



**NORTH CAROLINA
DEPARTMENT OF REVENUE**

2012 TAX LAW CHANGES



**OFFICE OF THE ASSISTANT SECRETARY
FOR TAX ADMINISTRATION**

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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 tax law changes made by prior General Assemblies that take effect for tax year 2012, as well as changes made by the 2012 General Assembly, regardless of when they take effect.

The local sales and use tax changes follow the State sales and use tax changes. 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.

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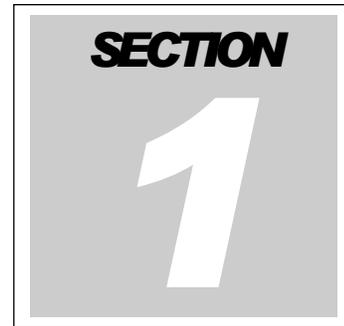
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PERSONAL TAXES



INDIVIDUAL INCOME TAX

G.S. 105-134.1 – Definitions of Adjusted Gross Income and Taxable Income: This subsection was rewritten to add the definition of adjusted gross income as defined in section 62 of the Code and to remove the definition for taxable income.

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(a), S.L. 11-145.)

G.S. 105-134.4 – Definition of Taxable Year: Repealed.

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(d), S.L. 11-145.)

G.S. 105-134.5 – North Carolina Taxable Income Defined: The term “North Carolina taxable income” means adjusted gross income as modified in G.S. 105-134.6.

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(b), S.L. 11-145.)

G.S. 105-134.5(b) and (c) – North Carolina Taxable Income Defined for Nonresidents and Part-year residents: This subsection was amended to remove the word “adjusted” when referring to the calculation of the numerator and denominator. As a result of this technical change, nonresidents and part-year residents will continue to use gross income, as modified, rather than adjusted gross income, as modified, in determining the North Carolina proration percentage.

(Effective June 26, 2012; SB 826, s. 1.2, S.L. 12-79.)

G.S. 105-134.5(e) – Tax Year Defined: This new subsection was added to replace the former definition of taxable year as defined under G.S. 105-134.4, which has been repealed.

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(b), S.L. 11-145.)

G.S. 105-134.6 – Modifications to Adjusted Gross Income: This section was rewritten to reflect the change to make adjusted gross income the starting point for the computation of North Carolina taxable income. In addition, section title “Adjustments to taxable income” was changed to “Modifications to adjusted gross income.”

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(c), S.L. 11-145.)

G.S. 105-134.6(a1) – Personal Exemption: House Bill 200 created this new subsection and defines allowable personal exemption amounts based on filing status and adjusted gross income. Senate Bill 267 rewrote this subsection to clarify that the taxpayer is allowed the same personal exemptions allowed under section 151 of the Code for the taxable year.

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(c), S.L. 11-145.)

(Effective for taxable years beginning on or after January 1, 2012; SB 267, s. 12.(b), S.L. 11-330.)

G.S. 105-134.6(a2) – Deduction Amount: House Bill 200 created this new subsection that defines the standard deduction available to taxpayers based on filing status. Senate Bill 267 rewrote this subsection to clarify that in the case of a married couple filing separate returns, a taxpayer may not deduct the standard deduction amount if the taxpayer’s spouse claims itemized deductions for State purposes. SB 267 also allows an additional State deduction amount for taxpayers who are entitled to an additional deduction amount under section 63(f) of the Code for the aged or blind.

This subsection was amended by the 2012 session of the General Assembly to limit the North Carolina standard deduction to the lesser of the amount shown in the table contained in G.S. 105-134.6(a2) or the amount allowed under the Code. As a result of this technical change, an individual who is claimed as a dependent on another individual’s return must limit the North Carolina standard deduction the same as required under the Code for federal purposes. That individual’s North Carolina standard deduction is the lesser of the amount limited under the Code or the amount shown in the table contained in G.S. 105-134.6(a2). Another result of this technical change is that there is no North Carolina standard deduction allowed to a taxpayer who is not entitled to a standard deduction under the Code for federal purposes, such as the taxpayer who is a nonresident alien or the taxpayer who files a short-year return because of a change in accounting period.

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(c), S.L. 11-145.)

(Effective for taxable years beginning on or after January 1, 2012; SB 267, s. 12.(b), S.L. 11-330.)

(Effective June 26, 2012; SB 826, s. 1.3, S.L. 12-79.)

G.S. 105-134.6(b) – Other Deductions: This section was rewritten. Subsection title “Deductions” was changed to “Other Deductions”. Deductions are allowed in this subsection to the extent those items are included in the taxpayer’s adjusted gross income.

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(c), S.L. 11-145.)

G.S. 105-134.6(b)(22) – Business Income Deduction: House Bill 200 created this new subdivision to allow a deduction of \$50,000 for net business income the taxpayer receives during the taxable year. The term “business income” does not include income that is considered passive income under the Code. Senate Bill 267 rewrote this subdivision to clarify that an amount not to exceed \$50,000 of net business income the taxpayer receives during the taxable year may be deducted. However, in the case of a married couple filing a joint return where both spouses receive or incur net business income, the maximum amount applies separately to each spouse’s net business income, not to exceed a total of \$100,000.

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(c), S.L. 11-145.)

(Effective for taxable years beginning on or after January 1, 2012; SB 267, s. 12.(c), S.L. 11-330.)

G.S. 105-134.6(c) – Additions: This section was rewritten to reflect the change to make adjusted gross income the starting point for the computation of North Carolina taxable income.

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(c), S.L. 11-145.)

G.S. 105-134.6(c)(3) – Addition for Taxes Claimed: This subsection was rewritten to require an addition for qualified motor vehicle taxes claimed as an itemized deduction.

(Effective for taxable years beginning on or after January 1, 2012; SB 267, s. 12(d), S.L. 11-330.)

G.S. 105-134.6(c)(4) – Additional Standard Deduction: Repealed. The change to adjusted gross income makes this statute irrelevant.

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(c), S.L. 11-145.)

G.S. 105-134.6(c)(4a) – Personal Exemption Adjustment: Repealed. The change to adjusted gross income makes this statute irrelevant.

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(c), S.L. 11-145.)

G.S. 105-134.6(c)(11) – Real Property Tax Add-Back by Nonitemizers: Repealed. This federal deduction was in addition to the basic federal standard deduction and was available for tax years 2008 and 2009.

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(c), S.L. 11-145.)

G.S. 105-134.6(c)(12) – Motor Vehicle Sales Tax Add-Back: Repealed. House Bill 200 removed the reference to Code section 63(c)(1)(E). Senate Bill 267 repealed this subdivision and added a reference to qualified motor vehicle tax under G.S. 105-134.6(c)(3).

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(c), S.L. 11-145.)

(Effective for taxable years beginning on or after January 1, 2012; SB 267, s. 12(e), S.L. 11-330.)

G.S. 105-134.6(d) – Other Adjustments: This subsection was rewritten to make reference to adjusted gross income.

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(c), S.L. 11-145.)

G.S. 105-134.6(d)(9) – Modifications to Adjusted Gross Income – Other Adjustments: This subdivision was added in the event Congress does not extend the \$250 educator expense deduction that expired after 2011 at the federal level. If the federal educator expense deduction is not extended, this adjustment allows an eligible educator a deduction for certain expenses on the North Carolina individual income tax return.

An eligible educator may deduct an amount not to exceed \$250 for the total cost of (a.) books, (b.) supplies, other than nonathletic supplies for courses of instruction in health or physical education, (c.) computer equipment, including related software and services, and (d.) supplementary materials used by the eligible educator in the classroom.

“Eligible educator” has the same meaning as defined in section 62 of the Code, as it existed on December 31, 2011. In the case of a married couple filing a joint return where both spouses are eligible educators, the maximum deduction is \$500 (up to \$250 for each spouse).

(Effective for taxable years beginning on or after January 1, 2012; HB 1015, s. 2.(a), S.L. 12-74.)

G.S. 105-151.26 – Credit for Charitable Contributions by Nonitemizers: This section has been rewritten to allow a taxpayer, who elects the North Carolina standard deduction, a tax credit against North Carolina individual income tax for an amount equal to 7% of the taxpayer’s excess charitable contributions. Excess charitable contributions

are the amount by which the taxpayer's charitable contributions for the taxable year that would have been deductible under section 170 of the Code exceed 2% of the taxpayer's adjusted gross income.

(Effective for taxable years beginning on or after January 1, 2012; HB 200, s. 31A.1.(e), S.L. 11-145.)

G.S. 105-151.28(d) – Credit for Premiums Paid on Long-term Care Insurance: This subsection was amended to update the sunset. The credit for premiums paid on long-term care insurance was scheduled to expire for taxable years beginning on or after January 1, 2013. The credit now expires for taxable years beginning on or after January 1, 2014.

(Effective June 20, 2012; HB 1025, s. 7, S.L. 12-36.)

G.S. 105-151.29(k) – Credit for Qualifying Expenses of a Production Company: This subsection was amended to update the sunset. The credit for qualifying expenses of a production company was scheduled to expire for qualifying expenses occurring on or after January 1, 2014. This credit now expires for qualifying expenses occurring on or after January 1, 2015.

(Effective July 17, 2012; SB 847, s. 79.10(b), S.L. 12-194.)

G.S. 105-151.30(f) – Credit for Recycling Oyster Shells: This subsection was amended to update the sunset. The credit for recycling oyster shells was scheduled to expire for taxable years beginning on or after January 1, 2013. This credit now expires for taxable years beginning on or after January 1, 2014.

(Effective June 20, 2012; HB 1025, s. 6.(b), S.L. 12-36.)

G.S. 105-151.31(c) – Earned Income Tax Credit: This subsection was amended to update the sunset. The earned income tax credit was scheduled to expire for taxable years beginning on or after January 1, 2013. This credit now expires for taxable years beginning on or after January 1, 2014.

(Effective June 20, 2012; HB 1025, s. 8, S.L. 12-36.)

G.S. 105-151.32(c) – Credit for Adoption Expenses: This subsection was amended to update the sunset. The credit for adoption expenses was scheduled to expire for taxable years beginning on or after January 1, 2013. This credit now expires for taxable years beginning on or after January 1, 2014.

(Effective June 20, 2012; HB 1025, s. 9, S.L. 12-36.)

G.S. 105-152(e) – Innocent Spouse Relief on Joint Income Tax Returns: This subsection was amended to clarify that relief is provided to a taxpayer who files as

married filing jointly and qualifies for innocent spouse relief attributable to the substantial underpayment under section 6015 of the Code. Under prior law, relief was available for the corresponding North Carolina joint individual income tax liability only if that spouse had been granted innocent spouse relief from the joint federal income tax liability.

(Effective June 26, 2012; SB 826, s. 2.5, S.L. 12-79.)

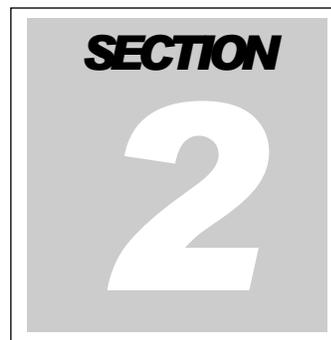
G.S. 105-160.3(b) – Tax Credits: This subsection was amended as a clarifying change to add the tax credit for children with disabilities who require special education available under G.S. 105-151.33 to the list of tax credits that may not be claimed on the income tax return for trusts and estates.

(Effective June 26, 2012; SB 826, s. 2.6, S.L. 12-79.)

G. S. 105-163.015 –Tax Credits for Qualified Business Investments: This subsection was amended to update the sunset. The credit for qualified business investments was scheduled to expire for investments made on or after January 1, 2013. The credit now expires for investments made on or after January 1, 2014.

(Effective June 20, 2012; HB 1025, s. 10, S.L. 12-36.)

CORPORATE TAX



FRANCHISE TAX

G.S. 105-120.2(c) – Clarifying Change; Definition of Holding Company: A holding company is a corporation that receives during its taxable year more than 80% of its gross income from corporations in which it owns directly or indirectly more than 50% of the outstanding voting stock or voting capital interests. In performing the holding company test, if the holding company receives no income during the year, the denominator of the ratio is zero, which is mathematically undefined. Therefore, the corporation technically does not meet the 80% test. To provide a remedy for this scenario, the subsection was amended to add a second condition under which a corporation may qualify as a holding company. A corporation will also qualify for holding company status if it has no assets other than ownership interests in corporations in which it owns, directly or indirectly, more than 50% of the outstanding stock or voting capital interests.

(Effective June 26, 2012, SB 826, s. 2.3, S.L. 12-79.)

G.S. 105-122(b1) – Conforming Change; Definitions: This subsection was amended to replace references to G.S. 105-130.6 with G.S. 105-130.2. The definitions of the terms “affiliate”, “parent” and “subsidiary”, previously codified under G.S. 105-130.6, which was repealed by S.L. 11-390, were re-codified under G.S. 105-130.2.

(Effective June 26, 2012, SB 826, s. 1.14.(a), S.L. 12-79.)

BUSINESS AND ENERGY TAX CREDITS

G.S. 105-129.16D(d) – Extend Sunset for Credit for Constructing Renewable Fuel Facilities: This subsection was amended to extend the sunset date for the credit for constructing renewable fuel facilities to January 1, 2014. The sunset date had been January 1, 2013.

(Effective June 20, 2012, HB 1025, s. 2, S.L. 12-36.)

G.S. 105-129.16F(b) – Extend Sunset for Credit for Biodiesel Producers: This subsection was amended to extend the sunset date for the credit for biodiesel producers to January 1, 2014. The sunset date had been January 1, 2013. *(Effective June 20, 2012, HB 1025, s. 3, S.L. 12-36.)*

G.S. 105-129.16G(b) – Extend Sunset for Work Opportunity Tax Credit: This subsection was amended to extend the sunset date for this credit to January 1, 2014. The sunset date had been January 1, 2012.

(Effective June 20, 2012, HB 1025, s. 4, S.L. 12-36.)

HISTORIC REHABILITATION TAX CREDITS

G.S. 105-129.39 – Extend Sunset for Historic Rehabilitation Tax Credits: This section was amended to extend the sunset date for these credits to January 1, 2015. The sunset date had been January 1, 2014.

(Effective June 20, 2012, HB 1025, s. 12.(a), S.L. 12-36.)

MILL REHABILITATION TAX CREDIT

G.S. 105-129.75 – Extend Sunset for Mill Rehabilitation Tax Credit: This section was amended to extend the sunset date for this credit to January 1, 2015. The sunset date had been January 1, 2014.

(Effective June 20, 2012, HB 1025, s. 12.(b), S.L. 12-36.)

TAX CREDITS FOR GROWING BUSINESSES

G.S. 105-129.81(4) – Clarifying Change, Definition of Business Property: This subsection was amended to clarify that for tangible property to be considered business property, it must be used in a business and capitalized *by the taxpayer for tax purposes* under the Code. The italicized language was added to conform the language in this statute to other references to “business property” elsewhere in the credit statutes. Without the clarifying language, a taxpayer might take the position that a credit could be claimed on leased property even when the lessor had capitalized the property.

(Effective June 26, 2012, SB 826, s. 2.4, S.L. 12-79.)

G.S. 105-129.81(20a) – Port Enhancement Zone Defined: This subdivision was added to define port enhancement zone by reference to G.S. 143B-437.012. A port enhancement zone is an area that meets all of the following conditions: (1) it is comprised of one or more contiguous census tracts, census block groups, or both, (2)

all of the area is located within 25 miles of a State port and is capable of being used to enhance port operations, and (3) every census tract and census block group in the area has at least 11% of households with incomes of \$15,000 or less.

(Effective for taxable years beginning on or after January 1, 2013; HB 751, s. 6, S.L. 11-302.)

G.S. 105-129.81(20a) – Technical Change; Port Enhancement Zone Definition:

This is a technical correction to clarify the definition of port enhancement zone in G.S. 143B-437.013(a). A port enhancement zone is an area that meets all of these conditions: (1) it is comprised of *part or all of* one or more contiguous census tracts, census block groups, or both, in the most recent federal decennial census, (2) all of the area is located within 25 miles of a State port and is capable of being used to enhance port operations, and (3) every census tract and census block group in the area has at least 11% of households with incomes of \$15,000 or less. The italicized text was added by this legislation.

(Effective for taxable years beginning on or after January 1, 2013 HB 1015, s. 6.(a), S.L. 12-74.)

G.S. 105-129.82(a) – Sunset Extended for Credits for Growing Businesses: This subsection was amended to extend the sunset date for Article 3J credits to January 1, 2014. The sunset date had been January 1, 2013.

(Effective June 20, 2012, HB 1025, s. 5, S.L. 12-36.)

G.S. 105-129.83(c) – Eligibility, Wage Standard: This subsection was amended to add a port enhancement zone to the list of areas that will be treated as a tier one area for purposes of the wage standard. A taxpayer is not required to meet a wage standard in a tier one area.

(Effective for taxable years beginning on or after January 1, 2013; HB 751, s. 7, S.L. 11-302.)

G.S. 105-129.83(l) – Eligibility, Planned Expansion: A taxpayer that signs a letter of commitment with the Department of Commerce calculates its credit based on the tier or zone designation in place at the time the letter is signed. This subsection was amended to add a port enhancement zone to the list of zones.

(Effective for taxable years beginning on or after January 1, 2013; HB 751, s. 7, S.L. 11-302.)

G.S. 105-129.84(c) – Carryforward of Article 3J Tax Credits: Legislation was enacted to provide that, notwithstanding the investment requirement of G.S. 105-129.84(c), if the Secretary of Commerce makes a written determination that the

taxpayer is expected to purchase or lease, and place in service in connection with an eligible business within a two-year period, at least \$100,000,000 worth of business and real property in a development tier one area, any unused portion of a credit under 3J of Chapter 105 of the General Statutes with respect to the establishment that satisfies that condition may be carried forward for the succeeding 20 years. If the taxpayer does not make the required level of investment, the taxpayer must apply the five-year carryforward period rather than the 20-year carryforward period. Note that this legislation did not directly amend the statutory language. This provision will be noted following the section.

(Effective for taxable years beginning on or after January 1, 2012, and expires for taxable years beginning on or after January 1, 2013, HB 1015, s. 5, S.L. 12-74.)

G.S. 105-129.84(d) – Statute of Limitations: During the 2010 Legislative Session, the General Assembly enacted S.L. 2010-147 to lessen the stringency of the environmental impact test used in determining eligibility for Article 3J credits, making the change retroactive to January 1, 2007. However, G.S. 105-129.84(d) requires a taxpayer to claim an Article 3J credit within six months after the due date of the return, thus limiting the effect of the retroactive change. To correct that limitation, legislation was enacted during the 2012 Session to provide that, for taxable years 2007 through 2010, a taxpayer that files an amended return before January 1, 2013, may claim a credit under Article 3J of Chapter 105 if all of the following conditions are met: 1) the taxpayer did not timely claim a credit under Article 3J of Chapter 105 of the General Statutes, 2) the taxpayer would have been ineligible to claim a credit under Article 3J of Chapter 105 because it failed to meet the environmental impact standard under G.S. 105-129.83(e) prior to the enactment of S.L. 2010-147, and (3) the taxpayer satisfies the environmental impact standard under G.S. 105-129.83(e) after the enactment of S.L. 2010-147. Note that this legislation did not directly amend the statutory language. This provision will be noted following the section.

(Effective June 26, 2012, SB 826, s. 1.13.(b), S.L. 12-79.)

G.S. 105-129.87(a) – Credit for Creating Jobs, Credit: This subsection was amended to add the port enhancement zone to the list of areas in which the value of a credit for a job created in that area will be increased by \$1,000, and if the job is filled by a resident of that area or by a long-term unemployed worker, the amount of the credit is increased by \$2,000.

(Effective for taxable years beginning on or after January 1, 2013; HB 751, s. 8, S.L. 11-302.)

G.S. 105-129.87(b) – Credit for Creating Jobs, Threshold: This subsection was amended to add the port enhancement zone to the list of areas that will be treated as a tier one area for purposes of the jobs threshold.

(Effective for taxable years beginning on or after January 1, 2013; HB 751, s. 8, S.L. 11-302.)

G.S. 105-129.87(c) – Credit for Creating Jobs, Calculation: A job is considered to be located in a county or zone if more than 50% of the employee’s duties are performed within the county or zone. This subsection was amended to add the port enhancement zone to the list of areas.

(Effective for taxable years beginning on or after January 1, 2013; HB 751, s. 8, S.L. 11-302.)

G.S. 105-129.87(e) – Credit for Creating Jobs, Transferred Jobs: When a job is transferred out of a county or zone to a higher tier, the remaining installments of the credit are allowed only to the extent the credit would have been allowed if the job was created in the area to which it was moved. Likewise, if a job is transferred from a higher tier to a lower tier or zone, the remaining installments of the credit are calculated as if the job was created in the lower tier or zone. This subsection was amended to add the port enhancement zone to the list of areas.

(Effective for taxable years beginning on or after January 1, 2013; HB 751, s. 8, S.L. 11-302.)

G.S. 105-129.88(a) – Credit for Investing in Business Property, General Credit: This subsection was amended to add a port enhancement zone to the list of areas that will be treated as a tier one area for purposes of determining the applicable percentage to use in the computation of the business property credit.

(Effective for taxable years beginning on or after January 1, 2013; HB 751, s. 9, S.L. 11-302.)

G.S. 105-129.88(c) – Credit for Investing in Business Property, Threshold: This subsection was amended to add a port enhancement zone to the list of areas that will be treated as a tier one area for purposes of determining the minimum investment required for credit eligibility. Tier one requires no minimum investment.

(Effective for taxable years beginning on or after January 1, 2013; HB 751, s. 9, S.L. 11-302.)

G.S. 105-129.88(e) – Credit for Investing in Business Property, Transferred Property: When property is transferred from a county or zone to a higher tier, remaining installments of the credit are allowed only to the extent they would have been allowed if the property was initially placed in the area to which it was moved. Likewise, if property is transferred from a higher tier to a lower tier or zone, the remaining installments of the credit are computed as if the property was originally placed in the lower tier or zone. This subsection was amended to add the port enhancement zone to the list of areas.

(Effective for taxable years beginning on or after January 1, 2013; HB 751, s. 9, S.L. 11-302.)

CORPORATION INCOME TAX

G.S. 105-130.2 – Definitions: This section was amended to add the definitions of “affiliate”, “parent”, and “subsidiary”. These definitions had previously been codified in G.S. 105-130.6, which was repealed by S.L. 11-390. The items in this section were also renumbered.

(Effective June 26, 2012, SB 826, s. 1.14.(b), S.L. 12-79)

G.S. 105-130.5(b)(14) – Technical Change; Deductions from Federal Taxable Income: When computing State taxable income, a taxpayer is permitted a deduction from federal income of the amount by which the basis of a depreciable asset is required to be reduced under the Code for federal tax purposes because of a tax credit allowed against the corporation’s federal income tax liability. This technical change clarifies that the taxpayer may also make the deduction for basis reduction because of a grant allowed under section 1603 of the American Recovery and Reinvestment Tax Act of 2009, P.L. 111-3. This deduction may be claimed only in the year in which the Code requires that the asset’s basis be reduced and is considered as depreciation.

(Effective June 26, 2012, SB 826, s. 1.1, S.L. 12-79.)

G.S. 105-130.5A – Rules for Combined Return: This section was added to establish new procedures for the Secretary to follow when he has reason to believe that a corporation conducts its business in such a manner as to fail to accurately report its State net income. The Secretary may make written request of the taxpayer to provide any information reasonably necessary to determine whether the corporation’s intercompany transactions have economic substance and are at fair market value. The corporation must provide the information within 90 days of the request.

If the Secretary finds as a fact that the intercompany transactions lack economic substance or are not at fair market value, the Secretary must first adjust the intercompany transactions to redetermine the taxpayer’s income attributable to this State. If adjustment to intercompany transactions is inadequate to correct taxable income, the Secretary may give written notice to the taxpayer requiring a combined report of all members of the affiliated group that are conducting a unitary business. The taxpayer must submit the return within 90 days. The Secretary or the taxpayer may propose a combination of fewer than all members of the unitary group; however, there must be mutual consent.

If the Secretary makes an adjustment or requires a combined return, he must provide a written statement to the taxpayer containing detailed facts, circumstances, and reasons for which he has found that the corporation did not accurately report its income attributable to this State. The statement must also give the proposed method for computing income. The statement must be given to the taxpayer no later than 90 days following the issuance of a proposed assessment.

A transaction has economic substance if the transaction, or series of transactions, has one or more reasonable business purposes other than for the creation of State income tax benefits and has economic effects beyond the creation of State income tax benefits. In determining whether transactions between affiliates are not at fair market value, the Secretary must apply the standards contained in the regulations adopted under section 482 of the Code.

A corporation or noncorporate entity is part of the affiliated group if more than 50% of the voting stock or ownership interest is directly or indirectly owned or controlled by a common owner, or by one or more of the member corporations or noncorporate entities. The following entities will not be included in a combined return:

1. A corporation not required to file a federal income tax return.
2. An insurance company, other than a captive insurance company.
3. A corporation exempt from taxation under section 501 of the Code.
4. An S corporation.
5. A foreign corporation as defined in section 7701 of the Code, other than a domestic branch.
6. A partnership, limited liability company, or other entity not taxed as a corporation.
7. A corporation with at least 80% of its gross income from all sources in the tax year being active foreign business income as defined in section 861(c)(1)(B) of the Code in effect as of July 1, 2009.

(Effective January 1, 2012; HB 619, s. 2, S.L. 11-390.)

G.S. 105-130.6 – Subsidiary and Affiliated Corporations Repealed: This section was repealed.

(Effective January 1, 2012; HB 619, s. 1, S.L. 11-390.)

G.S. 105-130.14(1) – Conforming Change; Corporations Filing Consolidated Returns for Federal Income Tax Purposes: A corporation which elects or is required to file a federal consolidated return must file a single entity return for State income tax purposes except in specific circumstances. This subsection was amended to replace the reference to G.S. 105-130.6, which was repealed by S.L. 11-390, with G.S. 105-130.5A, Secretary's Authority to Adjust Net Income or Require a Combined Return.

(Effective June 26, 2012, SB 826, s. 1.14.(c), S.L. 12-79)

G.S. 105-130.14(2) – Conforming Change; Corporations Filing Consolidated Returns for Federal Income Tax Purposes: A corporation which elects or is required to file a federal consolidated return must file a single entity return for State income tax purposes except in specific circumstances. This subsection, which permitted a combined return when the taxpayer's facts and circumstances met those set out in a rule adopted by the Department pursuant to G.S. 105-130.6, was repealed by

S.L. 11-390, with G.S. 105-130.5A, Secretary's Authority to Adjust Net Income or Require a Combined Return.

(Effective June 26, 2012, SB 826, s. 1.14.(c), S.L. 12-79.)

G.S. 105-130.14(3) – Conforming Change; Corporations Filing Consolidated Returns for Federal Income Tax Purposes: A corporation which elects or is required to file a federal consolidated return must file a single entity return for State income tax purposes except in specific circumstances. This subsection was amended to replace the reference to G.S. 105-130.6, which was repealed by S.L. 11-390, with G.S. 105-130.5A, Secretary's Authority to Adjust Net Income or Require a Combined Return, and to provide that the Secretary will allow, rather than require, a consolidated or combined return if a corporation makes the request in writing and files the return in accordance with the written request.

(Effective June 26, 2012, SB 826, s. 1.14.(c), S.L. 12-79.)

G.S. 105-130.15(a) – Conforming Change: This subsection was amended to delete language regarding the Secretary's opinion as to whether a methodology used by the taxpayer to compute its income is proper. Rules for determining income attributable to activities conducted in this State are codified in G.S. 105-130.5A.

(Effective January 1, 2012 and applies to assessments issued on or after that date; HB 619, s. 3, S.L. 11-390.)

G.S. 105-130.16 - Returns: Subsections (b) and (c) were repealed. These are some of the statutes primarily relied on by the Secretary to combine corporations when true earnings were not reported to this State. Rules for determining income attributable to activities conducted in this State are codified in G.S. 105-130.5A.

(Effective January 1, 2012 and applies to assessments issued on or after that date; HB 619, s. 4, S.L. 11-390.)

G.S. 105-130.47(k) – Extended Sunset for Credit for Qualifying Expenses of a Production Company: This subsection was amended to extend the sunset date for this credit to January 1, 2015. The sunset date had been January 1, 2014.

(Effective July 17, 2012, SB 847, s. 79.10.(a), S.L. 12-194.)

G.S. 105-130.48(f) – Extended Sunset for Credit for Recycling Oyster Shells: This subsection was amended to extend the sunset date for this credit to January 1, 2014. The sunset date had been January 1, 2013.

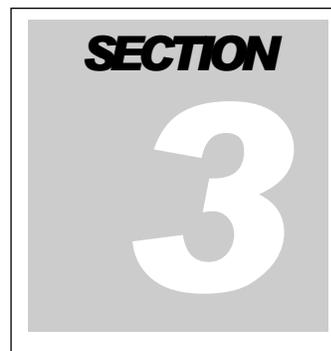
(Effective June 20, 2012, HB 1025, s. 6.(a), S.L. 12-36.)

INSURANCE GROSS 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% for the 2012 calendar year. This charge is a percentage of gross premiums tax liability.

(Effective June 26, 2012; HB 1015, s.1.(c), S.L. 12-74.)

EXCISE TAX



MOTOR FUELS

G.S. 105-241(b)(2a) - Technical: This statute was amended to clarify that a taxpayer who files a return electronically must also pay electronically.

(Effective June 26, 2012; SB 826, s. 2.15, S.L. 2012-179.)

G.S. 105-449.80(a) – Fuel Tax Rate Cap: This statute was amended to cap the motor fuel excise tax at 37.5¢ per gallon.

(Effective for the period of July 1, 2012 – June 30, 2013; HB 950, s. 24.11, S.L. 2012-142.)

TOBACCO

G.S. 105-113.38 - Bonds: This statute was amended to add Irrevocable Letter of Credit as an acceptable instrument for compliance with the bond requirement.

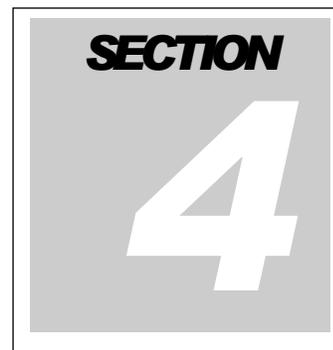
(Effective June 26, 2012; SB 826, s. 2.1, S.L. 2012-179.)

PIPED NATURAL GAS

G.S. 105-187.43(b) - Consistency: This statute was amended to make the prepayment threshold for the excise tax imposed on piped natural gas consistent with the prepayment threshold for retailers required to submit sales and use tax. The threshold for sales and use tax was changed during the 2010 legislative session but was overlooked for piped natural gas.

(Effective June 26, 2012; SB 826, s. 2.13, S.L. 2012-179.)

SALES AND USE TAX



SALES AND USE TAX

G.S. 105-164.3 – Definitions: The 2012 General Assembly added and revised multiple definitions. The changes and their effective dates are as follows:

Over-the-counter drug – (25a). This definition is amended in order to conform precisely to the Streamlined Sales and Use Tax Agreement. As amended, an over-the-counter drug is a “drug that contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66. The label includes either of the following: a. A ‘Drug Facts’ panel. b. A statement of its active ingredients with a list of those ingredients contained in the compound, substance, or preparation.”

(Effective June 26, 2012; SB 826, s. 2.7, S.L. 12-79.)

Prepaid calling service – (26b). This definition is amended to add the word “predetermined” in order to conform precisely to the Streamlined Sales and Use Tax Agreement. As amended, requirement d. of the definition states “[i]s sold in predetermined units or dollars whose number or dollar value declines with use and is known on a continuous basis.”

(Effective June 26, 2012; SB 826, s. 2.7, S.L. 12-79.)

Prepaid wireless calling service – (27a). This definition is amended to add the word “predetermined” in order to conform precisely to the Streamlined Sales and Use Tax Agreement. As amended, requirement c. of the definition states “[i]s sold in predetermined units or dollars whose number or dollar value declines with use and is known on a continuous basis.”

(Effective June 26, 2012; SB 826, s. 2.7, S.L. 12-79.)

Sale or selling – (36). The definition is amended to clarify “sale or selling” includes “license to use or consume” which is included in the definition of “purchase.”

(Effective June 26, 2012; SB 826, s. 2.7, S.L. 12-79.)

Streamlined Agreement – (45a). The definition is amended to reflect the version of the Streamlined Sales and Use Tax Agreement dated December 19, 2011.

(Effective June 26, 2012; SB 826, s. 2.7, S.L. 12-79.)

G.S. 105-164.4B(a) – Sourcing Principles- General: This section is amended to conform the general sourcing principles precisely to the Streamlined Sales and Use Tax Agreement. The section as amended states:

“The following principles apply in determining where to source the sale of a product. These principles apply regardless of the nature of the product, except as otherwise noted in this section:

- (1) When a purchaser receives a product at a business location of the seller, the sale is sourced to that business location.
- (2) When a purchaser or purchaser's donee receives a product at a location specified by the purchaser and the location is not a business location of the seller, the sale is sourced to the location where the purchaser or the purchaser's donee receives the product.
- (3) When subdivisions (1) and (2) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.
- (4) When subdivisions (1), (2), and (3) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.
- (5) When subdivisions (1), (2), (3), and (4) of this subsection do not apply, including the circumstance in which the seller is without sufficient information to apply the rules, the location will be determined based on the following:
 - a. Address from which tangible personal property was shipped,
 - b. Address from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or
 - c. Address from which the service was provided."

(Effective June 26, 2012; SB 826, s. 2.8, S.L. 12-79.)

G.S. 105-164.7 – Retailer to Collect Sales Tax from Purchaser as Trustee for State: This section is amended to add the following language: “[t]he tax must be stated and charged separately on the invoices or other documents of the retailer given to the purchaser at the time of the sale except for either of the following: (1) Vending machine sales. (2) Where a retailer displays a statement indicating the sales price includes the tax.”

(Effective June 26, 2012; SB 826, s. 2.9, S.L. 12-79.)

G.S. 105-164.12C – Items Given Away by Merchants: This is a new section that restores language relating to the application of use tax to items given away by merchants, which was inadvertently deleted in a 2009 budget provision. “If a retailer engaged in the business of selling prepared food and drink for immediate or on-premises consumption also gives prepared food or drink to its patrons or employees free of charge, for the purpose of this Article, the property given away is considered sold along with the property sold. If a retailer gives an item of inventory to a customer free of charge on the condition that the customer purchase similar or related property, the item given away is considered sold along with the item sold. In all other cases, property given away or used by any retailer or wholesale merchant is not considered sold, whether or not the retailer or wholesale merchant recovers its cost of the property from sales of other property.”

The above language was originally added to the definition of “sale or selling” in 1996 as a result of a court case. In 2009, the language dealing with items given away by merchants was removed from a definition with the intent that it would be located elsewhere in the sales and use statutes as a technical change.

(Enacted June 26, 2012 with application of language effective August 7, 2009; SB 826, s. 2.10(a), S.L. 12-79.)

G.S. 105-164.13 – Exemptions and Exclusions: The 2012 General Assembly enacted clarifying changes to exemptions. The changes and their effective dates are as follows:

Any of the following fuel... – (11). This exemption is amended to clarify that to the extent a motor fuel is taxed under Article 36C (Gasoline, Diesel, and Blends), it is exempt from sales and use tax.

(Effective June 26, 2012; SB 826, s. 1.4, S.L. 12-79.)

Installation charges when the charges are separately stated... – (49). This exemption is amended to add the phrase “similar billing document” to parallel the language in G.S. 105-164.13(49a). Installation charges are exempt from sales and use taxes **when** the charges are separately stated on an invoice or similar billing document given to the purchaser at the time of the sale.

(Effective June 26, 2012; SB 826, s. 1.4, S.L. 12-79.)

Delivery charges for delivery of direct mail... – (49a). This exemption is amended to add the phrase “at the time of the sale” to parallel the language in G.S. 105-164.13(49). Delivery charges for delivery of direct mail are exempt from sales and use taxes if the charges are separately stated on an invoice or similar billing document given to the purchaser at the time of the sale.

(Effective June 26, 2012; SB 826, s. 1.4, S.L. 12-79.)

G.S. 105-164.14(a) – Refunds for Interstate Carriers: This section is amended to clarify that airplane miles are not considered in this State if the airplane flies over North Carolina but does not take off or land in this State. This section is also amended to clarify, for purposes of calculating a refund on certain cars, parts, fuel, and repair parts, that an interstate carrier must include all motor vehicles, railroad cars, locomotives, and airplanes that the applicant owns or leases and that are operated both inside and outside this State in the denominator.

(Effective June 26, 2012; SB 826, s. 2.11, S.L. 12-79.)

G.S. 105-164.14A(a)(1) – Refunds for Passenger Air Carrier: This subsection is amended to extend the repeal date for purchases made on or after January 1, 2013 to January 1, 2014.

(Effective June 20, 2012; HB 1025, s. 11.(a), S.L. 12-36.)

G.S. 105-164.14A(a)(1) – Refunds for Passenger Air Carrier: For calendar year 2010, an interstate passenger air carrier that is eligible for a refund of sales and use taxes paid on fuel in excess of two million five hundred thousand dollars (\$2,500,000) under G.S. 105-164.14(a1) and G.S. 105-164.14A(a)(1) is subject to the provisions of this section, notwithstanding any provisions of G.S. 105-164.14, G.S. 105-164.14A, or Section 4 of S.L. 2010-166 to the contrary. Notwithstanding the fact that the first six months of 2010 are subject to G.S. 105-164.14(a1) and the last six months of 2010 are subject to G.S. 105-164.14A(a)(1), a taxpayer shall submit one request for a refund for the entire calendar year.

(Effective June 26, 2012; HB 1015, s. 3.(a), S.L. 12-74.)

An interstate passenger air carrier is allowed a refund of the sales and use tax paid by it on fuel in excess of one million two hundred fifty thousand dollars (\$1,250,000) for the period January 1, 2011, through June 30, 2011. The State portion of the refund may not exceed three million one hundred fifty thousand dollars (\$3,150,000). The amount of sales and use tax paid does not include a refund allowed to the interstate passenger air carrier under G.S. 105-164.14(a). A request for a refund must be in writing and must include any information and documentation required by the Secretary. The request for a refund is due before October 1, 2012. A refund applied for after the due date is barred.

(Effective January 1, 2011, and applies to purchases made on or after that date; HB 1015, s. 3.(b) & (c), S.L. 12-74.)

G.S. 105-164.14A(a)(3) – Refunds for Business in Low-Tier Area: This subsection is amended to extend the repeal date for purchases made on or after January 1, 2013 to January 1, 2014.

(Effective June 20, 2012; HB 1025, s. 11.(a), S.L. 12-36.)

G.S. 105-164.14A(a)(4) – Refunds for Motorsports Team or Sanctioning Body:

This subsection is amended to extend the repeal date for purchases made on or after January 1, 2013 to January 1, 2014.

(Effective June 20, 2012; HB 1025, s. 11.(a), S.L. 12-36.)

G.S. 105-164.14A(a)(6) – Refunds for Analytical Services Business:

This subsection is amended to extend the repeal date for purchases made on or after January 1, 2013 to January 1, 2014.

(Effective June 20, 2012; HB 1025, s. 11.(a), S.L. 12-36.)

G.S. 105-164.14B(f) – Refunds for Certain Industrial Facilities:

This subsection is amended to extend the repeal date for purchases made on or after January 1, 2013 to January 1, 2014.

(Effective June 20, 2012; HB 1025, s. 11.(b), S.L. 12-36.)

G.S. 105-164.27A(a) – Direct Pay Permit General:

This section is amended by adding the words “for storage, use, or consumption in this State” to make it clear that a direct pay permit may not be used to avoid paying North Carolina sales tax when purchasing items from North Carolina vendors where the items are delivered to the purchaser in North Carolina.

(Effective June 26, 2012; SB 826, s. 2.12, S.L. 12-79.)

G.S. 105-164.27A(b) – Direct Pay Permit Telecommunications Service:

This section is amended as a conforming change by adding the word “quarterly” so that the filing frequency requirements are consistent with the filing frequency requirements for general State and local sales tax remitters.

(Effective June 26, 2012; SB 826, s. 2.12, S.L. 12-79.)

One-Year Sales Tax Refund for Purchases of Specialized Equipment Used at

State Ports: See Certain Machinery and Equipment – Article 5F for information regarding a refund of sales and use taxes for purchases made on or after July 1, 2012, but before July 1, 2013.

(Effective June 26, 2012 and applies to purchases of eligible property made on or after July 1, 2012, but before July 1, 2013; HB 1015, s. 7, S.L. 12-74.)

One-Year Sales Tax Refund for Specified Purchases by a Large Manufacturing and Distribution Facility: See Certain Machinery and Equipment – Article 5F for information regarding a refund of sales and use taxes for purchases made on or after July 1, 2012, but before July 1, 2013.

(Effective June 24, 2011 and applies to purchases of eligible property made on or after July 1, 2012, but before July 1, 2013; HB 751, s. 3.(b), S.L. 11-302.)

LOCAL SALES AND USE TAX

G.S. 105-468 – Scope of Use Tax: A technical change was enacted to conform the statute to parallel the language in the statute for the State use tax, which was amended during the 2011 session. The 2011 change in S.L. 2011-330, s.25(a) was a clarifying change. In order for credit to be allowed against North Carolina local sales and use taxes, taxes paid to another local jurisdiction must be “due” and “paid.” Taxes paid to another jurisdiction but not legally due are not allowed as a credit against North Carolina local use taxes.

(Effective June 26, 2012; SB 826, s. 1.10, S.L. 12-79.)

G.S. 105-501(b) – Deductions: This amends the subsection (b)(2)b. to delete one-twelfth of the costs for the preceding year for the Department of State Treasurer’s costs for personnel and operations of the Local Government Commission.

(Effective July 1, 2012; HB 200, s. 27.1.(b), S.L. 11-145.)

HIGHWAY USE TAX – ARTICLE 5A

G.S. 105-187.9(b)(1) and (2) – Use of Tax Proceeds: This subsection is temporarily amended to transfer to the General Fund during the 2011-2012 fiscal year the sum of seventy-six million seven hundred twenty-three thousand six hundred and forty-two dollars (\$76,723,642) and to transfer to the General Fund during the 2012-2013 fiscal year the sum of twenty-seven million six hundred thousand dollars (\$27,600,000).

(Effective July 1, 2011; HB 200, s. 2.2.(b), S.L. 11-145.)

G.S. 105-187.9(c) – Use of Tax Proceeds: This subsection is amended to rename the Mobility Fund Transfer to the Prioritization Reserve. The DOT Prioritization Reserve account is within the Highway Trust Fund.

(Effective July 1, 2012; HB 200, s. 28.33.(c), S.L. 11-145.)

G.S. 105-187.9(c) – Use of Tax Proceeds: This subsection is amended to increase the amount of Prioritization Reserve Transfer from forty-five million dollars (\$45,000,000) to fifty-eight million dollars (\$58,000,000).

(Effective July 1, 2013; HB 200, s. 28.33.(d), S.L. 11-145.)

SCRAP TIRE DISPOSAL TAX – ARTICLE 5B

G.S. 105-187.19(b) – Use of Tax Proceeds: This subsection is temporarily amended for taxes levied during the 2011-2012 fiscal year. The Secretary must credit to the General Fund the sum of two million two hundred sixty-eight thousand nine hundred eighty-nine dollars (\$2,268,989) from the net proceeds that G.S. 105-187.19(b) directs the Secretary of Revenue to credit to the Scrap Tire Disposal Account.

(Effective July 1, 2011; HB 200, s. 2.2.(f), S.L. 11-145.)

WHITE GOODS DISPOSAL TAX – ARTICLE 5C

G.S. 105-187.24 – Use of Tax Proceeds: This subsection is temporarily amended for taxes levied during the 2011-2012 fiscal year. The Secretary must credit to the General Fund the sum of one million nine hundred fifty-one thousand four hundred sixty-five dollars (\$1,951,465) from the net proceeds that G.S. 105-187.24 directs the Secretary of Revenue to credit to the White Goods Management Account.

(Effective July 1, 2011; HB 200, s. 2.2.(g), S.L. 11-145.)

CERTAIN MACHINERY AND EQUIPMENT – ARTICLE 5F: The title of Article 5F of Chapter 105 of the General Statutes is rewritten to delete “Manufacturing Fuel.” The tax on manufacturing fuel was repealed, effective July 1, 2010.

(Effective June 26, 2012; SB 826, s. 1.5, S.L. 12-79.)

One-Year Sales Tax Refund for Purchases of Specialized Equipment Used at State Ports: For purchases made on or after July 1, 2012, but before July 1, 2013, a company located at a ports facility for waterborne commerce that purchases specialized equipment to be used at the facility to unload or process bulk cargo to make it suitable for delivery to and use by manufacturing facilities is allowed a refund of all local sales and use taxes paid and a portion of State sales and use taxes paid on the purchases as provided in this section. The portion of the State sales and use taxes that may be refunded is equal to the excess of the State sales and use taxes paid over the amount that would have been due had the taxpayer been subject to tax on the eligible property as if it were mill machinery under Article 5F of Chapter 105 of the General Statutes. A request for a refund under this section must be in writing and must include any

information and documentation required by the Secretary. A request for a refund under this section must be made on or after July 1, 2013, and is due before January 1, 2014. Refunds applied for after the due date are barred. Taxes for which a refund is allowed under this section are not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21.

(Effective June 26, 2012 and applies to purchases of eligible property made on or after July 1, 2012, but before July 1, 2013; HB 1015, s. 7, S.L. 12-74.)

G.S. 105-187.51B(a)(5) – Tax Imposed on Companies Located at Ports Facilities:

This is a new subdivision that imposes the 1% privilege tax with a maximum tax of eighty dollars (\$80.00) per article on a company located at a ports facility for waterborne commerce that purchases specialized equipment to be used at the facility to unload or process bulk cargo to make it suitable for delivery to and use by manufacturing facilities.

(Effective July 1, 2013 and applies to purchases made on or after that date; HB 751, s. 1, S.L. 11-302.)

One-Year Sales Tax Refund for Specified Purchases by a Large Manufacturing and Distribution Facility: For purchases of eligible property made on or after July 1, 2012, but before July 1, 2013, a large manufacturing and distribution facility is allowed a refund of all local sales and use taxes paid and a portion of State sales and use taxes paid on the purchases as provided in this section. The portion of the State sales and use taxes that may be refunded is equal to the excess of the State sales and use taxes paid over the amount that would have been due had the taxpayer been subject to tax on the eligible property if it were mill machinery under Article 5F of Chapter 105 of the General Statutes. A request for a refund under this section must be in writing and must include any information and documentation required by the Secretary. A request for a refund under this section must be made on or after July 1, 2013, and is due before January 1, 2014. Refunds applied for after the due date are barred. Refunds allowed under this section are not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21.

(Effective June 24, 2011 and applies to purchases of eligible property made on or after July 1, 2012, but before July 1, 2013; HB 751, s. 3.(b), S.L. 11-302.)

G.S. 105-187.51D – Tax Imposed on Machinery at Large Manufacturing and Distribution Facility:

This is a new section that imposes the 1% privilege tax with a maximum tax of eighty dollars (\$80.00) per article on purchases of mill machinery, distribution machinery, or parts or accessories (an accessory is not electricity) for mill machinery or distribution machinery for storage, use, or consumption in North Carolina by a large manufacturing and distribution facility. For the purposes of this new section, a 'large manufacturing and distribution facility' is a facility that is to be used primarily for manufacturing or assembling products and distributing finished products for which the Secretary of Commerce makes a certification that an investment of private funds of at

least eighty million dollars (\$80,000,000) has been or will be made in real and tangible personal property for the facility within five years after the date on which the first property investment is made and that the facility will achieve an employment level of at least 550 within five years after the date the facility is placed into service and maintain that minimum level of employment throughout its operation. If the required level of investment or employment to qualify as a large manufacturing and distribution facility is not timely made, achieved, or maintained, then the rate provided under this new section is forfeited. If the rate is forfeited due to a failure to timely make the required investment or to timely achieve the minimum required employment level, then the rate provided under this new section is forfeited on all purchases. If the rate is forfeited due to a failure to maintain the minimum required employment level once that level has been achieved, then the rate provided under this new section is forfeited for those purchases occurring on or after the date the taxpayer fails to maintain the minimum required employment level. A taxpayer that forfeits a rate under this new section is liable for all past sales and use taxes avoided as a result of the forfeiture, computed at the applicable State and local rates from the date the taxes would otherwise have been due, plus interest at the rate established under G.S. 105-241.21. Interest is computed from the date the sales or use tax would otherwise have been due. A credit is allowed against the State sales or use tax owed as a result of the forfeiture provisions of this subsection for privilege taxes paid pursuant to this section. For purposes of applying this credit, the fact that payment of the privilege tax occurred in a period outside the statute of limitations provided under G.S. 105-241.6 is not considered. The credit reduces the amount forfeited, and interest applies only to the reduced amount. The past taxes and interest are due 30 days after the date of forfeiture. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236.

(Effective July 1, 2013 and applies to purchases made on or after that date; HB 751, s. 2, S.L. 11-302; This section expires for sales occurring on or after July 1, 2018; HB 751, s. 2, S.L. 11-302.)

911 SERVICE CHARGE FOR PREPAID WIRELESS TELECOMMUNICATIONS SERVICE – ARTICLE 5H

G.S. 105-187.70 – Department Comply with Article 3 of Chapter 62A of the General Statutes: This is a new article that requires the Department of Revenue to comply with the provisions of Article 3 of Chapter 62A of the General Statutes to receive and transfer to the 911 Fund the 911 service charges for prepaid wireless telecommunications service collected on retail transactions occurring in this State. The Department has been tasked with collecting the 911 service charges for prepaid wireless telecommunications service which will include activities such as processing forms and remittances, distributing collections, and auditing.

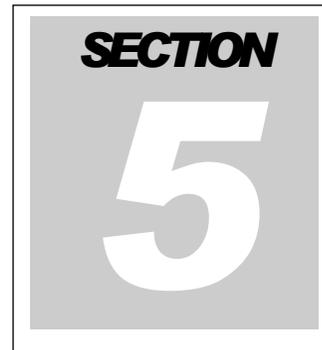
(Effective July 1, 2013 and applies to all retail transactions occurring in this State; HB 571, s. 6, S.L. 11-122. Effective June 26, 2012, a technical correction changed the statutory catchline to correct Article 4 enacted in the original legislation to Article 3; SB 826, s. 1.6, S.L. 12-79.)

MISCELLANEOUS ITEM

G.S. 143.59.1(a) – Ineligible Vendors: This section was amended to clarify that the Department of Administration and other entities to which this Article applies shall not contract for goods or services with a vendor or an affiliate of the vendor if the Secretary of Revenue has determined that the vendor or affiliate of the vendor meets one or more of the conditions of G.S. 105-164.8(b) but refuses to collect the use tax levied under Article 5 of Chapter 105 of the General Statutes on its sales delivered to North Carolina.

(Effective June 26, 2012; SB 826, s. 2.14, S.L. 12-79.)

LOCAL GOVERNMENT



LOCAL GOVERNMENT

G.S. 105-243.1(a1) — Use of Contingent Based Contracts: Adds new section stating that in determining the liability of any person for a tax, the Secretary may not employ an agent who is compensated in whole or in part by the State for services rendered on a contingent basis or any other basis related to the amount of tax, interest, or penalty assessed against or collected from the person.

(Effective July 12, 2012; HB 462, s. 1, S.L. 2012-152.)

G.S. 105-277.8 — Taxation of Nonprofit Homeowners' Association: Simplifies the collection of property taxes that are due on property owned by certain nonprofit homeowners associations when the association's property is located in one unit of local government and the association members' property is located in a different unit of local government.

(Effective July 12, 2012; HB 1105, s. 1, 2, and 3, S.L. 2012-157.)

G.S. 105-299 — Use of Contingent Based Contracts: Adds the following new language: If the board of county commissioners employs any person or firm to assist the assessor in the performance of the assessor's duties, the person or firm may not be compensated, in whole or in part, on a contingent fee basis or any other similar method that may impair the assessor's independence or the perception of the assessor's independence by the public.

(Effective July 12, 2012; HB 462, s. 2, S.L. 2012-152.)

G.S. 105-321 — Minimal Taxes: Removes motor vehicles from the minimal taxes statutes which allow the amount of property tax on a motor vehicle of any amount to be billed in the new combined property tax and motor vehicle registration system. Does not affect taxes on other real or personal property.

(Effective July 1, 2013; SB 826, s. 3.1, S.L. 2012-79.)

G.S. 105-330.2 — Motor Vehicle Appeals: Clarifies the appeal process for a vehicle owner to appeal the value of a motor vehicle and provides for a 30 day appeal process for a vehicle owner to appeal the county assessor's initial decision to deny a motor vehicle exemption or exclusion application.

(Effective July 1, 2013; SB 826, s. 3.2, S.L. 2012-79.)

G.S. 105-330.3(a1) — Taxation of Unregistered Motor Vehicles: Clarifies the process for taxing motor vehicles which are unregistered on January 1, of each year. Ensures that no vehicle is double taxed as a registered vehicle and an unregistered vehicle for the same tax year. Allows the county assessor to assess and tax any unregistered vehicle for the months in which it remained unregistered.

(Effective July 1, 2013; SB 826, s. 3.3, S.L. 2012-79.)

G.S. 105-330.3(b) — Property Tax Exemption and Exclusion of Motor Vehicles: Clarifies that a motor vehicle owner has to make an application for an exemption or exclusion within 30 days of the date the taxes on a motor vehicle are due.

(Effective July 1, 2013; SB 826, s. 3.3, S.L. 2012-79.)

G.S. 105-330.4(b) — Interest on Unpaid Motor Vehicle Taxes: Interest on unpaid motor vehicle taxes accrues at the rate of 5% for the remainder of the month following the date in which the registration renewal sticker expired and provides that 3/4% interest begins the second month following the due date with an additional 3/4% interest charged for each month thereafter.

(Effective July 1, 2013; SB 826, s. 3.4, S.L. 2012-79.)

G.S. 105-330.4(c) — Collection Remedies on Unpaid Motor Vehicle Taxes: Clarifies that the enforcement remedies in this Subchapter apply to unpaid taxes on an unregistered classified motor vehicle and for any unpaid taxes on a registered motor vehicle for which the tax year begins on or before July 1, 2013.

(Effective July 1, 2013; SB 826, s. 3.4, S.L. 2012-79.)

G.S. 105-330.4(d) — Tax Payments Submitted by Mail: Changes the tax collector to the collecting authority to determine when a tax payment is deemed to be received.

(Effective July 1, 2013; SB 826, s. 3.4, S.L. 2012-79.)

G.S. 105-330.5(e) — Is Repealed

(Effective July 1, 2013; SB 826, s. 3.5, S.L. 2012-79.)

G.S. 105-458 — Apportionment of Payments in Lieu of Taxes Between Local Units: Clarifies the apportionment of TVA payments between Swain County and Graham County, and establishes the boundary line between the two counties.

(Effective June 26, 2012; SB 1088, s. 1 and 2, S.L. 2012-62.)

G.S. § 105A-2(6) Debt Setoff: Authorizes a regional solid waste management authority to collect unpaid delinquent debt by setting off the debt against a state income tax refund.

(Effective June 28, 2012; HB 605, s. 1, S.L. 2012-88)

G.S. 153A-311 – G.S. 153A-317.1 — Revises the Laws Relating to County Research and Production Service Districts and the Approval of Property Taxes in Multijurisdictional Districts: Revises the standards that a county research and production service district must meet when established by a county board of commissioners. Establishes additional uses for which property within a service district can be used. Establishes standards and rules by which an urban research service district can be established and how such a district may levy a property tax within the district.

(Effective June 21, 2012; HB 391, s. 1, S.L. 2012-152)

G.S. 153A-146 — Use of Contingent Based Contracts: Adds the new language: In determining the liability of any taxpayer for a tax, a county may not employ an agent who is compensated in whole or in part by the county for services rendered on a contingent basis or any other basis related to the amount of tax, interest, or penalty assessed against or collected from the taxpayer.

(Effective July 12, 2012; HB 462, s. 4, S.L. 2012-152.)

G.S. 153A-340 — Prohibit Issues of Permit Until Delinquent Property Taxes Are Paid: Adds Sampson County to the list of counties that may by ordinance provide that a special use permit or conditional use permit may not be issued under subsection (c1) of this section to a person who owes delinquent property taxes, determined under G.S. 105-360, on property owned by the person. Such ordinance may provide that a special use permit or conditional use permit may be issued to a person protesting the assessment or collection of property taxes.

G.S. 153A-357 — Prohibit Issues of Permit Until Delinquent Property Taxes Are Paid: Adds Sampson County to the list of counties that may by ordinance provide that a permit may not be issued under subsection (a) of this section to a person who owes delinquent property taxes, determined under G.S. 105-360, on property owned by the person. Such ordinance may provide that a building permit may be issued to a person protesting the assessment or collection of property taxes.

(Effective June 12, 2012; HB 296, s. 1, and 2, S.L. 2012-23)

G.S. 160A-206 — Use of Contingent Based Contracts: Adds the new language: In determining the liability of any taxpayer for a tax, a city may not employ an agent who is compensated in whole or in part by the city for services rendered on a contingent basis

or any other basis related to the amount of tax, interest, or penalty assessed against or collected from the taxpayer.

(Effective July 12, 2012; HB 462, s. 5, S.L. 2012-152.)

G.S. 161-31(b) — Payment of Delinquent Property Taxes: Adds Sampson County to the list of counties authorized to require the payment of delinquent property taxes before recording deeds conveying property.

(Effective June 12, 2012; HB 296, s. 3, S.L. 2012-23.)

G.S. 161-31(b) — Payment of Delinquent Property Taxes: Adds Stokes County to the list of counties authorized to require the payment of delinquent property taxes before recording deeds conveying property.

(Effective June 28, 2012; HB 1197, s. 1, S.L. 2012-114.)

A local act only in effect for Alamance County and Orange County: An act to authorize Alamance County and Orange County to establish the location of the remaining nine percent of the common boundary between Alamance County and Orange County not addressed by session law 2011-88 and as authorized by session law 2010-62.

(Effective June 28, 2012; SB 1090, s. 1-12, S.L. 2012-108.)

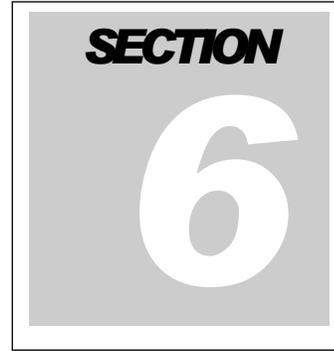
A local act to study local option sales tax: Allows the Revenue Laws Study Committee to conduct a study whether municipalities should be granted the authority to levy a local option sales tax for the purpose of providing dedicated funding for beach nourishment and other natural resources preservation.

(Effective July 16, 2012; SB 1181, s. 1 and 2, S.L. 2012-189.)

Effective Date of House Bill 462: Places the following sunset on the ban on contingency fee basis audits by local government: From July 1, 2013, until July 1, 2015, cities and counties shall not renew any contingency fee-based contracts for these services. From July 1, 2013, until July 1, 2015, cities and counties shall not assign further audits on a contingency fee basis to an auditing firm under a contract that meets all the following conditions: (i) the contract would have been prohibited under this act had the contract been entered into after July 1, 2013, and (ii) the contract allows the assignment of audits on a discretionary basis. The remainder of the act is effective when the act becomes law.

(Effective July 17, 2012; SB 847, s. 61.5(b), S.L. 2012-152.)

GENERAL ADMINISTRATION



GENERAL ADMINISTRATION

G.S. 105-228.90(b)(16) - Reference to the Internal Revenue Code Updated:

The calculation of North Carolina taxable income begins with federal taxable income as defined under the Internal Revenue Code (“Code”). State law defines the Code as the Code enacted as of a certain date. When our State law’s reference date to the Code is updated each year, that change conforms North Carolina law to federal law that has been enacted as of that date, except for any items for which specific adjustments are required by State law.

This subdivision was amended to update the reference to the Internal Revenue Code from January 1, 2011 to January 1, 2012. Notwithstanding the effective date, any amendments to the Internal Revenue Code enacted after January 1, 2011 that increase North Carolina taxable income for the 2011 taxable year become effective for taxable years beginning on or after January 1, 2012.

(Effective June 26, 2012, SB 826, s. 1.7.(a), S.L. 12-79.)

G.S. 105-236(a)(3) – Penalty, Failure to File: This subdivision was amended to eliminate the \$5 minimum penalty. The penalty will be based on the appropriate percentage regardless of the result.

(Effective January 1, 2014, SB 826, s. 2.18(a), S.L. 12-79.)

G.S. 105-236(a)(4) – Penalty, Failure to Pay: This subdivision was amended to eliminate the \$5 minimum penalty. The penalty will be based on the appropriate percentage regardless of the result.

(Effective January 1, 2014, SB 826, s. 2.18(a), S.L. 12-79.)

G.S. 105-241(b)(2a) – Technical Change; Motor Fuel Taxes: This subsection was amended to replace the phrase “is required to file” with the word “files”. This clarifies that the taxpayer is required to pay the tax by electronic funds transfer any time it files a return under the specified articles.

Effective July 1, 2012, SB 826, s.2.15, S.L. 12-79.)

G.S. 105-243.1(a1) – Collection of Tax Debts: This subsection was added to prohibit the employment by the Secretary of any agent compensated in whole or in part by the State for services rendered on a contingent basis or any other basis related to the amount of tax, interest, or penalty assessed against or collected from the person.

(Effective July 1, 2012, and applies to audits, determinations of liability, and assessments contracted for on or after that date; HB 462, s.1, S.L. 12-152.)

G.S. 105-259(b)(15) – Technical Change; Secrecy Required of Officials; Penalty for Violation: This subdivision was amended to delete the reference to the United States Treasury Department and replace it with United States Department of Justice.

(Effective June 26, 2012, SB 881, s. 35, S.L. 12-83.)

G.S. 105-259(b)(43) – Secrecy Required of Officials; Penalty for Violation: This subsection was changed to add a new subdivision. The new subdivision requires the Department to furnish requested workforce data to the North Carolina Longitudinal Data System, as required by G.S. 116E-6. Information is to be provided in a nonidentifying form for statistical and analytical purposes to facilitate and enable the linkage of student data and workforce data and must not include specific taxpayer identification.

(Effective June 29, 2012, HB 964, s. 1.(b), S.L. 12-133.)

G.S. 105-262(b) – Rules, Notice and Hearing Exceptions: This subsection is repealed.

(Effective June 20, 2012, SB 824, s. 1, S.L. 12-43.)

G.S. 105-262.1 – Rules to Exercise Authority under G.S. 105-130.5A: This section was added to require the interpretation of statutes concerning the authority to adjust net income or require a combined return be made through rule making and to provide an expedited process for rule making on this issue.

Except for a voluntary redetermination as allowed under G.S. 105-130.5A(c), the Secretary may not redetermine the State net income of a corporation properly attributable to its business carried on in the State under G.S. 105-130.5A until a rule has been adopted in accordance with this section.

Generally, the Secretary must prepare a fiscal note for a proposed new rule or a proposed change to a rule that has a substantial economic impact. The fiscal note must be submitted with the rule to the Codifier of Rules. The Codifier of Rules will publish the proposed rule and fiscal note on the Internet. The Secretary must accept written comments on both the proposed rule and the fiscal note. However, if the proposed new rule is submitted to the Codifier of Rules prior to December 31, 2012, the Secretary is not required to prepare a fiscal note for a proposed new rule explaining the Secretary's authority under and application of G.S. 105-130.5A.

The Secretary may adopt a rule by using the adoption of temporary rule procedure (G.S. 150B-21.1(a3)). The Secretary must provide electronic notification of the adoption of a rule to persons who have requested notice of rule making and any other interested parties including those originally given notice of the rule making and those who provided comment on the rule.

A person may object to the rule and request review by the Rules Review Commission at any point prior to the rule adoption and by 5:00 P.M. of the third business day following notification from the Secretary of the adoption of a rule. If the Secretary receives written objection to a rule and request for review, the rule must be reviewed as described below. If no written objection and/or request for review are received by the Secretary, the rule is delivered to the Codifier of Rules for entry into the North Carolina Administrative Code.

When reviewing a rule, the Commission may not consider questions relating to the quality or efficacy of the rule, but must restrict its review to a determination of whether the rule meets all of these criteria: 1) the rule is written within the authority delegated to the agency by the General Assembly, 2) the rule is clear and unambiguous, 3) the rule is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission must consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed, and 4) the rule is adopted in accordance with this section.

The review of a proposed rule is to be done within 15 days of receipt of request by the Commission and must be done by a staff member who is an attorney licensed to practice law in North Carolina. This staff member makes a recommendation to the Commission or its designee (a panel of at least three members of the Commission). The staff member, Commission's designee, or the Commission may request technical changes and may condition approval of the rule on the agency's making the requested changes. The Commission may consider any information submitted by the Secretary or another person in reviewing the rule.

If the Commission or its designee determines that the rule does not meet all the criteria and objects to the rule, the Secretary must be informed in writing of the objection and the reason for the objection within one business day of the determination. The Secretary must either change the rule to satisfy the Commission and submit the revised rule to the Commission or submit a written response indicating the rule will not be revised.

When the Secretary changes a rule in response to an objection by the Commission, the Commission determines if the changes satisfy the Commission's objection. If so, the Commission approves the rule and delivers it to the Codifier of Rules for entry into the North Carolina Administrative Code. If not, the Commission must send a written statement of continued objection and the reason for the continued objection.

A rule to which the Commission has objected remains under review by the Commission until the Secretary decides not to satisfy the Commission's objection and makes a written request to the Commission to return the rule to the Secretary. When the rule is returned to the Secretary, the Secretary may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.

A rule adopted under this section becomes effective on the last day of the month the Codifier of Rules enters the rule in the North Carolina Administrative Code.

(Effective June 20, 2012, SB 824, ss. 2,4, S.L. 12-43.)

G.S. 105-262.1 – Rules to Exercise Authority under G.S. 105-130.5A: The legislation which enacted this section supersedes directive CD-12-02 which was published pursuant to G.S. 105-264. The directive explains the Secretary's authority under G.S. 105-130.5A to redetermine a corporation's net income by adjusting the corporation's intercompany transactions or requiring a corporation to file a combined income tax return for tax years beginning on or after January 1, 2012. However, a taxpayer who relied upon the interpretation in Directive CD-12-02, and whose North Carolina taxable income for the 2012 taxable year is less under the Directive's interpretation than under an interpretation of G.S. 105-130.5A by a rule adopted pursuant to G.S. 105-262.1, as enacted by this act is entitled to rely on the interpretation under the Directive for the 2012 taxable year.

(Effective June 20, 2012, SB 824, s. 5, S.L. 12-43.)

G.S. 105-262.1 – Rules to Exercise Authority under G.S. 105-130.5A: The Secretary of Revenue's authority under G.S. 105-130.5A exists continuously for taxable years beginning on or after January 1, 2012. However, the Secretary cannot exercise the authority granted under G.S. 105-130.5A until a rule in accordance with this section becomes effective. After the rule becomes effective, the Secretary may issue a proposed denial of refund or a proposed assessment under the authority of G.S. 105-130.5A for any taxable year beginning on or after January 1, 2012, subject to the applicable statute of limitations.

(Effective June 20, 2012, SB 824, s. 6, S.L. 12-43.)

G.S. 105-263(a) – Technical Change; Timely Filing of Mailed Documents and Requests for Extensions: During the 2010 Legislative Session, the General Assembly enacted S.L. 2010-147, adding this subsection to provide that Section 7502 of the Code governs when a return, report, payment, or any other document that is mailed to the Department is filed. This section of the Code is known as the "mailbox rule." Under the mailbox rule, the date the document is considered filed is the United States postmark date stamped on the cover in which such return, report, payment, or other document is mailed. Therefore, a request for review is considered filed when it is mailed, rather than when it is received by the DOR. During the 2012 Session, this subsection was

amended to add a reference to Internal Revenue Code Section 7503, which sets out that when the last day prescribed by statute to perform an act, such as filing a return, falls on a weekend or legal holiday, the performance of that act is considered timely if it is performed on the next succeeding business day.

(Effective June 26, 2012, SB 826, s. 1.8, S.L. 12-79.)

G.S. 105A-2(6) – Debt Setoff Collection Act Definitions: For purposes of the Debt Setoff Collection Act, the definition of local agency is expanded to include a regional solid waste management authority created under Article 22 of Chapter 153A of the General Statutes.

(Effective January 1, 2013, and applies to tax refunds determined by the Department on or after that date, HB 605, s. 1, S.L. 12-88.)