachments and repair parts for farm machinery. In addition, an individual shareholder of an S Corporation engaged in the business of farming is allowed a credit against the tax imposed by this Division equal to the shareholder's pro rata share of the amount of property taxes the S Corporation paid at par during the taxable year on farm machinery and on attachments and repair parts for farm machinery. The total credit allowed under this section may not exceed one thousand dollars (\$1,000) for the taxable year and may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed under this Division, except payments of tax made by or on behalf of the taxpayer. To claim the credit, the taxpayer shall attach to the return a copy of the tax receipt for the property taxes for which credit is claimed.

The receipt must indicate that the taxes have been paid and the amount and date of the payment.

(b) Definitions. The following definitions apply in this section:

- (1) Farm machinery. Machinery subject to State sales tax at the rate of one percent (1%) under G.S. 105-164.4(a)(1d)a.
- (2) Property taxes. The principal amount of taxes levied and assessed by a taxing unit under Subchapter II of this Chapter. The term does not include costs, penalties, interest, or other charges that may be added to the principal amount.
- (3) Taxing unit. Defined in G.S. 105-273.

(c) Adjustment. If a taxing unit gives a taxpayer a credit or refund for any of the property taxes for which the taxpayer claimed a credit under this section, the taxpayer shall notify the Secretary within 90 days. The Secretary shall then recompute the credit allowed under this section and make any resulting adjustment of income tax for the taxable year for which the credit was claimed. ~~credit, not to exceed one thousand dollars (\$1,000), against the income tax imposed by this Article equal to the amount of property taxes paid, at par by that individual or corporation during the taxable year, on the farm machinery and attachments and repair parts for the machinery. As used in this section, "farm machinery" means machinery that:~~

- ~~(1) Is used in planting, cultivating, harvesting, or curing farm crops or in producing dairy products, poultry, eggs, or livestock; and~~
- ~~(2) Is subject to State sales tax at the rate of one percent (1%) under G.S. 105-164.4(1)g."~~

(b) The remainder of Division IV of Article 4 of Chapter 105 of the General Statutes is repealed.

(c) G.S. 105-320(a)(16) reads as rewritten:

"(16) The total assessed value of farm machinery, attachments, and repair parts of individual owners and Subchapter "S"S corporations engaged in farming subject to the income tax credit in G.S. ~~105-163.07-105-151.21~~ and the amount of ad valorem taxes due by an individual farmer or a Subchapter "S"S corporation engaged in farming on farm machinery, attachments, and repair parts subject to that credit."

Sec. 15. G.S. 105-164.3(5) reads as rewritten:

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

this State ~~shall be~~ is immaterial. It ~~shall also mean the~~ also means maintaining in this State, either permanently or temporarily, directly or through a subsidiary, tangible personal property for the purpose of lease or rental. It ~~shall also mean also means~~ making a mail order sale, as defined in ~~subdivision (8a)~~ of this section, if one of the conditions listed in G.S. 105-164.8(b) is met."

Sec. 16. G.S. 105-164.8(b) reads as rewritten:

"(b) A retailer who makes a mail order sale is engaged in business in this State and is subject to the tax levied under this Article if one of the following conditions is met:

- (1) The retailer is a corporation engaged in business under the laws of this State or a person domiciled in, a resident of, or a citizen of, this State;
- (2) The retailer maintains retail establishments or offices in this State, whether the mail order sales thus subject to taxation by this State result from or are related in any other way to the activities of such establishments or offices;
- (3) The retailer has representatives in this State who solicit business or transact business on behalf of the retailer, whether the mail order sales thus subject to taxation by this State result from or are related in any other way to such solicitation or transaction of business;
- (4) ~~The property was delivered in this State in fulfillment of a sales contract that was entered into in this State, in accordance with applicable conflict of laws rules, when a person in this State accepted an offer by ordering the property;~~
- (5) The retailer, by purposefully or systematically exploiting the market provided by this State by any media-assisted, media-facilitated, or media-solicited means, including direct mail advertising, distribution of catalogues, computer-assisted shopping, television, radio or other electronic media, telephone solicitation, magazine or newspaper advertisements, or other media, creates nexus with this State;
- (6) Through compact or reciprocity with another jurisdiction of the United States, that jurisdiction uses its taxing power and its jurisdiction over the retailer in support of this State's taxing power; or
- (7) The retailer consents, expressly or by implication, to the imposition of the tax imposed by this Article. For purposes of this subdivision, evidence that a retailer engaged in the activity described in subdivision (5) shall be prima facie evidence that the retailer consents to the imposition of the tax imposed by this Article."

Sec. 17. G.S. 105-164.13(14) reads as rewritten:

"(14) ~~Holy Bibles; public~~ Public school books on the adopted list, the selling price of which is fixed by State contract."

Sec. 18. G.S. 105-164.44A is repealed.

Sec. 19. G.S. 105-265 is repealed.

Sec. 20. G.S. 105-130.35 is recodified as G.S. 105-269.5 and reads as rewritten:

"§ 105-130.35. Contribution of corporate income tax refunds to Wildlife Fund for management of nongame and endangered species. — 105-269.5. Contribution of income tax refund to Wildlife Fund.

Any taxpayer that is entitled to a refund of income taxes paid as provided by this Article under Article 4 of this Chapter may elect to contribute all or any part of such part of the refund to the Wildlife Fund for the support of wildlife management and protection programs primarily for nongame wildlife species and wildlife species which are or may hereafter be designated as endangered or threatened. The Secretary of Revenue shall provide appropriate language and space on the corporation income tax form in which to make the election. such election and shall note the same in his instructions as a contribution qualifying as a deduction under G.S. 105-130.9(2). Any such The taxpayer's election shall become irrevocable upon filing the taxpayer's income tax return for the taxable year. All of such contributions shall be transmitted The Secretary of Revenue shall transmit the contributions made pursuant to this section to the State Treasurer for credit to the Wildlife Fund which shall be made available to the to be used by the Wildlife Resources Commission only for the support of management and protection programs primarily for nongame wildlife and endangered and threatened species and to match federal funds which may become available for such these purposes."

Sec. 21. Article 9 of Chapter 105 of the General Statutes, as amended by this act, is further amended by adding at the end a new section to read:

"§ 105-269.6. Contribution of individual income tax refund to Candidates Financing Fund.

An individual entitled to a refund of income taxes under Division II of Article 4 of this Chapter may elect to contribute all or part of the refund to the North Carolina Candidates Financing Fund for the use of political campaigns as provided in Article 22C of Chapter 163 of the General Statutes. The Secretary of Revenue shall provide appropriate language and space on the individual income tax form in which to make the election. The election becomes irrevocable upon filing the individual's income tax return for the taxable year. The Secretary of Revenue shall, on a quarterly basis, transmit the contributions made pursuant to this section to the State Treasurer for credit to the North Carolina Candidates Financing Fund. Any interest earned on funds so credited shall be credited to that Fund."

Sec. 22. G.S. 105-163.16 reads as rewritten:

"§ 105-163.16. Overpayment refunded.

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

~~overpayment to his estimated income tax liability for the following year pursuant to G.S. 105-269.4.~~

(b) ~~If the amount of estimated tax paid under G.S. 105-163.15 exceeds the taxes imposed by Article 4 of this Chapter against which the estimated tax so paid may be credited under the provisions of this Article, the excess shall be considered an overpayment by the taxpayer. taxpayer, and, notwithstanding the provisions of G.S. 105-266 and G.S. 105-266.1, this overpayment by the taxpayer shall be refunded by the Secretary under the provisions of this section unless the taxpayer elects to apply the overpayment to his estimated income tax liability for the following year pursuant to G.S. 105-269.4.~~

(c) ~~Where there has been an overpayment (as specified in subsections (a) and (b) of this section) Notwithstanding G.S. 105-266 and G.S. 105-266.1, an overpayment of any tax imposed under Article 4 of this Chapter, as disclosed by the taxpayer's annual return required to be filed by Article 4, the amount of such overpayment shall be refunded to the taxpayer; taxpayer subject to the following exceptions:~~

- (1) The taxpayer may elect to apply the overpayment to another purpose as provided in Article 9 of this Chapter.
- (2) If the amount of the overpayment is less than one dollar (\$1.00), it will be refunded only upon the taxpayer's written demand for a refund.
- (3) There will be no refund of any part of the overpayment set off under the Setoff Debt Collection Act, Chapter 105A.

~~except that overpayments of less than one dollar (\$1.00) shall be refunded only upon receipt by the Secretary of a written demand for such refund from the taxpayer and except that there shall be no refund to the taxpayer of any sum set off under the provisions of Chapter 105A, the Set-off Debt Collection Act. Every refund authorized by this section shall be made as expeditiously as possible, possible after the taxpayer files the final return, and within six months from after the date on which the annual final return is filed or due to be filed, whichever is later, insofar as practical. the same is practicable; except that no refunds for overpayment of estimated tax shall be made by the Secretary prior to the date on which the final return is filed by the taxpayer. No interest shall be paid with respect to any such refund if the refund is made within the six months' period above referred to. refund made within this six-month period. Refunds made after the end of the six-month period shall bear interest Interest computed at the rate established in G.S. 105-241.1(i) for assessments shall be paid on refunds made after the expiration of said six months' period, such interest to be computed from the time of the expiration of said six months' from the end of the six-month period until paid. It shall not be is not necessary for the Attorney General or any member of his staff to approve such refund. to approve the refund. The making of such the refund does not absolve any taxpayer of any income tax liability which may in fact exist and the Secretary may make any assessment for any deficiency in the manner provided in Article 9 of this Chapter. No overpayment of tax by the taxpayer shall be refunded irrespective of whether upon discovery or receipt of written demand if such the discovery is not made or such the demand is not received within three years from the date set by the statute for the filing of the annual return by the taxpayer or within six~~

months of the payment of the tax alleged to be an overpayment, whichever date is the later.

~~(d) When a husband and wife have elected under G.S. 105-152.1 to file a joint return and a refund for overpayment of tax is made payable to both spouses as provided in that subsection, the provisions of this section shall apply to the refund.~~

~~(e) Any taxpayer who is entitled to a refund of taxes withheld or estimated taxes paid as provided by this section may elect to contribute all or any part of the refund to the Wildlife Fund for the support of wildlife management and protection programs primarily for nongame wildlife species and wildlife species which are or may hereafter be designated as endangered or threatened. The Secretary shall provide appropriate language and space on the individual income tax form in which to make the election. The election shall become irrevocable upon filing the taxpayer's income tax return for the taxable year. All of the contributions made pursuant to this subsection shall be transmitted to the State Treasurer for credit to the Wildlife Fund which shall be made available to the Wildlife Resources Commission for the support of management and protection programs primarily for nongame wildlife and endangered and threatened species and to match federal funds which may become available for these purposes.~~

~~(f) Any taxpayer who is entitled to a refund of taxes withheld or estimated taxes paid as provided by this section may elect to contribute all or any part of the refund to the North Carolina Candidates Financing Fund for the use of political campaigns as provided in Article 22C of Chapter 163 of the General Statutes. The Secretary shall provide appropriate language and space on the individual income tax form in which to make the election. The election shall become irrevocable upon filing the taxpayer's income tax return for the taxable year. The Secretary shall, on a quarterly basis, transmit the the contributions made pursuant to this subsection to the State Treasurer for deposit in the North Carolina Candidates Financing Fund. Any interest earned on funds so deposited shall be credited to that Fund."~~

Sec. 23. G.S. 113A-39 reads as rewritten:

"§ 113A-39. Claim and allowance of charitable deduction for contribution or gift of easement.

The contribution or donation of a 'scenic easement,' right-of-way or any other easement or interest in land to the State of North Carolina, as provided in this Article, shall be deemed a contribution to the State of North Carolina within the provisions of G.S. 105-130.9 and ~~105-147(16)~~ section 170(c)(1) of the Internal Revenue Code. The value of the contribution or donation shall be the fair market value of the easement or other interest in land when the contribution or donation is made."

Sec. 24. G.S. 131C-5 reads as rewritten:

"§ 131C-5. Exemptions.

(a) Any person who solicits charitable contributions for a religious purpose or on behalf of a person established for a religious purpose shall not be required to apply for a license.

(b) Solicitation of charitable contributions by the federal, State or local government, or any agency thereof, shall not be subject to this ~~Article [Chapter]~~ Chapter. For purposes of this subsection any volunteer fire department or rescue squad

which receives any funds from federal, State, or local government shall be considered an agency thereof.

(c) Any person who receives less than ten thousand dollars (\$10,000) in contributions in any calendar year and does not provide compensation to any officer, trustee, organizer, incorporator, fund-raiser or professional solicitor shall not be required to apply for a license.

(d) Any educational institution, the curriculum of which in whole or in part, is registered, approved or accredited by the Southern Association of Colleges and Schools or an equivalent regional accrediting body; any educational institution in compliance with Article 39 of Chapter 115C of the General Statutes; and any foundation or department having an established identity with any of the aforementioned educational institutions shall not be required to apply for a license.

(e) Any hospital licensed pursuant to ~~Article 13A of Chapter 131~~ Article 5 of Chapter 131E of the General Statutes and any foundation or department having an established identity with the aforementioned hospital shall not be required to apply for a license; Provided, however, that the governing board of the hospital authorizes the solicitation and receives an accounting of the funds collected and expended.

(f) Any noncommercial radio or television station shall not be required to apply for a license.

(g) ~~Any public supported community foundation or public supported community trust as defined by G.S. 105-147(16) shall not be~~ A qualified community trust as provided in 26 C.F.R. § 1.170A-9(e)(10) through (e)(14) is not required to apply for a license."

Sec. 25. G.S. 143-283.7 is repealed.

Sec. 26. G.S. 105-241.4 reads as rewritten:

"§ 105-241.4. Action to recover tax paid.

Within 30 days after notification of the Secretary's decision with respect to liability under this Subchapter or ~~under Article 36 of Subchapter V~~, any taxpayer aggrieved thereby, in lieu of petitioning for administrative review thereof by the Tax Review Board under G.S. 105-241.2, may pay the tax and bring a civil action for its recovery as provided in G.S. 105-267.

Any taxpayer who has obtained an administrative review by the Tax Review Board as provided by G.S. 105-241.2 and who is aggrieved by the decision of the ~~said~~ Board may, in lieu of appealing pursuant to the provisions of G.S. 105-241.3, within 30 days after notification of the Board's decision with respect to liability pay the tax and bring a civil action for its recovery as provided in G.S. 105-267.

Either party may appeal to the appellate division from the judgment of the superior court under the rules and regulations prescribed by law for appeals, except that ~~if the Secretary, if he should appeal, shall not be~~ Secretary appeals, the Secretary is not required to give any undertaking or make any deposit to secure the cost of ~~such~~ the appeal.

Any taxes, interest or penalties paid and found by the court to be in excess of those which can be properly assessed shall be ordered refunded to the taxpayer with interest from time of payment."

Sec. 27. G.S. 105-236(12) is repealed.

Sec. 28. G.S. 105-262 reads as rewritten:

"§ 105-262. Rules and regulations.

~~The Secretary of Revenue shall, from time to time, initiate and prepare such regulations, not inconsistent with law, as may be useful and necessary to implement the provisions of all the Articles of Subchapter I (except Article 8B) and Article 36 of Subchapter V, such regulations to become effective when approved by the Tax Review Board. may adopt regulations needed to administer a tax collected by the Secretary or to fulfill another duty delegated to the Secretary. A regulation becomes effective when it is approved by the Tax Review Board. All regulations and amendments thereto shall be published and made available by the Secretary of Revenue.~~

The Secretary of Revenue may, from time to time, make and prescribe such administrative rules, not inconsistent with law and the regulations approved by the Tax Review Board, as may be useful for the administration of his department and the discharge of his responsibilities.

References to rules and regulations of the Secretary of Revenue in this Chapter and in any subsequent amendments or additions thereto (unless expressly provided to the contrary therein) shall be construed to mean those rules and regulations promulgated under the provisions of this section."

Sec. 29. G.S. 105-264 reads as rewritten:

"§ 105-264. ~~Construction of Subchapter; population.~~ Effect of interpretation, regulation, or ruling.

~~It shall be the duty of the Secretary of Revenue to construe all sections of this Subchapter (except Article 8B) that are administered by the Secretary and all sections of Article 36 of Subchapter V; provided, such construction shall not be inconsistent with applicable regulations duly promulgated under the provisions of G.S. 105-262; provided further, nothing in this section shall be construed to prohibit the Secretary of Revenue from initiating and proposing regulations, as provided in G.S. 105-262, modifying, changing, altering or repealing existing regulations. Such decisions V. The Secretary's interpretation of these sections shall be consistent with the applicable regulations. Interpretations by the Secretary of Revenue shall be prima facie correct, and a protection to the officers and taxpayers affected thereby. Where the license tax is graduated in this Subchapter according to the population, the population shall be the number of inhabitants as determined by the last census of the United States government: Provided, that if any city or town in this State has extended its limits since the last census period, and hereafter has taken a census of its population in these increased limits by an official enumeration, either through the aid of the United States government or otherwise, the population thus ascertained shall be that upon which the license tax is to be graduated.~~

Whenever the Secretary of Revenue shall construe any provisions of the revenue laws administered by him and shall issue or publish to taxpayers in writing any regulation or ruling so construing the effect or operation of any such laws, such ruling or regulation shall be a protection to the officers and taxpayers affected thereby and taxpayers shall be entitled to rely upon such regulation or ruling. In the event the

Secretary of Revenue shall change, modify, repeal, abrogate, or alter any such regulation or ruling any taxpayer who has relied upon the construction or interpretation contained in the Secretary's previous ruling or regulation shall not be liable for any additional assessment on account of any tax not paid by reason of reliance upon such ruling or regulation and which might have accrued prior to the date of the change, modification, repeal, abrogation, or alteration by the Secretary, and during the effective period of such prior ruling or regulation. Provided, that nothing herein contained shall prevent any such change in construction or interpretation of the provisions of this Chapter by the Secretary of Revenue from being effective from and after the date of its issuance or promulgation, or the assessment of any tax thereunder."

Sec. 30. G.S. 105-267.1 is repealed.

Sec. 31. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of April, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives