

North Carolina

2001 Tax Law Changes

North Carolina Department of Revenue
Tax Administration

PREFACE

This document is designed for use by personnel in the North Carolina Department of Revenue. It is available to those outside the Department as a resource document. It gives a brief summary of the following tax law changes:

- (1) Changes made by prior General Assemblies that take effect for tax year 2001. Each change enacted by a prior General Assembly is also discussed in the Department's Tax Law Change document for the year the change was enacted.
- (2) Changes made by the 2001 General Assembly, regardless of when they take effect.

The changes are listed by type of tax. The order of the tax types is their order in the General Statutes, except for local sales and use tax changes. The local sales and use tax changes follow the State sales and use tax changes, and both changes are grouped under the heading "Sales and Use Tax." Within a tax type, the changes are listed in numerical order. The document does not include law changes that affect the Department of Revenue but do not affect the tax laws.

For further information on a tax law change, refer to the legislation that made the change. Administrative rules, bulletins, directives, and other instructions issued by the Department, as well as opinions issued by the Attorney General's Office, may provide further information on the application of a tax law change.

The General Assembly began its 2001 session on January 24, 2001, and adjourned on December 6, 2001. Under Article II, Section 22(7) of the North Carolina Constitution, the Governor then had 30 days to sign or veto the bills enacted during the final days of the session. The Governor signed the last of the tax bills on January 4, 2002.

North Carolina Department of Revenue

Table of Contents

<u>Type of Tax</u>	<u>Page</u>
I. Estate Tax.....	3
II. Privilege Tax	3
III. Alcoholic Beverage License and Excise Taxes.....	4
IV. Corporate Franchise Tax	5
V. Tax Incentives for New and Expanding Businesses	8
VI. Business and Energy Tax Credits.....	25
VII. Historic Rehabilitation Tax Credits	26
VIII. Corporate Income Tax	27
IX. Individual Income Tax	31
X. Tax Credits for Qualified Business Investments	34
XI. Withholding of Income Tax	35
XII. Estimated Income Tax - Corporations.....	35
XIII. Sales and Use Tax.....	36
XIV. Highway Use Tax.....	76
XV. Scrap Tire Disposal Tax.....	79
XVI. White Goods Disposal Tax	80
XVII. Dry-Cleaning Solvent Tax	81
XVIII. Piped Natural Gas Excise Tax	81
XIX. Mill Machinery Tax	82
XX. Gift Tax	83
XXI. Insurance Premiums Tax.....	83
XXII. Excise Tax on Conveyances.....	85
XXIII. General Administration	85
XXIV. Property Tax	90
XXV. Motor Fuels Tax.....	98
XXVI. Debt Set-Off.....	100
XXVII. Studies.....	100

I. ESTATE TAX

No State law changes: The federal Economic Growth and Tax Relief Reconciliation Act of 2001, signed into law on June 7, 2001, makes changes to the federal estate and gift tax laws. These changes do not apply to the North Carolina estate tax law because of the definition of Code in G.S. 105-32.1(1) and G.S. 105-228.90(1a). The term "Code" as defined in those statutes means the Internal Revenue Code as enacted as of January 1, 2001. The June 7, 2001 federal changes were enacted after January 1, 2001, and therefore do not apply to North Carolina law. In order for the June 7, 2001 federal changes to apply to North Carolina, the General Assembly must enact legislation changing the reference date of the Code. In the absence of this legislation, the Department will not follow the federal changes.

II. PRIVILEGE TAX

G.S. 105-111 - Repeal: This statute was repealed because it is unnecessary. Its provisions either repeat other statutes or are obsolete. Subsection (a) of the section is unnecessary because G.S. 105-104 describes the Secretary's role in administering the privilege taxes. Subsection (b) describes an obsolete process for issuing privilege licenses. Privilege licenses are generated by the Department's integrated tax system rather than through the use of blank certificates. Subsection (c) describes an obsolete procedure for issuing duplicate privilege licenses. The Department issues a duplicate by reprinting the notice to the taxpayer that contains the privilege license and will continue to follow this procedure.

(Effective September 14, 2001; SB 165, ss. 2 and 53, S.L. 01-414.)

G.S. 105-113.21(a) – Technical Change: This subsection was amended to make it clear that in order for a distributor of cigarettes to receive a four percent discount as reimbursement for expenses incurred for preparing records and furnishing a bond, the taxpayer must pay the tax on time. Before this change, the law did not specifically require the payment to be timely to qualify for the discount. The change made to this subsection parallels the changes made to other statutes that allow payment discounts. Every statute that allows a payment discount was changed to make it clear that the discount applies only if the tax is timely paid.

(Effective September 14, 2001; SB 165, ss. 3 and 53, S.L. 01-414.)

G.S. 105-113.39 – Technical Change: This section was amended to make it clear that in order for a distributor of other tobacco products to receive a four percent discount as reimbursement for expenses incurred for preparing records and furnishing a bond, the taxpayer must pay the tax on time. Before this change, the law did not specifically require the payment to be timely to qualify for the discount. The change made to this section parallels the changes made to other statutes that allow payment discounts. Every statute that allows a payment discount was changed to make it clear that the discount applies only if the tax is timely paid.

(Effective September 14, 2001; SB 165, ss. 4 and 53, S.L. 01-414.)

III. ALCOHOLIC BEVERAGE LICENSE AND EXCISE TAXES

G.S. 105-113.80(c) – Rate Reduction and Conforming Change: This subsection was amended in two ways. First, the excise tax rate on liquor sold in ABC stores was reduced from 28% to 25%, effective February 1, 2002. The excise tax was reduced because of the enactment of G.S. 105-164.4(a)(7), which levies a 6% State sales tax on spirituous liquor effective December 1, 2001. Second, the language exempting spirituous liquor from sales and use taxes was deleted. The deletion of this language is a conforming change necessitated by the levy of the new sales tax on liquor.

(Excise tax reduction effective February 1, 2002, and conforming change effective December 1, 2001; SB 1005, ss. 34.23(c), (d), and (e), S.L. 01-424.)

G.S. 105-113.81A - Increase in Wine Tax Proceeds Earmarked for Grape Growers Council: This section was amended to increase the amount of wine tax proceeds earmarked for the Grape Growers Council. Under prior law, the Department of Revenue credited to the Department of Agriculture and Consumer Services on a quarterly basis 94% of the net proceeds of the excise tax collected on unfortified wine and 95% of the net proceeds of the excise tax collected on fortified wine bottled in North Carolina during the previous quarter. The amount credited could not exceed \$175,000 annually. As amended, the amount credited is 100% of the net proceeds of both unfortified and fortified wine bottled in North Carolina and the annual maximum is \$350,000.

(Effective October 1, 2001, for distributions made on or after that date; SB 970, s. 1, S.L. 01-475.)

G.S. 105-113.85 – Technical Change: This subsection was amended to make two technical changes. The first change makes it clear that in order for a

wholesaler or importer of malt beverages or wine to receive a four percent discount as reimbursement for expenses incurred for preparing records and furnishing a bond, the taxpayer must pay the tax on time. Before this change, the law did not specifically require the payment to be timely to qualify for the discount. The change made to this section parallels the changes made to other statutes that allow payment discounts. Every statute that allows a payment discount was changed to make it clear that the discount applies only if the tax is timely paid. The second technical change makes the wording of the statute gender-neutral.

(Effective September 14, 2001; SB 165, ss. 5 and 53, S.L. 01-414.)

IV. CORPORATE FRANCHISE TAX

G.S. 105-114(c)- Corporate Members of LLCs: This new subsection requires a corporation that is a member of a limited liability company (LLC) and is entitled to receive at least 70% of the LLC's assets upon dissolution to include the LLC's assets in the corporation's franchise tax base. The member corporation's investment in the LLC is excludible from the computation. The new subsection also provides that a taxpayer that underpays the franchise tax due under this subsection because of fraud with intent to evade tax is guilty of a Class H felony. This criminal sanction would apply in the absence of this specific language by operation of G.S. 105-236(7).

This subsection was enacted out of concern for the erosion of the franchise tax base. The legislation enacting new subsection (c) states that some taxpayers "take advantage of an unintended loophole in the law and avoid franchise tax by transferring their assets to a controlled limited liability company." The potential erosion stems from the exemption of LLCs from the franchise tax and the ability of corporations to transfer assets to single-member LLCs of which the corporations are the single members. This can reduce the corporation's franchise tax liability under the calculation based on investment in tangible property.

The changes made by this subsection are a modification of a recommendation of the North Carolina Efficiency and Loophole-Closing Commission. That Commission, co-chaired by former Governors Jim Holshouser and Bob Scott and former State Treasurer Harlan Boyles, recommended that all LLCs be subject to the franchise tax and that the annual report fee for LLCs be reduced from \$200 to \$20.

(Effective January 1, 2002, and applies to taxes due on or after that date; HB 1157, s. 2, S.L. 01-327.)

G.S. 105-116- Accelerated Payments by Electric Companies and Technical Changes: Subsections (b) and (d) of this section were amended to revise the payment schedule for electric power companies and to make technical changes. The purpose of the revised payment schedule is to require more frequent payments, thereby shifting the receipt of some tax revenue from the 2002-03 fiscal year into the end of the 2001-02 fiscal year.

Amended subsection (b) requires electric power companies to pay their gross receipts taxes on electricity in accordance with the same schedule by which they pay sales and use taxes on electricity. G.S. 105-164.16 sets out the payment schedule for sales and use taxes. It requires a taxpayer that consistently remits at least \$10,000 a month in sales and use taxes to pay the taxes twice a month. By application of G.S. 105-241(b)(2), these semimonthly payments must be made by electronic funds transfer. The sales tax law requires a taxpayer who remits between \$100 and \$10,000 a month to pay on a monthly basis, and requires all other taxpayers to pay on a quarterly basis.

Before this change, all electric power companies paid their gross receipts franchise taxes on a monthly basis and filed a quarterly return. With the changes, electric power companies will pay on a semimonthly, monthly, or quarterly basis depending on their payment schedule for sales and use taxes and will continue to file a return on a quarterly basis. Because electric power companies typically remit large amounts of sales tax on electricity, they will likely pay their sales tax on a semimonthly basis. As a result, they will be required to pay their gross receipts franchise tax on a semimonthly basis as well. They will continue to file a franchise return on the same quarterly schedule, however, because the due date of the quarterly return has not changed. The return is due by the last day of the month following the end of the quarter.

The penalty for underpayments has been revised to accommodate the new semimonthly payment periods. Before this change, an electric power company was not subject to interest and penalty on an underpayment for a monthly payment period if it paid at least 95% of what was due and paid the remainder when filing the quarterly return. As revised, an electric power company is not subject to interest and penalty on an underpayment for a semimonthly or monthly payment period if it timely pays at least ninety-five percent of the amount due for each period and includes the underpayment with next quarterly return.

The changes made to the payment schedule for electric power companies do not affect water and sewerage companies. These companies will continue to file and pay on a quarterly basis.

In rewriting this section to revise the payment schedule, several technical changes were made. First, references in the section to a quarterly “report” were changed to a quarterly “return.” This change is part of the continuing effort to refer to all tax forms submitted by taxpayers as tax returns rather than tax reports. Second, the sentence requiring taxpayers to report on an accrual basis was moved from the paragraph in subsection (b) following the numbered

subdivisions to the paragraph preceding the numbered subdivisions. Third, the language requiring the Secretary to determine a practical method of allocating gross receipts to a city if the taxpayer fails to do so was removed from subsection (b) and inserted in subsection (d).

(Effective January 1, 2002; HB 232, ss. 6(c), (d), and (j), S.L. 01-427.)

G.S. 105-116.1- Conforming Changes to Gross Receipts Tax Distribution to Cities: This section was amended to reflect the repeal of the gross receipts franchise tax on telephone companies, formerly set out in G.S. 105-120. Effective January 1, 2002, the telephone franchise tax is repealed and replaced with an increased sales tax on telecommunications service.

This section was amended to delete references to telephone companies and to G.S. 105-120, so that the distribution under this section applies only to receipts from electric power companies. In addition, the section was amended in various places to insert language clarifying that the computation and allocation of the hold-harmless adjustment for the city distribution includes only receipts from electric power companies and natural gas companies.

As a result, the hold-back amount for a city will be adjusted to delete the portion attributable to telephone receipts and the adjusted amount will be taken only from receipts from electric power companies and piped natural gas companies. New G.S. 105-164.44F addresses the freeze deduction for receipts from the repealed franchise tax on local telecommunications service.

(Effective January 1, 2002, and applies to taxable services reflected on bills on or after that date; HB 571, s. 11, S.L. 01-430.)

G.S. 105-120- Telephone Tax Amended and then Repealed: The General Assembly amended this section to make the same changes in the payment schedule for telephone companies that it made for electric power companies in G.S. 105-116. It then repealed this section as part of the telecommunications reform legislation that consolidates all the taxes on telecommunications services into a single State sales tax at the rate of 6%. As a result, the amendments never went into effect. New G.S. 105-164.4B sets out the consolidated telecommunications tax.

(Amendments effective January 1, 2002; HB 232, s. 6(e), S.L. 01-427; repeal effective January 1, 2002; HB 571, s. 12, S.L. 01-430, and HB 338, ss. 118 and 126, S.L. 01-487.)

G.S. 105-122(d1)- Technical and Clarifying Changes: This subsection was amended to delete an obsolete reference to Part 5 of Article 4 of Chapter 105 of the General Statutes. That Part sets out the tax credits for qualified business

investments. The reference to that Part is obsolete because the tax credits for qualified business investments can be claimed only against individual income tax. A C corporation is therefore not eligible for the tax credits for qualified business investments. An S corporation, as a pass-through entity, can qualify for the credits but the credits must be claimed by the S corporation shareholders against individual income tax.

The subsection was also amended to clarify the tax credit for one-half the piped natural gas excise tax. The amendment makes it clear that this credit is subject to the general limitation that a tax credit cannot exceed the amount of tax and is therefore not refundable.

(Effective September 28, 2001; HB 232, s. 12, S.L. 01-427.)

V. TAX INCENTIVES FOR NEW AND EXPANDING BUSINESSES

Article 3A

G.S. 105-129.2 – Clarifying, Substantive, and Technical Changes: This section was amended to clarify the “primary business” requirement for eligibility for the Article 3A credits and then to make exceptions to that requirement for tax years beginning in 2001 or later.

Primary Business Clarification. - This amendment makes it clear that a taxpayer is eligible for most of the tax credits in Article 3A only if the primary business of the taxpayer is an eligible business. There had been some confusion in the past as to whether a taxpayer had to be both primarily engaged in a qualifying business and performing the activity qualifying for a credit in that business to be eligible for a credit. Some taxpayers believed that the credits were site-specific, meaning that their primary business did not matter as long as they were in a qualifying business at the site of the activity.

The amendment makes it clear that for tax years prior to 2001, a taxpayer had to be both primarily engaged in a qualifying business and be conducting that business at the site of the activity to be eligible for any of the Article 3A credits except for the credit for investing in central office or aircraft facility property or the credit for contributing to a development zone project. This clarification is consistent with the Department of Revenue’s long-standing interpretation and is not considered a change to current law. The legislation sets out a finding by the General Assembly that the amendments concerning primary business “clarify the intent of the existing law and do not represent a change in the law.”

Substantive Changes. - The substantive amendments to this section are effective for tax years 2001 and later. They remove the requirements regarding primary business from five of the definitions, add three new definitions, and amend three of the existing definitions. The amendments remove the primary business requirement from the definitions of “air courier services,” “data processing,” “electronic mail order house,” “manufacturing,” “warehousing,” and “wholesale trade.” These requirements are removed from this section because they are incorporated in G.S. 105-129.4(a) with some modifications. See the discussion of G.S. 105-129.4(a) for an explanation of the changes to the primary business requirement.

One of the two new definitions is for “computer services” and one of the amended definitions is the term “data processing.” The definition of the term “computer services” includes four of the five NAICS industry groups previously included in the definition of “data processing.” The new term “computer services” includes computer systems design and related services, software publishing, software reproducing, and on-line information services.

The amended definition of “data processing” is not tied to NAICS and consists of six new types of businesses. The six are data entry and preparation; database creation, conversion, and management; data capture and imaging; rental of computer processing time; conversion of data storage media; and conversion of data file format. The term does not include payroll services, text processing, desktop publishing, or financial transaction processing.

A new limitation applies to both computer services and data processing. For a taxpayer in either of these industries to qualify for an Article 3A credit, the taxpayer must provide the services primarily to persons who are not related entities.

The other new definitions are for “establishment” and “related entity.” As defined, the term “establishment” has the same meaning as in NAICS. The term “related entity” was added as a result of the new limitation on eligibility for businesses engaged in computer services or data processing. As defined, the term “related entity” has the same meaning as in new G.S. 105-130.7(a).

The other amended definitions are “customer service center” and “NAICS.” The term “customer service center” was amended to delete the reference to an auxiliary subdivision and replace it with a reference to the new term establishment. This change was made because the term “auxiliary subdivision” was not defined and was not clear.

The amendment to the definition of NAICS pegs the NAICS to a certain date. The date set is December 31, 1997. This change parallels the treatment of the Internal Revenue Code, which is tied to a certain date set in G.S. 105-228.90(b)(1a). The change was made to avoid any issue of an impermissible delegation of the taxing power.

Technical Changes. – The technical changes renumber the subdivisions in the section. The renumbering affects the definition of “customer service center” and all subsequent definitions in the section. Before the changes, the definition of customer service center was designated as subdivision (3a). After the changes, this definition is designated as subdivision (5). Subsequent definitions are similarly affected.

(Clarifying changes effective November 29, 2001, SB 748, ss. 1(a) and (c), S.L. 01-476; substantive and technical changes effective for taxable years beginning on or after January 1, 2001, SB 748, ss. 1(b) and (c), S.L. 01-476.)

G.S. 105-129.2A – Conforming Changes and Change in Frequency of

Report: Subsections (a), (c), and (d) of this section were amended to make slight changes. Subsection (a) was amended to provide that Article 3A of Chapter 105 expires for business activities that occur on or after January 1, 2006. This change conforms with the change to G.S. 105-129.6 that eliminates the requirement that a taxpayer submit an application to the Department of Commerce to claim the credits in Article 3A. The expiration date for Article 3A remains the same.

Subsection (c) was amended to update the economic recruitment data used by the Department of Commerce in conducting its impact study of the effectiveness of the tax credits. Before the amendment, the subsection required the use of data ending in 2000. The change deletes the date “2000” and requires the use of the most recent data.

Subsection (d) was amended to require the Department of Commerce to conduct an equity study and an impact study of the tax credits every two years. The reports are due by April 1 of odd-numbered years. Before the change, the subsection required the two reports to be submitted once on April 1, 2001.

(Effective November 29, 2001, SB 748, s. 2, S.L. 01-476.)

G.S. 105-129.3 – Information, Population, and Industrial Park Changes:

Subsections (b), (d), and (e) of this section were amended. Subsection (b) was amended to require the Department of Commerce to publish the enterprise tier designations of the counties rather than provide the information to the Secretary of Revenue. This information was already available on the Department of Commerce’s website at ww.nccommerce.com/finance/tiers/, so the change is a technical change rather than a substantive change.

Subsection (d) was amended to allow more flexibility in creating two-county industrial parks. It was enacted for the benefit of Craven County and Jones County. Any other county park that meets the revised description will benefit as well. Under the law, when an industrial park is located in two counties, the park has the lower tier designation of the two counties in which it is located if certain conditions are met. Before this change, one of the conditions was a requirement

that the lower-tiered county contribute at least one-half of the cost of developing the park. Under the amendment, the lower-tiered county must contribute the lesser of one-half the cost of developing the park or the proportion of the cost of developing the park that is equal to the proportion of the park located in that county. At least one-third of the park must be located in the county with the lower tier designation.

Subsection (e) was amended to benefit more counties. Under that subsection, counties receive lower tier designations than they otherwise would if they meet certain conditions. Under subdivision (1) of that subsection, counties with populations that meet specified thresholds qualify as Tier One. One of the specified thresholds is total population. This threshold was increased from 10,000 to 12,000. This change enables Alleghany County and Jones County to qualify as Tier One counties.

Under subdivision (3) of subsection (e), counties that would otherwise receive designations as Tier Five or Tier Four counties can qualify as Tier Three counties if their population does not exceed a specified threshold. This threshold was increased from 25,000 to 35,000. This change enables Alexander, Dare, Davie, Macon, and Transylvania Counties to qualify as Tier Three Counties.

(Information and population changes in subsections (b) and (e) effective November 29, 2001, SB 748, s. 3, S.L. 01-476; industrial park change in subsection (d) effective for taxable years beginning on or after January 1, 2001; SB 538, S.L. 01-94.)

G.S. 105-129.3A – Publication of Development Zones and Technical

Change: This section defines development zones and authorizes the Department of Commerce to designate areas as development zones. Subsection (b) was amended to require the Department of Commerce to publish annually a list of all development zones with a description of their boundaries. Subsection (c) was amended to correct an incorrect cross-reference to the wage standard. That standard is codified under G.S. 105-129.4, not under G.S. 105-129.3(b).

(Publication change effective November 29, 2001, SB 748, s. 4, S. L. 01-476; technical change effective September 14, 2001; SB 165, ss. 6 and 53, S.L. 01-414.)

G.S. 105-129.4(a) – Types of Eligible Businesses: This subsection was rewritten to become the primary law for determining whether a taxpayer is in an eligible business for purposes of the Article 3A credits. The eligible businesses are divided into six categories. In some cases, the primary business requirement remains the same; in other cases, the primary business requirement is relaxed.

The six categories and their requirements are as follows:

- (1) *Central office or aircraft facility.* To be an eligible business, the taxpayer must operate a central office or aircraft facility that creates at least 40 new jobs and the jobs, investment, and activity with respect to which a credit is claimed must be used in that office or facility. These are the same requirements as under prior law.
- (2) *Single business.* This category consists of air courier services and data processing. The taxpayer must be primarily engaged in one of these businesses and the jobs, investment, and activity with respect to which a credit is claimed must be used in that business. These are the same requirements as under prior law for air courier services. The requirements are also the same for the businesses included within data processing, but the kinds of businesses included under data processing have changed and data processing qualifies only if the services are provided to an entity that is not a related. See the discussion of G.S. 105-129.2 for an explanation of those changes.
- (3) *Multiple business.* This category consists of manufacturing, warehousing, and wholesale trade. Under prior law, the taxpayer had to be primarily engaged in one of those businesses and the jobs, investment, and activity with respect to which a credit was claimed had to be used in that business. For example, a taxpayer primarily engaged in manufacturing did not qualify for credits for jobs, investment, and activity carried on at a warehousing site. Those requirements are relaxed for these three businesses.

As amended, the taxpayer must be primarily engaged in one of those businesses and the jobs, investment, and activity with respect to which a credit is claimed must be used in one of those businesses. This means that a manufacturer qualifies for the credit if the jobs, investment, and activity are carried on at a site at which the primary activity is manufacturing, warehousing, or wholesale trade.

- (4) *Single establishment.* This category consists of computer services and an electronic mail order house. The computer services must be provided primarily to persons who are not related entities. The electronic mail order house must create at least 250 new jobs and must be located in a tier one, two, or three area. To be eligible for the credits, computer services or an electronic mail order house must be either the taxpayer's primary business or the primary activity at an establishment of the taxpayer and the jobs, investment, and activity with respect to which a credit is claimed must be used in that business.
- (5) *Customer service center.* To be an eligible business, the taxpayer must satisfy all of the following requirements:

- The taxpayer's primary business must be a telecommunications or financial services company.
- The customer service center must be the primary activity of an establishment of the taxpayer located in a tier one, two, or three area.
- The jobs, investment, and activity with respect to which a credit is claimed must be used in the establishment's primary activity.

These are the same requirements as under prior law with one exception. Under prior law, the establishment had to be in a tier one or two area. Under the changes, the establishment can be in a tier one, two, or three area.

- (6) *Warehousing Option.* This category is a second way for a taxpayer engaged in warehousing to qualify for the credits. The multiple business category includes a taxpayer whose primary business is warehousing. This option applies if warehousing is not the primary business of the taxpayer. This category was enacted for the benefit of a specific taxpayer, but any taxpayer that meets the requirements is eligible.

Under this option, the taxpayer is eligible for the credits if the taxpayer satisfies the following requirements:

- The primary activity of an establishment of the taxpayer is warehousing.
- The warehousing establishment is located in a tier one, two, or three area and serves 25 or more establishments of the taxpayer in at least five different counties in one or more states.
- The jobs, investment, and activity with respect to which a credit is claimed are used in the warehousing establishment.

(Effective for taxable years beginning on or after January 1, 2001; SB 748, s. 6, S.L. 01-476.)

G.S. 105-129.4(a1) – Changes Concerning New Job Creation: This subsection was amended to make a clarifying change and a substantive addition. The clarifying change concerns the period of time during which a central office or aircraft facility may create the required 40 new jobs. The change makes it clear that for a central office or aircraft facility, the 40 new jobs must be created either (i) within twelve months immediately following the date the taxpayer first uses the property as a central office or aircraft facility or (ii) if the taxpayer uses temporary space during completion of the central office or aircraft facility, within a 36-month period that includes the 24 months immediately preceding and the 12 months immediately following the first use of the property as central office or aircraft facility property. Under the prior law, it was not clear if

the “year” allowed for job creation was the taxpayer’s taxable year, the calendar year, or a twelve-month period.

The substantive addition to this subsection establishes the minimum number of jobs a taxpayer must create to qualify for the new tax credit for substantial investment in other real property in G.S. 105-129.12A and the time period in which these jobs must be created. To qualify for the credit for substantial investment in other real property, a taxpayer must create at least 200 additional full-time employees to fill new positions at the location in a two-year period beginning when the property is first used in an eligible business.

(Effective for taxable years beginning on or after January 1, 2002; SB 748, s. 6, S.L. 01-476.)

G.S. 105-129.4(a2) – Credit Expiration Changes: This subsection was amended to make a clarifying change and a substantive change. The clarifying change adds a sentence to make it clear that a subsequent change to the tier designation of the area in which an establishment is located does not cause installments of the credits to expire. This affects the new credit for substantial investment in other property and the credits claimed by businesses with a customer service center, an electronic mail order house, or certain warehousing establishments. The new credit applies only in tier one and two areas. A customer service center, an electronic mail order house, and a warehousing establishment of a taxpayer whose primary business is not warehousing must be in a tier one, two, or three area.

The substantive change establishes expiration provisions for installments of credits claimed by a central office, an aircraft facility, or an electronic mail order house. To qualify for an Article 3A credit, a central office or an aircraft facility must create at least 40 new jobs and an electronic mail order house must create at least 250 new jobs. Under the amendment, installments of a credit claimed by one of these types of businesses expire when the number of jobs at the office, facility, or house falls below the minimum threshold required to qualify. The taxpayer may not take an expired installment.

For a central office or aircraft facility, this is a change from prior law. Before this change, G.S. 105-129.12(c) stated that installments of credits for a central office or aircraft facility expired when the number of jobs at all the taxpayer’s central office or aircraft facilities in this State dropped by 40 or more. For an electronic mail order house, this change addresses an issue that was not addressed in the prior law.

The new credit for substantial investment in other property, set out in G.S. 105-129.12A, contains an expiration provision similar to the one amended in this subsection. To qualify for the new credit, a business must create at least 200 new jobs. Under G.S. 105-129.12A(c), an installment of that credit expires if the number of jobs at the property falls below 200.

North Carolina Department of Revenue

(Effective November 29, 2001, and applies to tax years ending on or after that date, SB 748, s. 6, S.L. 01-476.)

G.S. 105-129.4(b)- Wage Standard Changes: This subsection was amended to make various changes to the wage standard test and to require the Department of Commerce to publish the wage standard for each county. The changes to the wage standard consist of three clarifying changes, one conforming change, and one substantive change. The first clarifying change adds a sentence stating that no jobs tax credit is allowed for jobs not included in the wage calculation.

The second clarifying change requires all positions that were filled for at least 1,600 hours during the calendar year in which the qualifying activity occurred to be included in the calculation of whether all jobs at a location meet the wage standard. This ensures that a taxpayer determines the average wage of employees at a location based on all full-time jobs, including those subject to seasonal layoffs. For tax years beginning before January 1, 2002, the average wage for all jobs at a location was a factor in determining eligibility for credits other than the jobs tax credit and the worker training credit, such as the credit for investing in machinery and equipment. For tax year 2002 and subsequent tax years, the average wage for all jobs at a location is also a factor in determining eligibility for the jobs tax credit and the worker training credit, as explained in the discussion of the substantive change to this subsection.

The third clarifying change deletes references to the time a taxpayer applies for a credit and substitutes references to the calendar year in which the taxpayer engages in a qualifying activity. Read literally, the law before this change required the taxpayer to meet the wage standard for the year in which the taxpayer applied for the credit, even if the taxpayer first claimed the credit on an amended return filed two years after the original return. The Department did not interpret these provisions literally, however. Instead, the Department construed these provisions to mean the year in which the qualifying activity occurred.

The conforming change inserts a reference to the new credit for a substantial investment in other property, set out in G.S. 105-129.12A. The average wage of all jobs at a location must meet the wage standard for a taxpayer to qualify for the new credit.

The substantive change sets a new wage standard for the credit for creating new jobs and the worker training credit, effective with tax year 2002. The new standard is a two-part test. Under the new test, both the average wage of the jobs for which the credit is claimed and the average wage of all jobs at the facility must meet the wage standard.

(First and second clarifying changes effective September 14, 2001; SB 165, ss. 7 and 53, S.L. 01-414; third clarifying change, conforming change, and

substantive change to the wage standard effective for taxable years beginning on or after January 1, 2002; SB 748, s. 6, S.L. 01-476.)

G.S. 105-129.4(b1) – Large Investment Conforming Change – This subsection was amended to conform with the changes to G.S. 105-129.6. As rewritten, that statute no longer requires the Department of Commerce to certify a taxpayer’s eligibility for the Article 3A credits. To be eligible for the large investment enhancements in Article 3A, a taxpayer must obtain a written determination from the Department of Commerce that the taxpayer is expected to meet the large investment thresholds.

(Effective for taxable years beginning on or after January 1, 2002; SB 748, s. 6, S.L. 01-476.)

G.S. 105-129.4(b2) – Health Insurance Conforming Change: This subsection was amended to conform with the changes to G.S. 105-129.6. As rewritten, that statute eliminates the requirement that a taxpayer obtain a certification from the Department of Commerce to claim the credits in Article 3A.

(Effective for taxable years beginning on or after January 1, 2002; SB 748, s. 6, S.L. 01-476.)

G.S. 105-129.4(b3) – Environmental Impact Conforming Change: This subsection was amended to conform with the changes to G.S. 105-129.6. As rewritten, that statute eliminates the requirement that a taxpayer obtain a certification from the Department of Commerce to claim the Article 3A credits. Under prior law, the Department of Commerce reported to the Department of Environment and Natural Resources (DENR) those taxpayers who claimed on their applications for certification to meet the environmental impact eligibility requirements. As amended, DENR must annually report to the Department of Revenue those persons who have pending actions concerning significant violations or have had final determinations of responsibility for significant violations during the last five years. The Department of Revenue can then use the information provided by DENR when reviewing the returns on which tax credits are claimed.

(Effective for taxable years beginning on or after January 1, 2002; SB 748, s. 6, S.L. 01-476.)

G.S. 105-129.4(b4) – Safety and Health Conforming and Substantive Changes: This subsection was amended to make a substantive change and a conforming change. The substantive change revises the safety and health

eligibility requirements effective retroactively to tax year 2000. The change was made to enable a particular taxpayer to qualify for the Article 3A credits.

To be eligible for the Article 3A credits, a taxpayer must have a good OSHA record at the business location where the qualifying business activity occurs. Under prior law, a good OSHA record meant that the taxpayer had no outstanding OSHA citations and had no serious violations within the last three years. As amended, the term means that the taxpayer has no citations that have become a final order within the past three years for willful serious violations or for failing to abate serious violations.

The conforming changes reflect the changes made to G.S. 105-129.6. That statute was rewritten to eliminate the requirement that a taxpayer obtain a certification from the Department of Commerce to claim the Article 3A credits. Under prior law, the Department of Commerce reported to the Department of Labor (DOL) those taxpayers who claimed on their applications for certification to meet the safety and health eligibility requirements. As amended, DOL must annually report to the Department of Revenue those employers who have had final orders for serious violations within the past three years. The Department of Revenue can then use the information provided by DOL when reviewing the returns on which tax credits are claimed.

(Substantive change to eligibility requirements effective retroactively for taxable years beginning on or after January 1, 2000; SB 748, s. 5, S.L. 01-476; conforming changes effective for taxable years beginning on or after January 1, 2002; SB 748, s. 6, S.L. 01-476.)

G.S. 105-129.4(b5) – Eligibility for New Credit: This subsection was enacted to establish eligibility requirements for the new credit for a substantial investment in other real property, set out in G.S. 105-129.12A. To be eligible for the new credit, a taxpayer must obtain a written determination from the Department of Commerce that the taxpayer is expected to make the necessary investment and create the necessary new jobs within the required time periods. If the taxpayer fails to make the required level of investment or timely create the required number of new jobs, the taxpayer forfeits the credit.

(Effective for taxable years beginning on or after January 1, 2002; SB 748, s. 6, S.L. 01-476.)

G.S. 105-129.4(d) – Forfeiture Conforming Changes: This subsection was amended to make two conforming changes. The first change reflects the changes made to G.S. 105-129.6. That statute was rewritten to eliminate the requirement that a taxpayer obtain a certification from the Department of Commerce to claim the Article 3A credits. As a result, this subsection was amended to delete references to making an application for a tax credit and certification by the Department of Commerce.

The second conforming change adds a forfeiture provision for the new credit for substantial investment in other property, set out in G.S. 105-129.12A. That credit requires the creation of 200 new jobs within two years and an investment of at least \$10 million within three years. The credit is forfeited if the taxpayer does not meet either of these requirements.

(Effective for taxable years beginning on or after January 1, 2002; SB 748, s. 6, S.L. 01-476.)

G.S. 105-129.4(e) – Clarifying Change: This subsection was amended to clarify the term “business” for purposes of determining whether the business has changed ownership. A business is either a taxpayer or an establishment. G.S. 105-129.2 sets out the new definition of establishment.

(Effective for taxable years beginning on or after January 1, 2002; SB 748, s. 6, S.L. 01-476.)

G.S. 105-129.4(g) – Advisory Ruling: This subsection was enacted to inform taxpayers that they can seek an advisory ruling from the Department of Revenue regarding their eligibility for tax credits. A written ruling will enable a taxpayer to determine in advance whether planned activity will qualify for a credit.

(Effective November 29, 2001; SB 748, s. 6, S.L. 01-476.)

G.S. 105-129.5 – R&D Carryforward Extended, New Statute of Limitations, and Conforming Changes: The catchline to this section was amended to add a reference to the new statute of limitations, subsection (c) was amended to make substantive and conforming changes, and new subsection (d) was added. New subsection (d) is effective for tax years beginning on or after January 1, 2001. The other changes are effective for tax years beginning on or after January 1, 2002.

The substantive changes to subsection (c) extend the carryforward period for the tax credit for research development from five years to 15 years and insert a 20-year carryforward for the new credit for a substantial investment in other property, set out in G.S. 105-129.12A. The conforming changes reflect the changes made to G.S. 105-129.6. That statute was rewritten to eliminate the requirement that a taxpayer obtain a certification from the Department of Commerce to claim the Article 3A credits. References in this subsection to certification by the Department of Commerce were therefore deleted.

New subsection (d) was enacted to establish a special statute of limitations for claiming the Article 3A tax credits. Section 7(a) of Chapter 476 of the 2001 Session Laws states that the General Assembly finds that the purpose of the Article 3A credits is to encourage the creation of new quality jobs and to

encourage new investment in machinery and equipment, research and development, and real property and that “allowing taxpayers to file amended returns and retroactively claim credits under that Article does not further this purpose of encouraging job creation and new investment.”

Under the new limitation, a credit must be claimed within six months after the due date of the return on which the taxpayer can first claim the credit. The due date includes extensions received by the taxpayer.

The return on which the taxpayer can first claim the credit is the return for the year in which the taxpayer engages in the activity that qualifies for the credit. This applies both to credits for which a taxpayer qualifies in one year and then takes in installments in subsequent years and to credits that are taken in the year in which the taxpayer engages in the activity that qualifies for the credit. Form NC-478 and the applicable NC-478 letter series form must be filed within six months after the due date of the return for the year in which the taxpayer engages in the activity that qualifies for the credit.

This new requirement is a statute of limitations. It cannot be waived or extended by the Department. The Department cannot accept a return on which an Article 3A tax credit is claimed unless the return is filed within the six-month time limit set in this subsection.

(Changes to subsection (c) effective for taxable years beginning on or after January 1, 2002, and apply to credits that are first claimed on or after that date; new subsection (d) effective for taxable years beginning on or after January 1, 2001; SB 748, s. 7, S.L. 01-476.)

G.S. 105-129.6 – No Application Process, Fees Paid to DOR, and Reports and Disclosure by DOR: This section was rewritten to eliminate the confusion caused by having two different agencies, the Department of Commerce and the Department of Revenue, involved in the tax credit process. The confusion is eliminated by removing the Department of Commerce from the role of receiving applications for tax credits, issuing certifications of approval, and reporting on various aspects of the tax credits.

No Application for Certification. The step of applying for an Article 3A tax credit is eliminated. Subsection (a), which required a taxpayer to obtain a certification from the Department of Commerce before claiming a tax credit, is repealed. This change is effective for all business activities occurring on or after January 1, 2002, and it is effective for activities occurring before January 1, 2002, if the taxpayer did not file an application with the Department of Commerce by January 1, 2002. The goal is to eliminate applications for certification for tax credits for returns filed for tax year 2002.

The year 2002, however, is a transition year for eliminating the application for certification. As of January 1, 2002, some taxpayers had submitted applications to the Department of Commerce for credits for which they qualified in tax year 2001 or an earlier year and some had not because they were waiting until closer to the due date of the return in 2002 or because they had not yet filed an amended return to claim a credit for a prior year. A taxpayer who had not filed an application as of January 1, 2002, must still file an application with the Department of Commerce if the taxpayer includes the tax credit on a return filed in 2002. The application, however, is simply a method of collecting the required fee. The Department of Commerce will not make any determinations about eligibility based on this application. The Department of Commerce must mark on the application that the fee has been paid. The taxpayer must then attach the marked application to the taxpayer's tax return.

The Department of Commerce's role in the application process ends on January 1, 2003. If a taxpayer that qualified for a tax credit before January 1, 2002, has not submitted an application to the Department of Commerce by January 1, 2003, the taxpayer must provide the information required by the Department of Revenue when filing a return that includes the credit and must pay any required fee to the Department of Revenue. The taxpayer is not required to interact with the Department of Commerce in claiming the credit.

Fee Paid to DOR. Subsection (a1) was rewritten to require the fee that must be paid by taxpayers before they can claim some of the Article 3A credits to be paid to the Department of Revenue instead of the Department of Commerce. As rewritten, the fee must be paid by the taxpayer when filing a tax return for the taxable year in which the taxpayer engaged in the activity that qualifies the taxpayer for an Article 3A credit. Under prior law, the fee was paid when an application for certification was submitted to the Department of Commerce.

The fee is due at the time the return is due and the credit is not allowable until the fee is paid. The Department of Revenue retains 75% of the fee proceeds and credits the remaining fee proceeds to the Department of Commerce. The fee amount and the allocation of the fee between the Departments of Revenue and Commerce remain the same. The Department of Revenue, rather than the Department of Commerce, is the agency that collects the fee.

Reports Made by DOR. Subsection (b), which required the Department of Commerce to issue an annual report on the Article 3A credits, was rewritten to require the Department of Revenue, rather than the Department of Commerce, to prepare and publish the report, to change the reporting date, to expand the information required in the report, and to include the names of taxpayers receiving the credits. With the elimination of the application to the Department of Commerce, the Department of Commerce will not have data to prepare a report.

As rewritten, the report is due by March 1 and covers the twelve-month period ending the preceding December 31. Before the change, the report was due by May 1 and covered the twelve-month period ending the preceding April 1. The reporting change is effective for business activities occurring on or after January 1, 2002. The first report published by the Department of Revenue under the new requirements is therefore due March 1, 2003, and will cover the twelve-month period ending December 31, 2002.

The information required to be included in the report was expanded to include the names of the taxpayers qualifying for and claiming the credits and specific information about the credits. The specific additional information includes information about tier areas for which credits are claimed, the worker training credit, the research and development credit, and the new credit for substantial investment in other property. The secrecy prohibition in G.S. 105-259 is amended to allow the disclosure of taxpayer names to meet the requirements of subsection (b).

(Effective for business activities occurring on or after January 1, 2002, and for certain activities occurring before January 1, 2002, HB 338, s.123, S.L. 01-487 and SB 748, s. 8(a) and (c), S.L. 01-476. Note that Section 123 of Chapter 487 changed the original effective date of Section 8(a) of Chapter 476.)

G.S. 105-129.7(b) – Reporting New Jobs and Conforming Changes: Three subdivisions of subsection (b) were amended to make one substantive and two conforming changes. The substantive change, in subdivision (b)(1), eliminates the requirement that taxpayers, when providing substantiating information about new jobs created, identify whether the new employee lived in a development zone when the employee took the job. Instead, if jobs for which a credit is taken are located in a development zone, the taxpayer must identify the number of those jobs that are filled by residents of the development zone.

Subdivisions (b)(3) and (b)(4) were amended to make two conforming changes. The first change reflects the changes made to G.S. 105-129.6. That statute was rewritten to eliminate the requirement that a taxpayer obtain a certification from the Department of Commerce to claim the Article 3A credits. As a result, subdivision (b)(3) was amended to delete a reference to certification of an investment amount.

The second conforming change reflects the enactment of the credit for a substantial investment in other property, set out in G.S. 105-129.12A. Subdivisions (b)(3) and (b)(4) were amended to add references to this new credit.

(Effective for taxable years beginning on or after January 1, 2002, SB 748, s. 9, S.L. 01-476.)

G.S. 105-129.8(a)- Clarifying and Technical Changes: The first sentence of this subsection was amended to make it clear that the relevant year is the taxable year instead of the calendar year. Other provisions of this subsection were amended to make stylistic changes that do not affect the meaning of the statute.

(Effective September 14, 2001; SB 165, ss. 8 and 53, S.L. 01-414.)

G.S. 105-129.9(b) – Conforming Change: This subsection was amended to conform with the changes made to G.S. 105-129.6. That statute was rewritten to eliminate the requirement that a taxpayer obtain a certification from the Department of Commerce to claim the Article 3A credits. As a result, this subsection was amended to delete the requirement that the taxpayer include with the application information showing how the taxpayer calculated the eligible investment amount.

(Effective for taxable years beginning on or after January 1, 2002, and applies to machinery and equipment first placed in service on or after that date; SB 748, s. 10, S.L. 01-476.)

G.S. 105-129.9(c) – M&E Threshold Determined by Establishment: This subsection was amended to apply the investment threshold for purposes of the credit for investing in machinery and equipment to each establishment rather than to each enterprise tier. Before the change, a taxpayer that had two or more locations in an enterprise tier could add the amount invested at each location in the tier in determining whether the taxpayer met the investment threshold. With the change, the threshold applies separately to each establishment and the taxpayer cannot add the amounts invested at each location. As a result, more investment is required to qualify for the credits.

(Effective for taxable years beginning on or after January 1, 2002, and applies to machinery and equipment first placed in service on or after that date; SB 748, s. 10, S.L. 01-476.)

G.S. 105-129.9A – Conforming Changes: Subsections (c), (d), and (e) of this section were amended to conform with the changes made to G.S. 105-129.6. That statute was rewritten to eliminate the requirement that a taxpayer obtain a certification from the Department of Commerce to claim the Article 3A credits. As a result, subsection (c) of this section was amended to eliminate the duty of the Secretary of Commerce to obtain an opinion from the Attorney General before certifying an application in certain circumstances and to replace it with a

duty of the taxpayer to obtain a ruling from the Department of Revenue. Subsections (d) and (e) were amended to delete references to certification.

(Effective for taxable years beginning on or after January 1, 2002; SB 748, s. 10, S.L. 01-476.)

G.S. 105-129.12(c) – Expiration of Credit for Investing in Central Office or Aircraft Facility Property: This subsection was amended to conform to the change made to G.S. 105-129.4 concerning the expiration of an installment of the credit for investing in central office or aircraft facility property. Under G.S. 105-129.4, as amended, the credit expires if the number of jobs at the office or facility falls below the 40 required to qualify for the credit. Before this change, the credit expired if the number of jobs at all the taxpayer's central office or aircraft facilities in the State dropped by 40 or more. The sentence contained in this subsection about the expiration is deleted and G.S. 105-129.4 governs the expiration of the installments.

(Effective for taxable years beginning on or after January 1, 2001; SB 748, s. 12, S.L. 01-476.)

G.S. 105-129.12A – New Credit for Substantial Investment in Other Property: This section was enacted to benefit a specific taxpayer. It applies, however, to any taxpayer that meets the requirements set in the statute.

The section provides a tax credit for substantial investment in other real property. Subsection (a) provides that a taxpayer is eligible for this credit if the taxpayer begins to use real property located in a tier one or tier two area in an eligible business during the tax year. The Department of Commerce must make a written determination that the taxpayer will invest at least \$10 million in real property at the location within a three-year period and that the location will create at least 200 new jobs within two years of the time the property is first used in the eligible business.

The credit is equal to 30% of the eligible investment amount, which is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the real property the taxpayer is using in this State in an eligible business on the last day of the tax year exceeds the cost of all real property used by the taxpayer on the last day of the base year. The base year is the year of the last three preceding years in which the taxpayer had the most real property. In the case of leased property, the cost of the property is equal to the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used by the taxpayer if the expenditures are not reimbursed or credited by the lessor.

The credit is taken in seven equal installments beginning in the year following the year in which the property is first used in an eligible business. When part of the

property is first used in an eligible business in one year and another part is first used in an eligible business in a subsequent year, separate credits may be claimed. The basis in the real property for which a credit is claimed must be reduced by the amount of credit allowable.

Subsection (b) provides a method of calculating the credit if only a portion of the property is used in an eligible business. In this circumstance, the amount of allowable credit is reduced by multiplying the allowable credit by the percentage of the square footage of the property actually used in an eligible business.

Subsection (c) provides for the expiration or reduction of the credit. If, in one of the seven years in which the installments of the credit accrue, part or all of the property is no longer used in the business or the number of employees at the property is less than 200, the remaining installments expire.

Subsection (d) provides that a taxpayer may not claim this credit if a credit for investing in central office or aircraft facility property is taken for the same property.

(Effective for taxable years beginning on or after January 1, 2002, and applies to real property first used in an eligible business on or after that date; SB 748, s. 13, S.L. 01-476.)

G.S. 105-129.13 - Clarifying and Conforming Changes: Subsection (c) was amended to make it clear that the reference to the Secretary in this subsection means the Secretary of Commerce rather than the Secretary of Revenue. The Secretary of Commerce is responsible for collecting certain information from a development zone agency before certifying an improvement project, not the Secretary of Revenue.

Subsection (e) was amended to conform with the changes made to G.S. 105-129.6. That statute was rewritten to eliminate the requirement that a taxpayer obtain a certification from the Department of Commerce to claim the Article 3A credits. As a result, this subsection was amended to delete the reference to the application that was formerly required under G.S. 105-129.6.

(Clarifying change effective September 14, 2001; SB 165, ss. 9 and 53, S.L. 01-414; conforming change effective for taxable years beginning on or after January 1, 2002; SB 748, s. 14, S.L. 01-476.)

VI. BUSINESS AND ENERGY TAX CREDITS

Article 3B

G.S. 105-129.15(4a) – Pass-through Entity Defined: New subdivision (4a) was added to define “pass-through entity.” The term is applied in the credit for low-income housing. The definition is the same as that established under Article 3D for the credit for historic rehabilitation. A pass-through entity includes a limited partnership, a general partnership, a joint venture, a Subchapter S Corporation, and a limited liability company.

(Effective January 1, 2001; SB 181, ss. 1 and 4, S.L. 01-431.)

G.S. 105-129.16B - Special Allocation and Forfeiture of Credit for Low-Income Housing: This section was amended to add a new allocation provision concerning pass-through entities and to revise the provisions for forfeiture of the credit. New subsection (b1) allows a pass-through entity that qualifies for the credit to allocate the credit among any of its owners in its discretion as long as the amount of credit allocated to an owner does not exceed the owner’s adjusted basis in the pass-through entity at the end of the taxable year in which the federal credit is first claimed. An explanation of the allocation made under this new subsection and the allocation that would have been required if this change had not been enacted must be included with the tax returns filed by the pass-through entity and the owners for each year in which the allocated credit is claimed.

Subsection (e) was rewritten and subsections (f) and (g) were added concerning forfeiture of the credit. Subsection (e) was amended to delete the provisions on the effect of forfeiture and to stipulate that forfeiture applies to owners of a pass-through entity in the same proportion that the credit was allocated.

Subsection (f) was added to require an owner of a pass-through entity to forfeit a portion of the credit for low-income housing if the owner disposes of more than one-third of the owner’s interest in the pass-through entity within five years from the date the federal credit is first claimed. The forfeiture amount is determined by multiplying the amount of the credit by the percentage reduction in ownership and then multiplying that product by an amount that equals the federal recapture percentage found in section 50(a)(1)(B) of the Internal Revenue Code. The remaining allowable credit is allocated equally among the five years in which the credit is claimed. The credit is not forfeited if the change in ownership is the result of either the death of the owner or a merger, consolidation, or similar transaction.

The provisions concerning the effect of a forfeiture that were deleted from subsection (e) are recodified in new subsection (g). The provisions are moved

from subsection (e) to this new subsection because they apply to forfeitures under both subsection (e) and new subsection (f).

(Effective for taxable years beginning on or after January 1, 2001, and applies to buildings placed in service on or after that date; SB 181, ss. 2 and 4, S.L. 01-431.)

G.S. 105-129.17(a) - Insurers Can Claim Low-Income Housing Credit: This subsection was amended to permit the credit for low-income housing to be claimed against the gross premiums tax levied in Article 8B. Prior to the amendment, the credit was permitted only against the franchise or income tax liability levied in Article 3 and Article 4, respectively. The purpose of this change is to expand the pool of taxpayers that can benefit from the low-income housing credit and thereby increase the market for these credits.

(Effective for taxable years beginning on or after January 1, 2001, and applies to buildings placed in service on or after that date; SB 181, ss. 3 and 4, S.L. 01-431.)

G.S. 105-129.19 - Technical Change: This subsection was amended to designate the Revenue Laws Study Committee rather than the Legislative Research Commission as the entity to receive the Department of Revenue's report on Article 3B tax credits.

(Effective September 14, 2001; SB 165, s. 10, S.L. 01-414.)

VII. HISTORIC REHABILITATION TAX CREDITS

Special Allocation Provision Extended: S.L. 1999-389 included a special provision in G.S. 105-129.35(b) that allows a pass-through entity that qualifies for the credit for rehabilitating income-producing historic property to allocate the credit among any of its owners in its discretion as long as the amount of credit allocated to an owner does not exceed the owner's adjusted basis in the pass-through entity at the end of the taxable year in which the rehabilitated structure is placed in service. The special allocation provision was effective for taxable years beginning on or after January 1, 1999, and was scheduled to expire effective January 1, 2002, for property placed in service on or after that date. The expiration date is now extended to January 1, 2004.

(Effective November 29, 2001, SB 748, s. 19, S.L. 01-476.)

VIII. CORPORATE INCOME TAX

G.S. 105-130.4(a)(4) – Excluded Corporation Clarifying Change: This subdivision was amended to clarify that a corporation is an excluded corporation if it receives more than 50% of its ordinary gross income from intangible property. The amendment deletes the phrase “investments in and/or dealing in” from the description of a corporation that falls under the category of an excluded corporation.

The amendment was added as part of the royalty reporting option provisions. Some intangible holding companies have argued to the Department that they are not excluded corporations because they do not “deal in” trademarks, in the sense of regularly buying and selling trademarks as if the trademarks were securities on an exchange. This argument distorts the meaning of the statutes and is contrary to the Department’s longstanding application of the statute.

(Effective for taxable years beginning on or after January 1, 2001; HB 1157, s. 1(c) and (f), S.L. 01-327.)

G.S. 105-130.5 – Conforming Change: This section was amended to conform to the new name of the former Office of State Budget, Planning, and Management. The General Assembly eliminated the planning function from that Office and renamed it the Office of State Budget and Management.

(Effective July 1, 2001; SB 1005, s. 12.2(b), S.L. 01-424.)

G.S. 105-130.5(a)(7) – Dividends Received Add-Back Repealed: This statute was repealed as part of the changes made to the corporate income tax laws to conform North Carolina’s deduction for subsidiary dividends to federal law, net of expenses. The repealed subdivision required taxpayers to add back to federal taxable income, for the purpose of calculating North Carolina taxable income, the amounts deducted from their federal taxable income under sections 241 through 247 of the Internal Revenue Code as dividends received.

(Effective for taxable years beginning on or after January 1, 2001; HB 1157, s. 3(a), S.L. 01-327.)

G.S. 105-130.5(a)(13) – FSC Add-Back Repealed: This subdivision was repealed because it is obsolete by virtue of the federal repeal of the Foreign Sales Corporation.

(Effective January 1, 2002; HB 232, s. 4(b), S.L. 01-427.)

G.S. 105-130.5(a)(14) – New Royalty Payment Add-Back: This subdivision was added as part of the royalty reporting option provisions. It requires the payer of royalty payments to add the payments to its federal taxable income unless the recipient of the royalty payments includes the royalty income from the payments in the recipient's income. New G.S. 105-130.7A(c) sets out the options for reporting royalty payments.

A special penalty exception applies for tax years beginning in calendar year 2001. No underpayment penalty under G.S. 105-164.31 applies with respect to an underpayment that was created or increased as a result of the addition of royalty payments to income under this subdivision.

(Effective for taxable years beginning on or after January 1, 2001; HB 1157, ss. 1(d) and (f), S.L. 01-327.)

G.S. 105-130.5(b)(3a) – Deduction for Foreign Source Dividends: This subdivision was added as part of the changes made to the corporate income tax laws to conform North Carolina's deduction for subsidiary dividends to federal law. The subdivision provides a deduction from federal taxable income for an item that is included in federal gross income and is related to dividends received but is not deductible under sections 243 through 247 of the Internal Revenue Code. The item is dividends treated under section 862 of the Code as received from sources outside the United States. The deduction is net of related expenses.

A special penalty exception applies for tax years beginning in calendar year 2001. No underpayment penalty under G.S. 105-164.31 applies with respect to an underpayment that was created or increased as a result of the changes made to the laws concerning the deduction of dividends.

(Effective for taxable years beginning on or after January 1, 2001; HB 1157, ss. 3(b) and (c), S.L. 01-327 and HB 232, s.10, S.L. 01-427.)

G.S. 105-130.5(b)(3b) – Deduction For Items Related to Dividends: This subdivision was added as part of the changes made to the corporate income tax laws to conform North Carolina's deduction for subsidiary dividends to federal law. The subdivision provides a deduction from federal taxable income for two items that are included in federal gross income and are related to dividends received but are not deductible under sections 243 through 247 of the Internal Revenue Code. One item is the amount treated as dividends received from a foreign corporation under section 78 of the Code. The other item is a shareholder's pro rata share of the income of a foreign controlled corporation under subpart F, section 951 of the Code. The deduction for both items is net of related expenses.

A special penalty exception applies for tax years beginning in calendar year 2001. No underpayment penalty under G.S. 105-164.31 applies with respect to an underpayment that was created or increased as a result of the changes made to the laws concerning the deduction of dividends.

(Effective for taxable years beginning on or after January 1, 2001; HB 1157, ss. 3(b) and (c), S.L. 01-327 and HB 232, s.10, S.L. 01-427.)

G.S. 105-130.5(b)(20) – Deduction for Royalty Income: This subdivision was added as part of the royalty reporting option provisions. It allows the recipient of royalty income to deduct this income from federal taxable income, for the purpose of computing North Carolina taxable income, if the corporation that made the royalty payments adds the payments to its income under G.S. 105-130.5(a)(14).

(Effective for taxable years beginning on or after January 1, 2001; HB 1157, s. 1(e), S.L. 01-327.)

G.S. 105-130.7(b) – Subsidiary Dividend Deduction Repealed: This statute was repealed as part of the changes made to the corporate income tax laws to conform North Carolina's deduction for subsidiary dividends to federal law, net of expenses. Prior State law required taxpayers to add to their federal taxable income the dividend deductions allowed under federal law and then allowed taxpayers to deduct subsidiary dividends in accordance with this subdivision. This subdivision allowed a corporation to deduct all dividends received from corporations in which it owned more than 50% of the stock and, by application of G.S. 105-130.5(b)(3) and (c)(3), did not require the deduction to be reduced by related expenses.

As a result of the repeal of this subdivision and G.S. 105-130.5(a)(7), taxpayers do not have to adjust their federal taxable income to add back their federal dividends received deduction and then subtract from that adjusted amount the North Carolina dividend deduction. The amount already deducted in their federal taxable income will flow through to their North Carolina taxable income. The amount deducted under federal law, however, must be reduced in accordance with G.S. 105-130.5(c)(3) for expenses.

The change in the taxation of subsidiary dividends was one of the recommendations of the North Carolina Efficiency and Loophole-Closing Commission. That Commission, co-chaired by former Governors Jim Holshouser and Bob Scott and former State Treasurer Harlan Boyles, recommended that North Carolina's law on subsidiary dividends be changed to conform to the federal law. The Commission found that this change would have no anti-competitive effects on businesses.

A special penalty exception applies for tax years beginning in calendar year 2001. No underpayment penalty under G.S. 105-164.31 applies with respect to an underpayment that was created or increased as a result of the repeal of this subdivision.

(Effective for taxable years beginning on or after January 1, 2001; HB 1157, ss. 3(a) and (c), S.L. 01-327.)

G.S. 105-130.7A – Royalty Income: This new statute clarifies that royalties from the use of trademarks in this State are income derived from doing business in this State and are therefore subject to North Carolina income tax and sets out new reporting options for royalty payments and income. Under the options, royalty income from the use of a trademark in North Carolina may be reported in either of two ways if the payer and the recipient are related entities. First, the recipient of the payments can include the payments in its North Carolina income and the company making the payments can deduct the payments from the company's North Carolina income. Second, the recipient of the payments can exclude the payments from its North Carolina income and the company making the payments can add the payments to the company's North Carolina income.

The options in new G.S. 105-130.7A are reporting options and not filing options. A corporation that receives royalty payments for the use of trademarks in this State is doing business in this State and must file an income tax return and a franchise tax return. The reporting option for royalty payments for the use of trademarks does not apply to interest income, income from patents, or any other income reportable to North Carolina.

This statute is the result of a change recommended by the North Carolina Efficiency and Loophole-Closing Commission and pursued by the General Assembly. The Commission, co-chaired by former Governors Jim Holshouser and Bob Scott and former State Treasurer Harlan Boyles, recommended that North Carolina adopt the Ohio and Connecticut approach to royalty expenses between related companies and disallow the deduction of these expenses. The Ohio law was introduced in Senate Bill 1058 of the 2001 Session. The provisions in Senate Bill 1058 were modified after consultation with businesses to include the options set out in this statute and then incorporated in House Bill 1157.

This statute was enacted to address a problem with the current law identified by the Department of Revenue and reported to the Efficiency and Loophole-Closing Commission. The problem is the lack of compliance by intangible holding companies with the requirement to file returns and pay taxes on their royalty income derived from North Carolina. Section 1 of House Bill 1157 reflects this concern. That section states that the "General Assembly finds that most corporations engaged in manufacturing and retailing activities in this State comply with the State tax on income generated from using trademarks in those

activities” but that the taxpayers who do not comply create an unfair burden on those who do.

(Effective for taxable years beginning on or after January 1, 2001; HB 1157, s. 1, S.L. 01-327.)

G.S. 105-130.41 – Ports Tax Credit Extended: The sunset on this credit, which had expired for taxable years ending after February 28, 2001, was extended. The credit now sunsets for taxable years beginning on or after January 1, 2003.

(Effective for taxable years beginning on or after March 2, 2000; HB 1388, ss. 1 and 2, S.L. 01-517.)

IX. INDIVIDUAL INCOME TAX

G.S. 105-134.2(a): Temporary Tax Rate Increase – This subdivision was amended to add a new 8.25% temporary marginal income tax rate bracket above the current top bracket of 7.75%. The rate applies to the 2001 tax year and expires effective with the 2004 tax year.

The new 8.25% individual income tax rate bracket applies as follows: Married individuals filing joint returns – 8.25% on taxable income over \$200,000; Heads of households – 8.25% on taxable income over \$160,000; Unmarried individuals other than surviving spouses and heads of households – 8.25% on taxable income over \$120,000; and Married individuals filing separately – 8.25% on taxable income over \$100,000.

Because the new bracket was enacted late in the tax year to which it first applies, taxpayers subject to this new rate are protected from underpayment penalties that could otherwise apply as a result of the increased liability. Notwithstanding G.S. 105-163.15, no addition to tax may be made for a taxable year beginning on or after January 1, 2001, and before January 1, 2002, with respect to an underpayment of individual income tax to the extent the underpayment was created or increased by the new tax rate.

(Effective for taxable years beginning on or after January 1, 2001, and expires for taxable years beginning on or after January 1, 2004; SB 1005, s. 34.18, S.L. 01-424.)

G.S. 105-134.6(b)(16) – Conforming Change: This section was amended to conform to the new name of the former Office of State Budget, Planning, and Management. The General Assembly eliminated the planning function from that Office and renamed it the Office of State Budget and Management.

(Effective July 1, 2001; SB 1005, s. 12.2(b), S.L. 01-424.)

G.S. 105-134.6(c) – Elimination of Standard Deduction Marriage Penalty:

This subsection was amended in two phases to eliminate the marriage penalty with respect to the standard deduction. The term “marriage penalty” refers to the imposition of a higher income tax liability on a married couple than on two single individuals due to two factors. One factor is the difference in the amounts allowed single taxpayers and married taxpayers as a standard deduction. The other factor is the difference in the thresholds for single taxpayers and married taxpayers under the marginal income tax rates. The standard deduction for a married couple is less than the standard deduction for a single taxpayer multiplied by two. Similarly, the thresholds for the marginal tax rates for a married couple occur at lower taxable income amounts than the thresholds for a single taxpayer multiplied by two.

The General Assembly amended this subsection to end the marriage penalty with respect to the standard deduction but did not change the marriage penalty with respect to the marginal rate thresholds. The penalty attributable to the thresholds remains and is perpetuated in the new 8.25% bracket explained under G.S. 105-134.2(a).

Under the changes made to this subsection, the standard deduction for a married couple filing jointly and for a married individual filing separately increases over a two-year period beginning with tax year 2002 to an amount that eliminates the marriage penalty attributable to the standard deduction. Effective with the 2002 tax year, the standard deduction for taxpayers whose filing status is married filing jointly increases from \$5,000 to \$5,500. Effective with the 2003 tax year, the standard deduction for taxpayers whose filing status is married filing jointly increases from \$5,500 to \$6,000. Similarly, effective with the 2002 tax year, the standard deduction for married individuals whose filing status is married filing separately increases from \$2,500 to \$2,750, and then increases from \$2,750 to \$3,000 effective with the 2003 tax year. As a result, for the 2003 tax year, the standard deduction for a married couple filing jointly will be twice the standard deduction for a single taxpayer and the standard deduction for a married taxpayer who files separately will be the same as the standard deduction for a single taxpayer.

(Effective for taxable years beginning on or after January 1, 2002; SB 1005, s. 34.19(a) and (b), S.L. 01-424.)

G.S. 105-151.12(f) – Credit for Certain Real Property Donations: This subsection was enacted to create a temporary exception to the change made to G.S. 105-269.15(a) concerning the calculation of tax credits by partnerships. The temporary exception applies for tax years 2002, 2003, and 2004.

Under the change made to G.S. 105-269.15(a), a maximum dollar limit on a tax credit applies to a partnership as a whole rather than to each of the individual partners. This subsection preserves the application of the dollar limit on the credit for real property donations at the individual partner level.

G.S. 105-151.12(a) limits the credit for certain real property donations to \$250,000. If a partnership with four partners qualifies for a \$1,000,000 tax credit, each partner can claim a tax credit of \$250,000. Without new subsection (f), each partner could claim a tax credit of only \$62,500 (one-fourth of the maximum \$250,000).

This exception was enacted at the request of the Department of Environment and Natural Resources. That Department was concerned that the application of the maximum credit at the partnership level rather than the partner level would decrease the amount of property donated for land conservation purposes.

(Effective for taxable years beginning on or after January 1, 2002, and expires for taxable years beginning on or after January 1, 2005; HB 146, ss. 2 and 3, S.L. 01-335.)

G.S. 105-151.21(b)(1) – Technical Change: This subdivision was amended to make a technical change to the definition of farm machinery that applies to the tax credit for property taxes paid on farm machinery. The cross-reference to the definition of farm machinery was amended to reflect the 1999 recodification of part of G.S. 105-164.4(a)(1d) as G.S. 105-164.4A. Farm machinery subject to the 1% sales tax rate is set out in G.S. 105-164.4A instead of G.S. 105-164.4(a)(1d).

(Effective September 14, 2001; SB 165, ss.11 and 53, S.L. 01-414.)

G.S. 105-151.22 – Ports Tax Credit Extended: The sunset on this credit, which had expired for taxable years ending after February 28, 2001, was extended. The credit now sunsets for taxable years beginning on or after January 1, 2003.

(Effective for taxable years beginning on or after March 2, 2000; HB 1388, ss. 1 and 2, S.L. 01-517.)

G.S. 105-151.24 – Two-step Increase in Credit for Children: This statute was amended to make a two-step increase in the tax credit for a dependent child for whom the taxpayer is allowed to claim a personal exemption. The first step is effective for taxable years beginning on or after January 1, 2002, and increases

the credit from \$60 to \$75. The second step is effective for taxable years beginning on or after January 1, 2003, and increases the credit from \$75 to \$100. The adjusted gross income eligibility limits that apply to the credit remain the same.

(Effective for taxable years beginning on or after January 1, 2002; SB 1005, s. 34.20 (a) and (b), S.L. 01-424.)

G.S. 105-151.27 – Repeal of Child Health Insurance Credit: The credit for child health insurance was repealed effective for the 2001 tax year. This repeal was recommended by the North Carolina Efficiency and Loophole-Closing Commission, co-chaired by former Governors Jim Holshouser and Bob Scott and former State Treasurer Harlan Boyles. The Commission recommended the repeal as a means of providing more funds for North Carolina’s Health Choice Program. The Commission believed that the State could provide health insurance to more children by shifting the dollars that were being indirectly appropriated by the tax credit to increased funding for the State’s Health Choice Program. The tax credit was refundable and was complex.

(Effective for taxable years beginning on or after January 1, 2001; SB 1005, s. 34.21(a) and (b), S.L. 01-424.)

X. TAX CREDITS FOR QUALIFIED BUSINESS INVESTMENTS

G.S. 105-163.013(g) – Technical Change: This subsection was amended to delete a reference to the Legislative Research Commission and insert a reference to the Revenue Laws Study Committee. This change reflects the creation in 1999 of the Revenue Laws Study Committee as a permanent, statutory committee. Before that change, the Revenue Laws Study Committee operated under the umbrella of the Legislative Research Commission.

(Effective September 14, 2001; SB 165, ss.12 and 53, S.L. 01-414.)

XI. WITHHOLDING OF INCOME TAX

G.S. 105-163.6 (b) and (c) – More Monthly Payments of Withholding Taxes:

Subsections (b) and (c) of this section were amended to move more taxpayers from quarterly filing to monthly filing of withholding taxes. The purpose of the changes is require more taxpayers to remit taxes more frequently, thereby shifting the receipt of some tax revenue from the 2002-03 fiscal year into the end of the 2001-02 fiscal year. When a taxpayer is changed from a quarterly filing status to a monthly filing status, the State receives two months of withheld taxes one fiscal year sooner.

Subsection (b) was amended to require an employer who withholds an average of less than \$250 of State income taxes from wages each month to file a return and pay the taxes on a quarterly basis. Subsection (c) was amended to require an employer who withholds an average of at least \$250 but less than \$2,000 from wages each month to file a return and pay the taxes on a monthly basis. . Before these changes, the threshold for distinguishing quarterly filers from monthly filers was \$500 instead of \$250. The change is expected to convert about 70,000 quarterly taxpayers into monthly taxpayers.

(Effective January 1, 2002; HB 232, s. 5, S.L. 01-427.)

XII. ESTIMATED INCOME TAX – CORPORATIONS

G.S. 105-163.41(a) – Clarifying Change: This subsection was amended to clarify that, in determining whether a corporation is subject to the penalty for underpayment of estimated income tax, the amount of income tax imposed is the net amount of income tax after reducing the tax by allowable tax credits.

(Effective September 14, 2001; SB 165, s. 13, S.L. 01-414.)

XIII. SALES AND USE TAX

G.S. 105-164.3 – Definition Changes: The language in this section preceding the list of definitions was amended to make it conform to the standard statutory language used to designate a list of definitions and numerous changes were made to the definitions. Some definitions were revised, some were recodified, some were added, and some were repealed.

Because of the number of new definitions added and repealed, Section 18(c) of S.L. 01-476 authorized the Codifier of Statutes to change the format of all the definitions in this section to match the format of the new definitions and to renumber the definitions to keep them in alphabetical order. Pursuant to this instruction, the Codifier took two actions. The Codifier changed the format of the definitions to match that of the new definitions and the existing definitions in G.S. 105-164.3(6b), (6d), (8), (8b), (16b), and (20). The new standard format sets out the term to be defined, followed by a period, a dash, and then the definition. The Codifier also renumbered all the definitions to eliminate letters after numbers. The reformatting and renumbering affects all definitions in this section.

The changes to the definitions are as follows and become effective as noted after each definition.

Business – (1). This definition was reformatted by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

Candy – (2)(New). This definition was added by the legislation enabling North Carolina to become a member of the national Streamlined Sales Tax Project. The definition matches the definition of candy adopted by that Project. The definition sets out the ingredients that constitute candy; these ingredients do not include flour.

Prior law did not include a definition of candy. A definition of candy was enacted so candy can be identified and taxed differently from other types of food, if the General Assembly chooses to do so. The 2001 General Assembly made no changes in the taxation of candy. Candy that is purchased for home consumption and would be exempt if purchased under the federal Food Stamp Program remains exempt from State tax and the Mecklenburg ½% Public Transit Tax.

The legislation adding this definition designated it as (2a). The Codifier of Statutes, however, renumbered all the definitions in G.S. 105-164.3 and designated this definition as (2) instead of (2a).

North Carolina Department of Revenue

(Effective January 1, 2002; SB 144, ss. 2.2 and 3.2, S.L. 01-347; SB 748, s. 18(c), S.L. 01-476.)

Clothing – (3)(New). This definition was added to implement the new sales tax holiday set out in new G.S. 105-164.13C. During the holiday, clothing with a sales price of \$100 or less is exempt from State and local sales and use taxes. The definition of clothing matches the definition of clothing adopted by the national Streamlined Sales Tax Project. The term is defined as all human wearing apparel suitable for general use. The Project definition contains an exhaustive list of items that are included in the definition. The Department will administer this definition in accordance with that list of items.

The legislation adding this definition designated it as (2b). The Codifier of Statutes, however, renumbered all the definitions in G.S. 105-164.3 and designated this definition as (3) instead of (2b).

(Effective January 1, 2002; SB 748, s. 18, S.L. 01-476.)

Clothing accessories or equipment – (4)(New). This definition was added to implement the new sales tax holiday set out in new G.S. 105-164.13C. During the holiday, clothing with a sales price of \$100 or less is exempt from State and local sales and use taxes but clothing accessories and equipment are subject to tax. The definition of clothing accessories and equipment matches the definition of the term adopted by the national Streamlined Sales Tax Project. The term is defined as incidental items worn on the person or in conjunction with clothing. The Project definition contains an exhaustive list of items that are included in the definition. The Department will administer this definition in accordance with that list of items.

The legislation adding this definition designated it as (2c). The Codifier of Statutes, however, renumbered all the definitions in G.S. 105-164.3 and designated this definition as (4) instead of (2c).

(Effective January 1, 2002; SB 748, s. 18, S.L. 01-476.)

Consumer – (5) (Was 3). This definition was reformatted and renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3 and to arrange all the definitions in alphabetical order without using letters to designate any of the definitions. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

Cost Price – Former (4). This definition was repealed. It is replaced by the definition of “purchase price” set out in subdivision (33) of this section. The new term “purchase price” has the same meaning as the prior term “cost price.” Even before the addition of the term “purchase price,” the statutes used the terms “cost price” and “purchase price” interchangeably. G.S. 105-164.6(a)(1), for example, used the term “cost price” and G.S. 105-164.6(b) used the term “purchase price.”

(Effective January 1, 2002; SB 165, ss. 14 and 53, S.L. 01-414.)

Delivery charges – (6)(New). This definition was added by the legislation enabling North Carolina to become a member of the national Streamlined Sales Tax Project. The definition matches the definition of delivery charges adopted by that Project. As defined, the term means all charges imposed by a retailer for preparation and delivery of personal property or services to a location designated by the consumer.

As a result of the repeal of G.S. 105-164.12, all transportation charges will be taxable without regard to where shipment originates, where title passes, or how the property is shipped. Under prior law, delivery charges were not taxable if title passed to the purchaser at the point of origin.

The legislation adding this definition designated it as (4a). The Codifier of Statutes, however, renumbered all the definitions in G.S. 105-164.3 and designated this definition as (6) instead of (4a).

(Effective January 1, 2002; SB 144, ss. 2.2 and 3.2, S.L. 01-347; SB 748, s. 18(c), S.L. 01-476.)

Dietary supplement – (7)(New). This definition was added by the legislation enabling North Carolina to become a member of the national Streamlined Sales Tax Project. The definition is a simpler version of the definition adopted by that Project but has the same meaning as the definition adopted by that Project. A dietary supplement is a product that is intended to supplement the diet of humans and is required to be labeled as a dietary supplement under federal law.

A definition of dietary supplement was enacted so these items can be identified and taxed differently from other types of food, if the General Assembly chooses to do so. The 2001 General Assembly made no changes in the taxation of dietary supplements. These items are subject to State and local sales and use taxes.

The legislation adding this definition designated it as (4b). The Codifier of Statutes, however, renumbered all the definitions in G.S. 105-164.3 and designated this definition as (7) instead of (4b).

(Effective January 1, 2002; SB 144, ss. 2.2 and 3.2, S.L. 01-347; SB 748, s. 18(c), S.L. 01-476.)

Direct-to-home satellite service – (8)(New). This definition was added as a result of the levy of a 5% State sales and use tax under G.S. 105-164.4(a)(7) on direct-to-home satellite services. The term is defined as “programming transmitted or broadcast by satellite directly to the subscribers’ premises without the use of ground equipment or distribution equipment, except equipment at the subscribers’ premises or the uplink process to the satellite.”

The legislation adding this definition designated it as (4a). The Codifier of Statutes, however, renumbered all the definitions in G.S. 105-164.3 and designated this definition as (8) instead of (4a).

(Effective January 1, 2002; SB 1005, s. 34.17, S.L. 01-424; SB 748, s. 18(c), S.L. 01-476.)

Engaged in business. – (9)(Was 5). This definition was reformatted and renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

Food – (10)(New). This definition was added by the legislation enabling North Carolina to become a member of the national Streamlined Sales Tax Project. The definition matches the definition of food adopted by that Project, with one technical difference. The Project definition of food states that the term does not include alcoholic beverages. The Project definition of food excludes alcoholic beverages so that the exemption many states have for food will not automatically apply to alcoholic beverages as well.

The definition of food set out in this subdivision includes alcoholic beverages so that the scope of the local prepared food taxes in North Carolina is not inadvertently decreased. The local prepared food taxes in this State use the definition of food set out in the State sales tax statutes as the starting point for the levy of the tax. If alcoholic beverages are not included in the definition of food, the local taxes must impose a tax on alcoholic beverages as well as on prepared food to be able to tax alcoholic beverages. The relevant local acts could be amended to do this, but the same result is achieved with fewer changes to the local acts by including alcoholic beverages in the definition of food.

North Carolina Department of Revenue

The definition of food is broad and is not tied to the federal Food Stamp Program. Various categories of food, such as candy and dietary supplements, are also defined to enable the General Assembly to make choices about what to tax and what to exempt from tax.

The legislation adding this definition designated it as (5a). The Codifier of Statutes, however, renumbered all the definitions in G.S. 105-164.3 and designated this definition as (10) instead of (5a).

(Effective January 1, 2002; SB 144, ss. 2.2 and 3.2, S.L. 01-347; HB 748, s. 3, S.L. 01-489; SB 748, s. 18(c), S.L. 01-476.)

Food sold through a vending machine – (11)(New). This definition was added by the legislation enabling North Carolina to become a member of the national Streamlined Sales Tax Project. The definition matches the definition of food sold through a vending machine adopted by that Project. This definition was enacted so that food sold through a vending machine can be identified and taxed differently from other types of food, if the General Assembly chooses to do so. The 2001 General Assembly made no changes in the taxation of food sold through a vending machine. These items are subject to State and local sales and use taxes based on 50% of their sales price.

The legislation adding this definition designated it as (5b). The Codifier of Statutes, however, renumbered all the definitions in G.S. 105-164.3 and designated this definition as (11) instead of (5b).

(Effective January 1, 2002; SB 144, ss. 2.2 and 3.2, S.L. 01-347; SB 748, s. 18(c), S.L. 01-476.)

Gross sales - (12)(Was 6). This definition was reformatted and renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

Hub – (13)(Was 6b). This definition was renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

In this State – (14)(Was 6c). This definition was reformatted and renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

Interstate air courier – (15)(Was 6d). This definition was renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

Interstate passenger air carrier – (16)(Was 6e). This definition was renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

Lease or rental – (17)(Was 7a). This definition was reformatted and renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

Mail order sale – (18)(Was 7b). This definition was reformatted and renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

Major recycling facility – (19)(Was 8). This definition was renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

Manufactured home – (20)(Was 8a). This definition was reformatted and renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

Mobile telecommunications service – (21)(New). This definition was added by the legislation that consolidated the taxes on telecommunications into a 6% State sales tax. The definition mirrors the definition of this term in the federal Mobile Telecommunications Sourcing Act. As defined, mobile telecommunications service is a radio communication service carried on between

mobile stations or receivers and land stations and by mobile stations communicating among themselves.

The legislation adding this definition designated it as (8b). The Codifier of Statutes, however, renumbered all the definitions in G.S. 105-164.3 and designated this definition as (21) instead of (8b).

(Effective January 1, 2002; HB 571, s. 13, S.L. 01-430; SB 748, s. 18(c), S.L. 01-476.)

Moped – 22 (Was 8b). This definition was renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

Motor vehicle – (23)(Was 8c). This definition was reformatted and renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

Net taxable sales. – (24)(Was 9). This definition was reformatted and renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

Nonresident retail or wholesale merchant – (25)(Was 10). This definition was reformatted and renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

Person – (26)(Was 11). This definition was reformatted and renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

Prepaid telephone calling arrangement – (27)(New). This definition was added by the legislation that simplified the taxes on telecommunications. Its purpose is to identify these arrangements so they can be taxed as tangible personal

property. The term is defined as a right that is paid for in advance, enables the origination of phone calls by means of an access number, authorization code, or similar means, and is sold in units or dollars whose number or dollar value declines with use and is known on a continuous basis. A prepaid calling card is an example of a prepaid telephone calling arrangement.

The legislation adding this definition designated it as (11a). The Codifier of Statutes, however, renumbered all the definitions in G.S. 105-164.3 and designated this definition as (27) instead of (11a).

(Effective January 1, 2002; HB 571, s. 1, S.L. 01-430; SB 748, s. 18(c), S.L. 01-476.)

Prepared food – (28)(Was 11b). This definition was rewritten by the legislation enabling North Carolina to become a member of the national Streamlined Sales Tax Project. The rewritten definition matches the definition of prepared food adopted by that Project. The rewritten definition deletes the phrase “and drink” from the defined term but has the same meaning as the prior definition.

The legislation adding this definition designated it as (11a). The Codifier of Statutes, however, renumbered all the definitions in G.S. 105-164.3 to put them in their proper alphabetical order and changed the designation of this definition to (28).

(Effective January 1, 2002; SB 144, s. 2.3, S.L. 01-347; SB 748, s. 18(c), S.L. 01-476.)

Prescription drug – (29)(Was 11b). This definition was reformatted and renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

Production company – (30)(Was 11c). This definition was reformatted and renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

Protective equipment – (31)(New). This definition was added to implement the new sales tax holiday set out in new G.S. 105-164.13C. During the holiday, certain clothing is exempt from State and local sales and use taxes but protective equipment is subject to tax. The definition of protective equipment matches the definition of the term adopted by the national Streamlined Sales Tax Project. The Project definition contains an exhaustive list of items that are included in the

definition. The Department will administer this definition in accordance with that list of items.

The legislation adding this definition designated it as (11d). The Codifier of Statutes, however, renumbered all the definitions in G.S. 105-164.3 to put them in their proper alphabetical order and changed the designation of this definition to (31).

(Effective January 1, 2002; SB 748, s. 18, S.L. 01-476.)

Purchase – (32)(Was 12). This definition was reformatted and renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

Purchase price – (33)(New). This definition was added by the legislation enabling North Carolina to become a member of the national Streamlined Sales Tax Project. The definition matches the definition of purchase price adopted by that Project. The term has the same meaning as “sales price” when applied to an item subject to use tax.

The legislation adding this definition designated it as (12a). The Codifier of Statutes, however, renumbered all the definitions in G.S. 105-164.3 to put them in their proper alphabetical order and changed the designation of this definition to (33).

(Effective January 1, 2002; SB 144, ss. 2.2 and 3.2, S.L. 01-347; SB 748, s. 18(c), S.L. 01-476.)

Retail sale or sale at retail – (34)(Was 13). This definition was rewritten by the legislation enabling North Carolina to become a member of the national Streamlined Sales Tax Project. The rewritten definition matches the definition of retail sale or sale at retail adopted by that Project. The revised definition expands the defined term from “retail” to “retail sale or sale at retail,” but makes no substantive change in the law.

The legislation rewriting this definition kept the designation of the definition as (13). The Codifier of Statutes, however, renumbered all the definitions in G.S. 105-164.3 to put them in their proper alphabetical order and changed the designation of this definition to (34).

(Effective January 1, 2002; SB 144, ss. 2.4 and 3.2, S.L. 01-347; SB 748, s. 18(c), S.L. 01-476.)

Retailer – (35)(Was 14). This definition was reformatted and renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

Sale or selling – (36)(Was 15). This definition was reformatted and renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

Sales price – (37)(Was 16). This definition was rewritten by the legislation enabling North Carolina to become a member of the national Streamlined Sales Tax Project. The definition matches the definition of sales price adopted by that Project. The revised definition lists items that are included in subpart a. and lists items that are not included in subpart b. Four of the exclusions from tax that were contained in this definition are now set out in G.S. 105-164.13 as exemptions. New subdivision (47) of G.S. 105-164.13 exempts bottle deposits from tax, new subdivision (48) of that section exempts deposits on certain replacement parts from tax, new subdivision (49) exempts separately stated installation charges from tax, and new subdivision (50) exempts from tax 50% of the sales price of most items sold through a vending machine.

The only substantive change made as a result of rewriting the definition affects cash discounts. Under the prior definition, cash discounts were included in the sales price and tax was due on the sales price without regard to the discount. Under the revised definition, cash discounts are not considered to be part of the sales price.

The legislation rewriting this definition kept the designation of the definition as (16). The Codifier of Statutes, however, renumbered all the definitions in G.S. 105-164.3 to put them in their proper alphabetical order and changed the designation of this definition to (37).

(Effective January 1, 2002; SB 144, ss. 2.5 and 3.2, S.L. 01-347; SB 748, s. 18(c), S.L. 01-476.)

Secretary – (38)(Was 16a). This definition was reformatted and renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

Service address – (39)(New). This definition was added by the legislation that consolidated the taxes on telecommunications into a 6% State sales tax. The definition mirrors the federal definition of this term. As defined, the service address is the location of telecommunications equipment from which a customer originates or receives telecommunications service. If the service provider cannot determine the location of the equipment, such as with mobile telecommunications, the location of the equipment may be determined based on the telephone number of the customer, the mailing address, or the street address.

The legislation adding this definition designated it as (16b). The Codifier of Statutes, however, renumbered all the definitions in G.S. 105-164.3 to put them in their proper alphabetical order and changed the designation of this definition to (39).

(Effective January 1, 2002; HB 571, s. 1, S.L. 01-430; SB 748, s. 18(c), S.L. 01-476.)

Soft drink – (40)(New). This definition was added by the legislation enabling North Carolina to become a member of the national Streamlined Sales Tax Project. The definition matches the definition of soft drink adopted by that Project. The definition differs from the definition of soft drink that applied in the repealed soft drink excise tax previously imposed under Article 2B of Chapter 105.

This definition was enacted so that soft drinks can be identified and taxed differently from other types of food, if the General Assembly chooses to do so. The 2001 General Assembly made no changes in the taxation of soft drinks.

The legislation adding this definition designated it as (16b). The Codifier of Statutes, however, renumbered all the definitions in G.S. 105-164.3 to put them in their proper alphabetical order and changed the designation of this definition to (40).

(Effective January 1, 2002; SB 144, ss. 2.2 and 3.2, S.L. 01-347; SB 748, s. 18(c), S.L. 01-476.)

Special mobile equipment – (41)(Was 16b). Two acts passed in the 2001 Session affected the number and format of this definition but not its substance. Chapter 347 changed the designation of this section from (16b) to (16c) to accommodate the addition by that act of other definitions to G.S. 105-164.3. Chapter 476 gave the Codifier of the Statutes the authority to renumber and reformat all the definitions in G.S. 105-164.3. The Codifier exercised this authority, changed the format of the definition to the new standard format, and changed the designation of this definition to (41).

North Carolina Department of Revenue

(Effective January 1, 2002; SB 144, ss. 2.7 and 3.2, S.L. 01-347; SB 748, s. 18, S.L. 01-476.)

Sport or recreational equipment – (42)(New). This definition was added to implement the new sales tax holiday set out in new G.S. 105-164.13C. During the holiday, certain clothing is exempt from State and local sales and use taxes but sport or recreational equipment is subject to tax. The definition of sport or recreational equipment matches the definition of the term adopted by the national Streamlined Sales Tax Project. The Project definition contains an exhaustive list of items that are included in the definition. The Department will administer this definition in accordance with that list of items.

The legislation adding this definition designated it as (16e), but gave the Codifier of the Statutes the authority to renumber all the definitions in G.S. 105-164.3. The Codifier exercised this authority, renumbered all the definitions in G.S. 105-164.3 to put them in their proper alphabetical order, and changed the designation of this definition to (42).

(Effective January 1, 2002; SB 748, s. 18, S.L. 01-476.)

State agency – (43)(Was 16c). Two acts passed in the 2001 Session affected the number of this definition but not its substance. Chapter 347 changed the designation of this section from (16c) to (16d) to accommodate the addition by that act of other definitions to G.S. 105-164.3. Chapter 476 gave the Codifier of the Statutes the authority to reformat and renumber all the definitions in G.S. 105-164.3. The Codifier exercised this authority, changed the format of the definition to the new standard format, and changed the designation of this definition to (43).

(Effective January 1, 2002; SB 144, ss. 2.7 and 3.2, S.L. 01-347; SB 748, s. 18, S.L. 01-476.)

Storage – (44)(Was 17). This definition was reformatted and renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

Storage and use; exclusion – (45)(Was 19). This definition was reformatted and renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

Tangible personal property – (46)(Was 20). This definition was renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

Taxpayer – (47)(Was 20). This definition was reformatted and renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

Telecommunications service – (48)(New). This definition was added by the legislation that consolidated the taxes on telecommunications into a 6% State sales tax. The definition mirrors the federal definition of this term. As defined, telecommunications service is the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by or through any electronic, radio, satellite, optical, microwave, or other medium regardless of the protocol used for the transmission, conveyance, or routing.

The legislation adding this definition designated it as (21a). The Codifier of Statutes, however, renumbered all the definitions in G.S. 105-164.3 to put them in their proper alphabetical order and changed the designation of this definition to (48).

(Effective January 1, 2002; HB 571, s. 1, S.L. 01-430; SB 748, s. 18(c), S.L. 01-476.)

Use – (49)(Was 18). This definition was reformatted, renumbered, and amended. The amendment adds “distribution” to the list of activities that constitute “use” for sales and use tax purposes. This addition is a change from prior law. The change brings North Carolina law in line with the United States Supreme Court decision in the case of *D.H. Holmes*. Under the rewritten definition, use tax is due when an in-state retailer contracts with an out-of-state printer to print catalogues or other material and mail the material directly from the printer’s place of business to customers of the retailer in North Carolina.

Chapter 476 of the 2001 Session Laws gave the Codifier of the Statutes the authority to reformat and renumber all the definitions in G.S. 105-164.3. The Codifier exercised this authority, changed the format of the definition to the new standard format, and changed the designation of this definition to (49) so that it is in the proper alphabetical order.

(Effective January 1, 2002; SB 144, ss. 2.6 and 3.2, S.L. 01-347; SB 748, s. 18(c), S.L. 01-476.)

Use tax – (50)(Was 22). This definition was reformatted and renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

Utility – (Former 25). This definition was repealed because it is no longer used. The statutes that applied this term were rewritten in the 2001 Session and no longer use this term.

(Effective January 1, 2002; HB 571, s. 2, S.L. 01-430.)

Wholesale merchant – (51)(Was 23). This definition was reformatted and renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

Wholesale sale – (52)(Was 24). This definition was reformatted and renumbered by the Codifier as part of the changes to apply a standard format to G.S. 105-164.3. No change was made to the meaning of the definition.

(Effective January 1, 2002; SB 748, s. 18(c), S.L. 01-476.)

G.S. 105-164.4 – Increases in State Tax Rate and Base: Numerous amendments were made to this section. The amendments either changed the State sales tax rate on an item or expanded the State sales tax base to include items that were not previously subject to tax. The changes and their effective dates are as follows.

G.S. 105-164.4(a) - Temporary Increase in State Rate. The introductory language of this subsection was amended to temporarily increase the general State rate of sales and use tax from 4% to 4½% effective October 16, 2001. The additional ½% State tax will expire June 30, 2003, at which time counties will have the option of levying an additional ½% county tax. The increase does not apply to construction materials purchased to fulfill a lump-sum or unit-price contract entered into or awarded before the effective date of the increase or entered into or awarded pursuant to a bid made before the effective date of the increase.

(Effective October 16, 2001; SB 1005, s. 34.13, S.L. 01-424.)

North Carolina Department of Revenue

G.S. 105-164.4(a)(1d), (1f)b., and (1g) - Electricity Sold to Manufacturers. Subdivision (a)(1d) was amended to make it clear that electricity is not an accessory and is therefore not subject to a reduced rate of tax under G.S. 105-164.4A or under new G.S. 105-187.51, which is the future replacement for current G.S. 105-164.4A(2). Under G.S. 105-164.4A, accessories to farm machinery, mill machinery, and various other kinds of machinery are taxable at the rate of 1%, with a maximum tax of \$80.00 per article. The amendment to subdivision (a)(1d) is part of the comprehensive changes made by the 2001 General Assembly to resolve questions about the application of sales taxes to electricity.

Subpart (a)(1f)b. was repealed and replaced by new subdivision (a)(1g). The new subdivision sets out a new method of taxing electricity sold to manufacturers. Under the new method, the tax rate that applies is set for each fiscal year beginning July 1, and the rate varies among manufacturers based on the megawatt hours of electricity used by each manufacturer in the preceding calendar year.

One rate table applies to the period January 1, 2002, through June 30, 2005, and another rate table applies to periods beginning July 1, 2005. The tables were enacted in Chapter 748 of the 2001 Session Laws and then revised in Chapter 487 of the 2001 Session Laws before they took effect. The rate tables are as follows:

January 1, 2002, through June 30, 2005

<i>Previous Year's Megawatt Hours</i>	<i>Rate</i>
900,000 or less	2.83%
Over 900,000	0.17%

July 1, 2005 and After

<i>Previous Year's Megawatt Hours</i>	<i>Rate</i>
5,000 or less	2.83%
Over 5,000 up to 250,000	2.25%
Over 250,000 up to 900,000	2.00%
Over 900,000	0.17%

A retailer of electricity must determine the amount of electricity used by each manufacturer during each calendar year and notify the manufacturer of the rate that will be in effect for the fiscal year. If a manufacturer has not been in business long enough to have a year's data to use to set the rate, the retailer must estimate the manufacturer's volume of electricity purchases for the coming fiscal year and set a rate based on the estimate.

At the end of a fiscal year, if a manufacturer's volume of electricity purchased for that year is not in the proper category based on the tax rate paid, the manufacturer makes a "true-up" adjustment. If the manufacturer's actual volume entitles the manufacturer to a lower rate than the rate paid, the manufacturer can apply to the Department for a refund. If the reverse is the case and the

manufacturer's actual volume subjects the manufacturer to a higher rate than the rate paid, the manufacturer must remit to the Department the difference between the amount paid and the amount due at the higher rate.

The new rate structure is a modification of the "declining block" rate structure enacted for piped natural gas effective July 1, 1999. As with the piped natural gas structure, the rate for electricity decreases as usage increases. Unlike the piped natural gas structure, however, the electricity structure does not require the retailer to "run through the blocks" each billing period to determine the tax payable by a customer for that period.

The General Assembly enacted the new electricity rate structure at the request of Alcoa and other companies. The subject of sales tax on electricity used by manufacturers became an issue after a hearing decision by the Secretary of Revenue found that electricity is energy and is not included within the scope of the exemption set out in G.S. 105-164.13(8) for property that enters into or becomes a component part of a manufactured product. Before that hearing decision, several manufacturers had received rulings from the Department exempting electricity used in arc furnaces and in a few other manufacturing applications from sales tax under the rationale that their use of electricity was exempt under G.S. 105-164.13(8).

(Clarifying change to subdivision (a)(1d) effective November 29, 2001, SB 748, ss. 17(d) and (g), S.L. 01-476; rate structure changes effective January 1, 2002, SB 748, s. 17, S.L. 01-476 and HB 338, s. 122, S.L. 01-487; revised rate table effective July 1, 2005, SB 748, ss. 17(f) and (g), S.L. 01-476 and HB 338, s. 122, S.L. 01-487.)

G.S. 105-164.4(a)(4a) – Local Telecommunications Service Removed. This subdivision was amended to delete local telecommunications service from the imposition of the State 3% rate of tax, to delete the reference to the term "utility," and to delete the sales tax exemption for receipts from service provided by means of public coin-operated pay telephone instruments. These provisions were removed as part of the comprehensive revision and simplification of the taxes on telecommunications. Telecommunications are now taxed under G.S. 105-164.4(a)(4c) and new G.S. 105-164.4B. As amended, this subdivision applies only to sales of electricity.

(Effective January 1, 2002; HB 571, s. 3, S.L. 01-430.)

G.S. 105-164.4(a)(4c) – 6% Rate on Telecommunications Service. This subdivision was amended to apply to all telecommunications service and to impose a 6% State sales tax on the gross receipts derived from providing telecommunications service. The amendments were made as part of the comprehensive revision and simplification of telecommunications taxes. Before

the amendments, the subdivision applied only to intrastate long distance telephone calls and imposed a 6½% rate on these calls.

The Department of Revenue recommended to the General Assembly that all telecommunications service be taxed at the same rate. The Department made this recommendation due to the difficulties in administering the various taxes on telecommunications and the inequity of taxing some calls, such as intrastate long distance, at 6½% and exempting other calls, such as interstate long distance. Under prior law, local calls were taxed under a 3.22% franchise tax in G.S. 105-120 and a 3% sales tax in G.S. 105-164.4(a)(4a), and intrastate long distance was taxed under this subdivision at 6½%.

The legislation recommended by the Department set the rate at 4½%. The 4½% rate was enacted and was then increased to 6% by a subsequent act of the General Assembly. The 6% rate was a recommendation of the North Carolina Efficiency and Loophole-Closing Commission. That Commission, co-chaired by former Governors Jim Holshouser and Bob Scott and former State Treasurer Harlan Boyles, joined the Department in recommending that all telecommunications services be taxed at a uniform rate. The Commission recommended a rate of 6% and the General Assembly followed that recommendation.

(Effective January 1, 2002; HB 571, s. 4, S.L. 01-430; SB 1005, ss. 34.25(a) and (c), S.L. 01-424; HB 338, ss. 67(b) and (f), S.L. 01-487.)

G.S. 105-164.4(a)(4d) – Prepaid Calling Arrangements. This new subdivision was added to impose sales and use tax at the general State rate on the sale of prepaid telephone calling arrangements. Because the arrangements are taxable at the general State rate, they are also subject to local sales and use taxes. The subdivision was added as part of the comprehensive revision and simplification of telecommunications taxes. The subdivision taxes these arrangements at the point of sale as tangible personal property rather than as a telecommunications service when calls are made under the arrangement. The tax applies regardless of whether any tangible personal property, such as a card or a telephone, is transferred at the time of sale.

The addition of this subdivision brings North Carolina into conformity with the vast majority of other states that tax prepaid calling cards and similar arrangements as tangible personal property. The Department of Revenue recommended this change to the General Assembly. The change was supported by the telephone companies and the retailers. Point of sale taxation of prepaid telephone cards is much simpler for retailers to administer. These cards are often sold at drug stores, grocery stores, and discount department stores, for example, along with many other items of tangible personal property.

(Effective January 1, 2002; HB 571, s. 5, S.L. 01-430.)

G.S. 105-164.4(a)(6) – State Tax on Liquor. This new subdivision was added to impose a 6% State sales and use tax on sales of spirituous liquor other than mixed beverages, effective December 1, 2001. Mixed beverages are not affected by this new subdivision because they were already subject to State and local sales and use taxes. Local sales and use taxes do not apply to sales of liquor, however.

(Effective December 1, 2001; SB 1005, s. 34.23, S.L. 01-424.)

G.S. 105-164.4(a)(7) – Direct-to-Home Satellite Service. This subdivision was added to impose a 5% State sales tax on the gross receipts derived from providing direct-to-home satellite service to subscribers in this State. A person engaged in the business of providing this service is considered to be a retailer.

The enactment of this tax is one of the recommendations of the North Carolina Efficiency and Loophole-Closing Commission. That Commission, co-chaired by former Governors Jim Holshouser and Bob Scott and former State Treasurer Harlan Boyles, recommended that amusements that compete with each other be taxed equally. The Commission's report notes that cable television is subject to a 5% local franchise tax and that direct-to-home TV services are not subject to a similar local or State tax. The 5% State tax rate is intended to equalize the tax treatment between cable and direct-to-home TV services. The tax is a State tax and is not made part of the local sales tax base because all of the current tax on cable TV service is a local tax and is retained by the units of local government.

The legislation enacting this subdivision designated it as subdivision (6). The Codifier of Statutes, however, changed the designation to (7) after using the designation (6) for the new subdivision imposing a State sales tax on liquor.

(Effective January 1, 2002; SB 1005, s. 34.17, S.L. 01-424.)

G.S. 105-164.4A(2) – Mill Machinery Tax Replaced: This subdivision is repealed, effective January 1, 2006. Under this subdivision, sales of mill machinery and mill machinery parts and accessories are subject to tax at the rate of 1%, with an \$80.00 maximum tax per item. This subdivision is repealed because it is replaced on January 1, 2006 by the new privilege tax set out in Article 5F of Chapter 105. The new tax applies to the same items and at the same rate as under this subdivision.

The repeal of this subdivision is part of the effort made to enable North Carolina to be a member of the national Streamlined Sales Tax Project. Under that Project, states must limit the number of state sales tax rates they have. The 1%, \$80 maximum rate is one of several State sales and use tax rates. The repeal of this subdivision eliminates a lower rate as applied to some items because the new tax is not a sales and use tax paid by a retailer. The new tax is a privilege tax paid directly by manufacturers to the Department. The Department expects

that most of the manufacturers will have direct pay permits for sales and use taxes and that the new replacement tax will be self-accrued with other items subject to the direct pay permit.

(Effective January 1, 2006; SB 144, ss. 2.8 and 3.2, S.L. 01-347.)

G.S. 105-164.4B – Change in Sourcing Principles: This statute was added by the legislation enabling North Carolina to become a member of the national Streamlined Sales Tax Project. The section sets out the sourcing principles that apply to State sales and use taxes. One of the requirements of the Project is that states apply a uniform sourcing rule. “Sourcing” refers to the procedure by which a determination is made of the jurisdiction in which a transaction is subject to tax. The sourcing principles adopted by the Project are destination based as opposed to origin based.

The section describes various circumstances under which a transaction can be made and specifies where that transaction is subject to tax. An over-the-counter sale is sourced to the seller’s business location. When a product is received at a location specified by the purchaser and the location is not the business location of the seller, the sale is sourced to the location where the purchaser receives the product.

The section does not apply to telecommunications services. This is because, to a large extent, federal law determines where telecommunications services are to be sourced.

(Effective January 1, 2002; SB 144, ss. 2.9 and 3.2, S.L. 01-347.)

G.S. 105-164.4C – Scope of Tax on Telecommunications Service: This new section sets out the scope of the 6% tax imposed by G.S. 105-164.4(a)(4c) on telecommunications service, specifies how bundled telecommunications services and interstate private lines are to be taxed, and sets a cap on the tax payable by certain call centers. The legislation adding this section designated it as G.S. 105-164.4B. A subsequent act of the 2001 Session changed the designation from G.S. 105-164.4B to 105-164.4C to eliminate a duplication that occurred when two separate acts of the 2001 Session designated two statutes as G.S. 105-164.4B.

Scope. Subsection (a) specifies that the tax applies to the gross receipts derived from providing telecommunications service in this State and states that mobile telecommunications are provided in this State if the customer’s service address is in the State and the call originates or terminates in the State.

Items Included in Gross Receipts. Subsection (b) lists items that are included in gross receipts. The inclusion in (b)(1) of receipts from interstate

telecommunications is new. Interstate telecommunications are included to make the tax apply uniformly to all types of telecommunications. Receipts from some of the services listed in subdivision (b)(2) were taxable under prior law and some were not. Receipts from charges for directory assistance were not taxable. Receipts from charges for directory listings and the other services listed in that subdivision were taxable when they were associated with local telecommunications service but not when they were associated with toll telecommunications service. The receipts from access charges listed in subdivision (b)(3) and pay telephone providers listed in subdivision (b)(4) were not taxable under prior law. Receipts from charges to pay telephone providers are now included because their receipts are excluded under subsection (c).

Items Excluded from Gross Receipts. Subsection (c) lists items that are excluded from gross receipts. All of the items listed in this subsection were excluded from tax under prior law, except the items listed in subdivisions (c)(2) and (c)(7). Subdivision (c)(2) excludes from tax the receipts from services derived from the use of a prepaid calling card or another prepaid calling arrangement because new G.S. 105-164.4(a)(4d) taxes prepaid calling arrangements at the point of sale as tangible personal property. Subdivision (c)(2) therefore eliminates double taxation of receipts from prepaid calling arrangements. Subdivision (c)(7) excludes receipts from paging services only if the service is a one-way communication. Under prior law, all receipts from paging services were exempt because the transmission was not considered to be “telephonic quality” under the definitions in former G.S. 105-120. Under subdivision (c)(7), receipts from two-paging services are now taxable.

Bundled Services. Subsection (d) specifies how bundled telecommunications services are to be taxed. Prior law contained no provisions on how to tax bundled telecommunications service. A “bundled telecommunications service” is one that includes both taxable and nontaxable services. The subsection sets out two methods for taxation. If the provider of the bundled services offers all the services on an unbundled basis, tax applies to the proportionate price of the taxable services in the bundle. If the provider of the bundled services does not offer the services on an unbundled basis, tax applies to the taxable services included in the bundle based on a reasonable allocation of revenue to that service.

Interstate Private Line. Subsection (e) specifies how interstate private lines are to be taxed. Prior law contained no provisions on interstate private lines because all interstate telecommunications were exempt under prior law. All receipts from charges imposed at channel termination points in the State and for channel mileage between termination points in the State are subject to tax. One-

half of the receipts from charges for channel mileage that crosses the State border are subject to tax.

Call Center Cap. Subsection (f) sets an annual cap on the tax on certain interstate telecommunications by a call center. The cap is \$50,000. The cap applies only to a person that has a direct pay permit from the Department. G.S. 105-164.27A(b) describes the direct pay permit and who is eligible for the permit.

Credit. Subsection (g) states that a taxpayer who pays a tax legally imposed by another state on a taxable telecommunications service is allowed a credit against the North Carolina tax owed.

Definitions. Subsection (h) sets out definitions that apply to the section. The definitions of local telecommunications service in subdivision (4), private telecommunications service in (6), and toll telecommunications in (9) are derived from the definitions of these terms formerly contained in G.S. 105-120. The other definitions in this section are new.

(Effective January 1, 2002; HB 571, s. 6, S.L. 01-430; HB 338, ss. 67(a), (c), and (f) and s. 69, S.L. 01-487.)

G.S. 105-164.6(a) – Conforming Change: Subdivision (a)(1) was amended to delete the term “cost price” and substitute the term “purchase price.” Other legislation in the 2001 Session enacted a new definition of “purchase price” in G.S. 105-164.3, and the new definition of “purchase price” replaces the prior definition of “cost price.” The two terms have the same meaning. This change also makes the language of G.S. 105-164.6(a)(1) consistent with the language in G.S. 105-164.6(b). Even before the addition of the term “purchase price,” G.S. 105-164.6(a)(1) used the term “cost price” and G.S. 105-164.6(b) used the term “purchase price.”

(Effective January 1, 2002; SB 165, ss. 15 and 53, S.L. 01-414.)

G.S. 105-164.8 – Retailers Must Collect Tax for Destination County: Several changes were made to this section for the purpose of adding a new subsection to impose a requirement on retailers to collect local use taxes. The purpose of this change is to prevent any erosion in collections as a result of the switch from origin-based sourcing to destination-based sourcing in accordance with the sourcing principles set out in G.S. 105-164.4B and applied to local sales and use taxes in G.S. 105-467(c).

The catchline of this section was rewritten to eliminate the reference to the place where a sale is consummated, headings were added to subsections (a) and (b), and subsection (c) was added to set out the new requirement. Under new subsection (c), a retailer that is required to collect the State tax is required to collect a local use tax if a local sales tax does not apply to a transaction. For example, if a sale is sourced to a county where a purchaser receives a product and that county is different from the county where the retailer is located, the retailer must collect the use tax due for the destination county if the retailer is liable for collecting State sales or use tax on the transaction.

(Effective January 1, 2002; SB 144, ss. 2.10 and 3.2, S.L. 01-347.)

G.S. 105-164.12 – Repealed: This statute was repealed. It provided an exclusion from sales tax for transportation charges when the title to the property passed to the purchaser at the point of origin. Under this statute, delivery charges by a retailer who delivered merchandise in the retailer's trucks were subject to tax, and delivery charges by a retailer who used a common carrier to deliver the merchandise were not subject to tax. The statute was repealed so that the State could adopt and apply the definition of delivery charges adopted by the national Streamlined Sales Tax Project. As a result of the repeal, all freight, delivery, or transportation charges made in connection with a taxable sale are subject to sales or use tax no matter where title to the property is transferred.

(Effective January 1, 2002; SB 144, s. 2.11 and 3.2, S.L. 01-347.)

G.S. 105-164.12B – Conforming Change: Subpart (a)(3)b. and subsection (f) of this section were amended to delete the term "cost price" and substitute the term "purchase price." Other legislation in the 2001 Session enacted a new definition of "purchase price" in G.S. 105-164.3, and the new definition of "purchase price" replaces the prior definition of "cost price." The two terms have the same meaning. This change also makes the language of the statutes consistent. Even before the addition of the term "purchase price," some statutes, such as this section, used the term "cost price" and others, such as G.S. 105-164.6(b), used the term "purchase price."

(Effective January 1, 2002; SB 165, ss. 16, 17, and 53, S.L. 01-414.)

G.S. 105-164.13 – Changes to Exemptions: Five new exemption subdivisions were added, two exemptions were repealed, one exemption was revised to narrow its scope, one exemption was revised to broaden its scope, and one exemption was clarified. The specific changes and their effective dates are as follows:

Commercial Fertilizer, Lime, Land Plaster, and Seeds – (1). This subdivision was amended to limit the exemption for sales of commercial fertilizer to sales of these items to a farmer for agricultural purposes, to incorporate the exemption in repealed G.S. 105-164.13(2) for seeds, and to limit the exemption for seeds to seeds sold to a farmer for agricultural purposes. The changes do not affect the scope of the exemption for lime or land plaster; sales of these items were already exempt only when made for agricultural purposes.

The revisions delete the description of commercial fertilizer as commercial fertilizer “on which the inspection tax is paid.” This deletion has no effect on the number of fertilizers that are exempt, however, because G.S. 106-671 imposes an inspection tax on all commercial fertilizer sold in a quantity (more than 5 lbs.) that would be purchased by a farmer for agricultural purposes. The Department of Revenue applies the definition of “commercial fertilizer” in G.S. 106-657 in administering this exemption.

Under prior law, the exemption for commercial fertilizer and seeds applied to whomever the product was sold. The narrowing of the exemption for commercial fertilizer and seeds was one of the recommendations of the North Carolina Efficiency and Loophole-Closing Commission. That Commission, co-chaired by former Governors Jim Holshouser and Bob Scott and former State Treasurer Harlan Boyles, recommended the elimination of the tax preference of not charging the combined State and local sales and use tax rate (then 6%) on fertilizers and seeds purchased by non-farmers. The Commission’s report notes that an increasing volume of fertilizers and seeds are purchased for residential use or other non-agricultural uses such as for golf courses or landscaping. (Effective February 1, 2002, HB 688, ss. 1 and 4, S.L. 01-514.)

Seeds - (2). This subdivision was repealed. An exemption for seeds sold to farmers is preserved in rewritten G.S. 105-164.13(1). See the discussion of the exemption for commercial fertilizer, lime, land plaster, and seeds above for an explanation of why this exemption was revised.

(Effective February 1, 2002, HB 688, ss. 1 and 4, S.L. 01-514.)

Mill Machinery – (5a). This new subdivision exempts from sales and use taxes mill machinery and mill machinery parts and accessories that are subject to tax under new Article 5F of Chapter 105. The exemption is effective January 1, 2006. The exemption prevents double taxation under both the new tax and the sales and use tax. The addition of this exemption is part of the changes made to transform the existing 1%, \$80 maximum sales and use tax on these items to a different tax with an identical application. See the discussion of G.S. 105-164.4A(2) and Article 5F of Chapter 105 for an explanation of the changes.

(Effective January 1, 2006; SB 144, ss. 2.12 and 3.2, S.L. 01-347.)

Electricity Not Included – (8). This subdivision exempts from tax property that enters into or becomes a component part of a manufactured product. The subdivision was amended to make it clear that this exemption does not apply to electricity. The amendment is part of the comprehensive changes made by the 2001 General Assembly to resolve questions about the application of sales taxes to electricity.

The amendment codifies the result of a hearing decision by the Secretary of Revenue. In that decision, the Secretary found that electricity is energy and is not included within the scope of this exemption. Before that hearing decision, several manufacturers had received rulings from the Department exempting electricity used in arc furnaces and in a few other manufacturing applications from sales tax under the rationale that their use of electricity was exempt under this subdivision because the electricity either entered into or became a component part of a manufactured product.

(Effective November 29, 2001; SB 748, ss. 17(e) and (g), S.L. 01-476.)

Newspapers Sold in Vending Machines – (28). This exemption was expanded to include all sales of newspapers made by means of a vending machine. Under prior law, some sales of newspapers made by means of a vending machine were exempt and some were not. The prior exemption for vending machine sales depended on whether the vending machine could be characterized as a “street vendor.”

The prior exemption did not specifically address sales of newspapers in vending machines. The exemption applied to newspapers sold by “street vendors” and to newspapers delivered door-to-door. The Department construed the term “street vendor” to include a vending machine located in a public area that was comparable to a street and to exclude a vending machine located on the premises of a private business. The term “vending machine” includes a newspaper rack in which the buyer drops coins to get a newspaper.

(Effective January 1, 2002, SB 400, S.L. 01-509.)

Liquor – (37). This exemption was repealed because a sales tax was imposed on liquor. New G.S. 105-164.4(a)(6) imposes sales and use tax on sales of spirituous liquor, excluding mixed beverages, at the State rate of 6%. Mixed beverages are subject to the combined State and local sales and use tax rate.

(Effective December 1, 2001; SB 1005, s. 34.23(a), S.L. 01-424.)

Deposits on Containers – (47). This new subdivision sets out an exemption for an item that was formerly excluded from tax in the language of the definition of

sales price. The item is amounts charged as deposits on returnable containers. Although this exemption subdivision is new, the law on this subject has not changed. See the discussion of the definition of sales price in G.S. 105-164.3 for an explanation of why this change was made.

(Effective January 1, 2002; SB 144, ss. 2.12 and 3.2, S.L. 01-347.)

Deposits on Replacement Parts – (48). This new subdivision sets out an exemption for an item that was formerly excluded from tax in the language of the definition of sales price. The item is amounts charged as deposits on certain replacement parts. Although this exemption subdivision is new, the law on this subject has not changed. See the discussion of the definition of sales price in G.S. 105-164.3 for an explanation of why this change was made.

(Effective January 1, 2002; SB 144, ss. 2.12 and 3.2, S.L. 01-347.)

Installation Charges – (49). This new subdivision sets out an exemption for an item that was formerly excluded from tax in the language of the definition of sales price. The item is amounts that are charged for installation and are separately stated. Although this exemption subdivision is new, the law on this subject has not changed. See the discussion of the definition of sales price in G.S. 105-164.3 for an explanation of why this change was made.

(Effective January 1, 2002; SB 144, ss. 2.12 and 3.2, S.L. 01-347.)

Vending Receipts – (50). This new subdivision sets out a partial exemption for certain vending receipts that were formerly excluded from tax in the language of the definition of sales price. Under prior law, the definition of sales price excluded from tax 50% of the sales price of tangible personal property sold through vending machines, except for closed container soft drinks and tobacco products. Although this exemption subdivision is new, the law on this subject has not changed. See the discussion of the definition of sales price in G.S. 105-164.3 for an explanation of why this change was made.

(Effective January 1, 2002; SB 144, ss. 2.12 and 3.2, S.L. 01-347.)

G.S. 105-164.13B – Exemption for Certain Food: This section was rewritten to reflect the changes made in G.S. 105-164.13 to the definitions of “food” and “prepared food” and to apply the new definitions in that statute of “candy,” “dietary supplement,” “food sold through a vending machine,” and “soft drink.” See the discussion of those definitions for an explanation of why they were changed. Food is exempt from State tax unless it is set out in either subdivisions (1) or (2) of this statute. Food remains subject to local sales and use taxes, except the Mecklenburg Public Transit Tax.

Subdivision (1) lists three types of food that are subject to State tax regardless of where they are sold or the purpose for which they are sold. These three types are alcoholic beverages, dietary supplements, and food sold through a vending machine. These types were all subject to tax under prior law, so subdivision (1) makes no changes with respect to the application of State sales tax to these three types of food.

Subdivision (2) lists three types of food that are subject to State tax unless they are purchased for home consumption and would be exempt if purchased under the federal Food Stamp program. The three types are “candy,” “prepared food,” and “soft drinks.” These types were all subject to tax under the same circumstances under prior law, so subdivision (2) makes no changes with respect to the application of State sales tax to these three types of food.

Subdivision (2), however, does not list every type of food that was subject to tax under prior law when it was not sold for home consumption and eligible to be purchased with food stamps. As a result, a few items that were taxable under prior law are exempt under the revised law. The items that moved from taxable to non-taxable are miscellaneous food items such as crackers and peanuts sold at a gas station or by another seller who is not eligible to accept food stamps.

(Effective January 1, 2002; SB 144, s. 2.13, S.L. 01-347; HB 748, s. 3., S.L. 01-489.)

G.S. 105-164.13C – Sales Tax Holiday: This new section provides an exemption for certain items of tangible personal property sold between 12:01 A.M. on the first Friday in August and 11:59 P.M. the following Sunday. When the exemption was discussed at the General Assembly, the holiday was described as a back-to-school sales tax holiday.

The exemption applies to the following:

- Clothing with a sales price of \$100 or less per item.
- School supplies with a sales price of \$100 or less per item.
- Computers, printers and printer supplies, and educational software with a sales price of \$3,500 or less per item.
- Sport or recreational equipment with a sales price of \$50 or less per item.

The exemption does not apply to clothing accessories or equipment, protective equipment, furniture, layaway transactions, items used in a trade or business, or rentals.

(Effective January 1, 2002; SB 1005, s. 34.16, S.L. 01-424 and SB 748, ss. 18(b) and (c), S.L. 01-476.)

G.S. 105-164.14(c) – Obsolete Provisions Repealed: Subdivisions (c)(18) and (c)(19) were repealed because they are obsolete. Prior subdivision (c)(18) authorized the North Carolina Low-Level Radioactive Waste Management

Authority to obtain a refund of sales and use taxes, and prior subdivision (c)(19) authorized the North Carolina Hazardous Waste Management Commission to obtain a refund of sales and use taxes. These two are no longer operating.

(Effective November 29, 2001, SB 920, ss. 7 and 40, S.L. 01-474.)

G.S. 105-164.16 – Semimonthly Payment, Reporting, and Conforming

Changes: This statute was amended by four separate acts. All of the changes become effective January 1, 2002. Two of the acts amended subsection (c) of this section, which was then repealed. The four acts combined make the following changes:

- Require semimonthly taxpayers to file only one monthly return instead of a return with each semimonthly payment.
- Decrease the threshold for making semimonthly payments from \$20,000 a month in tax liability to \$10,000 a month.
- Require electric power companies and telecommunications companies to remit sales and use taxes in accordance with the same schedule as all other retailers. The result is that most of these companies are now semimonthly taxpayers instead of monthly.
- Apply the new defined term of “purchase price.”
- Make technical changes that move provisions from one subsection to another, add headings to subsections, and create new subsections from the existing law.

One Monthly Return for Semimonthly Taxpayers. The requirements concerning returns filed by semimonthly taxpayers were changed to enable North Carolina to become a member of the national Streamlined Sales Tax Project. Under that project, a state cannot require a taxpayer to file a return more than once in a month. Accordingly, this statute was rewritten to delete the requirement that a semimonthly taxpayer file a return twice a month and to substitute a requirement that a semimonthly taxpayer make an electronic funds transfer (EFT) payment twice a month and file a return once a month. This change separates the requirement to make payments from the requirement to file a return and reduces the compliance burden for retailers. A return includes the city and county breakdowns used to distribute local sales and use tax revenue and other information concerning the tax collected for a filing period.

Prior law required semimonthly taxpayers to file a return and make an EFT payment on the 10th and 25th of each month and allowed them to make estimates for these two returns and payments and then file a reconciling return and payment on the 20th of a month. If a taxpayer chose to file a reconciling return, no penalties were assessed for an underpayment if the underpayment did not exceed 10% of the tax due for the two filing periods covered by the reconciling return.

The revised law requires two EFT payments each month and one return. The EFT payments are due on the same dates as under the prior law – on the 10th and 25th of a month – and a return is due on the 20th of a month. The option of the reconciling return is eliminated because it is not needed.

The revised law changes the threshold for penalties for underpayments. It increases the threshold from 90% to 95%. It does this to match the underpayment penalty provisions for franchise tax payments made under G.S. 105-116 and piped natural gas excise tax payments made under 105-187.43. To avoid a penalty, a taxpayer must pay at least 95%, rather than 90%, of the amount due on an EFT payment date and pay the remainder with the return filed on the 20th.

\$10,000 Semimonthly Payment Threshold. The threshold for semimonthly taxpayers was decreased from \$20,000 to \$10,000. As a result, a taxpayer who is consistently liable for at least \$10,000 a month in State and local sales and use taxes must pay the tax twice a month. Semimonthly payments must be made by electronic funds transfer and are due on the 10th and the 25th of each month. The purpose of lowering the threshold was to enable the State to receive more frequent payments from more taxpayers, thereby shifting the receipt of some tax revenue from the 2002-03 fiscal year into the end of the 2001-02 fiscal year.

Utilities Same as Other Retailers. Subsection (c) of this section was deleted, thereby eliminating the special reporting provisions that applied only to electric power companies and telecommunications companies. Under prior law, the semimonthly payment and reporting requirements did not apply to electric power companies and telecommunications companies. These companies filed returns and made payments on either a monthly or quarterly basis, regardless of the amount of tax remitted with the returns and payments. Under the revised law, these companies must follow the same reporting requirements as other retailers. As a result, most of these companies will pay sales tax on a semimonthly basis because they remit at least \$10,000 a month in tax.

The payment and reporting requirements under prior law were designed to match the franchise tax payment and reporting requirements under G.S. 105-116 and G.S. 105-120. The 2001 General Assembly changed the reporting and payment requirements for electric power companies and telecommunications companies under both the franchise tax and the sales tax. These companies now pay sales tax and file sales tax returns on the same basis as other retailers and they pay their franchise tax on the same basis as their sales tax. The purpose of the revised payment schedule is to require more frequent payments, thereby shifting the receipt of some tax revenue from the 2002-03 fiscal year into the end of the 2001-02 fiscal year.

Conforming Change. Subsection (a) was amended to delete the term “cost price” and substitute the term “purchase price.” Other legislation in the 2001 Session enacted a new definition of “purchase price” in G.S. 105-164.3, and the new definition of “purchase price” replaces the prior definition of “cost price.” The two terms have the same meaning. This change also makes the language of the statutes consistent. Even before the addition of the term “purchase price,” some statutes, such as this subsection, used the term “cost price” and others, such as G.S. 105-164.6(b), used the term “purchase price.”

Technical Changes. Various technical changes were made to this section when it was rewritten to make the substantive changes described above. The headings to subsections (a) and (b) were changed to “General” and “Quarterly,” respectively, to match the rewritten provisions of these subsections. Parts of former subsection (b) were designated as subsections (b1), (b2), and (b3) with the headings “Monthly,” “Semimonthly,” and “Category,” respectively. Provisions that apply to all filing frequencies were moved to subsection (a).

(Monthly return for semimonthly taxpayers effective January 1, 2002; SB 144, s. 2.14, S.L. 01-347; conforming change concerning “purchase price” effective January 1, 2002; SB 165, ss. 18 and 53, S.L. 01-414; change in semimonthly threshold for all retailers and in payment schedule for utilities effective for filing periods beginning January 1, 2002; HB 232, s. 6(a), S.L. 01-427 and HB 571, s. 7, S.L. 01-430. The changes made by HB 571 were superseded by those made in House Bill 232.)

G.S. 105-164.20 – Conforming Change: This section was amended to delete the reference to “utility” and replace it with a reference to a retailer of electricity or telecommunications service. This amendment was made because the definition of “utility” in G.S. 105-164.3(25) was repealed. The term “utility” applied only to a business entity that sold electricity or telecommunications service. Therefore, the elimination of the term “utility” does not change the meaning of this section.

(Effective January 1, 2002; HB 571, s. 8, S.L. 01-430.)

G.S. 105-164.23 – Conforming Change: This section was amended to delete the term “cost price” and substitute the term “purchase price.” Other legislation in the 2001 Session enacted a new definition of “purchase price” in G.S. 105-164.3, and the new definition of “purchase price” replaces the prior definition of “cost price.” The two terms have the same meaning. This change also makes the language of the statutes consistent. Even before the addition of the term “purchase price,” some statutes, such as this section, used the term “cost price” and others, such as G.S. 105-164.6(b), used the term “purchase price” to mean the same thing.

(Effective January 1, 2002; SB 165, ss. 18 and 53, S.L. 01-414.)

G.S. 105-164.27A – New Direct Pay Permit for Call Centers: This section was rewritten to add a direct pay permit for call centers to use for their purchases of telecommunications service and to make a technical change. In adding the new permit for call centers, the term “direct pay certificate” was changed to “direct pay permit” throughout the section, subsection (a) was changed to apply to a direct pay permit for tangible personal property, the new provisions on the direct pay permit for call centers were added in subsection (b), and other subsections of the section were rearranged.

Rewritten subsection (a) applies to the direct pay permit that existed prior to the changes made to this section. That permit applies only to tangible personal property. The text of former subsection (c), which set out the effect of a direct pay permit for tangible personal property, was moved to subsection (a) and the heading to subsection (a) was changed to “Tangible Personal Property.” The provisions on the direct pay permit for tangible personal property were rearranged, but their meaning did not change.

Subsection (b) sets out the new direct pay permit for call centers that purchase interstate telecommunications service that originates outside this State and terminates inside this State. A call center is a business that is primarily engaged in providing support services to customers by telephone to support products or services of the business. At least 60% of the calls must be incoming for a business to be primarily engaged in providing support services by telephone.

A permit issued to a call center authorizes the call center to self accrue the sales tax due on its interstate telecommunications service. G.S. 105-164.4C sets an annual cap of \$50,000 on the amount of tax payable by a call center on telecommunications service that originates outside this State and terminates inside this State. The permit applies to all telecommunications service provided to the call center, but the \$50,000 annual cap applies only to in-coming interstate calls.

Subsection (c) contains the text of former subsection (b). The application provisions were moved so they would follow the two kinds of permits.

Subsection (d) was amended by two different acts. The first act made a technical change to insert the missing word “tax” in the second sentence of the subsection. The second act made the changes concerning the new call center permit. The second act deleted references to “certificate” and inserted references to “permit” and made stylistic changes.

(Technical change to subsection (d) effective September 14, 2001; SB 165, ss. 20 and 53, S.L. 01-414; other changes effective January 1, 2002, HB 571, s. 9, S.L. 01-430.)

G.S. 105-164.32 – Conforming Change: This section was amended to delete the term “cost price” and substitute the term “purchase price.” Other legislation in the 2001 Session enacted a new definition of “purchase price” in G.S. 105-164.3, and the new definition of “purchase price” replaces the prior definition of “cost price.” The two terms have the same meaning. This change also makes the language of the statutes consistent. Even before the addition of the term “purchase price,” some statutes, such as this section, used the term “cost price” and others, such as G.S. 105-164.6(b), used the term “purchase price” to mean the same thing.

(Effective January 1, 2002; SB 165, ss. 21 and 53, S.L. 01-414.)

Part 7A of Article 5 – Uniform Sales and Use Tax Administration Act: This new Part, entitled “Uniform Sales and Use Tax Administration Act,” was added to Article 5 of Chapter 105 of the General Statutes. It consists of G.S. 105-164.42A through G.S. 105-164.42I. This Part was added by the legislation enacted to enable North Carolina to become a member of the national Streamlined Sales Tax Project. This Part enacts the Uniform Act proposed by that Project.

(Effective January 1, 2002; SB 144, s. 1.1, S.L. 01-347.)

G.S. 105-164.42A – Short Title: This section names new Part 7A of Article 5 the “Uniform Sales and Use Tax Administration Act.”

(Effective January 1, 2002; SB 144, s. 1.3, S.L. 01-347.)

G.S. 105-164.42B – Definitions of Uniform Act: This statute defines terms that are used throughout the Uniform Sales and Use Tax Administration Act. The defined terms are “Agreement,” “certified automated system,” “certified service provider,” “member state,” “person,” “sales tax,” “seller,” “state,” and “use tax.” The term “Agreement” means the National Streamlined Sales and Use Tax Agreement. The other terms reflect existing definitions in the sales and use tax statutes.

(Effective January 1, 2002; SB 144, s. 1.3, S.L. 01-347.)

G.S. 105-164.42C – Authority for Entry: This statute authorizes the Secretary of Revenue to enter into the national Streamlined Sales and Use Tax Agreement with one or more other states. The purpose of the Agreement is to simplify and modernize sales and use tax administration in order to reduce substantially the burden of tax compliance for all sellers and all types of commerce. The statute designates the Secretary of Revenue as the person who is authorized to represent North Carolina in the Agreement.

(Effective January 1, 2002; SB 144, s. 1.3, S.L. 01-347.)

G.S. 105-164.42D – Relationship to State Law: This statute provides that nothing in the national Streamlined Sales and Use Tax Agreement amends or modifies any law of this State and that implementation of a condition of the Agreement must be approved by the General Assembly.

(Effective January 1, 2002; SB 144, s. 1.3, S.L. 01-347.)

G.S. 105-164.42E – Requirements of Agreement: This statute sets out the requirements the national Streamlined Sales and Use Tax Agreement must contain in order for North Carolina to become a member of the Agreement.

These requirements include:

- Restrictions on the number of State sales and use tax rates.
- Restrictions on maximum amounts of tax due.
- Restrictions on price thresholds for application of tax.
- Uniform standards for sourcing, the administration of exempt sales, bad debt allowances, and returns and payments.
- Uniform definitions.
- A central, electronic registration system for participating sellers.
- A prohibition on attributing nexus to sellers based on their registration under the central system or their voluntary collection of sales and use tax.
- Restrictions on variances in state and local tax bases.
- State administration of local sales and use taxes.
- Restrictions on the frequency of changes in local sales and use tax rates.
- Standard effective dates for tax purposes for boundary changes in local jurisdictions.
- Uniform notice requirements for changes in local tax rates or boundaries.
- Uniform privacy policy for certified service providers.

(Effective January 1, 2002; SB 144, s. 1.3, S.L. 01-347.)

G.S. 105-164.42F – Cooperating Sovereigns: This statute explains the nature of the national Streamlined Sales and Use Tax Agreement. It states that the Agreement is an accord between member states that provides a mechanism for the member states to establish and maintain a simplified sales and use tax system under the laws of the member states. The Agreement is not a Compact.

(Effective January 1, 2002; SB 144, s. 1.3, S.L. 01-347.)

G.S. 105-164.42G – Effect of Agreement: This statute provides that North Carolina's entry into the national Streamlined Sales and Use Tax Agreement does not create a cause of action or a defense to an action.

(Effective January 1, 2002; SB 144, s. 1.3, S.L. 01-347.)

G.S. 105-164.42H – Certified Automated System: This statute addresses one of the business models envisioned by the national Streamlined Sales and Use Tax Agreement. The model involves the use of a certified automated system in the collection of sales and use taxes.

G.S. 105-164.43A(a) was recodified as subsection (a) of this section with two conforming amendments and new subsection (b) was added. One of the conforming amendments to subsection (a) deletes the reference to a “certified sales tax collection program” and substitutes a reference to a “certified automated system” so that the statute applies the new defined term “certified automated system.” The second conforming change inserts a reference to the statute, G.S. 105-164.4B, that sets out the sourcing principles in place of a reference to sourcing based on “ship-to” address. New subsection (b) sets out the liability of a seller that uses a certified automated system and of the provider of the certified automated system.

(Effective January 1, 2002; SB 144, ss. 1.1 and 1.3, S.L. 01-347.)

G.S. 105-164.42I – Contract with Certified Service Provider: This statute addresses one of the business models envisioned by the national Streamlined Sales and Use Tax Agreement. The model involves the use of a certified service provider in the collection of sales and use taxes.

G.S. 105-164.43A(b) was recodified as subsection (a) of this section with several conforming amendments, G.S. 105-164.43B was recodified as subsection (b) of this section with several conforming amendments, and the provisions of repealed G.S. 105-164.43C were incorporated into new subsections (c) and (d) of this statute. The conforming changes to subsections (a) and (b) apply the new defined terms of “certified automated system,” “certified service provider,” and “seller” set out in new G.S. 105-164.42B.

Subsections (c) and (d) repeat the provisions of former G.S. 105-164.43C. Subsection (c) sets out the liability of a certified service provider and of a seller that uses the certified service provider. Subsection (d) establishes the scope of an audit of a certified service provider and of a seller that uses a certified service provider and gives a state the authority to review a certified service provider’s system to determine its accuracy.

(Effective January 1, 2002; SB 144, ss. 1.1 and 1.3, S.L. 01-347.)

G.S. 105-164.42J – Performance Standards: This statute addresses one of the business models envisioned by the national Streamlined Sales and Use Tax

Agreement. The model involves the use of a proprietary software system in the collection of sales and use taxes.

The model addressed in this statute affects sellers that use their own proprietary software to administer their sales and use tax functions, instead of using a certified service provider or a certified automated system, and are engaged in business in at least 10 states. The statute allows the Secretary to establish a performance standard for the seller's proprietary system and to use the performance standard as the measure of the seller's liability for sales and use taxes.

(Effective January 1, 2002; SB 144, s. 1.3, S.L. 01-347.)

G.S. 105-164.43A – Recodified: This statute was recodified in new Part 7A of Article 5. G.S. 105-164.43A(a) was recodified as G.S. 105-164.42H(a). . G.S. 105-164.43A(b) was recodified as G.S. 105-164.42I(a).

(Effective January 1, 2002; SB 144, s. 1.1, S.L. 01-347.)

G.S. 105-164.43B – Recodified: This statute was recodified in new Part 7A of Article 5. It was recodified as G.S. 105-164.42I(b).

(Effective January 1, 2002; SB 144, s. 1.1, S.L. 01-347.)

G.S. 105-164.43C – Repealed: This statute was repealed because its provisions are incorporated in new G.S. 105-164.42H and G.S. 105-164.42I in new Part 7A of Article 5.

(Effective January 1, 2002; SB 144, s. 1.2, S.L. 01-347.)

G.S. 105-164.44C – Food Stamp Reimbursement Repealed: This statute was repealed, effective July 1, 2003. The statute required the Department of Revenue to distribute annually to counties and cities the amount of tax revenue they “lose” as a result of the repeal of the sales tax on food purchased with food stamps. The amount distributed is based on the amount of revenue they did not receive in fiscal year 1989-90 due to the removal of food stamp food from the sales tax base. The repeal of this reimbursement is part of the repeal of all local reimbursements and the replacement of these reimbursements with the authority given the counties in new Article 44 of Subchapter VIII of Chapter 105 to levy additional ½% local sales and use taxes.

(Effective July 1, 2003; SB 1005, s. 34.15, S.L. 01-424.)

G.S. 105-164.44E – Future transfer to Dry-Cleaning Solvent Cleanup Fund:

This section was enacted in 2000 but does not take effect until 2003. It directs the Secretary to transfer to the Dry-Cleaning Solvent Cleanup Fund an amount equal to 15% of the net State sales and use taxes collected under G.S. 105-164.4(a)(4) on receipts from dry cleaners, laundries, and similar businesses. The amount will be based on the collections of the previous fiscal year and will be transferred at the end of each calendar quarter. The Secretary will determine the amount to transfer based on available data. The first transfer will occur after July 1, 2003, for the calendar quarter beginning April 1, 2003. The last transfer will occur after April 1, 2010, for the calendar quarter beginning January 1, 2010. Four transfers will occur each year starting in fiscal year 2003-04 through fiscal year 2009-10.

(Effective April 1, 2003 and expires June 30, 2010; HB 1326, s. 1.1, S.L. 00-19.)

G.S. 105-164.44F – Telecommunications Tax Distribution to Cities: This section was enacted to replace the quarterly distribution to cities of the franchise tax on local telecommunications service formerly made under repealed G.S. 105-120. This section directs the Secretary to distribute to the cities 18.26% of the net proceeds of the taxes collected in a quarter, minus \$2,620,948. This deduction is one-fourth of the annual “hold-back” from taxes imposed under former G.S. 105-120 and distributed under G.S. 105-116.1. The distribution is to be made quarterly, so the first distribution under this section will be made in June of 2002 for the quarter ending March 31, 2002.

This section changes the method of distribution from a source-based distribution to a combination of a per capita distribution and a distribution based on a fixed percentage share of the prior telephone franchise tax distributions. As a result, this section simplifies the reporting requirements for providers of telecommunications service. These providers are no longer required to file city breakdowns with the Department of Revenue listing the receipts derived from service provided within the boundaries of each city.

Under this section, cities are divided into two categories. The first category, set out in subsections (b) and (d), consists of cities incorporated on or after January 1, 2001. This category includes cities served by telephone membership corporations, regardless of their actual date of incorporation. Cities served by telephone membership corporations are included in this category because the corporations were not subject to the franchise tax imposed by former G.S. 105-120 on providers of local telecommunications service. These cities therefore never received a distribution of franchise tax based on telecommunications service provided by a telephone membership corporation. Telephone membership corporations are subject to the tax imposed by G.S. 105-164.4(a)(4c), however.

Cities that are incorporated on or after January 1, 2001 receive a per capita share of part of the “pool” to be distributed. Their part of the “pool” is based on their percentage of the total population of all cities. If for example, their percentage of the total population of all cities is 8%, then they will receive a per capita share of 8% of the “pool.”

The second category, set out in subsection (c), consists of cities that were incorporated before January 1, 2001. These cities receive a proportionate share of part of the “pool” to be distributed. The amount of the “pool” to be distributed to these cities is the amount that is not distributed to the cities in the first category. For example, if 8% of the “pool” is to be distributed to the cities in the first category, then 92% of the “pool” is to be distributed to the cities in the second category.

The amount each individual city in the second category receives is based on the amount it last received under former G.S. 105-120 for the same quarter. All the cities incorporated before January 1, 2001 will have received a distribution under former G.S. 105-120 for every quarter of 2001.

Some cities are not entitled to a share. Subsection (e) describes the cities that are not eligible for a distribution.

(Effective January 1, 2002, HB 571, s. 10, S.L. 01-430; SB 1005, s. 34.25, S.L. 01-424; HB 338, ss. 67(d) and (f), S.L. 01-487.)

G.S. 105-466(c) – Technical Changes: This statute was amended to correct a redlining error made previously and to make a stylistic change. The correction deletes the words “board of county commissioner set by the board” that were inadvertently left in the subsection when it was previously amended. The stylistic change replaces the word “shall” with the word “must.”

(Effective September 14, 2001; SB 165, ss. 28 and 53, S.L. 01-414.)

G.S. 105-467 – Scope and Sourcing of Local Tax: Five acts of the 2001 Session amended this section to make substantive, conforming, and technical changes. The technical changes separate the section into subsections (a), (b), and (c) with the headings “Sales Tax,” “Exemptions and Refunds,” and “Sourcing” respectively, delete the sentence that followed the list of subdivisions in what is now subsection (a), and insert the same sentence before the list of subdivisions in subsection (a).

The substantive change to this section replaces origin-based sourcing with destination-based sourcing. Newly designated subsection (c) deletes the sentence that establishes the retailer’s place of business as the situs of a transaction and adds a sentence stating that the sourcing principles in G.S. 105-164.4B apply in determining which local sales tax applies to a transaction. Under those principles, over-the-counter sales are sourced to the county of the

location of the seller. For property that is shipped or delivered to a customer in another county, use tax for the destination county is due. A retailer that is required to collect State tax is required to collect the county use tax due for property that is shipped or delivered to a county other than the county in which the seller is located.

The change from origin-based sourcing to destination-based sourcing is one of the changes the General Assembly made to the sales and use tax laws to enable North Carolina to become a member of the national Streamlined Sales Tax Project. Under that Project, states must source both State and local sales and use taxes on a destination basis.

The conforming changes reflect changes made in the State sales and use tax laws. Subdivision (5) of newly designated subsection (a) was rewritten to match the revision of the State exemption for food in G.S. 105-164.13B. New subdivision (6) was added to include prepaid telephone calling arrangements in the local sales and use tax base. Newly designated subsection (b) was amended to add a reference to sales made during the new sales tax holiday set out in G.S. 105-164.13C. Sales made during the holiday are exempt from local sales and use taxes as well as State sales and use taxes.

(Effective January 1, 2002. Technical and sourcing changes set out in SB 144, s. 2.15, S.L. 01-347 and in HB 338, s. 67(e), S.L. 01-487; conforming change to subdivision (a)(5) set out in SB 165, ss. 29 and 53, S.L. 01-414; new subdivision (a)(6) set out in HB 571, s. 13, S.L. 01-430; and change subsection (b) set out in SB 1005, ss. 34.16(b) and (d), S.L. 01-424.)

G.S. 105-472 – Monthly Distribution of 1% Local Tax: This statute was amended, effective July 1, 2003, to require the Department of Revenue to distribute 1% local sales and use taxes on a monthly basis rather than a quarterly basis. The change was made by deleting references in subsections (a) and (b) to “quarterly” or “quarter” and replacing them with references to “monthly” or “month.”

The Department of Revenue collects local sales and use taxes and distributes them within 45 days after the end of each quarter to the local units. With this change, the Department will make the monthly distributions within 45 days after the end of each month.

(Effective July 1, 2003; HB 232, ss. 13(a) and (g), S.L. 01-427.)

G.S. 105-486 - Monthly Distribution of First ½% Local Tax: This statute was amended, effective July 1, 2003, to require the Department of Revenue to distribute the first ½% local sales and use taxes on a monthly basis rather than a quarterly basis. The change was made by deleting the reference in subsection (a) to “quarterly” and replacing it with a reference to “monthly.” This change

accompanies the switch made in G.S. 105-472 from a quarterly to monthly distribution of the 1% local sales and use taxes.

Subsection (c) of this section was amended by deleting the sentence that instructed the Secretary of Revenue how to distribute taxes if the taxes had not been in effect in a county for a full quarter. With a change from a quarterly distribution to a monthly distribution, this instruction is no longer needed. G.S. 105-466 requires the levy of a local tax to take effect at the beginning of a calendar month and G.S. 105-473 requires the repeal of a local tax to take effect at the end of a fiscal year.

(Effective July 1, 2003; HB 232, ss. 13(b), (c), and (g), S.L. 01-427.)

G.S. 105-501 - Monthly Distribution of Second ½% Local Tax: This statute was amended, effective July 1, 2003, to require the Department of Revenue to distribute the second ½% local sales and use taxes on a monthly basis rather than a quarterly basis. The change was made by deleting the reference in the first paragraph to “quarterly” and replacing it with a reference to “monthly.” This change accompanies the switch made in G.S. 105-472 and 105-486 from a quarterly to monthly distribution of the 1% and the first ½% local sales and use taxes.

Two other changes were made to this section as a result of the change from quarterly to monthly distributions. The second paragraph of the section was deleted. That paragraph instructed the Secretary of Revenue how to distribute taxes if they had not been in effect in a county for a full quarter. With a change from a quarterly distribution to a monthly distribution, this instruction is no longer needed. G.S. 105-466 requires the levy of a local tax to take effect at the beginning of a calendar month and G.S. 105-473 requires the repeal of a local tax to take effect at the end of a fiscal year.

The last paragraph of the section was amended to adjust the fraction of costs that are deducted from each distribution of local sale and use taxes. The fraction was changed from ¼ to 1/12. When the distribution is made quarterly, the appropriate fraction to achieve full recovery of costs is ¼. When the distribution is made monthly, the appropriate fraction to achieve full recovery of costs is 1/12.

(Effective July 1, 2003; HB 232, ss. 13(d) and (g), S.L. 01-427.)

G.S. 105-510 - Monthly Distribution of Mecklenburg Public Transit Tax: This statute was amended, effective July 1, 2003, to require the Department of Revenue to distribute the Mecklenburg Public Transit tax on a monthly basis rather than a quarterly basis. The Mecklenburg Public Transit tax is a ½% local sales and use tax that applies in Mecklenburg and is used for public transportation purposes. The distribution change was made by deleting the references in subsection (a) to “quarterly” and replacing them with references to

“monthly.” This change accompanies the switch made in G.S. 105-472, 105-486, and 105-481 from a quarterly to monthly distribution of the 1% and the other two ½% local sales and use taxes.

(Effective July 1, 2003; HB 232, ss. 13(f) and (g), S.L. 01-427.)

Article 44 – Third One-Half Cent Local Sales and Use Tax: A new Article 44 of Subchapter VIII of Chapter 105 was added to give counties the authority to impose additional ½% local sales and use taxes effective July 1, 2003 or later and to provide for a new “hold-harmless” distribution of funds to counties and cities. The new Article consists of G.S. 105-515 through 105-521. An explanation of each section follows.

The new Article accompanies other changes that, in effect, gives counties the choice of exercising the authority the new Article gives them to levy additional local sales and use taxes or lose revenue as a result of the repeal of all the reimbursements made to counties and cities for former reductions in taxes. Effective July 1, 2003, the reimbursements in G.S. 105-164.44C (sales taxes on food stamp foods), 105-275.1 (manufacturers’ inventories), 105-275.2 (intangible personal property), 105-277.001 (retailers’ and wholesalers’ inventories), and 105-277.1A (property tax homestead exemption)) are repealed.

(Article 44 effective September 26, 2001; SB 1005, s. 34.14, S.L. 01-424; repeal of distributions effective July 1, 2003, s. 34.15, S.L. 01-424.)

G.S. 105-515 – Short Title of New Article 44: This statute sets out the short title of new Article 44 of Subchapter VIII of Chapter 105. The short title is “Third One-Half Cent Local Government Sales and Use Tax Act.”

(Effective September 26, 2001; SB 1005, s. 34.14, S.L. 01-424.)

G.S. 105-516 – Limitations on Levying New Tax: This statute states that a county cannot levy a tax under Article 44 unless it has already levied the 1% and two ½% local sales and use taxes.

(Effective September 26, 2001; SB 1005, s. 34.14, S.L. 01-424.)

G.S. 105-517 – Levy of New Tax: This statute specifies how a county can levy the new tax. The county board of commissioners can hold an election on whether to levy the tax. If the voters approve the levy, the board may levy the tax but is not required to do so. The board can also proceed to levy the tax without an advisory election by adopting a resolution that imposes the tax. The tax cannot become effective before July 1, 2003.

(Effective September 26, 2001; SB 1005, s. 34.14, S.L. 01-424.)

G.S. 105-518 – County Election: This statute sets out the procedure for a county to follow if it wants to hold an election on the question of whether to levy the new ½% local sales and use taxes.

(Effective September 26, 2001; SB 1005, s. 34.14, S.L. 01-424.)

G.S. 105-519 – New Tax Does Not Apply to Food: This statute states that the new ½% tax is to be administered the same as the 1% local sales and use tax, except as specified in Article 44. Article 44 differs from the 1% tax in the method of distribution and in the tax base. The new ½% tax does not apply to food that is exempt from State tax under G.S. 105-164.13B. Food is generally subject to the 1% local sales and use tax as well as the two ½% local sales and use taxes. G.S. 105-520 specifies how the new tax is to be distributed.

(Effective September 26, 2001; SB 1005, s. 34.14, S.L. 01-424.)

G.S. 105-520 – Distribution of New Taxes: This statute directs the Department of Revenue to distribute the taxes on a monthly basis. One-half of the amount of tax sourced to a county is to be allocated to that county and the other half is to be placed in a pool for allocation among the taxing counties on a per capita basis. This 50/50 split between source and per capita reflects the distribution of the 1% local sales and use taxes based on source and the distribution of the two ½% local sales and use taxes on a per capita basis. Amounts allocated to a county are split between the county and the municipalities in the county on the same basis as the other local sales and use taxes.

(Effective September 26, 2001; SB 1005, s. 34.14, S.L. 01-424.)

G.S. 105-521 – Hold Harmless Distribution: This statute sets out the procedure for a county to follow if it wants to hold an election on the question of whether to levy the new ½% local sales and use taxes.

(Effective September 26, 2001; SB 1005, s. 34.14, S.L. 01-424.)

Chapter 1096, 1967 Session Laws – Conforming Changes to Mecklenburg Local Act: Four acts of the 2001 Session amended this Chapter to make conforming changes. This Chapter is a local act that governs Mecklenburg's 1% local sales and use taxes. The amendments to this Chapter reflect changes made in the State sales and use tax laws.

Two amendments affect the list of items that are subject to tax. Subdivision (5) of the first paragraph of Section 4 of this Chapter was amended to revise the description of food that is exempt from State tax but is subject to 1%

Mecklenburg local sales and use taxes. G.S. 105-164.13B sets out the State exemption for food and is therefore the appropriate reference. New subdivision (6) was added to the first paragraph of Section 4 of this Chapter to include prepaid telephone calling arrangements in the 1% Mecklenburg local sales and use tax base. Prepaid calling arrangements are taxable at the State's general rate of tax under G.S. 105-164.4(a)(4d).

One amendment affects exemptions from the tax. The second paragraph of Section 4 of this Chapter was amended to add a reference to sales made during the new sales tax holiday set out in G.S. 105-164.13C. Sales made during the holiday are exempt from the 1% Mecklenburg local sales and use taxes as well as State sales and use taxes.

One amendment affects the distribution of the taxes by the Department of Revenue. The Department of Revenue collects the 1% Mecklenburg sales and use taxes. Section 9 of this Chapter was amended, effective July 1, 2003, to require the Department of Revenue to distribute these taxes on a monthly basis rather than a quarterly basis. The change was made by deleting references to "quarterly" or "quarter" and replacing them with references to "monthly" or "month." This change accompanies the switch made in G.S. 105-472 from a quarterly to monthly distribution of the 1% local sales and use taxes for all counties except Mecklenburg.

(Changes to items subject to tax effective January 1, 2002, and change from quarterly to monthly distribution effective July 1, 2003. Change to subdivision (5) set out in SB 165, ss. 30 and 53, S.L. 01-414; new subdivision (6) set out in HB 571, s.14, S.L. 01-430; change to second paragraph of Section 4 set out in SB 1005, ss. 34.16(c) and (d), S.L. 01-424; and change to Section 9 set out in HB 232, ss. 13(e) and (g), S.L. 01-427.)

XIV. HIGHWAY USE TAX

G.S. 105-187.1 – Definition Changes: This statute was amended to add two new definitions and to renumber two existing definitions. The changes are as follows:

Recreational vehicle – (4)(New). This definition was added for the purpose of identifying the vehicles that are subject to the \$1,500 maximum tax in G.S. 105-187.3(a). As defined, a recreational vehicle is a motorized or towable vehicle that combines transportation and temporary living quarters for travel, recreation, and camping.

Rescue squad – (5)(New). This definition was added for the purpose of identifying the vehicles that are subject to the new exemption in G.S. 105-187.6(a)(9) for certain vehicles owned by volunteer fire departments and rescue squads. As defined, a rescue squad is an organization that provides rescue services, medical services, or both.

The legislation that added this definition designated it as (3a). Subsequent legislation renumbered this definition as well as two others in this section to put all the definitions in their proper alphabetical order without the use of letters to designate the definitions.

Retailer – (6)(Was 3b). This definition was renumbered from (3b) to (6) to keep the definitions in alphabetical order. No change was made to the meaning of the definition.

Short-term lease or rental – (7)(Was 4). This definition was renumbered from (4) to (7) to keep the definitions in alphabetical order. No change was made to the meaning of the definition.

(Rescue squad definition effective October 1, 2001; SB 1005, s. 34.24(e), S.L. 01-424; recreational vehicle definition and other definition changes effective December 19, 2001, HB 72, S.L. 01-497.)

G.S. 105-187.3(a) – \$1,500 Maximum Tax Repealed for Most Vehicles: This statute was amended by two acts of the 2001 Session to revise the \$1,500 maximum tax. Prior law set a maximum tax of \$1,500 on certificates of title issued for motor vehicles that were not Class A or Class B commercial motor vehicles. The General Assembly first repealed this maximum and then reinstated it in part. As revised, the \$1,500 maximum applies only to recreational vehicles that are not Class A or Class B motor vehicles.

The \$1,000 maximum that applies to Class A and B commercial motor vehicles remains in effect. In general, Class A and Class B commercial motor vehicles are tractor-trailer combinations or single vehicles that weigh at least 26,001 pounds. The \$1,500 maximum therefore applied primarily to luxury cars.

The \$1,500 maximum was reinstated for recreational vehicles that are not Class A or Class B commercial motor vehicles to resolve an anomaly that resulted from the repeal of the \$1,500 maximum. The largest recreational vehicles fall into the category of Class A or Class B commercial motor vehicle, as defined in G.S. 20-4.01(2b), (2c), and (3d), and are therefore subject to the \$1,000 maximum tax. Without a maximum on the smaller recreational vehicles, the tax on the largest and most expensive ones would be capped and the tax on the smaller and less expensive ones would not be capped. The reinstatement of the \$1,500 cap on recreational vehicles that are not Class A or Class B motor vehicles does not

fully resolve the anomalies in the taxation of recreational motor vehicles. It simply leaves the taxation of recreational vehicles unchanged.

The North Carolina Efficiency and Loophole-Closing Commission, co-chaired by former Governors Jim Holshouser and Bob Scott and former State Treasurer Harlan Boyles, identified the \$1,500 cap as a tax loophole warranting further study. The General Assembly decided to eliminate the \$1,500 cap for most vehicles and enacted legislation to implement that decision.

(Effective October 1, 2001; SB 1005, s. 34.24(a), S.L. 01-424; HB 72, s.2, S.L. 01-497.)

G.S. 105-187.5(b) – Conforming Change to Leases: This subsection was amended to eliminate the \$1,500 maximum tax on the gross receipts from the lease of a motor vehicle that is not a Class A or Class B commercial motor vehicle or a recreational vehicle. This change was made to conform to the partial repeal of the \$1,500 cap in G.S. 105-187.3.

(Effective October 1, 2001; SB 1005, s. 34.24(b), S.L. 01-424; HB 72, s.2, S.L. 01-497.)

G.S. 105-187.6(a) – Fire and Rescue Exemption: This subsection was amended to add two more exemptions from the highway use tax and to expand one of the existing exemptions. The highway use tax is paid when a certificate of title is issued for a vehicle. New subdivisions (a)(3a) and (a)(9) set out the new exemptions. Revised subdivision (b)(2) expands an existing exemption.

The new exemption in (a)(3a) applies to a vehicle transferred to one or more of the same co-owners of the vehicle to reflect the removal of one or more of the co-owners from the title. The exemption applies only if no consideration is made for the transfer.

The new exemption in (a)(9) applies to certain motor vehicles that are transferred to a volunteer fire department or volunteer rescue squad that is not a part of a unit of local government and has no more than two paid employees. The vehicles that qualify for an exemption are a fire truck, a pump truck, tanker truck, or ladder truck used to suppress fire, a four-wheel drive vehicle that has a water tank and hose and is used to fight forest fires, and an emergency services vehicle.

Revised subdivision (b)(2) expands the partial exemption for transfers to entities upon their formation, merger, conversion, or consolidation. Under the partial exemption, a transfer of a certificate of title is subject to a maximum tax of \$40.00. The prior exemption applied only to partnerships, limited liability companies, and corporations. The expanded exemption includes transfers to any entity when no gain or loss is recognized on the transfer for income tax

purposes and transfers to entities that are “disregarded entities,” such as single member limited liability companies, for income tax purposes.

(Subdivision (a)(3a) effective December 16, 2001, HB 338, ss. 68 and 126, S.L. 01-487; subdivision (a)(9) effective October 1, 2001; SB 1005, s. 34.24(d), S.L. 01-424; expanded subdivision (b)(2) effective January 1, 2002, SB 842, ss. 151 and 175, S.L. 01-387.)

G.S. 105-187.9 – New Tax Revenue to General Fund: This statute was amended to credit the tax revenue resulting from the partial repeal of the \$1,500 maximum tax to the General Fund and to make technical changes. The technical changes add the headings “Distribution” and “Transfer” to subsections (a) and (b), respectively.

Without the change to the disposition of highway use tax revenue, the tax revenue resulting from the partial repeal of the \$1,500 cap would have been credited to the Highway Trust Fund by application of subsection (a) of this section. Under subsection (a), tax revenue collected at the rate of 3% goes to the Highway Trust Fund. The 3% rate applies to the transfer of a certificate of title and to the gross receipts from a long-term lease or rental.

The shift of the new tax revenue to the General Fund is accomplished by directing that a certain sum be transferred from the Highway Trust Fund to the General Fund each year. That sum is the estimated amount of tax revenue that will be generated by the removal of the cap. The amount for the 2001-02 fiscal year, during which the partial repeal is effective for only nine months, is \$1.7 million. The amount for the 2002-03 fiscal year, during which the partial repeal is in effect for the entire year, is \$2.4 million. The amount for each fiscal subsequent year is the amount transferred the previous year, adjusted in proportion to an increase or decrease in highway use tax collections for that year.

(Effective July 1, 2001; SB 1005, s. 34.24(c), S.L. 01-424; HB 231, s. 15, S.L. 01-513.)

XV. SCRAP TIRE DISPOSAL TAX

G.S. 105-187.16 – Rate Decrease and Conforming Change: The 1997 General Assembly rewrote this section, effective July 1, 2002, to decrease the scrap tire disposal tax rate and to eliminate the subsection designations. Effective on that date, the tax rate on tires with a bead diameter of less than twenty inches will decrease from 2% to 1%. As a result, all tires will be taxed at

the same rate regardless of their size. Because the rate will be uniform, a separate subsection for a rate schedule based on tire size is no longer needed.

The 2001 General Assembly made a conforming change to this section. The change deletes the term “cost price” and substitutes the term “purchase price.” Other legislation in the 2001 Session enacted a new definition of “purchase price” in G.S. 105-164.3, and the new definition of “purchase price” replaces the prior definition of “cost price.” The two terms have the same meaning. Under G.S. 105-187.15, the definitions in G.S. 105-164.3 apply to the Scrap Tire Disposal Tax statutes. This statute therefore needed to be amended to reflect the definition changes in G.S. 105-164.3.

(Rate decrease effective July 1, 2002; SB 153, s. 1, S.L. 97-209; conforming change effective January 1, 2002; SB 165, ss. 22 and 53, S.L. 01-414.)

Chapter 424 of the 2001 Session Laws – Change in Distribution of Tax

Proceeds: Section 2.2 of Chapter 424 of the 2001 Session Laws changes the distribution of the scrap tire disposal tax for a one-year period. The distributions affected are those for the quarters ending September 30, 2001, December 31, 2001, March 31, 2002, and June 30, 2002. None of the proceeds for these quarters will be distributed to the Scrap Tire Disposal Account. Instead, the amount that would have been credited to this Account in the absence of this section will be credited to the General Fund.

G.S. 105-187.19 requires the Department to credit 27% of the scrap tire tax proceeds to the Scrap Tire Disposal Account each quarter. For the one-year period designated in this session law, the amounts that would have gone to this Account will go to the General Fund.

(Effective July 1, 2001; SB 1005, s. 2.2(j), S.L. 01-424.)

XVI. WHITE GOODS DISPOSAL TAX

Chapter 424 of the 2001 Session Laws – Change in Distribution of Tax

Proceeds: Section 2.2 of Chapter 424 of the 2001 Session Laws changes the distribution of the white goods disposal tax for a one-year period. The distributions affected are those for the quarters ending September 30, 2001, December 31, 2001, March 31, 2002, and June 30, 2002. None of the proceeds for these quarters will be distributed to the White Goods Management Account. Instead, the amount that would have been credited to this Account in the absence of this section will be credited to the General Fund.

Under G.S. 105-187.24, revenue is credited to the White Goods Management Account in two ways. First, the statute requires the Department to credit 20% of

the white goods tax proceeds to this Account each quarter. Second, the statute requires the Department to credit to the Account the amount of the quarterly county distribution for which the counties do not qualify, as determined by the Department of Environment and Natural Resources. For the one-year period designated in this session law, the amounts that would have gone to this Account will go to the General Fund.

(Effective July 1, 2001; SB 1005, s. 2.2(j), S.L. 01-424.)

XVII. DRY-CLEANING SOLVENT TAX

G.S. 105-187.31 – Change in Date of Rate Increase: The 2001 General Assembly changed the effective date of the rate increase that was enacted in 2000 and was scheduled to take effect October 1, 2001. The effective date of the increase was moved from October 1, 2001 to August 1, 2001, thereby making the increase effective two months sooner than under the 2000 legislation. Effective August 1, 2001, the tax on chlorine-based solvent increased from \$5.85 to \$10.00 per gallon and the tax on hydrocarbon-based solvent increased from \$0.80 to \$1.35 per gallon. The tax expires January 1, 2010.

(2001 change effective August 1, 2001 and expires January 1, 2010; HB 1062, s. 1, S.L. 01-265; original 2000 change effective October 1, 2001 and expires January 1, 2010; HB 1326, s. 1.2, S.L. 00-19.)

XVIII. PIPED NATURAL GAS EXCISE TAX

G.S. 105-187.43- Accelerated Payments: This section was amended to revise the payment schedule for entities subject to the piped natural gas excise tax. The purpose of the revised payment schedule is to require more frequent payments, thereby shifting the receipt of some tax revenue from the 2002-03 fiscal year into the end of the 2001-02 fiscal year. The 2001 General Assembly also made similar changes to the payment schedule for telecommunications companies and electric power companies.

Under the revised payment schedule, piped natural gas companies must pay the tax twice a month in accordance with the timetable for semimonthly sales tax payments. Under prior law, the tax was due on a monthly basis.

G.S. 105-164.16 sets out the payment schedule for sales and use taxes. Under the semimonthly payment schedule, a payment for activity in the first 15 days of a month is due by the 25th of that same month, and a payment for activity in the

rest of the month is due by the 10th of the following month. Payments must be made by electronic funds transfer.

The change in the payment due dates does not affect the due date of the return. A return remains due on a quarterly basis by the last day of the month following the end of the quarter.

The penalty for underpayments has been revised to accommodate the new semimonthly payment periods. Before the change, a piped natural gas company was not subject to interest and penalty on an underpayment for a monthly payment period if it paid at least 95% of what was due and paid the remainder when filing the quarterly return. As revised, a piped natural gas company is not subject to interest and penalty on an underpayment for a semimonthly payment period if it timely pays at least ninety-five percent of the amount due for each period and includes the underpayment with next quarterly return.

(Effective January 1, 2002; HB 232, ss. 6(f) and (j), S.L. 01-427.)

XIX. MILL MACHINERY TAX

Article 5F

Article 5F– Replacement Tax on Mill Machinery: A new Article 5F of Chapter 105 was added effective January 1, 2006. The new Article consists of G.S. 105-187.50 through 105-187.52. It replaces the tax now imposed under G.S. 105-164.4A(2). Article 5F was enacted as part of the effort made to enable North Carolina to be a member of the national Streamlined Sales Tax Project. Under that Project, states must limit the number of state sales tax rates they have. The 1%, \$80 maximum rate is one of several State sales and use tax rates. The repeal of G.S. 105-164.4A(2) eliminates a lower rate as applied to some items because the new tax is not a sales and use tax paid by a retailer. The new tax is a privilege tax paid directly by manufacturers to the Department. The Department expects that most of the manufacturers will have direct pay permits for sales and use taxes and that the new replacement tax will be self-accrued with other items subject to the direct pay permit.

(Effective January 1, 2006; SB 144, ss. 2.17 and 3.2, S.L. 01-347.)

G.S. 105-187.50 – Definitions: This section makes the sales and use tax definitions in G.S. 105-164.3 applicable to Article 5F.

(Effective January 1, 2006; SB 144, ss. 2.17 and 3.2, S.L. 01-347.)

G.S. 105-187.51 – Scope of Replacement Tax: This section imposes a privilege tax on a manufacturer's purchases of mill machinery and mill machinery

parts and accessories. A 1% rate of tax will apply with a maximum of \$80.00 per article. When this new tax becomes effective, G.S. 105-164.4A(2) is repealed. This tax replaces the tax levied under that subdivision. It applies to the same items and at the same rate as under that subdivision.

(Effective January 1, 2006; SB 144, ss. 2.17 and 3.2, S.L. 01-347.)

G.S. 105-187.52 – Administration of Replacement Tax: This section states that the privilege tax imposed by Article 5F is an additional State use tax and is to be administered the same as the State use tax imposed under Article 5. As a use tax, the tax will be paid directly by manufacturers to the Department. The Department expects that most of the affected manufacturers will have direct pay permits for sales and use taxes and that they will self-accrue this tax along with the other items subject to their direct pay permit.

(Effective January 1, 2006; SB 144, ss. 2.17 and 3.2, S.L. 01-347.)

XX. GIFT TAX

No State Law Changes: The federal annual gift tax exclusion is indexed for inflation and is projected to increase from \$10,000 to \$11,000 effective for tax year 2002. The North Carolina annual gift tax exclusion is not tied to the federal exclusion in any way. Therefore, the North Carolina annual gift tax exclusion will not increase unless the North Carolina General Assembly enacts legislation increasing the exclusion.

XXI. INSURANCE PREMIUMS TAX

G.S. 58-6-25 – Insurance Regulatory Charge: The percentage rate to be used in calculating the insurance regulatory charge under this statute is 6.5% for the 2001 calendar year. This charge is a percentage of gross premiums tax liability.

(2001 regulatory rate effective September 28, 2001; HB 232, s.1, S.L. 01-427.)

G.S. 105-228.5 – Tax Scope, Rate, and Technical Changes: This section was amended several times to adjust its scope and rate. The first act that amended this section made health maintenance organizations (HMOs) subject to a gross premiums tax at the rate of 0.833% and increased the rate for Article 65 corporations from 0.5% to 0.833%. Both of these changes were effective for tax year 2002. In addition to these changes, the first act that amended this section

increased the rate for both HMOs and Article 65 corporations to 1% effective for the 2003 tax year.

The changes made by the first act were undone by subsequent acts. The subsequent acts delayed the effective date of the application of the tax to HMOs and of the tax increase to Article 65 corporations until tax year 2003. Under these acts, the tax rate for both HMOs and Article 65 Corporations will be 1.1% effective for the 2003 tax year. The rate decreases to 1% for tax years beginning on or after January 1, 2004. As a result, the tax rate for Article 65 corporations remains 0.5% for tax year 2002 and HMOs are not subject to the gross premiums tax for tax year 2002.

Subsection (f) of this section requires taxpayers to prepay their tax liability in three installments. Special rules apply to HMOs and Article 65 corporations for tax year 2003. HMOs and Article 65 corporations must prepay their 2003 tax liability in two installments, rather than three. One-half of the estimated liability is due with each installment. The installments are due on April 15 and June 15, 2003. An underpayment of estimated tax accrues interest. The penalties in Article 9 of Chapter 105 apply to these estimated tax payments.

In addition to these substantive changes, a clarifying change and several technical changes were made to this section. Subsection (c) was amended to add an exclusion for premiums from the Federal Employees Health Benefits Plan, Medicaid, or Medicare to the extent federal law prohibits their inclusion. This is a clarifying change that makes explicit the requirements of federal law.

The technical changes moved a sentence in subsection (c) so that it precedes rather than follows the subdivisions in that subsection, deleted an unnecessary sentence in subsection (e), and made stylistic changes in subsections (d), (e), and (f). The sentence in subsection (e) that was deleted required the gross premiums tax return to be verified by the oath of the individual transmitting the return. This sentence is unnecessary because G.S. 105-252 requires all returns and reports to be filed under affirmation.

(HMOs subject to tax originally effective January 1, 2002; SB 1005, s. 34.22, S.L. 01-424; revision to the effective date, the establishment of the 1.1% tax rate, and the exception to the provisions of G.S. 105-228.5(f) effective for tax year 2003; decrease in the 1.1% rate to 1% effective for tax years beginning on or after January 1, 2004; HB 748, s. 2, S.L. 01-489; technical change to G.S. 105-228.5(e) effective January 1, 2002; HB 338, s. 69, S.L. 01-487.)

XXII. EXCISE TAX ON CONVEYANCES

G.S. 105-228.30(b) – Counties to Remit to State on Monthly Basis: This subsection was amended to accelerate the frequency with which the counties must remit the State's share of the deed excise tax to the Department of Revenue. As amended, the counties must remit the State's share on a monthly basis. Before the change, the counties were required to remit the State's share on a quarterly basis. The change does not become effective until July 1, 2003.

This change accompanies the change to the frequency with which the State distributes to the cities and counties the local sales and use taxes collected by the Department of Revenue on their behalf. Effective July 1, 2003, the Department must make monthly distributions of local sales and use taxes. Under current law, the Department makes quarterly distributions of local sales and use taxes.

(Effective July 1, 2003; HB 232, s. 14, S.L. 01427.)

XXIII. GENERAL ADMINISTRATION

G.S. 105-228.90 – Clarifying Changes: Subsection (a) and subdivisions (b)(5), (b)(7), and (b)(8) were amended to clarify that Article 9 of Chapter 105 and the definitions of "person," "tax," and "taxpayer" include the primary forest product assessment under Article 12 of Chapter 113A of the General Statutes and those responsible for remitting the assessment. Subdivision (b)(5) was also amended to clarify that the term "person" as used in Article 9 of Chapter 105 includes those subject to the annual report filing requirements in G.S. 55-16-22.

(Effective September 14, 2001; SB 165, ss. 23 and 53, S.L. 01-414.)

G.S. 105-228.90(b)(1b)- Reference to the Internal Revenue Code Updated: This subdivision was amended to update the reference to the Internal Revenue Code from January 1, 2000 to January 1, 2001. Any amendments to the IRC enacted in 2000 that increase North Carolina taxable income for the 2000 taxable year become effective for taxable years beginning on or after January 1, 2001.

(Effective January 1, 2001; HB 232, s. 4, S.L. 01-427)

G.S. 105-230(b) – Conforming Change: This subsection was amended to make otherwise invalid acts performed while a corporation or limited liability

company was suspended valid upon the Secretary of State's reinstatement of the company's charter under the provisions of G.S. 105-232(a). Under G.S. 105-230, the Secretary of State suspends the charter of a company if the Department notifies the Secretary that the company has not filed a tax return with the Department.

(Effective January 1, 2002, but validates acts prior to that date, SB 842, ss. 152 and 175, S.L. 01-387.)

G.S. 105-232(a) – Reinstatement of Charter and Clarifying and Technical Changes: This subsection was amended by two acts the 2001 Session. The first act makes reinstatement of a suspended corporation or limited liability company effective back to the date of the suspension by the Secretary of State. The corporation or limited liability company resumes its business as if the suspension had never occurred. That act also clarifies that notification of reinstatement to the entity is by mail. The second act corrects grammatical errors and makes stylistic changes to the provisions added by the first act.

(Substantive change effective January 1, 2002, but validates acts prior to that date, SB 842, s. 153, S.L. 01-387; technical changes effective January 1, 2002; HB 338, s. 62(dd) and (gg), S.L. 01-487.)

G.S. 105-241(b) – Semimonthly Tax Payments By EFT: This subsection was amended to add an additional category of taxpayer that must remit tax payments by electronic funds transfer (EFT) and to consolidate the EFT requirements into this subsection. The new category for mandatory EFT payments, set out in subdivision (b)(2), consists of taxpayers that are required to remit payments twice a month. This affects sales and use taxpayers that regularly remit at least \$10,000 a month, electric power companies under G.S. 105-116, and piped natural gas companies under G.S. 105-187.43.

Subdivision (b)(1) sets out the EFT payment requirement that applies to corporations. This is not a new requirement; it is a restatement of the existing requirement in G.S. 105-163.40. The requirement is set out here as well so that all the EFT requirements are listed in this subsection.

Subdivision (b)(3) contains the prior language of subsection (b) with technical changes. The technical changes delete a reference to G.S. 105-163.40 that is unnecessary in light of new subdivision (b)(1) and make stylistic changes.

(Effective January 1, 2002; HB 232, ss. 6(b) and (j), S.L. 01-427.)

G.S. 105-243.1 – 20% Collection Assistance Fee: This new section imposes a 20% collection assistance fee on overdue tax debts, authorizes the Department to outsource the collection of tax debts, requires the Department to notify

taxpayers before imposing the fee or outsourcing a tax debt, specifies how the fee receipts are to be used, and requires the Department to make quarterly reports to the Joint Legislative Commission on Governmental Operations on the Department's efforts to collect tax debts. The rationale for imposing the fee is to place the cost of collecting overdue taxes on those who do not pay their taxes rather than on those who do. Prior to the enactment of this fee, General Fund tax revenue provided the funds for the collection component of the Department.

An overdue tax debt is a debt that has been "final billed" and is unpaid 90 days after the notice of final assessment is mailed to the taxpayer. The Department has the authority to impose a 20% fee on this overdue tax debt, unless the taxpayer enters into an installment payment agreement with the Department before the fee is imposed. The fee does not apply to tax debts that are under an installment payment agreement.

Before the Department imposes the fee, the Department must send the taxpayer a letter informing the taxpayer that the fee will be imposed if the debt is not paid. The 20% fee applies to principal, interest, and penalty. The fee can be waived in limited circumstances.

The Department can use a contractor to help collect tax debts. Before the Department refers a debt to the contractor for collection, however, the Department must send the taxpayer a letter informing the taxpayer that the debt will be outsourced if it is not paid. Until October 1, 2003, the Department can outsource any type of tax debt. On or after October 1, 2003, the Department can outsource only tax debts owed by nonresidents and foreign entities.

The General Assembly imposed this "sunset" on the outsourcing of tax debts owed by residents for two reasons. First, the General Assembly wanted to review the results of the outsourcing of tax debts of residents before making the Department's authority to outsource these debts permanent. Second, the General Assembly wanted to review the ability of the Department to collect these debts using Department personnel. The 2001 General Assembly increased the personnel of the Department and this increase may affect the need of the Department to outsource debts owed by residents.

(Effective August 20, 2001; SB 353, ss. 2, 8, and 9, S.L. 01-380.)

G.S. 105-249.2 – Disaster Extensions and Technical Changes: Subdivision (b) of this section was enacted and the existing language of the statute was designated as subsection (a). New subsection (b) gives taxpayers the same extensions to file State tax returns that they are given to file federal tax returns in the event of a Presidentially declared disaster. Subsection (b) waives the State penalties for failure to obtain a privilege license, failure to file a return, and failure to pay a tax when due for the same period of time for which the IRS grants an extension of time under section 7508 of the Code for persons affected by a Presidentially declared disaster to file federal tax returns or pay federal taxes.

Unlike the federal extension, however, the State penalty waiver does not relieve a taxpayer of the obligation to pay interest on late payments of tax.

After the enactment of subsection (b), technical changes were made to this section to add headings to subsections (a) and (b). The heading for subsection (a) is “Combat” and the heading for subsection (b) is “Disaster.”

(New subsection (b) effective May 7, 2001; HB 150, s. 1, S.L. 01-87; technical changes effective September 14, 2001; SB 165, ss. 24 and 53, S.L. 01-414.)

G. S. 105-256 – References to Reports Added: Subdivision (a)(6) and subsection (d) of this section were added to incorporate references to various reports the Department of Revenue must provide on a recurring basis. New subdivision (a)(6) replaces repealed G.S. 143B-218.1 and sets out the annual reporting requirement concerning the quality of services to taxpayers. New subsection (d) adds references to reports required by statutes outside Chapter 105. New subdivision (d)(1) refers to the requirement to provide quarterly video poker reports to the Joint Legislative Commission on Governmental Operations. New subdivision (d)(2) refers to the requirement to provide information on escheats by October 1 of each year.

(Effective September 14, 2001; SB 165, ss. 25, 26, and 53, S.L. 01-414.)

G. S. 105-259(b) – Additional Authority to Disclose and Technical Change: This subsection was amended to add three new subdivisions authorizing the disclosure of certain tax information and to make a technical change to a subdivision. The three new authorizations to disclose information are set out in new subdivisions (7a), (26), and (27) and the technical change applies to subpart (15)e.

New subdivision (7a) authorizes the Department to furnish the name and account number of motor carriers whose licenses have been revoked to the administrator of a national database. Criminal justice agencies and public safety organizations use this database to identify motor carriers who operate with a revoked license.

New subdivision (26) authorizes the Department to disclose tax information to a contractor to whom the Department has outsourced the collection of tax debts. G.S. 105-243.1 sets out the authority of the Department to use collection agencies to collect tax debts.

New subdivision (27) authorizes the Department to publish the names of taxpayers that qualify for Article 3A tax credits and certain information about these credits. G.S. 105-129.6 sets out the information about Article 3A credits that is to be disclosed.

Subpart e. of subdivision (15) was amended to conform to a change in the name of the Division of Adult Probation and Parole of the Department of Corrections. The division's new name is the Division of Community Corrections.

(New subdivision (7a) effective June 15, 2001; SB 967; S.L. 01-205; new subdivision (26) effective August 20, 2001, SB 353, ss. 5 and 9, S.L. 01-380; new subdivision (27) effective for taxable years beginning on or after January 1, 2002, SB 748, s. 8(b), S.L. 01-476; technical change to subpart e. of subdivision (15) effective December 16, 2001, HB 338, S.L. 01-487.)

G.S. 105-262 – Conforming Change: This section was amended to conform to the new name of the former Office of State Budget, Planning, and Management. The General Assembly eliminated the planning function from that Office and renamed it the Office of State Budget and Management.

(Effective July 1, 2001; SB 1005, s. 12.2(b), S.L. 01-424.)

G.S. 105-269– Conforming and Technical Changes: This section was amended to delete subsection (b), which was incorporated into new G.S. 105-243.1, and to make technical changes to subsection (a). Former subsection (b) gave the Department the authority to contract for the collection of tax debts owed by taxpayers located in other states. New G.S. 105-243.1(b) continues this authority.

The technical changes in subsection (a) apply the definition of "Secretary," set out in G.S. 105-228.90, to references to the Secretary of the Department of Revenue and make stylistic changes. The stylistic changes modernize the language in subsection (a).

G.S. 105-269.15(a) – Income Tax Credits of Partnerships: This subdivision was amended to treat partnerships the same as S corporations with respect to the application of dollar limits on tax credits. The Department recommended this change to the Revenue Laws Study Committee.

Under the change, any dollar limit on the amount of a tax credit will apply to the partnership as a whole instead of to the individual partners. Before the change, the dollar limits applied to each partner. A maximum tax credit for which a partnership qualifies will be allocated among the partners in proportion to their interest in the partnership.

The change makes North Carolina partnership law consistent with federal law and North Carolina S corporation law. The change also applies to limited liability companies that are taxed as partnerships.

The following tax credits have maximum dollar limits:

- Worker training in G.S. 105-129.11
- Investments in central administrative office property in G.S. 105-129.12
- Investments in business property in G.S. 105-129.16
- Investments in renewable energy property in G.S. 105-129.16A
- Real property donations in G.S. 105-151.12
- Conservation tillage equipment in G.S. 105-151.13
- Construction of a poultry composting facility in G.S. 105-151.25.

The change made to this subsection affects the calculation of all of the credits in this list that are taken by partnerships, except the tax credit for real property donations. The tax credit for real property donations is not affected until tax year 2005 because the General Assembly created a three-year exception in G.S. 105-151.12 for that credit.

(Effective for taxable years beginning on or after January 1, 2002; HB 146, ss. 1 and 3, S.L. 01-335.)

XXIV. PROPERTY TAX

G.S. 105-273(13) – Manufactured Home Changes: This subdivision sets out the definition of “real property.” It was amended to make substantive changes concerning manufactured homes and to make technical changes. The substantive changes delete two requirements for a manufactured home to qualify as real property. One of the deleted requirements is that a manufactured home consist of more than one section. The other deleted requirement is that a manufactured home be on an enclosed foundation. Therefore, as amended, a manufactured home can be real property if it consists of one section and is on a permanent foundation that is not enclosed. The technical changes modernize the language of the subdivision.

(Effective for taxable years beginning on or after July 1, 2002; HB 253, ss. 1 and 4, S.L. 01-506.)

G.S. 105-275 – New Prison Exclusions and Technical Changes: This section was amended to repeal two obsolete exclusions from property taxes, expand an existing exclusion, and add a new exclusion concerning State prisons. The changes and their effective dates are as follows.

(36) - Repealed. This subdivision was repealed because it is obsolete. It provided a property tax exclusion for property belonging to the North Carolina Low-Level Radioactive Waste Management Authority. That Authority has been repealed.

(Effective November 29, 2001, SB 920, ss. 8 and 40, S.L. 01-474.)

(38) - *Repealed*. This subdivision was repealed because it is obsolete. It provided a property tax exclusion for property belonging to the North Carolina Hazardous Waste Management Commission. That Commission has been repealed.

(Effective November 29, 2001, SB 920, ss. 8 and 40, S.L. 01-474.)

(39) – *Prison Constructed by Nonprofit*. This subdivision was amended as part of a plan to construct State prisons through the use of a nonprofit corporation that issues tax-exempt certificates of participation to finance the construction. The amendment excludes from property tax any property that is owned by a nonprofit organization organized at the request of the State, is leased to the State, and is used by the State for a public purpose. The amendment is not limited to property used for a prison.

Under the North Carolina Constitution, property belonging to the State is exempt from property tax. The amendment therefore ensures that a prison owned by a nonprofit corporation and leased to the State has the same property tax treatment as a prison owned by the State.

(Effective May 17, 2001; SB 25, ss. 1 and 5, S.L. 01-84.)

(39a) – *Prison on State-Owned Land*. This subdivision was added to provide a property tax exclusion for prisons that are located on land owned by the State and constructed pursuant to a contract with the State. The exclusion applies to construction in progress and any leasehold interest in the land.

Under the North Carolina Constitution, property belonging to the State is exempt from property tax. The amendment therefore ensures the same property tax treatment for a prison owned by the State and a prison owned by someone other than the State but located on land owned by the State.

(Effective July 1, 2001; HB 232, s. 15, S.L. 01-427.)

G.S. 105-275.1 – Reimbursement Repealed: This statute was repealed, effective July 1, 2003. The statute required the Department of Revenue to distribute annually to counties and cities the amount of tax revenue they “lose” as a result of the exclusion of manufacturers’ inventories and poultry and livestock from the property tax base. The amount distributed is based on the amount of property tax received by a local unit before the repeal. The repeal of this reimbursement is part of the repeal of all local reimbursements and the replacement of these reimbursements with the authority given the counties in new Article 44 of Subchapter VIII of Chapter 105 to levy additional ½% local sales and use taxes.

(Effective July 1, 2003; SB 1005, s. 34.15, S.L. 01-424.)

G.S. 105-275.2 – Reimbursement Repealed: This statute was repealed, effective July 1, 2003. The statute required the Department of Revenue to distribute annually to counties and cities the amount of tax revenue they “lose” as a result of the exclusion of intangible personal property from the property tax base. The amount distributed is based on the amount of property tax received by a local unit before the repeal. The repeal of this reimbursement is part of the repeal of all local reimbursements and the replacement of these reimbursements with the authority given the counties in new Article 44 of Subchapter VIII of Chapter 105 to levy additional ½% local sales and use taxes.

(Effective July 1, 2003; SB 1005, s. 34.15, S.L. 01-424.)

G.S. 105-277.001 – Reimbursement Repealed: This statute was repealed, effective July 1, 2003. The statute required the Department of Revenue to distribute annually to counties and cities the amount of tax revenue they “lose” as a result of the exclusion of retailers’ and wholesalers’ inventories from the property tax base. The amount distributed is based on the amount of property tax received by all local units before the repeal and is allocated among the local units on a per capita basis. The repeal of this reimbursement is part of the repeal of all local reimbursements and the replacement of these reimbursements with the authority given the counties in new Article 44 of Subchapter VIII of Chapter 105 to levy additional ½% local sales and use taxes.

(Effective July 1, 2003; SB 1005, s. 34.15, S.L. 01-424.)

G.S. 105-277.1 – Homestead Exclusion: This section was amended to raise both the income eligibility threshold and the amount of the appraised value of a residence that is excluded from tax under the property tax “homestead exemption.” The income threshold is increased from \$15,000 to \$18,000 for 2002 and is adjusted annually beginning in 2003 based on the Social Security cost-of-living adjustment. The amount of the appraised value that is excluded from tax is changed from a flat \$20,000 to the greater of \$20,000 or 50% of the appraised value of the residence. The change in the calculation of the amount excluded makes the exclusion more responsive to changes in value that occur when a county conducts a revaluation. With this change, the amount excluded will now increase or decrease in accordance with changes in the value of the property.

(Effective July 1, 2002; HB 42, S.L. 01-308.)

G.S. 105-277.1A – Reimbursement Repealed: This statute was repealed, effective July 1, 2003. The statute required the Department of Revenue to distribute annually to counties and cities one-half of the amount of tax revenue

they “lose” as a result of the property tax homestead exclusion. The amount distributed is one-half of the amount of property tax revenue that was not received in specified prior years as a result of the exclusion. The repeal of this reimbursement is part of the repeal of all local reimbursements and the replacement of these reimbursements with the authority given the counties in new Article 44 of Subchapter VIII of Chapter 105 to levy additional ½% local sales and use taxes.

(Effective July 1, 2003; SB 1005, s. 34.15, S.L. 01-424.)

G.S. 105-277.3(b2)- Transfer Without Payment of Deferred Taxes: This subsection was amended to encourage farmer-to-farmer transfers of land classified for present use-value. The amendment allows land that is under present use-value taxation and is transferred to someone who will continue to use the land at its current use to continue to qualify for present use-value taxation without the payment of the deferred taxes attributable to the land’s past present use-value taxation. The liability for deferred taxes is transferred to the new owner but no payment for deferred taxes is required upon the transfer. Under prior law, the deferred taxes were payable unless the new owner had other land already classified for taxation at its present use-value.

(Effective for taxable years beginning on or after January 1, 2002; HB 1427, ss. 1 and 4, S.L. 01-499.)

G.S. 105-277.4(c) – Prepayments of Deferred Taxes: This subsection was amended to allow prepayments of taxes deferred on land that is taxed under the present use-value system. Under that system, the difference in tax due based on a market value appraisal and a use-value appraisal are deferred until the property is transferred. A prepayment does not disqualify the land for continued taxation at present use-value.

(Effective for taxable years beginning on or after January 1, 2002; HB 1427, ss. 2 and 4, S.L. 01-499.)

G.S. 105-278.6A – Continuing Care Retirement Home Exclusion Modified: This statute was rewritten to provide a permanent property tax exclusion for qualifying continuing care retirement home property. The existing exclusion expired in July 1, 2001.

Under the rewritten exclusion, property owned by a non-profit continuing care retirement center is exempt from property tax if the center either serves all residents of the center without regard to their ability to pay or provides at least 5% of the center’s resident revenue in charity care to its residents, in community benefits, or both. Property owned by the center is partially exempt if the center provides at least 1% of its resident revenue in charity care to its residents, in community benefits, or both, but not as much as 5%. For each percentage, 20%

of the center's property is exempt. Therefore, resident revenue of 4% charity excludes 80% of the center's property, 3% charity excludes 60% of the center's property, 2% charity excludes 40% of the center's property, 1% excludes 20% of the center's property, and less than 1% does not qualify for an exclusion.

(Effective July 1, 2001; HB 193, S.L. 01-17.)

G.S. 105-282.1 – Application Changes: This statute was rewritten to make it clear and to change several of the requirements for applying for an exemption or exclusion from property taxes. Prior law required an annual application for the following types of property: severable development rights, art objects owned by the North Carolina Art Society, private water company property, and Brownfields property. The rewritten statute requires a single one-time application for these properties.

Prior law required an application for exclusion for the following types of property: poultry, livestock, feed used in the production of poultry and livestock, motor vehicles subject to the short-term rental tax, buildings with solar energy heating or cooling systems, and real property in a transportation corridor. The rewritten statute eliminates the requirement of an application for these properties; the exclusion is automatic.

(Effective May 31, 2001; SB 162, ss 1 and 11, S. L. 01-139.)

G.S. 105-287(a) – Clarifying Changes: This subsection was amended to add clarify when an assessor can change the value of property in a non-revaluation year. The amendments specify that a change in value can occur whether or not the factor creating the change was within the control of the property owner and add two new subdivisions setting out reasons for a change. The statement that a change in value does not have to result from a factor within the control of the owner addresses a recent court case. In that case, the court indicated that a county cannot change a property value in a non-revaluation year unless the reason necessitating the change came as a result of some action taken by the property owner or at the request of the owner. The new subdivisions clarify that zoning changes, improvements to the property, boundary changes, and changes in the legally permitted use of the land can result in a value change in a non-revaluation year.

(Effective July 1, 2002; SB 162, ss. 2 and 11, S.L. 01-139.)

G.S. 105-296(j) and (l) – Failure to Provide Information: These subsections were amended to require a property owner to provide certain information requested by the assessor within 60 days or risk loss of preferential property tax treatment. These subsections require the assessor to annually review one eighth of all property exempted or excluded from tax or taxed at present-use value. The subsections give the assessor the authority to request information

justifying the preferential tax treatment from the property's owner. The amendment allows the assessor to eliminate the property's preferential tax treatment if the property owner does not comply with the assessor's request. The amendments specify that the preferential tax treatment must be reinstated if the owner provides the information.

(Effective May 31, 2001; SB 162, ss. 3, 4, and 11, S.L. 01-139.)

G.S. 105-296(m) – Transportation Corridors: This new subsection requires the assessor to annually review transportation corridor maps, to indicate the corridors on the tax maps, and to note temporary variances granted for property in a corridor. The subsection cross-references the existing law on the taxation of property in a corridor, specifying that the property is to be taxed in accordance with G.S. 105-277.9.

The 2001 General Assembly deleted the requirement in G.S. 105-282.1 that the owner of property in a corridor submit an application each year for taxation at a reduced rate. With the elimination of the annual application, the review required by this subsection will ensure that the assessor will periodically review property taxed at a reduced rate.

(Effective May 31, 2001; SB 162, ss. 5 and 11, S.L. 01-139.)

G.S. 105-304 - Electronic Listing and Technical Changes: This statute was amended to allow boards of county commissioners to adopt a resolution authorizing the electronic listing of business personal property and to make technical changes. The technical changes add headings to each subsection, make the language of the statute gender-neutral, put definitions in the section in the standard format, and put internal cross-references to other subsections and subdivisions in the statute in the standard format.

(Effective July 13, 2001; SB 365, S.L. 01-279.)

G.S. 105-307- Electronic Listing Period and Technical Changes: This statute was amended to allow counties to extend the listing period for business personal property until as late as June 1 if the listing is electronic and to make technical changes. This change accompanies the change made to G.S. 105-304, which authorizes electronic listing of business personal property. The technical changes add headings to the subsections, put the allowable extension periods in a list in subsection (b), and make stylistic changes.

(Effective July 13, 2001; SB 365, S.L. 01-279.)

G.S. 105-309(f) - Deadline for Homestead Exclusion Extended: This subsection was rewritten to extend from April 15 until June 1 the time allowed for submitting an application for the homestead exemption and to make conforming

changes. The conforming changes revise the language of the required notice concerning the property tax homestead exemption to reflect the increases made in G.S. 105-277.1 to the income eligibility threshold and the amount excluded.

(Effective July 1, 2002; HB 42, S.L. 01-308.)

G.S. 105-311(b) – Electronic Abstracts: This subsection was amended by two different acts of the 2001 General Assembly. The first act gives boards of county commissioners the authority to accept abstracts submitted electronically and makes technical changes. The abstract may be signed electronically in accordance with the general North Carolina law on electronic signatures. An abstract submitted electronically is filed when it is received in the assessor's office. The technical changes make the language of the subsection gender-neutral and modernize the language of the subsection. The second act corrects a redlining error made in the first act.

(Electronic changes effective July 13, 2001; SB 365, S.L. 01-279; correction effective December 16, 2001, HB338, ss. 70 and 126, S.L. 01-487.)

G.S. 105-322(e) - Conforming Change: This subsection was amended to insert a cross-reference to the new reasons for which a board of equalization and review can meet and hear appeals after July 1. The new reasons are set out in G.S. 105-322(g)(5).

(Effective May 31, 2001; SB 162, ss. 6 and 11, S.L. 01-139.)

G.S. 105-322(g) – Meetings of Board of E&R After Adjournment: This subsection was amended to give county boards of equalization and review the authority to hear specified appeals after they have adjourned and to make technical changes. The appeals that can be heard after adjournment are set out in new subdivision (g)(5). They consist of appeals of discoveries of property, of motor vehicle taxes, and of property reviewed annually to determine its continued qualification for exemption or other preferential tax treatment. The technical changes add headings to each subdivision, make the language of the statute gender-neutral, and modernize the language of the statute.

(Effective May 31, 2001; SB 162, ss. 7 and 11, S.L. 01-139.)

G.S. 105-330.4(b) – Interest Rate on Unpaid Motor Vehicle Taxes: This subsection was amended to conform the interest rate applicable to unpaid motor vehicle taxes to the interest rate due on other unpaid property taxes. The amended rate is 2% for the first month following the due date of the taxes and $\frac{3}{4}\%$ for each following month. Under prior law, the interest rate was $\frac{3}{4}\%$ for every month.

(Effective July 1, 2001; SB 162, ss. 8 and 11, S.L. 01-139.)

G.S. 105-330.6 – Adjustments to Motor Vehicle Taxes: Two acts of the 2001 General Assembly amended this section. The first act amended the section to allow a county tax collector to give a taxpayer a credit against taxes owed on certain motor vehicles and to make technical changes. The technical changes add headings to each subsection and modernize the language of the statute. The second act amended the section to extend the period of time for claiming a refund of taxes paid on certain motor vehicles.

The first act added new subsection (a1). This subsection authorizes the collector to allow a credit if both of the following conditions are met:

- The tax year for the vehicle changes because of a change in the vehicle's registration due to a reason other than the transfer of the vehicle's registration plates to another vehicle.
- The vehicle's new tax year begins before the vehicle's original tax year expires.

The amount of the credit is proportional to the amount of full calendar months remaining in the expired tax year. The credit is given in the form of a release against the taxpayer's taxes for the new tax year. Registration of a vehicle triggers a new property tax year for a vehicle.

The second act amends subsection (c) to extend from 120 days to one year the time period for applying for a release or refund of certain motor vehicle taxes. The taxes affected are those paid on a motor vehicle for which the taxpayer surrendered the registration plate. Under subsection (c), as amended, a taxpayer who surrenders the registration plate on a vehicle can apply for a refund of property taxes paid on the vehicle at any time within one year after surrendering the plate. The refund is proportional to the number of full months remaining in the vehicle's tax year after surrender of the plate.

(Effective October 1, 2001; HB 1431, S.L. 01-406; HB 72, s. 2, S.L. 01-497.)

G.S. 105-357(b)(2) – Technical Change: This subdivision was amended to correct the spelling of the word "inadvertence." The subdivision sets out the penalty for bad checks submitted in payment of property taxes.

(Effective December 16, 2001; HB 338, ss. 25 and 126, S.L. 01-487.)

G.S. 105-375(i) – In rem Foreclosure Change: This subsection was amended to shorten the waiting period of in rem foreclosures from six months to three months and to make technical changes. With the change in the waiting period, a property tax judgment can be executed three months after it is indexed rather than six months after it is indexed. The technical changes affect subdivision (i)(2). They make the language of that subdivision gender-neutral and move the language in the parenthetical to a separate sentence.

(Effective July 1, 2001; SB 162, ss. 9 and 11, S.L. 01-139.)

G.S. 161-31- Pay Property Tax To Transfer Property: This statute was amended to allow boards of county commissioners, by resolution, to require the register of deeds to refuse to accept for registration a deed transferring real property until the county tax collector certifies that all property taxes due on the property have been paid. The statute applies only to the following counties: Alleghany, Anson, Beaufort, Cabarrus, Camden, Cherokee, Chowan, Currituck, Forsyth, Graham, Granville, Harnett, Haywood, Jackson, Lee, Madison, Montgomery, Pasquotank, Perquimans, Pitt, Stanly, Swain, Vance, Warren, and Yadkin.

(Effective November 16, 2001; HB 108, S.L. 01-464.)

XXV. MOTOR FUELS TAX

G. S. 105-449.38 – Technical Change: This statute was amended to revise the statutory cross-reference to the computation of the tax rate. The cross-reference should read 105-449.136 rather than 105-449.134.

(Effective June 15, 2001; SB 967; S.L. 01-205.)

G. S. 105-449.60(41) – Technical Change: The definition of “user” in this subdivision was amended to correct a spelling error. The word “last” in the subdivision was changed to “least.”

(Effective September 14, 2001; SB 165, ss. 27 and 53, S.L. 01-414.)

G. S. 105-449.72 – Bond Requirement: This statute was amended by adding new subsection (e) and by revising the catchline of the statute to reflect the addition of the new subsection. New subsection (e) authorizes the Secretary to impose a bond requirement on a credit card company that has received refunds on exempt sales. A credit card company may be required to secure a bond to protect the State from loss if, during an audit, the Secretary determines the credit card company requested and received a larger refund than was allowed. If the Secretary requires a bond, the amount of the bond is two times the average monthly refund, with a minimum of \$2,000 and a maximum of \$250,000. The catchline was amended for this change.

(Effective October 1, 2001; SB 967; S.L. 01-205.)

G. S. 105-449.88 – Community College Exemption: This statute was amended to add an exemption for motor fuel sold to a community college to be

used for community college purposes. G.S. 115D-5 requires the Community Colleges System to send the Department a list of the community colleges and to update the list as needed.

(Effective January 1, 2002; HB 232, s. 9, S.L. 01-427.)

G. S. 105-449.88A – Liability on Exempt Credit Card Use: This statute was amended to impose liability on the issuer of a credit card when the issuer issues a credit card that authorizes the retail purchase of tax-exempt motor fuel to a person who is not authorized to buy tax-exempt motor fuel at retail. When this occurs, the credit card issuer is liable for the motor fuel excise tax due on fuel purchased with the card. If a supplier of motor fuel authorizes another entity to issue a credit card for the purchase of motor fuel, the credit card issuer and the supplier are both liable if a card that authorizes tax-exempt purchases is issued to a person who is not authorized to purchase tax-exempt fuel. Prior law did not address the issuance of credit cards by any entity other than a supplier of motor fuel. Frequently, however, a credit card company, and not a supplier, is the issuer of a motor fuel credit card.

(Effective October 1, 2001; SB 967; S.L. 01-205.)

G. S. 105-449.105(a) – Refunds to Credit Card Companies and Clarifying Changes: This statute was amended to clarify that an exempt entity may request a refund of motor fuel excise taxes paid by the entity and to establish a refund mechanism for credit card companies that issue cards to entities whose motor fuel purchases are exempt from the excise tax. When a purchaser uses an “exempt” card to buy motor fuel at retail, the retailer charges the credit card company the price of the motor fuel plus the excise tax due on the motor fuel. This is because the fuel sold by the retailer is tax-paid fuel. The credit card company then applies to the Department for a refund of the tax paid.

(Effective October 1, 2001; SB 967; S.L. 01-205.)

G. S. 105-449.105A – Exempt Use of Undyed Kerosene: This statute was amended to exempt undyed kerosene from the excise tax if the kerosene is used in the manufacturing process or for drying crops. Prior to this change these uses were subject to the excise tax and an annual claim for refund was filed to obtain a refund of the taxes paid for the nonhighway use. Under the revised subdivision (a)(2), the tank-marking requirement was expanded to allow for the marking that expressly states that the fuel is not to be used in a highway vehicle.

(Effective October 1, 2001; SB 967; S.L. 01-205.)

G. S. 105-449.107(b) – Fuel Tax Refund for Mulch-Blowing Equipment: This statute was amended to provide for a partial refund of motor fuel taxes paid on fuel used in a mulch-blower that uses a power takeoff to deliver or off-load the mulch or other similar materials. The refundable gallons are based on 33 1/3% percent of the fuel consumed by the vehicle. The amount of refund is then determined by applying the average motor fuel tax rate for the calendar year to the refundable gallons. The refund amount is then reduced by the sales tax due on the refundable gallons.

(Effective September 14, 2001; HB 170; S.L. 01-408.)

G. S. 105-449.123 – Conforming Change: This statute was amended to add a cross-reference for the types of storage facilities for which there are no marking requirements. The cross-reference refers to the types of storage facilities that are installed in such a manner that makes fueling a vehicle improbable.

(Effective October 1, 2001; SB 967; S.L. 01-205.)

XXVI. DEBT SET-OFF

G.S. 105A-13(b) – Fee for Federal Setoffs Repealed: This subsection was repealed because, with the enactment of the 20% collection assistance fee in G.S. 105-243.1, the fee is no longer necessary. All debts submitted to the United States Department of the Treasury for setoff are at least 90 days old and therefore include the 20% collection assistance fee. Under G.S. 105-243.1(e), the Department can use the proceeds of the 20% collection assistance fee to pay its costs under the federal setoff program.

(Effective November 1, 2001; SB 353, ss. 3 and 9, S.L. 01-380.)

XXVII. STUDIES

Property Tax Study Commission: The General Assembly established a study commission devoted to property tax issues. The Commission consists of 16 members, eight of whom are appointed by the President Pro Tempore of the Senate and eight of whom are appointed by the Speaker of the House.

North Carolina Department of Revenue

The Commission's charge is to study the property tax system and recommend any needed changes. The legislation establishing the Commission directs the Commission to study the following:

- All exemptions and exclusions
- The taxability of nonprofit charitable hospitals
- The present use-value system
- Ways to encourage agricultural, forestry, and horticultural uses of land
- Tax incentives to encourage conservation and environmental protection.

The Commission is authorized to make an interim report to the 2002 General Assembly. The Commission is directed to make a final report to the 2003 General Assembly.

(Effective December 19, 2001; HB 1427, ss. 3 and 4, S.L. 01-499.)

Legislative Tax Policy Commission: Part XXIX of Chapter 491 of the 2001 Session Laws re-establishes the North Carolina Tax Policy Commission. The Commission was originally established in 1999 by Chapter 395 of the 1999 Session Laws. The 1999 Commission expired in 2001 before the Commission completed its work.

The Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate each have 6 appointments to the Commission, for a total of 18 members. Members of the 1999 Commission must be reappointed if they are to serve on the 2001 Commission.

Like the 1999 Commission, the 2001 Commission is to establish the principles of taxation on which the State's tax structure should be based, review the tax structure to determine if it meets these principles, and recommend changes needed to align the tax structure in accordance with the principles. The Commission is to make a final report to the General Assembly, the Governor, and the citizens of the State by March 1, 2003.

(Legislation re-establishing Commission effective December 19, 2002; SB 166, Part XXIX, S.L. 01-491.)

Revenue Laws Study Committee: Various acts list topics of study for this committee. Some acts direct the Committee to study a certain topic and others state that the Committee may study a topic.

The Committee is directed to study the following topics:

- Any law changes necessary to conform North Carolina law with the federal Mobile Telecommunications Sourcing Act (HB 571, s. 19, S.L. 01-430).
- The tax rate structure relating to sales of electricity and piped natural gas to manufacturers (SB 748, ss. 15(a) and (c), S.L. 01-476).

The Committee is authorized, but not directed, to study the following topics:

- The reporting requirements for electric power companies and the method by which the franchise tax on these companies is distributed to cities. The purpose of this is to determine simpler ways to achieve the goals of the current requirements and distribution method. (HB 232, s. 6(h), S.L. 01-427.)
- Ways to improve compliance with the State's tax laws, including an evaluation of how existing data may be used to identify businesses that underreport income or sales, retailers that misuse certificates of resale, and taxpayers that use other methods to avoid complying with the tax laws. (SB 161, s. 9.2, S.L. 01-491.)
- Whether a travel and tourism capital incentive grant program should be established. (SB 161, s. 9.2, S.L. 01-491.)
- Credit card solicitation in this State. (SB 161, s. 9.2, S.L. 01-491.)
- The formula used to apportion the income of multistate corporations to this State, including the elimination of the double-weighted sales factor. (SB 161, s. 9.2, S.L. 01-491.)

The committee is also authorized in G.S. 120-70.106 to study any aspect of the tax laws. The committee is authorized to report its findings and recommendations to the 2002 Regular Session of the 2001 General Assembly or to the 2003 General Assembly.

Governor's Commission to Modernize State Finances: Governor Easley has established the Commission to Modernize State Finances. The Commission has three subcommittees – Intergovernmental Finance, New Economy, and Tax Simplification. The goal of the Intergovernmental Finance Subcommittee is to examine the federal-state-local relationship in the context of taxing authority, service responsibility, and shared revenue streams. The goal of the New Economy Subcommittee is to examine revenue sources that are consistent with the direction of the New Economy, including the effect of growth in the service sector and the Internet, to examine strategies to reduce the volatility of the tax structure, and to develop policies to maintain North Carolina's economic competitiveness. The goal of the Tax Simplification Subcommittee is to examine ways to simplify the tax code by eliminating tax preferences, reducing complexity, and reworking economic development tax credits. The Commission held its first meeting on March 5, 2002.