

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1575

Short Title: Revenue Laws Technical Changes.

(Public)

Sponsors: Representatives Hill, Allen, Gray, Jarrell, Luebke, Miller, Pope, and Tucker.

Referred to: Finance.

May 18, 2000

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

Section 1. Section 33 of S.L. 1999-360 reads as rewritten:

"Section 33. Affordable Housing Credit. – Part III of this act is effective for taxable years beginning on or after January 1, 2000, and applies 2000. Sections 10 through 15 of Part III apply to buildings to which federal credits are allocated on or after January 1, 2000."

Section 2.(a) Section 10.2(3) of Chapter 13 of the Session Laws of the 1996 Second Extra Session, as amended by Section 1 of S.L. 1999-360, reads as rewritten:

"(3) Quality jobs and business expansion tax credits. – Sections 3.5, 3.6, and 3.8 through 3.10 of Part III of this act become effective August 1, 1996. G.S. 105-129.11, as enacted by Part III of this act, becomes effective for taxable years beginning on or after January 1, 1997, and applies to training expenditures made on or after July 1, 1997. The remainder of Part III of this act is effective for taxable years beginning on or after January 1, 1996, and applies to jobs created on or after August 1, 1996, and property placed in service on or after August 1, 1996. Article 3A of Chapter 105 of the General Statutes is repealed effective for applications

1 for credits filed under G.S. 105-129.6 on or after January 1, 2006. G.S. 105-
2 129.16 is repealed effective for business property placed in service on or after
3 January 1, 2002. The remainder of as provided in that Article. Article 3B
4 of Chapter 105 of the General Statutes is repealed effective for buildings
5 to which federal credits are allocated on or after January 1, 2006, as provided
6 in that Article. "

7 Section 2.(b) Section 4 of S.L. 1997-277, as amended by Section 18.1 of S.L.
8 1999-360, is recodified as G.S. 105-129.2A(b), (c), and (d).

9 Section 2.(c) G.S. 105-129.2A, as enacted by this act, reads as rewritten:

10 "**§ 105-129.2A. Sunset; studies.**

11 (a) Sunset. – This Article is repealed effective for applications for credits filed
12 under G.S. 105-129.6 on or after January 1, 2006."

13 (b) Equity Study. – The Department of Commerce shall study the effect of the tax
14 incentives provided in the William S. Lee Quality Jobs and Business Expansion Act, codified
15 as Article 3A of Chapter 105 of the General Statutes, this Article on tax equity. This study
16 shall include the following:

- 17 (1) Reexamining the formula in G.S. 105-129.3(b) used to define enterprise
18 tiers, to include consideration of alternative measures for more equitable
19 treatment of counties in similar economic circumstances.
- 20 (2) Considering whether the assignment of tiers and the applicable
21 thresholds are equitable for smaller counties, for example those under
22 50,000 in population.
- 23 (3) Compiling any available data on whether expanding North Carolina
24 businesses receive fewer benefits than out-of-State businesses that
25 locate to North Carolina.

26 (c) Impact Study. – The Department of Commerce shall study the effectiveness of
27 the tax incentives provided in the William S. Lee Quality Jobs and Business Expansion Act,
28 eodified as Article 3A of Chapter 105 of the General Statutes. this Article. This study shall
29 include:

- 30 (1) Study of the distribution of tax incentives across new and expanding
31 industries.
- 32 (2) Examination of data on economic recruitment for the period 1994
33 through 2000 by county, by industry type, by size of investment, and by
34 number of jobs, and other relevant information to determine the pattern
35 of business locations and expansions before and after the enactment of
36 the William S. Lee Act incentives.
- 37 (3) Measuring the direct costs and benefits of the tax incentives.
- 38 (4) Compiling available information on the current use of incentives by
39 other states and whether that use is increasing or declining.

40 (d) Report. – The Department of Commerce shall report the results of these
41 studies and its recommendations to the 2001 General Assembly by April 1, 2001."

42 Section 2.(d) Article 3B of Chapter 105 of the General Statutes is amended by
43 adding a new section to read:

1 **"§ 105-129.15A. Sunset.**

2 G.S. 105-129.16 is repealed effective for business property placed in service on or
3 after January 1, 2002. The remainder of this Article is repealed effective January 1, 2006.
4 The repeal of G.S. 105-129.16A applies to renewable energy property placed in service
5 on or after January 1, 2006. The repeal of G.S. 105-129.16B applies to buildings to
6 which federal credits are allocated on or after January 1, 2006."

7 Section 3.(a) G.S. 105-129.17(b) reads as rewritten:

8 "(b) Cap. —~~A total~~The credits allowed in this Article may not exceed fifty percent
9 (50%) of the tax against which they are claimed for the taxable year, reduced by the sum
10 of all other credits allowed against that tax, except tax payments made by or on behalf of
11 the taxpayer. This limitation applies to the cumulative amount of credit, including
12 carryforwards, claimed by the taxpayer under this Article against each tax for the taxable
13 year. Any unused portion of the credits may be carried forward for the succeeding five
14 years."

15 Section 3.(b) G.S. 105-129.18 reads as rewritten:

16 **"§ 105-129.18. Substantiation.**

17 To claim a ~~credits~~credit allowed by this Article, the taxpayer must provide any
18 information required by the Secretary of Revenue. Every taxpayer claiming a credit under
19 this Article must maintain and make available for inspection by the Secretary of Revenue
20 any records the Secretary considers necessary to determine and verify the amount of the
21 credit to which the taxpayer is entitled. The burden of proving eligibility for a credit and
22 the amount of the credit rests upon the taxpayer, and no credit may be allowed to a
23 taxpayer that fails to maintain adequate records or to make them available for
24 inspection."

25 Section 3.(c) G.S. 105-129.19 reads as rewritten:

26 **"§ 105-129.19. Reports.**

27 The Department of Revenue shall report to the Legislative Research Commission and
28 to the Fiscal Research Division of the General Assembly by May 1 of each year the
29 following information for the 12-month period ending the preceding April 1:

- 30 (1) The number of taxpayers that claimed the credits allowed in this Article.
31 (2) The cost of business property and renewable energy property with
32 respect to which ~~business property~~ credits were claimed.
33 (2a) The location of each qualified North Carolina low-income building with
34 respect to which a low-income housing credit was claimed.
35 (3) The total cost to the General Fund of the credits claimed."

36 Section 4. The catchline of G.S. 105-40 reads as rewritten:

37 **"§ 105-40. Amusements – Certain exhibitions, performances, and entertainments**
38 **exempt from license-tax."**

39 Section 5. Effective July 1, 2000, G.S. 105-88(e) reads as rewritten:

40 "(e) Counties, cities, and towns may levy a license tax on the business taxed under
41 this section not in excess of section. Except as provided in G.S. 160A-211 and G.S. 153A-
42 152, the tax may not exceed one hundred dollars (\$100.00)."

43 Section 6. G.S. 105-113.82 reads as rewritten:

1 **"§ 105-113.82. Distribution of part of beer and wine taxes.**

2 (a) Amount, Method. – The Secretary shall distribute annually the following
3 percentages of the net amount of excise taxes collected on the sale of malt beverages and
4 wine during the preceding 12-month period ending March 31, less the amount of the net
5 proceeds credited to the Department of Agriculture and Consumer Services under G.S.
6 105-113.81A, to the counties and cities in which the retail sale of these beverages is
7 ~~authorized:~~ authorized in the entire county or city:

8 (1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty-
9 three and three-fourths percent (23 3/4%);

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

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

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

22 ~~(b) Reduction in Amount Distributed. – Where the sale of malt beverages,~~
23 ~~unfortified wine, or fortified wine is prohibited in a defined area of a city or county in~~
24 ~~which the sale of the beverage is authorized, the amount that would otherwise be~~
25 ~~distributed to the city or county on the basis of population under subsection (a) shall be~~
26 ~~reduced in the same ratio that the area of the defined area bears to the total area of the~~
27 ~~city or county, unless the defined area is a city. If the defined area in a county is a city,~~
28 ~~the reduction in the amount that would otherwise be distributed to the county under~~
29 ~~subsection (a) shall be based on population instead of area.~~

30 (c) Exception. – Notwithstanding subsection (a), in a county in which ABC stores
31 have been established by petition, the revenue shall be distributed as though the entire
32 county had approved the retail sale of a beverage whose retail sale is authorized in part of
33 the county.

34 (d) Time. – The revenue shall be distributed to cities and counties within 60 days
35 after March 31 of each year.

36 (e) Population Estimates. – To determine the population of a city or county for
37 purposes of the distribution required by this section, the Secretary shall use the most
38 recent annual estimate of population certified by the State Planning Officer.

39 (f) City Defined. – As used in this section, the term "city" means a city as defined
40 in G.S. 153A-1(1) or an urban service district defined by the governing body of a
41 consolidated city-county.

42 (g) Use of Funds. – Funds distributed to a county or city under this section may be
43 used for any public purpose.

1 (h) Disqualification. – No municipality may receive any funds under this section if
2 it was incorporated with an effective date of on or after January 1, 2000, and is
3 disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any
4 funds under this section, incorporated with an effective date on or after January 1, 2000,
5 unless a majority of the mileage of its streets are open to the public. The previous
6 sentence becomes effective with respect to distribution of funds on or after July 1, 1999."

7 Section 7. G.S. 105-116(d) reads as rewritten:

8 "(d) Distribution. – Part of the taxes imposed by this section on electric power
9 ~~companies, natural gas companies, and regional natural gas districts~~ companies is distributed
10 to cities under G.S. 105-116.1."

11 Section 8. G.S. 105-119 and G.S. 105-120.1 are repealed.

12 Section 9. G.S. 105-114 reads as rewritten:

13 **"§ 105-114. Nature of taxes; definitions.**

14 (a) Nature of Taxes. – The taxes levied in this Article upon persons and
15 partnerships are for the privilege of engaging in business or doing the act named.

16 (a1) Scope. – The taxes levied in this Article upon corporations are privilege or
17 excise taxes levied upon:

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

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

27 ¶

28 (a2) Condition for Doing Business. – ~~If~~ the corporation is organized under the laws
29 of this State, the payment of the taxes levied by this Article ~~shall be~~ is a condition
30 precedent to the right to continue in the corporate form of ~~organization; and if~~ If the
31 corporation is not organized under the laws of this State, payment of these taxes ~~shall be~~
32 is a condition precedent to the right to continue to engage in doing business in this State.

33 (a3) Tax Year. – The taxes levied in this Article are for the fiscal year of the State
34 in which the taxes become ~~due; due,~~ due, except that the taxes levied in G.S. 105-122 are for
35 the income year of the corporation in which the taxes become due.

36 ~~G.S. 105-122~~

37 (a4) No Double Taxation. – ~~G.S. 105-122~~ does not apply to ~~street transportation~~
38 ~~systems taxed under G.S. 105-120.1 or holding companies taxed under G.S. 105-120.2.~~ G.S.
39 105-122 applies to a corporation taxed under another section of this Article only to the
40 extent the taxes levied on the corporation in G.S. 105-122 exceed the taxes levied on the
41 corporation in other sections of this Article.

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

43 (1) City. – Defined in G.S. 105-228.90.

1 (1a) Code. – Defined in G.S. 105-228.90.

2 (2) Corporation. – A domestic corporation, a foreign corporation, an
3 electric membership corporation organized under Chapter 117 of the
4 General Statutes or doing business in this State, or an association that is
5 organized for pecuniary gain, has capital stock represented by shares,
6 whether with or without par value, and has privileges not possessed by
7 individuals or partnerships. The term includes a mutual or capital stock
8 savings and loan association or building and loan association chartered
9 under the laws of any state or of the United States. The term does not
10 include a limited liability company.

11 (3) Doing business. – Each and every act, power, or privilege exercised or
12 enjoyed in this State, as an incident to, or by virtue of the powers and
13 privileges granted by the laws of this State.

14 (4) Income year. – Defined in G.S. 105-130.2(5)."

15 Section 10.(a) G.S. 105-130.15(a) reads as rewritten:

16 "(a) The net income of a corporation shall be computed in accordance with the
17 method of accounting it regularly employed~~employs in~~ keeping the books of such
18 corporation, ~~but such method of accounting must its books.~~ The method must be consistent
19 with respect to both income and ~~deductions, but if in any case such deductions.~~ If this
20 method does not clearly reflect the income, the computation shall be made in accordance
21 with such method as in the opinion of the Secretary of Revenue a method that, in the
22 Secretary's opinion, does clearly reflect the income, but shall follow as nearly as
23 practicable the federal practice, unless contrary to the context and intent of this Part.

24 The Secretary may ~~in his discretion~~ adopt the rules and regulations and any guidelines
25 administered or established by the Internal Revenue Service unless contrary to any
26 provisions of this Part."

27 Section 10.(b) G.S. 105-130.17(a) reads as rewritten:

28 "(a) Returns must be filed as prescribed by the Secretary at the place prescribed by
29 the Secretary. Returns must be in the form prescribed by the Secretary. The Secretary
30 shall furnish forms in accordance with G.S. 105-254. ~~shall be in such form as the Secretary~~
31 ~~of Revenue may from time to time prescribe, and shall be filed with the Secretary at his office, or~~
32 ~~at any branch office which he may establish.~~ The Secretary shall cause to be prepared blank
33 forms for the said returns, and shall cause them to be distributed throughout the State, and shall
34 furnish them upon request; but failure to receive or secure the form shall not relieve any
35 corporation from the obligation of making any return herein required."

36 Section 10.(c) G.S. 105-130.18 reads as rewritten:

37 "**§ 105-130.18. Failure to file returns; supplementary returns.**

38 If the Secretary of Revenue ~~shall be of the opinion that any~~ determines that a corporation
39 has failed to file a return or to include in a return filed, either intentionally or through
40 error, items of taxable ~~income he may require of such~~ income, the Secretary may require
41 from the corporation a return or supplementary return, under affirmation, ~~in such form as~~
42 ~~he shall prescribe,~~ of all the items of income ~~which that~~ the corporation received during the
43 year for which the return is made, whether or not taxable under this Part. If from a

1 supplementary return or otherwise the Secretary finds that any items of income, taxable
2 under this Part, have been omitted from the original return, or ~~or that any items returned as~~
3 ~~taxable that are not taxable, or~~ that any item of taxable income is overstated or
4 understated, he may require any such item to be disclosed to him ~~the Secretary may require~~
5 that the item be disclosed under affirmation of the corporation, and to be added to or
6 deducted from the original return. Such ~~The filing of a supplementary return and the~~
7 correction of the original return shall ~~does not relieve the corporation from any of the~~
8 ~~penalties to which it may be liable under the provisions of~~ under G.S. 105-236. The Secretary
9 may proceed under the provisions of G.S. 105-241.1, whether or not ~~the Secretary~~ he
10 requires a return or a supplementary return under this section."

11 Section 11. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

12 "(b) Deductions. – The following deductions from taxable income shall be made in
13 calculating North Carolina taxable income, to the extent each item is included in taxable
14 income:

15 ...

16 "(5b) The amount received during the taxable year from one or more State,
17 local, or federal government retirement plans to the extent the amount is
18 exempt from tax under this Part pursuant to a court order in settlement
19 of the following cases: Bailey v. State, 92 CVS 10221, 94 CVS 6904,
20 95 CVS 6625, 95 CVS 8230; Emory v. State, 98 CVS 0738; and Patton
21 v. State, 95 CVS 04346. Amounts deducted under this subdivision may
22 not also be deducted under subdivision (6) of this subsection."

23 Section 12. G.S. 105-163.44 is repealed.

24 Section 13. G.S. 105-164.3(8a) reads as rewritten:

25 "(8a) 'Manufactured home' means a structure that is designed to be used as a
26 dwelling and is manufactured in accordance with the specifications for
27 manufactured homes issued by the United States Department of
28 Housing and Urban Development. and:

- 29 a. ~~Is built on a permanent chassis;~~
30 b. ~~Is transportable in one or more sections;~~
31 c. ~~When transported, is at least eight feet wide or forty feet long;~~
32 ~~and~~
33 d. ~~When erected on a site, has at least 320 square feet."~~

34 Section 14.(a) G.S. 105-164.4(c) reads as rewritten:

35 "(c) Certificate of Registration. – Before a person may engage in business as a
36 ~~Before a person may engage in business as a retailer or a wholesale merchant, the~~
37 ~~person must obtain a certificate of registration from the Department. To obtain a~~
38 ~~certificate of registration, a person must register with the Department.~~

39 ~~A certificate of registration is valid unless it is revoked for failure to comply with the~~
40 ~~provisions of this Article or becomes void. A certificate issued to a retailer who makes~~
41 ~~taxable sales becomes void if, for a period of 18 months, the retailer files no returns or~~
42 ~~files returns showing no sales. Department in accordance with G.S. 105-164.29."~~

43 Section 14.(b) G.S. 105-164.29 reads as rewritten:

1 **"§ 105-164.29. Application for ~~licenses~~ certificate of registration by wholesale**
2 **merchants and retailers.**

3 (a) Application. — ~~Every application for a license by a wholesale merchant or~~
4 ~~retailer shall be made upon a form prescribed by the Secretary and shall set forth all~~
5 ~~information the Secretary may require. To obtain a certificate of registration, a person~~
6 ~~must register with the Department. A wholesale merchant or retailer who has more than~~
7 ~~one business is required to obtain only one certificate of registration to cover all~~
8 ~~operations of the business throughout the State. An application for registration must~~ The
9 ~~application shall be signed as follows:~~

10 (1) By the owner, if the owner is an individual.

11 (2) By a manager, member, or partner, if the owner is an association, a
12 partnership, or a limited liability company.

13 (3) By an executive officer or some other person specifically authorized by
14 the corporation to sign the application, if the owner is a corporation. If
15 the application is signed by a person authorized to do so by the
16 corporation, written evidence of the person's authority must be attached
17 to the application.

18 ~~A wholesale merchant or retailer whose business extends into more than one county is~~
19 ~~required to secure only one license to cover all operations of the business throughout the~~
20 ~~State.~~

21 (b) Issuance. — ~~When the required application has been made the Secretary shall~~
22 ~~issue a license to the applicant. A license~~ A certificate of registration is not assignable
23 and is valid only for the person in whose name it is issued ~~and for the transaction of~~
24 ~~business at the place designated in the license. The license holder shall display the license~~
25 ~~conspicuously at all times at the place for which it was issued.~~ issued. A copy of the
26 certificate of registration must be displayed at each place of business.

27 (c) ~~Reissuance.~~ Term. — A certificate of registration is valid unless it is revoked for
28 failure to comply with the provisions of this Article or becomes void. A certificate issued
29 to a retailer who makes taxable sales becomes void if, for a period of 18 months, the
30 retailer files no returns or files returns showing no sales. A person whose license has been
31 previously suspended or revoked shall pay the Secretary fifteen dollars (\$15.00) for the
32 reissuance of the license. A wholesale merchant whose annual license has been previously
33 suspended or revoked shall pay the Secretary twenty-five dollars (\$25.00) for the reissuance of
34 the license for the remainder of the license year.

35 (d) Revocation. — ~~Whenever a license holder~~ wholesale merchant or retailer fails to
36 comply with this Article or violates G.S. 14-401.18, the Secretary, upon hearing, after
37 giving ~~the license holder~~ 10 days' notice in writing, specifying the time and place of
38 hearing and requiring the ~~license holder~~ wholesale merchant or retailer to show cause why
39 the ~~license~~ certificate of registration should not be revoked, may revoke or suspend the
40 ~~license.~~ certificate of registration. The notice may be served personally or by registered
41 mail directed to the last known address of the ~~license holder.~~ wholesale merchant or
42 retailer. All provisions with respect to review and appeals of the Secretary's decisions as
43 provided by G.S. 105-241.2, 105-241.3, and 105-241.4 apply to this section.

1 Any wholesale merchant or retailer who engages in business as a seller in this State
2 without a license or after the license has been suspended or revoked, and each officer of
3 any corporation that so engages in business shall be guilty of a Class 3 misdemeanor and
4 only subject to a fine of up to five hundred dollars (\$500.00) for each offense."

5 Section 14.(c) G.S. 105-164.38 reads as rewritten:

6 "**§ 105-164.38. Tax shall be is a lien.**

7 (a) The tax imposed by this Article shall be is a lien upon all personal property of
8 any person who is required by this Article to obtain a ~~license~~ certificate of registration to
9 engage in business and who stops engaging in the business by transferring the business,
10 transferring the stock of goods of the business, or going out of business. A person who
11 stops engaging in business shall must file the return required by this Article within 30
12 days after transferring the business, transferring the stock of goods of the business, or
13 going out of business.

14 (b) Any person to whom the business or the stock of goods was transferred shall
15 must withhold from the consideration paid for the business or stock of goods an amount
16 sufficient to cover the taxes due until the person selling the business or stock of goods
17 produces a statement from the Secretary showing that the taxes have been paid or that no
18 taxes are due. If the person who buys a business or stock of goods fails to withhold an
19 amount sufficient to cover the taxes and the taxes remain unpaid after the 30-day period
20 allowed, the buyer is personally liable for the unpaid taxes to the extent of the greater of
21 the following:

22 (1) The consideration paid by the buyer for the business or the stock of
23 goods.

24 (2) The fair market value of the business or the stock of goods.

25 (c) The period of limitations for assessing liability against the buyer of a business
26 or the stock of goods of a business and for enforcing the lien against the property shall
27 ~~expire~~ expires one year after the end of the period of limitations for assessment against the
28 person who sold the business or the stock of goods. Except as otherwise provided in this
29 section, a person who buys a business or the stock of goods of a business and that
30 person's liability for unpaid taxes are subject to the provisions of G.S. 105-241.1, 105-
31 241.2, 105-241.3, and 105-241.4 and to other remedies for the collection of taxes to the
32 same extent as if the person had incurred the original tax liability."

33 Section 15.(a) G.S. 105-187.1 is amended by adding a new subdivision to read:

34 "(3a) Retailer. – A retailer as defined in G.S. 105-164.3 who is engaged in the
35 business of selling, leasing, or renting motor vehicles."

36 Section 15.(b) G.S. 105-187.5(a) reads as rewritten:

37 "(a) Election. – A retailer ~~who is engaged in the business of leasing or renting motor~~
38 ~~vehicles~~ may elect not to pay the tax imposed by this Article at the rate set in G.S. 105-
39 187.3 when applying for a certificate of title for a motor vehicle purchased by the retailer
40 for lease or rental. A retailer who makes this election shall pay a tax on the gross receipts
41 of the lease or rental of the vehicle. Like the tax imposed by G.S. 105-187.3, this
42 alternate tax is a tax on the privilege of using the highways of this State. The tax is

1 imposed on a retailer, but is to be added to the lease or rental price of a motor vehicle and
2 thereby be paid by the person who leases or rents the vehicle."

3 Section 15.(c) G.S. 20-4.01(5) reads as rewritten:

4 "(5) Dealer. – Every person engaged in the business of buying, selling,
5 distributing, or exchanging motor vehicles, ~~trailers~~—trailers, or
6 semitrailers in this State, and having an established place of business in
7 this ~~State and being subject to the tax levied by G.S. 105-89.~~ State.
8 The terms 'motor vehicle dealer,' 'new motor vehicle dealer,' and 'used
9 motor vehicle dealer' ~~shall as used in Article 12 of this Chapter~~ have the
10 meaning set forth in G.S. 20-286."

11 Section 16. G.S. 105-187.6(b) reads as rewritten:

12 "(b) Partial Exemptions. – A maximum tax of forty dollars (\$40.00) applies when a
13 certificate of title is issued as the result of a transfer of a motor vehicle:

- 14 (1) To a secured party who has a perfected security interest in the motor
15 vehicle.
16 (2) To a partnership, limited liability company, or corporation as an
17 incident to the formation of the partnership, limited liability company,
18 or corporation, and no gain or loss arises on the transfer of the motor
19 vehicle under section 351 or section 721 of the ~~Internal Revenue Code as~~
20 ~~defined in G.S. 105-228.90,~~ Code, or to a partnership, limited liability
21 company, or corporation by merger, conversion, or consolidation in
22 accordance with applicable law."

23 Section 17. G.S. 105-228.90(b) is amended by adding a new subdivision to
24 read:

25 "(2) Department. – The Department of Revenue."

26 Section 18. G.S. 105-236(10) reads as rewritten:

27 "(10) Failure to File Informational Returns. –

- 28 a. Repealed by Session Laws 1998-212, s. 29A.14(m).
29 b. The Secretary may request a person who fails to file timely
30 statements of payment to another person with respect to wages,
31 dividends, rents, or interest paid to that person to file the
32 statements by a certain date. If the payer fails to file the
33 statements by that date, the amounts claimed on the payer's
34 income tax return as deductions for salaries and wages, or rents
35 or interest shall be disallowed to the extent that the payer failed
36 to comply with the Secretary's request with respect to the
37 statements.
38 c. For failure to file an informational return required by Article 36C
39 or 36D of this Chapter by the date the return is due, there shall be
40 assessed a penalty of fifty dollars (\$50.00)."

41 Section 19. G.S. 105-259(b)(15) reads as rewritten:

42 "(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who
43 has access to tax information in the course of service to or employment by the State may

1 not disclose the information to any other person unless the disclosure is made for one of
2 the following purposes:

- 3 ...
- 4 (15) To exchange information concerning a tax imposed by Articles 2A, 2C,
5 or 2D of this Chapter with one of the following agencies when the
6 information is needed to fulfill a duty imposed on the Department or the
7 agency:
- 8 a. The North Carolina Alcoholic Beverage Control Commission.
 - 9 b. The Division of Alcohol Law Enforcement of the Department of
10 Crime Control and Public Safety.
 - 11 c. The Bureau of Alcohol, Tobacco, and Firearms of the United
12 States Treasury Department.
 - 13 d. Law enforcement agencies.
 - 14 e. The Division of Adult Probation and Parole of the Department of
15 Correction."

16 Section 20. G.S. 105-275(40) reads as rewritten:

17 "(40) Computer software and any documentation related to the computer
18 software. As used in this subdivision, the term "computer
19 software" means any program or routine used to cause a computer to
20 perform a specific task or set of tasks. The term includes system and
21 application programs and database storage and management programs.

22 The exclusion established by this subdivision does not apply to
23 computer software and its related documentation if the computer
24 software meets one or more of the following descriptions:

- 25 a. It is embedded software. "Embedded software" means computer
26 instructions, known as microcode, that reside permanently in the
27 internal memory of a computer system or other equipment and
28 are not intended to be removed without terminating the operation
29 of the computer system or equipment and removing a computer
30 chip, a circuit, or another mechanical device.
- 31 b. It is purchased or licensed from a person who is unrelated to the
32 taxpayer and it is capitalized on the books of the taxpayer in
33 accordance with generally accepted accounting principles,
34 including financial accounting standards issued by the Financial
35 Accounting Standards Board. A person is unrelated to a taxpayer
36 if (i) the taxpayer and the person are not subject to any common
37 ownership, either directly or indirectly, and (ii) neither the
38 taxpayer nor the person has any ownership interest, either
39 directly or indirectly, in the other.

40 ~~This~~

41 This subdivision does not affect the value or taxable status of any
42 property that is otherwise subject to taxation under this
43 Subchapter.

1 The provisions of the exclusion established by this subdivision
2 are not severable. If any provision of this subdivision or its
3 application is held invalid, the entire subdivision is repealed."

4 Section 21. Effective January 1, 2001, G.S. 105-369(b1) reads as rewritten:

5 "(b1) Notice to Owner. – After the governing body orders the tax collector to
6 advertise the tax liens, the tax collector must send a notice to the listing owner and to the
7 record owner of each affected parcel of property, as determined as of December 31 of the
8 fiscal year for which the taxes are due. The notice must be sent to each owner's last
9 known address by first-class mail at least 30 days before the date the advertisement is to
10 be published. The notice must state the principal amount of unpaid taxes that are a lien on
11 the parcel to be advertised and inform the owner that the names of the listing owner and
12 the record owner listing owner that his or her name will appear in a newspaper
13 advertisement of delinquent taxes if the taxes are not paid before the publication date.
14 Failure to mail the notice required by this section to the correct listing owner or record
15 owner does not affect the validity of the tax lien or of any foreclosure action."

16 Section 22. G.S. 105-449.37(a)(1a) reads as rewritten:

17 (1a) Motor vehicle. – A motor vehicle as defined in G.S. ~~105-164.3(8e)~~, 105-
18 164.3 other than special mobile equipment as defined in G.S. ~~105-~~
19 ~~164.3(16b)~~, 105-164.3."

20 Section 23. G.S. 105-449.44 reads as rewritten:

21 "**§ 105-449.44. How to determine the amount of fuel used in the State; presumption**
22 **of amount used.**

23 (a) Calculation. – The amount of motor fuel or alternative fuel a motor carrier
24 ~~carries~~ uses in its operations in this State for a reporting period is the ratio of the number
25 of miles the motor carrier travels in this State during that period to the total number of
26 miles the motor carrier travels inside and outside this State during that period, multiplied
27 by the total amount of fuel the motor carrier uses in its operations inside and outside the
28 State during that period.

29 (b) Presumption. – The Secretary ~~shall~~ must check reports filed under this Article
30 against the weigh station records and other records of the Division of Motor Vehicles of
31 the Department of Transportation concerning motor carriers to determine if motor
32 carriers that are operating in this State are filing the reports required by this Article. The
33 Department may assess a motor carrier for the amount payable based on the presumed
34 mileage. A motor carrier that does either of the following for a quarter is presumed to
35 have traveled in this State during that quarter the number of miles equal to 10 trips of 450
36 miles each for each of the motor carrier's vehicles:

37 (1) Fails to file a report for the quarter and the records of the Division
38 indicate the carrier operated in this State during the quarter.

39 (2) Files a report for the quarter that, based on the records of the Division,
40 understates by at least twenty-five percent (25%) the carrier's mileage in
41 this State for the quarter.

42 (c) Vehicles. – The number of vehicles of a motor carrier that is registered under
43 this Article is the number of identification markers issued to the carrier. The number of

1 vehicles of a carrier that is not registered under this Article is the number of vehicles
2 registered by the motor carrier in the carrier's base state under the International
3 Registration Plan. ~~The Department shall assess a motor carrier for the amount payable based on~~
4 ~~the presumed mileage."~~

5 Section 24.(a) Effective July 1, 2000, G.S. 105-449.60(31) and (40) read as
6 rewritten:

7 **"§ 105-449.60. Definitions.**

8 The following definitions apply in this Article:

9 ...

10 (31) Supplier. – Any of the following:

- 11 a. A position holder or a person who receives motor fuel pursuant
12 to a two-party ~~transaction~~ exchange.
13 b. A fuel alcohol provider.

14 ...

15 (40) Two-party ~~transaction~~ exchange. – A transaction in which motor fuel is
16 transferred ~~between two licensed suppliers as the motor fuel crosses the~~
17 ~~terminal rack as the result of an exchange agreement or a sale between~~
18 ~~the suppliers that requires the supplier that is the position holder from~~
19 one licensed supplier to another licensed supplier pursuant to an
20 exchange agreement under which the supplier that is the position holder
21 agrees to deliver motor fuel to the other supplier or the other supplier's
22 customer at the rack of the terminal at which the delivering supplier is
23 the position holder."

24 Section 24.(b) Effective July 1, 2000, G.S. 105-449.88 is amended by adding a new
25 subdivision to read:

26 **"§ 105-449.88. Exemptions from the excise tax.**

27 The excise tax on motor fuel does not apply to the following:

28 ...

29 (1a) Motor fuel removed by transport truck from a terminal for export if the
30 motor fuel is removed by a licensed distributor or licensed exporter, the
31 supplier that is the position holder for the motor fuel sells the motor fuel
32 to another supplier as the motor fuel crosses the terminal rack, the
33 purchasing supplier or its customer receives the motor fuel at the
34 terminal rack for export, and the supplier that is the position holder
35 collects tax on the motor fuel at the rate of the motor fuel's destination
36 state."

37 Section 25.(a) G.S. 105-449.60(41) reads as rewritten:

38 **"§ 105-449.60. Definitions.**

39 The following definitions apply in this Article:

40 ...

41 (41) User. – A person who owns or operates a licensed highway vehicle that
42 has a registered gross vehicle weight of at last 10,001 pounds and who
43 ~~and~~ does not maintain storage facilities for motor fuel."

1 Section 25.(b) G.S. 105-449.68 reads as rewritten:

2 **"§ 105-449.68. Restrictions on who can get a license as a distributor.**

3 A bulk-end user of motor fuel may not be licensed as a distributor unless the bulk-end
4 user also acquires motor fuel from a supplier or from another distributor for subsequent
5 sale. This restriction does not apply to a bulk-end user that was licensed as a distributor
6 on January 1, 1996. If a distributor license held by a bulk-end user on January 1, 1996, is
7 subsequently cancelled, the bulk-end user is subject to the restriction set in this section."

8 Section 25.(c) G.S. 105-449.97(c) reads as rewritten:

9 "(c) Percentage Discount. – A supplier that sells motor fuel directly to an
10 unlicensed distributor or to the bulk-end user, the retailer, or the user of the fuel may take
11 the same percentage discount on the fuel that a licensed distributor may take under G.S.
12 105-449.93(b) when making deferred payments of tax to the supplier."

13 Section 26. G.S. 105-449.88(1) reads as rewritten:

14 **"§ 105-449.88. Exemptions from the excise tax.**

15 The excise tax on motor fuel does not apply to the following:

- 16 (1) Motor fuel removed, by transport truck or another means of transfer
17 outside the terminal transfer system, from a terminal for export, if the
18 motor fuel is removed by a licensed distributor or a licensed exporter
19 and the supplier of the motor fuel collects tax on it at the rate of the
20 motor fuel's destination state."

21 Section 27. The catchline of G.S. 105-449.105 reads as rewritten:

22 **"§ 105-449.105. Refunds upon application for tax paid on exempt fuel, lost fuel, and**
23 **fuel unsalable for highway use, and undyed diesel fuel used in boats. use."**

24 Section 28. G.S. 105-449.121(b)(2) reads as rewritten:

25 "(b) Inspection. – The Secretary or a person designated by the Secretary may do
26 any of the following to determine tax liability under this Article:

- 27 ...
28 (2) Audit a ~~distributor~~ distributor, a retailer, a bulk-end user, or a motor fuel
29 user that is not licensed under this Article."

30 Section 29. Section 14 of S.L. 1998-22 reads as rewritten:

31 "Section 14. (a) Notwithstanding G.S. 105-187.44(b), as enacted by this act, the
32 amount distributed to a city under G.S. 105-187.44(b) for taxes collected for each of the
33 quarters in the ~~fiscal year~~ 1999-2000 and 2000-2001 fiscal years may not exceed its
34 benchmark amount until each city receives an amount equal to its benchmark amount.
35 Each quarter, the Secretary of Revenue shall determine a city's benchmark amount and
36 the amount it would receive under G.S. 105-187.44(b) if not for the redistribution
37 required by this section. The Secretary shall identify those cities whose distribution
38 amounts under G.S. 105-187.44(b) are less than their benchmark amounts and shall
39 determine the total dollar amount of the shortfall. The Secretary shall reduce the amount
40 to be distributed to those cities whose distribution amount under G.S. 105-187.44(b)
41 exceeds their benchmark amount by the total dollar amount of the shortfall determined
42 for that quarter in proportion to each city's excess. However, in no event may a city's
43 distribution amount be reduced below its benchmark amount. The Secretary will

1 redistribute these monies to the cities whose distribution amounts under G.S. 105-
2 187.44(b) are less than their benchmark amounts in proportion to each city's shortfall. In
3 any quarter that a city does not have a prior year's distribution for the corresponding
4 quarter in fiscal year 1998-99, that city is excluded from the redistribution required under
5 this section for that quarter. In that case, the city will receive the amount it is entitled to
6 receive under G.S. 105-187.44(b), as enacted by this act.

7 For the purposes of this subsection, the term 'benchmark amount' means the amount a
8 city received under G.S. 105-116.1 attributable to piped natural gas for the corresponding
9 quarter during the fiscal year 1998-99.

10 (b) The Department of Revenue must calculate the amount a city received for
11 taxes collected for each of the ~~first three~~ quarters in fiscal year 1998-99 under G.S. 105-
12 116.1 that was attributable to piped natural gas. The Department must also calculate the
13 amount each city would have received under G.S. 105-187.44(b), as enacted by this act,
14 for taxes collected for each of the ~~first three~~ quarters in fiscal year 1999-2000. The
15 Department shall give this information to the Revenue Laws Study Committee. The
16 Revenue Laws Study Committee shall study the impact of this act on the distribution of
17 part of the proceeds of the excise tax on piped natural gas to the cities and report its
18 findings, and any recommendation, to the ~~2000 Session of the 1999-2001~~ General
19 Assembly."

20 Section 30. G.S. 62-302 reads as rewritten:

21 "**§ 62-302. Regulatory fee.**

22 (a) Fee Imposed. – It is the policy of the State of North Carolina to provide fair
23 regulation of public utilities in the interest of the public, as provided in G.S. 62-2. The
24 cost of regulating public utilities is a burden incident to the privilege of operating as a
25 public utility. Therefore, for the purpose of defraying the cost of regulating public
26 utilities, every public utility subject to the jurisdiction of the Commission shall pay a
27 quarterly regulatory fee, in addition to all other fees and taxes, as provided in this section.
28 The fees collected shall be used only to pay the expenses of the Commission and the
29 Public Staff in regulating public utilities in the interest of the public.

30 It is also the policy of the State to provide limited oversight of certain electric
31 membership corporations as provided in G.S. 62-53. Therefore, for the purpose of
32 defraying the cost of providing the oversight authorized by G.S. 62-53 and G.S. 117-18.1,
33 each fiscal year each electric membership corporation whose principal purpose is to
34 furnish or cause to be furnished bulk electric supplies at wholesale as provided in G.S.
35 117-16 shall pay an annual fee as provided in this section.

36 (b) Public Utility Rate. –

37 (1) ~~For the 1989-90 fiscal year, the regulatory fee shall be the greater of (i)~~
38 ~~twelve hundredths percent (0.12%) of each public utility's North~~
39 ~~Carolina jurisdictional revenues for each quarter or (ii) six dollars and~~
40 ~~twenty five cents (\$6.25) each quarter.~~

41 (2) ~~For fiscal years beginning on or after July 1, 1990, the~~ The public utility
42 regulatory fee for each fiscal year shall be the greater of (i) a percentage
43 rate, established by the General Assembly, of each public utility's North

1 Carolina jurisdictional revenues for each quarter or (ii) six dollars and
2 twenty-five cents (\$6.25) each quarter.

3 When the Commission prepares its budget request for the upcoming
4 fiscal year, the Commission shall propose a percentage rate of the public
5 utility regulatory fee. For fiscal years beginning in an odd-numbered
6 year, that proposed rate shall be included in the budget message the
7 Governor submits to the General Assembly pursuant to G.S. 143-11.
8 For fiscal years beginning in an even-numbered year, that proposed rate
9 shall be included in a special budget message the Governor shall submit
10 to the General Assembly. The General Assembly shall set the
11 percentage rate of the public utility regulatory fee by law.

12 The percentage rate may not exceed the amount necessary to
13 generate funds sufficient to defray the estimated cost of the operations
14 of the Commission and the Public Staff for the upcoming fiscal year,
15 including a reasonable margin for a reserve fund. The amount of the
16 reserve may not exceed the estimated cost of operating the Commission
17 and the Public Staff for the upcoming fiscal year. In calculating the
18 amount of the reserve, the General Assembly shall consider all relevant
19 factors that may affect the cost of operating the Commission or the
20 Public Staff or a possible unanticipated increase or decrease in North
21 Carolina jurisdictional revenues.

22 (3) If the Commission, the Public Staff, or both experience a revenue
23 shortfall, the Commission shall implement a temporary public utility
24 regulatory fee surcharge to avert the deficiency that would otherwise
25 occur. In no event may the total percentage rate of the public utility
26 regulatory fee plus any surcharge established by the Commission exceed
27 twenty-five hundredths percent (0.25%).

28 (4) As used in this section, the term 'North Carolina jurisdictional revenues'
29 means all revenues derived or realized from intrastate tariffs, rates, and
30 charges approved or allowed by the Commission or collected pursuant
31 to Commission order or rule, but not including tap-on fees or any other
32 form of contributions in aid of construction.

33 (b1) Electric Membership Corporation Rate. — ~~For the purpose of providing the~~
34 ~~oversight authorized by G.S. 62-53 and G.S. 117-18.1, beginning with the 1999-2000~~
35 ~~fiscal year the North Carolina Electric Membership Corporation shall pay an annual flat~~
36 ~~fee to the fund established in subsection (d) of this section. The amount of the annual~~
37 ~~electric membership corporation regulatory fee for each fiscal year shall be a dollar~~
38 ~~amount as established by the General Assembly by law.~~

39 When the Commission prepares its budget request for the upcoming fiscal year, the
40 Commission shall propose the amount of the electric membership corporation regulatory
41 fee. For fiscal years beginning in an odd-numbered year, the proposed amount shall be
42 included in the budget message the Governor submits to the General Assembly pursuant
43 to G.S. 143-11. For fiscal years beginning in an even-numbered year, the proposed

1 amount shall be included in a special budget message the Governor shall submit to the
2 General Assembly.

3 The amount of the electric membership corporation regulatory fee proposed by the
4 Commission may not exceed the amount necessary to defray the estimated cost of the
5 operations of the Commission and the Public Staff for the regulation of the electric
6 membership corporations in the upcoming fiscal year, including a reasonable margin for
7 a reserve fund. The amount of the reserve may not exceed the estimated cost of the
8 Commission and the Public Staff for the regulation of the electric membership
9 corporations for the upcoming fiscal year. ~~The fee will be assessed on a quarterly basis and
10 will be due and payable to the Commission on or before the 15th day of the second month
11 following the end of each quarter.~~

12 (c) When Due. – The electric membership corporation regulatory fee imposed
13 under this section shall be paid in quarterly installments. The fee is due and payable to
14 the Commission on or before the 15th day of the second month following the end of each
15 quarter.

16 The public utility regulatory fee imposed under this section, ~~except the fee imposed by~~
17 ~~subsection (b1) of this section, section~~ is due and payable to the Commission on or
18 before the 15th day of the second month following the end of each quarter. Every public
19 utility subject to the public utility regulatory fee shall, on or before the date the fee is due
20 for each quarter, prepare and render a report on a form prescribed by the Commission.
21 The report shall state the public utility's total North Carolina jurisdictional revenues for
22 the preceding quarter and shall be accompanied by any supporting documentation that the
23 Commission may by rule require. Receipts shall be reported on an accrual basis.

24 If a public utility's report for the first quarter of any fiscal year shows that application
25 of the percentage rate would yield a quarterly fee of twenty-five dollars (\$25.00) or less,
26 the public utility shall pay an estimated fee for the entire fiscal year in the amount of
27 twenty-five dollars (\$25.00). If, after payment of the estimated fee, the public utility's
28 subsequent returns show that application of the percentage rate would yield quarterly fees
29 that total more than twenty-five dollars (\$25.00) for the entire fiscal year, the public
30 utility shall pay the cumulative amount of the fee resulting from application of the
31 percentage rate, to the extent it exceeds the amount of fees, other than any surcharge,
32 previously paid.

33 (d) Use of Proceeds. – A special fund in the office of State Treasurer, the Utilities
34 Commission and Public Staff Fund, is created. The fees collected pursuant to this section
35 and all other funds received by the Commission or the Public Staff, except for the clear
36 proceeds of civil penalties collected pursuant to G.S. 62-50(d) and the clear proceeds of
37 funds forfeited pursuant to G.S. 62-310(a), shall be deposited in the Utilities Commission
38 and Public Staff Fund. The Fund shall be placed in an interest bearing account and any
39 interest or other income derived from the Fund shall be credited to the Fund. Moneys in
40 the Fund shall only be spent pursuant to appropriation by the General Assembly.

41 The Utilities Commission and Public Staff Fund shall be subject to the provisions of
42 the Executive Budget Act except that no unexpended surplus of the Fund shall revert to
43 the General Fund. All funds credited to the Utilities Commission and Public Staff Fund

1 shall be used only to pay the expenses of the Commission and the Public Staff in
2 regulating public utilities in the interest of the public as provided by this Chapter and in
3 regulating electric membership corporations as provided in G.S. 117-18.1.

4 The clear proceeds of civil penalties collected pursuant to G.S. 62-50(d) and the clear
5 proceeds of funds forfeited pursuant to G.S. 62-310(a) shall be remitted to the Civil
6 Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

7 Section 31.(a) G.S. 62A-5(d) reads as rewritten:

8 "(d) Any taxes due on 911 service provided by the service supplier will be billed to
9 the local government subscribing to that service. ~~State and local taxes do not apply to 911~~
10 ~~charges billed to subscribers under this Article."~~

11 Section 31.(b) G.S. 105-130.5(b)(17) reads as rewritten:

12 "(17) The amount of 911 charges collected under G.S. 62A-5 and remitted to
13 a local government under G.S. 62A-6, and the amount of wireless
14 Enhanced 911 service charges collected under G.S. 62A-23 and remitted
15 to the Wireless Fund under G.S. 62A-24."

16 Section 32. Section 3 of S.L. 1999-321 is repealed.

17 Section 33. G.S. 159-13(b)(6) reads as rewritten:

18 "(6) The estimated percentage of collection of property taxes shall not be
19 greater than the percentage of the levy actually realized in cash as of
20 June 30 during the preceding fiscal year. For purposes of the calculation
21 under this subdivision only, the levy for the registered motor vehicle tax
22 under Article ~~22C-22A~~ of Chapter 105 of the General Statutes shall be
23 based on the nine-month period ending March 31 of the preceding fiscal
24 year, and the collections realized in cash with respect to this levy shall
25 be based on the twelve-month period ending June 30 of the preceding
26 fiscal year."

27 Section 34. Except as otherwise provided in this act, this act is effective when
28 it becomes law.