

~~GENERAL ASSEMBLY OF NORTH CAROLINA~~

~~SESSION 1989~~

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~~HOUSE BILL 399\*~~

~~Committee Substitute Favorable 4/7/89~~

~~Committee Substitute #2 Favorable 5/30/89~~

~~Fourth Edition Engrossed 6/1/89~~

~~Finance Senate Committee Substitute Adopted 6/29/89 with Amendments 1,2,&3~~

~~Sixth Edition Engrossed 7/4/89~~

~~Short Title: Highway Trust Fund/General Fund Revenue.~~

~~(Public)~~

~~Sponsors:~~

~~Referred to:~~

~~February 28, 1989~~

~~A BILL TO BE ENTITLED~~

~~AN ACT TO ESTABLISH THE NORTH CAROLINA HIGHWAY TRUST FUND,  
TO PROVIDE REVENUE FOR THE FUND, TO DESIGNATE HOW REVENUE  
IN THE FUND IS TO BE USED, AND TO RAISE REVENUE FOR THE  
GENERAL FUND.~~

~~The General Assembly of North Carolina enacts:~~

~~CONTENTS~~

~~I. NORTH CAROLINA HIGHWAY TRUST FUND~~

~~II. CERTIFICATE OF TITLE FEE/ALTERNATE TRANSPORTATION  
FUNDING~~

~~III. SALES TAX CHANGES~~

~~IV. MOTOR VEHICLE USE TAX~~

~~V. MOTOR FUEL TAX~~

~~VI. ESTIMATED INCOME TAX AMENDMENTS~~

~~VII. EFFECTIVE DATES~~

~~PART I.~~

~~HIGHWAY TRUST FUND.~~

~~Section 1.1. Chapter 136 of the General Statutes is amended by adding a new  
Article to read:~~

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**GENERAL ASSEMBLY OF NORTH CAROLINA**

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**GENERAL ASSEMBLY OF NORTH CAROLINA**

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**GENERAL ASSEMBLY OF NORTH CAROLINA**

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**GENERAL ASSEMBLY OF NORTH CAROLINA**

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**GENERAL ASSEMBLY OF NORTH CAROLINA**

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**GENERAL ASSEMBLY OF NORTH CAROLINA**

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~~Sec. 1.2. Chapter 120 of the General Statutes is amended by adding a new~~

~~Article to read:~~

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**GENERAL ASSEMBLY OF NORTH CAROLINA**

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1           ~~Sec. 1.3. Article 2 of Chapter 136 of the General Statutes is amended by~~  
2 ~~adding a new section to read:~~

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13           ~~(1)~~

14           ~~(2)~~

15           ~~(3)~~

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18           ~~(1)~~

19           ~~(2)~~

20           ~~(3)~~

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23   "

24           ~~Sec. 1.4. G.S. 136-41.1(a) reads as rewritten:~~

25       ~~"(a) There is hereby annually appropriated out of the State Highway Fund a sum~~  
26 ~~equal to the net amount after refunds that was produced during the fiscal year by a one~~  
27 ~~and three-fourths cents (1 3/4¢) tax on each gallon of motor fuel as taxed by G.S. 105-~~  
28 ~~434 and 105-435, to be allocated in cash on or before October 1 of each year to the~~  
29 ~~cities and towns of the State in accordance with the following formula:~~

30       ~~Seventy five percent (75%) of said funds shall be distributed among the several~~  
31 ~~eligible municipalities of the State in the percentage proportion that the population of~~  
32 ~~each eligible municipality bears to the total population of all eligible municipalities~~  
33 ~~according to the most recent annual estimates of population as certified to the Secretary~~  
34 ~~of Revenue by the State Budget Officer. This annual estimation of population shall~~  
35 ~~include increases in the population within the municipalities caused by annexations~~  
36 ~~accomplished through July 1 of the calendar year in which these funds are distributed.~~  
37 ~~Twenty five percent (25%) of said fund shall be distributed among the several eligible~~  
38 ~~municipalities of the State in the percentage proportion that the mileage of public streets~~  
39 ~~in each eligible municipality which does not form a part of the highway system bears to~~  
40 ~~the total mileage of the public streets in all eligible municipalities which do not~~  
41 ~~constitute a part of the State highway system.~~

42       ~~It shall be the duty of the mayor of each municipality to report to the Department of~~  
43 ~~Transportation such information as it may request for its guidance in determining the~~  
44 ~~eligibility of each municipality to receive funds by virtue of G.S. 136-41.1 and 136-41.2~~



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**GENERAL ASSEMBLY OF NORTH CAROLINA**

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1 and in determining the amount of allocation to which each is entitled. Upon failure of  
2 any municipality to make such report within the time prescribed by the Department of  
3 Transportation, the Department of Transportation may disregard such defaulting unit in  
4 making said allotment.

5 The funds to be allocated under this section shall be paid in cash to the various  
6 eligible municipalities on or before October 1 each year after March 15, 1951. Provided  
7 that eligible municipalities are authorized within the discretion of their governing bodies  
8 to enter into contracts for the purpose of maintenance, repair, construction,  
9 reconstruction, widening, or improving streets of such municipalities at any time after  
10 January 1 of any calendar year in total amounts not to exceed ninety percent (90%) of  
11 the amount received by such municipality during the preceding fiscal year, in  
12 anticipation of the receipt of funds under this section during the next fiscal year, to be  
13 paid for out of such funds when received.

14 No allocation to cities and towns shall be made under the provisions of this section  
15 from the one cent (1¢) per gallon additional tax on gasoline imposed by Chapter 46 of  
16 the Session Laws of 1965, unless and until said additional one cent (1¢) per gallon tax  
17 produces funds which are not needed for or committed by said Chapter 46 of the  
18 Session Laws of 1965, to the payment of the principal of or the interest on the  
19 secondary road bonds issued pursuant to the provisions of said Chapter 46 of the  
20 Session Laws of 1965. The Department of Transportation is hereby authorized to  
21 withhold each year an amount not to exceed one percent (1%) of the total amount  
22 appropriated in G.S. 136-41.1 for the purpose of correcting errors in allocations:  
23 Provided, that the amount so withheld and not used for correcting errors will be carried  
24 over and added to the amount to be allocated for the following year.

25 The word 'street' as used in this section is hereby defined as any public road  
26 maintained by a municipality and open to use by the general public, and having an  
27 average width of not less than 16 feet. In order to obtain the necessary information to  
28 distribute the funds herein allocated, the Department of Transportation may require that  
29 each municipality eligible to receive funds under G.S. 136-41.1 and 136-41.2 submit to  
30 it a statement, certified by a registered engineer or surveyor of the total number of miles  
31 of streets in such municipality. The Department of Transportation may in its discretion  
32 require the certification of mileage on a biennial basis."

33 Sec. 1.5. G.S. 136-44.2A reads as rewritten:

34 **"§ 136-44.2A. Secondary road construction.**

35 There shall be annually allocated out of the State Highway Fund to the Department  
36 of Transportation for secondary road construction programs developed pursuant to G.S.  
37 136-44.7 and 136-44.8, a sum equal to that allocation made under G.S. 136-41.1(a).  
38 Such secondary roads allocation shall be made in accordance with the provisions of  
39 G.S. 136-44.5."

40 Sec. 1.6. G.S. 136-44.5 reads as rewritten:

41 **"§ 136-44.5. Secondary roads; mileage study; allocation of funds.**

42 Before July 1, in each calendar year, the Department of Transportation shall make a  
43 study of all state-maintained unpaved roads in the State. The study shall determine the  
44 number of miles of unpaved state-maintained roads in each county, and the total number

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**GENERAL ASSEMBLY OF NORTH CAROLINA**

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1 of miles of unpaved state maintained roads in the State. Except for federal aid  
2 programs, the Department shall allocate all secondary road construction funds on the  
3 basis of a formula using the study figures. The allocation shall be

4 as follows: Each county shall receive a percentage of the total funds available for  
5 totally state funded secondary road construction, the percentage to be determined as a  
6 factor of the number of miles of unpaved state maintained secondary roads in the  
7 county divided by the total number of miles of unpaved state maintained secondary  
8 roads in the State.

9  
10 Copies of the Department study of unpaved state maintained secondary roads and  
11 copies of the individual county allocations shall be made available to newspapers  
12 having general circulation in each county."

13 Sec. 1.7. G.S. 136-44.7 reads as rewritten:

14 **"§ 136-44.7. Secondary roads; annual work program.**

15 The Department of Transportation shall be responsible for developing criteria for  
16 improvements and maintenance of secondary roads. The criteria shall be adopted by the  
17 Board of Transportation before it shall become effective. The Department of  
18 Transportation shall be responsible for developing annual work programs for both  
19 construction and maintenance of secondary roads in each county in accordance with  
20 criteria developed. It shall reflect the long range and immediate goals of the Department  
21 of Transportation. Projects on the annual construction program for each county shall be  
22 rated according to their priority based upon the secondary road criteria and standards  
23 which shall be uniform throughout the State. Tentative construction projects and  
24 estimated funding shall also be listed in accordance to priority. The annual construction  
25 program shall be adopted by the Board of Transportation before it shall become  
26 effective.

27 "

28 Sec. 1.8. G.S. 143B-350(f)(4) reads as rewritten:

29 "(4) To approve a schedule of all major transportation improvement projects and  
30 their anticipated cost for a period of seven years into the future which shall be published  
31 in a single document along with a report of the progress accomplished in the past year  
32 and the anticipated funding sources for these projects; "

33 Sec. 1.9. The Department of Transportation shall determine on which  
34 highways and bridges it is economically feasible to collect tolls and shall report its  
35 findings to the General Assembly. If the Department finds it desirable to establish toll  
36 roads, the Department shall include in its report any legislation needed to establish toll  
37 roads and to implement the collection of tolls, including the creation of a North Carolina  
38 Toll Roads Authority.

39 Sec. 1.10. G.S. 105-445 reads as rewritten:

40 **"§ 105-445. Application of proceeds of gasoline tax. Except as provided in G.S. 105-**  
41 **446.2 and 136-41.1, the fund derived from the tax herein levied shall be**  
42 **for the exclusive uses of the purposes set out in this Article, and**  
43 **disbursed on vouchers drawn by the Board of Transportation in**

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GENERAL ASSEMBLY OF NORTH CAROLINA

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1           ~~accordance with the acts of the General Assembly dealing with the~~  
2           ~~subject matter herein referred to. "~~

3           ~~Sec. 1.11. G.S. 105-446.2(a) reads as rewritten:~~

4           ~~"(a) The North Carolina Wildlife Resources Commission shall receive one-eighth~~  
5           ~~of one percent (1/8 of 1%) of the net proceeds of the taxes on motor fuels levied under~~  
6           ~~G.S. 105-434 and the same shall be paid in accordance with the accounting periods as~~  
7           ~~set forth under G.S. 105-440(a). As used in this section 'net proceeds' shall mean the~~  
8           ~~entire tax collected less one cent (1¢) per gallon nonrebatale tax required to be~~  
9           ~~segregated by Chapter 1250 of the Session Laws of 1949, as amended by Chapter 46 of~~  
10           ~~the Session Laws of 1965."~~

11           ~~Sec. 1.12. G.S. 105-449.16 reads as rewritten:~~

12           ~~"§ 105-449.16. Levy of tax; purposes; special provisions for certain nonanhydrous~~  
13           ~~ethanol.~~

14           ~~"(a) A tax at the rate established pursuant to G.S. 105-434 is hereby imposed upon~~  
15           ~~all fuel sold or delivered by any supplier to any licensed user-seller, or used by any such~~  
16           ~~supplier in any motor vehicle owned, leased or operated by him, or delivered by such~~  
17           ~~supplier directly into the fuel supply tank of a motor vehicle, or imported by a user-~~  
18           ~~seller into, or acquired tax free by a user-seller or user in this State for resale or use for~~  
19           ~~the propulsion of a motor vehicle.~~

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25           ~~A supplier who consigns fuel to a reseller may elect to report and pay the tax due on the~~  
26           ~~fuel when the reseller sells or dispenses the fuel instead of when the supplier delivers~~  
27           ~~the fuel to the reseller. For the purpose of this section, "imported" shall not include fuels~~  
28           ~~brought into this State in the usual tank or receptacle connected with the engine of a~~  
29           ~~motor vehicle.~~

30           ~~The primary purposes of this levy and this Article are to provide a more efficient and~~  
31           ~~effective method of collecting the tax now imposed and collected pursuant to G.S. 105-~~  
32           ~~435, by providing for the collection of said tax from the supplier instead of the user.~~  
33           ~~The tax herein provided for is levied for the same purposes as the tax provided for in~~  
34           ~~G.S. 105-435. It is not intended that the tax collected pursuant to this Article shall be in~~  
35           ~~addition to that provided in G.S. 105-435, but the payment of the tax as provided by this~~  
36           ~~Article shall be deemed conclusively to constitute a compliance with the provisions of~~  
37           ~~G.S. 105-43the provisions of section 13 of Chapter 1250 of the Session Laws of 1949,~~  
38           ~~relating to G.S. 105-435, in that one cent (1¢) of the amount of tax levied on each~~  
39           ~~gallon shall be applied exclusively to the payment of the principal of and the interest on~~  
40           ~~the two hundred million dollars (\$200,000,000) State of North Carolina Secondary~~  
41           ~~Road Bonds therein provided for and as further provided in said Chapter 1250 of the~~  
42           ~~Session Laws of 1949.~~

43           ~~(b) Repealed by Session Laws 1985, c. 261, s. 1, effective July 1, 1985.~~

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**GENERAL ASSEMBLY OF NORTH CAROLINA**

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1 (e) Nonanhydrous ethanol is exempt from the tax described in this section if that  
2 ethanol is not for sale or distribution."

3 Sec. 1.13. G.S. 105-449.43 reads as rewritten:

4 **"§ 105-449.43. Taxes and fees to be paid to Highway Fund.**

5 ~~All taxes and fees collected under this Article shall be paid to the State Highway Fund.~~

6 "

7 Sec. 1.14. ~~Notwithstanding G.S. 136-176(b), the sum of \$11,000,000 for the~~  
8 ~~1989-90 fiscal year is appropriated from the Highway Trust Fund to the Department of~~  
9 ~~Transportation for administrative expenses of the Trust Fund. This appropriation is in~~  
10 ~~lieu of the allocation under G.S. 136-176(b).~~

11 Sec. 1.15. ~~Article 2 of Chapter 136 of the General Statutes is amended by~~  
12 ~~adding a new section to read:~~

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17 **PART II.**

18 **INCREASE CERTIFICATE OF TITLE FEE/ ALTERNATE**  
19 **TRANSPORTATION FUNDING.**

20 Sec. 2.1. G.S. 20-85 reads as rewritten:

21 **~~"§ 20-85. Schedule of fees.~~**

22 ~~Except as provided in G.S. 20-68, there shall be paid to the Division for the issuance~~  
23 ~~of certificates of title, transfer of registration and replacement of registration plates fees~~  
24 ~~according to the following schedules:~~

- 25 (1) Each application for certificate of  
26 title \$5.00  
27 (2) Each application for duplicate  
28 or corrected certificate of title 7.00  
29 (3) Each application of reposessor for  
30 certificate of title 5.00  
31 (4) Each transfer of registration 4.00  
32 (5) Each set of replacement registration  
33 plates 9.00  
34 (6) Each application for duplicate registration  
35 certificate 3.00  
36 (7) Each application for recording supplementary  
37 lien 3.00  
38 (8) Each application for removing a lien from a  
39 certificate of title 4.00.

40 "

41 Sec. 2.2. G.S. 136-44.20 is amended by adding a new subsection to read:

42 "("

43 **PART III.**  
44 **SALES TAX CHANGES.**

1           Sec. 3.1. G.S. 105-164.3 reads as rewritten:

2   ~~"§ 105-164.3. Definitions. The words, terms and phrases when used in this Article~~  
3   ~~shall have the meanings ascribed to them in this section except when the~~  
4   ~~context clearly indicates a different meaning:~~

5   (1)   ~~'Business' shall include any activity engaged in by any person or~~  
6   ~~caused to be engaged in by him with the object of gain, profit, benefit~~  
7   ~~or advantage, either direct or indirect. The term 'business' shall not be~~  
8   ~~construed in this Article to include occasional and isolated sales or~~  
9   ~~transactions by a person who does not hold himself out as engaged in~~  
10   ~~business.~~

11   (2)   ~~" Secretary" shall mean the Secretary of Revenue of the State of North~~  
12   ~~Carolina.~~

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16   (3)   ~~'Consumer' shall mean and include every person storing, using or~~  
17   ~~otherwise consuming in this State tangible personal property~~  
18   ~~purchased or received from a retailer either within or without this~~  
19   ~~State.~~

20   (4)   ~~'Cost price' means the actual cost of articles of tangible personal~~  
21   ~~property without any deductions therefrom on account of the cost of~~  
22   ~~materials used, cash discounts, labor or service costs, transportation~~  
23   ~~charges or any expenses whatsoever.~~

24   (5)   ~~'Engaged in business' shall mean maintaining, occupying or using~~  
25   ~~permanently or temporarily, directly or indirectly, or through a~~  
26   ~~subsidiary or agent, by whatever name called, any office, place of~~  
27   ~~distribution, sales or sample room or place, warehouse or storage~~  
28   ~~place, or other place of business, for the selling or delivering of~~  
29   ~~tangible personal property for storage, use or consumption in this~~  
30   ~~State, or permanently or temporarily, directly or through a subsidiary,~~  
31   ~~having any representative, agent, salesman, canvasser or solicitor~~  
32   ~~operating in this State in such selling or delivering, and the fact that~~  
33   ~~any corporate retailer, agent or subsidiary engaged in business in this~~  
34   ~~State may not be legally domesticated or qualified to do business in~~  
35   ~~this State shall be immaterial. It shall also mean the maintaining in this~~  
36   ~~State, either permanently or temporarily, directly or through a~~  
37   ~~subsidiary, tangible personal property for the purpose of lease or~~  
38   ~~rental. It shall also mean making a mail order sale, as defined in~~  
39   ~~subdivision (8a) of this section, if one of the conditions listed in G.S.~~  
40   ~~105-164.8(b) is met.~~

41   (6)   ~~'Gross sales' means the sum total of all retail sales of tangible personal~~  
42   ~~property as defined herein, whether for cash or credit without~~  
43   ~~allowance for cash discount and without any deduction on account of~~  
44   ~~the cost of the property sold, the cost of materials used, labor or~~

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**GENERAL ASSEMBLY OF NORTH CAROLINA**

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- 1                    ~~service costs, interest paid or any other expenses whatsoever and~~  
2                    ~~without any deductions of any kind or character except as provided in~~  
3                    ~~this Article.~~
- 4                    (7)                ~~'In this (the) State' means within the exterior limits of the State of~~  
5                    ~~North Carolina and includes all territory within such limits owned by~~  
6                    ~~or ceded to the United States of America.~~
- 7                    (8)                ~~'Lease or rental' means the leasing or renting of tangible personal~~  
8                    ~~property and the possession or use thereof by the lessee or rentee for~~  
9                    ~~a consideration without transfer of the title of such property.~~
- 10                  (8a)               ~~'Mail order sale' means a sale of tangible personal property, ordered~~  
11                  ~~by mail, telephone, computer link, or other similar method, to a~~  
12                  ~~purchaser who is in this State at the time the order is remitted, from a~~  
13                  ~~retailer who receives the order in another state and transports the~~  
14                  ~~property or causes it to be transported to a person in this State. It is~~  
15                  ~~presumed that a resident of this State who remits an order was in this~~  
16                  ~~State at the time the order was remitted.~~
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- 22                  (8b)               ~~'Motor vehicle' means any vehicle which is self propelled and~~  
23                  ~~designed primarily for use upon the highways, any vehicle which is~~  
24                  ~~propelled by electric power obtained from trolley wires but not~~  
25                  ~~operated upon rails, and any vehicle designed to run upon the~~  
26                  ~~highways which is propelled by a self propelled vehicle, but shall not~~  
27                  ~~include any implement of husbandry, farm tractor, road construction or~~  
28                  ~~maintenance machinery or equipment, special mobile equipment as~~  
29                  ~~defined in G.S. 20-4.01, or any vehicle designed primarily for use in~~  
30                  ~~work off the highway.~~
- 31                  (9)                ~~'Net taxable sales' shall mean and include the gross retail sales of the~~  
32                  ~~business of the retailer taxed under this Article after deducting~~  
33                  ~~therefrom exempt sales and nontaxable sales.~~
- 34                  (10)               ~~'Nonresident retail or wholesale merchant' means a person who does~~  
35                  ~~not have a place of business in this State, is engaged in the business of~~  
36                  ~~acquiring, by purchase, consignment, or otherwise, tangible personal~~  
37                  ~~property and selling the property outside the State, and is registered for~~  
38                  ~~sales and use tax purposes in a taxing jurisdiction outside the State.~~
- 39                  (11)               ~~'Person' includes any individual, firm, copartnership, joint venture,~~  
40                  ~~association, corporation, estate, trust, business trust, receiver, syndicate~~  
41                  ~~or other group, or combination acting as a unit, body politic, or~~  
42                  ~~political subdivision, whether public or private or quasi public and the~~  
43                  ~~plural as well as the singular number.~~
- 44                  (12)               ~~'Purchase' means acquired for a consideration whether~~

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**GENERAL ASSEMBLY OF NORTH CAROLINA**

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- 1           a.     ~~Such acquisition was effected by a transfer of title or~~  
2           ~~possession, or both, or a license to use or consume;~~  
3           b.     ~~Such transfer shall have been absolute or conditional and by~~  
4           ~~whatever means it shall have been effected; and~~  
5           e.     ~~Such consideration be a price or rental in money or by way of~~  
6           ~~exchange or barter.~~

7           It shall also include the procuring of a retailer to erect, install or apply  
8           tangible personal property for use in this State.

9           (13) ~~'Retail' shall mean the sale of any tangible personal property in any~~  
10          ~~quantity or quantities for any use or purpose on the part of the~~  
11           ~~purchaser other than for resale.~~

12          (14) ~~'Retailer' means and includes every person engaged in the business of~~  
13          ~~making sales of tangible personal property at retail, either within or~~  
14          ~~without this State, or peddling the same or soliciting or taking orders~~  
15          ~~for sales, whether for immediate or future delivery, for storage, use or~~  
16          ~~consumption in this State and every manufacturer, producer or~~  
17          ~~contractor engaged in business in this State and selling, delivering,~~  
18          ~~erecting, installing or applying tangible personal property for use in~~  
19          ~~this State notwithstanding that said property may be permanently~~  
20          ~~affixed to a building or realty or other tangible personal property.~~  
21          ~~'Retailer' also means a person who makes a mail order sale, as defined~~  
22          ~~in subdivision (8a) of this section, if one of the conditions listed in~~  
23          ~~G.S. 105-164.8(b) is met. Provided, however, that when in the opinion~~  
24          ~~of the Secretary it is necessary for the efficient administration of this~~  
25          ~~Article to regard any salesmen, solicitors, representatives, consignees,~~  
26          ~~peddlers, truckers or canvassers as agents of the dealers, distributors,~~  
27          ~~consignors, supervisors, employers or persons under whom they~~  
28          ~~operate or from whom they obtain the tangible personal property sold~~  
29          ~~by them regardless of whether they are making sales on their own~~  
30          ~~behalf or on behalf of such dealers, distributors, consignors,~~  
31          ~~supervisors, employers or persons, the Secretary may so regard them~~  
32          ~~and may regard the dealers, distributors, consignors, supervisors,~~  
33          ~~employers or persons as 'retailers' for the purpose of this Article.~~

34          (15) ~~'Sale' or 'selling' shall mean any transfer of title or possession, or both,~~  
35          ~~exchange, barter, lease, license to use or consume, or rental of tangible~~  
36          ~~personal property, conditional or otherwise, in any manner or by any~~  
37          ~~means whatsoever, however effected and by whatever name called, for~~  
38          ~~a consideration paid or to be paid, and includes the fabrication of~~  
39          ~~tangible personal property for consumers by persons engaged in~~  
40          ~~business who furnish either directly or indirectly the materials used in~~  
41          ~~the fabrication work, and the furnishing, preparing, or serving for a~~  
42          ~~consideration of any tangible personal property consumed on the~~  
43          ~~premises of the person furnishing, preparing, or serving such tangible~~  
44          ~~personal property or consumed at the place at which such property is~~

1 prepared, served or sold. A transaction whereby the possession of the  
2 property is transferred but the seller retains title or security for the  
3 payment of the price shall be deemed a sale.

4 (16) Except as provided in paragraph f., 'sales price' means the total  
5 amount for which tangible personal property is sold including charges  
6 for any services that go into the fabrication, manufacture or delivery of  
7 such tangible personal property and that are a part of the sale valued in  
8 money whether paid in money or otherwise and includes any amount  
9 for which credit is given to the purchaser by the seller without any  
10 deduction therefrom on account of the cost of the property sold, the  
11 cost of materials used, labor or service costs, interest charged, losses or  
12 any other expenses whatsoever. Provided, however, that where a  
13 manufacturer, producer or contractor erects, installs or affixes tangible  
14 personal property upon real property pursuant to a construction or  
15 performance type contract with or for the benefit of the owner of such  
16 real property, the sales price shall be the cost of such property to the  
17 manufacturer, producer or contractor performing the contract.  
18 Provided, further:

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



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**GENERAL ASSEMBLY OF NORTH CAROLINA**

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1                   drinks subject to excise tax under Article 2B of this Chapter or  
2                   tobacco products, is considered to be fifty percent (50%) of the  
3                   total amount for which the property is sold in the vending  
4                   machine.

5  
6           (17) ~~'Storage' means and includes any keeping or retention in this State for  
7           any purpose by the purchaser thereof, except sale in the regular course  
8           of business, of tangible personal property purchased from a retailer.~~

9           (18) ~~'Use' means and includes the exercise of any right or power or  
10           dominion whatsoever over tangible personal property by a purchaser  
11           thereof and includes, but is not limited to, any withdrawal from  
12           storage, installation, affixation to real or personal property, exhaustion  
13           or consumption of tangible personal property by the owner or  
14           purchaser thereof, but shall not include the sale of tangible personal  
15           property in the regular course of business.~~

16           (19) ~~'Storage' and 'Use'; Exclusion.—'Storage' and 'use' do not include the  
17           keeping, retaining or exercising of any right or power over tangible  
18           personal property by the purchaser thereof for the original purpose of  
19           subsequently transporting it outside the State for use by said purchaser  
20           thereafter solely outside the State and which purpose is consummated,  
21           or for the purpose of being processed, fabricated or manufactured into,  
22           attached to or incorporated into, other tangible personal property to be  
23           transported outside the State and thereafter used by the purchaser  
24           thereof solely outside the State.~~

25           (20) ~~'Tangible personal property' means and includes personal property  
26           which may be seen, weighed, measured, felt or touched or is in any  
27           other manner perceptible to the senses. The term 'tangible personal  
28           property' shall not include stocks, bonds, notes, insurance or other  
29           obligations or securities, nor shall it include water delivered by or  
30           through main lines or pipes either for commercial or domestic use or  
31           consumption. The term includes all 'canned' or prewritten computer  
32           programs, either in the form of written procedures or in the form of  
33           storage media on which or in which the program is recorded, held, or  
34           existing for general or repeated sale, lease, or license to use or  
35           consume. The term does not include the design, development, writing,  
36           translation, fabrication, lease, license to use or consume, or transfer for  
37           a consideration of title or possession of a custom computer program,  
38           other than a basic operational program, either in the form of written  
39           procedures or in the form of storage media on which or in which the  
40           program is recorded, or any required documentation or manuals  
41           designed to facilitate the use of the custom computer program.~~

42           As used in this subdivision:

43           a.       ~~'Basic operational program' or 'control program' means a  
44           computer program that is fundamental and necessary to the~~

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## GENERAL ASSEMBLY OF NORTH CAROLINA

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1 functioning of a computer. A basic operational program is that  
2 part of an operating system, including supervisors, monitors,  
3 executives, and control or master programs, which consists of  
4 the control program elements of that system. A control or  
5 master program, as opposed to a processing program, controls  
6 the operation of a computer by managing the allocation of all  
7 system resources, including the central processing unit, main  
8 storage, input/output devices, and processing programs. A  
9 processing program is used to develop and implement the  
10 specific applications the computer is to perform.

11 b. ~~'Computer program' means the complete plan for the solution~~  
12 ~~of a problem, such as the complete sequence of automatic data-~~  
13 ~~processing equipment instructions necessary to solve a problem,~~  
14 ~~and includes both systems and application programs and~~  
15 ~~subdivisions, such as assemblers, compilers, routines,~~  
16 ~~generators, and utility programs.~~

17 e. ~~'Custom computer program' means a computer program~~  
18 ~~prepared to the special order of the customer. Custom computer~~  
19 ~~programs include one of the following elements:~~

- 20 1. ~~Preparation or selection of the programs for the~~  
21 ~~customer's use requires an analysis of the customer's~~  
22 ~~requirements by the vendor; or~~
- 23 2. ~~The program requires adaptation by the vendor to be~~  
24 ~~used in a particular make and model of computer~~  
25 ~~utilizing a specified output device.~~

26 d. ~~'Storage media' means punched cards, tapes, disks, diskettes, or~~  
27 ~~drums.~~

28 (21) ~~'Taxpayer' means any person liable for taxes under this Article.~~

29 (22) ~~'Use tax' means and includes the tax imposed by Part 3 in Division II~~  
30 ~~of this Article.~~

31 (23) ~~'Wholesale merchant' shall mean every person who engages in the~~  
32 ~~business of buying or manufacturing any tangible personal property~~  
33 ~~and selling same to registered retailers, wholesalers and nonresident~~  
34 ~~retail or wholesale merchants for resale. It shall also include persons~~  
35 ~~making sales of tangible personal property which are defined herein as~~  
36 ~~wholesale sales. For the purposes of this Article any person, firm,~~  
37 ~~corporation, estate or trust engaged in the business of manufacturing,~~  
38 ~~producing, processing or blending any articles of commerce and~~  
39 ~~maintaining a store or stores, warehouse or warehouses, or any other~~  
40 ~~place or places, separate and apart from the place of manufacture or~~  
41 ~~production, for the sale or distribution of its products (other than~~  
42 ~~bakery products) to other manufacturers or producers, wholesale or~~  
43 ~~retail merchants, for the purpose of resale shall be deemed a~~  
44 ~~'wholesale merchant.'~~

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**GENERAL ASSEMBLY OF NORTH CAROLINA**

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1           (24) ~~'Wholesale sale' shall mean a sale of tangible personal property by a~~  
2           ~~wholesale merchant to a manufacturer, or registered jobber or dealer,~~  
3           ~~or registered wholesale or retail merchant, for the purpose of resale but~~  
4           ~~does not include a sale to users or consumers not for resale.~~

5           (25) ~~'Utility' means an electric power company, a gas company, or a~~  
6           ~~telephone company that is subject to a privilege tax based on gross~~  
7           ~~receipts under G.S. 105-116 or 105-120, a business entity that provides~~  
8           ~~local, toll or private telecommunications service as defined by G.S.~~  
9           ~~105-120(a) or a municipality that sells electric power, other than a~~  
10           ~~municipality whose only wholesale supplier of electric power is a~~  
11           ~~federal agency and who is required by a contract with that federal~~  
12           ~~agency to make payments in lieu of taxes."~~

13           ~~Sec. 3-2. G.S. 105-164.4 reads as rewritten:~~

14           ~~**"§ 105-164.4. Imposition of tax; retailer.**~~

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

21           (1) ~~At the rate of three percent (3%) of the sales price of each item or~~  
22           ~~article of tangible property when sold at retail in this State, the tax to~~  
23           ~~be computed on total net taxable sales as defined herein but for the~~  
24           ~~purpose of computing the amount due the State each and every taxable~~  
25           ~~retail sale, or retail sales upon which the tax has been collected, or the~~  
26           ~~amount of tax actually collected, whichever be greater and whether or~~  
27           ~~not erroneously collected, shall be included in the computation of tax~~  
28           ~~due the State. Provided, however, that in the case of the sale of any~~  
29           ~~aircraft, railway locomotive, railway car or the sale of any motor~~  
30           ~~vehicle or boat, the tax shall be only at the rate of two percent (2%) of~~  
31           ~~the sales price, but at no time shall the maximum tax with respect to~~  
32           ~~any one such aircraft, railway locomotive, railway car or motor vehicle~~  
33           ~~or boat, including all accessories attached thereto at the time of~~  
34           ~~delivery thereof to the purchaser, be in excess of three hundred dollars~~  
35           ~~(\$300.00).~~

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

43           ~~Notwithstanding G.S. 105-164.3(16) and regardless whether the~~  
44           ~~seller is a retailer of motor vehicles, the sales price of a motor vehicle~~

1 is the gross sales price of the motor vehicle less any allowance given  
2 for a motor vehicle taken in trade as part of the consideration for the  
3 purchased motor vehicle.

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

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

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

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

33  
34  
35  
36  
37 Provided further, the tax shall be only at  
38 the rate of one percent (1%) of the sales price on the following items:

- 39 a. Horses or mules by whomsoever sold.  
40 b. Semen to be used in the artificial insemination of animals.  
41 c. Sales of fuel, other than electricity or piped natural gas, to  
42 farmers to be used by them for any farm purposes other than  
43 preparing food, heating dwellings and other household  
44 purposes. The quantity of fuel purchased or used at any one

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**GENERAL ASSEMBLY OF NORTH CAROLINA**

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1                   time shall not in any manner be a determinative factor as to  
2                   whether any sale or use of fuel is or is not subject to the one  
3                   percent (1%) rate of tax imposed herein.

4                   d.       Sales of fuel, other than electricity or piped natural gas, to  
5                   manufacturing industries and manufacturing plants for use in  
6                   connection with the operation of such industries and plants  
7                   other than sales of fuels to be used for residential heating  
8                   purposes. The quantity of fuel purchased used at any one time  
9                   shall not in any manner be a determinative factor as to whether  
10                  any sale or use of fuel is or is not subject to the one percent  
11                  (1%) rate of tax imposed herein.

12                  e.       Sales of fuel, other than electricity or piped natural gas, to  
13                  commercial laundries or to pressing and dry cleaning  
14                  establishments for use in machinery used in the direct  
15                  performance of the laundering or the pressing and cleaning  
16                  service.

17                  f.       Sales to freezer locker plants of wrapping paper, cartons and  
18                  supplies consumed directly in the operation of such plant.

19                         Provided further, the tax shall be only at  
20                  the rate of one percent (1%) of the sales price, subject to a maximum  
21                  tax of eighty dollars (\$80.00) per article, on the following items:

22                  g.       Sales of machines and machinery, whether animal or motor  
23                  drawn or operated, and parts and accessories for such  
24                  machines and machinery to farmers for use by them in the  
25                  planting, cultivating, harvesting or curing of farm crops,  
26                  and sales of machines and machinery and parts and  
27                  accessories for such machines and machinery to dairy  
28                  operators, poultry farmers, egg producers, and livestock  
29                  farmers for use by them in the production of dairy  
30                  products, poultry, eggs or livestock, except such machines,  
31                  machinery, equipment, parts, and accessories that come  
32                  within the provisions of G.S. 105-164.13(4c).

33                         —The term 'machines and machinery' as used in this  
34                         subdivision is defined as follows:

35                         —The term shall include all vehicular implements,  
36                         designed and sold for any use defined in this subdivision,  
37                         which are operated, drawn or propelled by motor or animal  
38                         power, but shall not include vehicular implements which  
39                         are operated wholly by hand, and shall not include any  
40                         motor vehicles required to be registered under Chapter 20  
41                         of the General Statutes.

42                         —The term shall include all nonvehicular implements and  
43                         mechanical devices designed and sold for any use defined  
44                         in this subdivision, which have moving parts, or which

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**GENERAL ASSEMBLY OF NORTH CAROLINA**

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- 1                                    require the use of any motor or animal power, fuel, or  
2                                    electricity in their operation but shall not include  
3                                    nonvehicular implements which have no moving parts and  
4                                    are operated wholly by hand.  
5                                    —The term shall also include metal flues sold for use in  
6                                    curing tobacco, whether such flues are attached to  
7                                    handfired furnaces or used in connection with mechanical  
8                                    burners.
- 9                                    h.     ~~Sales of mill machinery or mill machinery parts and~~  
10                                    ~~accessories to manufacturing industries and plants, and~~  
11                                    ~~sales to contractors and subcontractors purchasing mill~~  
12                                    ~~machinery or mill machinery parts and accessories for use~~  
13                                    ~~by them in the performance of contracts with~~  
14                                    ~~manufacturing industries and plants, and sales to~~  
15                                    ~~subcontractors purchasing mill machinery or mill~~  
16                                    ~~machinery parts and accessories for use by them in the~~  
17                                    ~~performance of contracts with general contractors who~~  
18                                    ~~have contracts with manufacturing industries and plants.~~  
19                                    ~~As used in this paragraph, the term ‘manufacturing~~  
20                                    ~~industries and plants’ does not include delicatessens, cafes,~~  
21                                    ~~cafeterias, restaurants, and other similar retailers that are~~  
22                                    ~~principally engaged in the retail sale of foods prepared by~~  
23                                    ~~them for consumption on or off their premises.~~
- 24                                    i.     ~~Sales of central office equipment and switchboard and~~  
25                                    ~~private branch exchange equipment to telephone~~  
26                                    ~~companies regularly engaged in providing telephone~~  
27                                    ~~service to subscribers on a commercial basis, and sales to~~  
28                                    ~~these companies of prewritten computer programs used in~~  
29                                    ~~providing telephone service to their subscribers.~~
- 30                                    j.     ~~Sales to commercial laundries or to pressing and dry~~  
31                                    ~~cleaning establishments of machinery used in the direct~~  
32                                    ~~performance of the laundering or the pressing and cleaning~~  
33                                    ~~service and of parts and accessories thereto.~~
- 34                                    k.     ~~Sales to freezer locker plants of machinery used in the~~  
35                                    ~~direct operation of said freezer locker plant and of parts~~  
36                                    ~~and accessories thereto.~~
- 37                                    l.     ~~Sales of broadcasting equipment and parts and accessories~~  
38                                    ~~thereto and towers to commercial radio and television~~  
39                                    ~~companies which are under the regulation and supervision~~  
40                                    ~~of the Federal Communications Commission.~~
- 41                                    m.     ~~Sales to farmers of bulk tobacco barns and racks and all~~  
42                                    ~~parts and accessories thereto and similar apparatus used for~~  
43                                    ~~the curing and drying of any farm produce.~~

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**GENERAL ASSEMBLY OF NORTH CAROLINA**

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- 1           n.       Repealed by Session Laws 1983, c. 805, s. 2, effective July  
2                    1, 1983.
- 3           o.       Sales to farmers of grain, feed or soybean storage facilities  
4                    and accessories thereto, whether or not dryers are attached,  
5                    and all similar apparatus and accessories thereto for the  
6                    storage of grain, feed or soybeans.
- 7           p.       Repealed by Session Laws 1983, c. 805, s. 2, effective July  
8                    1, 1983.
- 9           q.       Sales of containers to farmers or producers for use in the  
10                   planting, producing, harvesting, curing, marketing,  
11                   packaging, sale, or transporting or delivery of their  
12                   products when such containers do not go with and become  
13                   part of the sale of their products at wholesale or retail.
- 14       (2)     ~~At the rate of three percent (3%) of the gross proceeds derived from~~  
15             ~~the lease or rental of tangible personal property as defined herein,~~  
16             ~~where the lease or rental of such property is an established business, or~~  
17             ~~the same is incidental or germane to said business; except that~~  
18             ~~whenever a rate of less than three percent (3%) is applicable to a sale~~  
19             ~~of property which is leased or rented, the lower rate of tax shall be due~~  
20             ~~on such lease or rental proceeds.~~
- 21       (3)     ~~Operators of hotels, motels, tourist homes, tourist camps, and similar~~  
22             ~~type businesses and persons who rent private residences and cottages~~  
23             ~~to transients are considered retailers under this Article. There is levied~~  
24             ~~upon every such retailer a tax of three percent (3%) of the gross~~  
25             ~~receipts derived from the rental of any room or rooms, lodgings, or~~  
26             ~~accommodations furnished to transients for a consideration. This tax~~  
27             ~~does not apply to any private residence or cottage that is rented for less~~  
28             ~~than 15 days in a calendar year or to any room, lodging, or~~  
29             ~~accommodation supplied to the same person for a period of 90 or more~~  
30             ~~continuous days.~~
- 31             ~~As used in this subdivision, the term 'persons who rent to~~  
32             ~~transients' means (i) owners of private residences and cottages who~~  
33             ~~rent to transients and (ii) rental agents, including 'real estate brokers'~~  
34             ~~as defined in G.S. 93A-2, who rent private residences and cottages to~~  
35             ~~transients on behalf of the owners. If a rental agent is liable for the tax~~  
36             ~~imposed by this subdivision, the owner is not liable.~~
- 37       (4)     ~~Every person, firm or corporation engaged in the business of operating~~  
38             ~~a pressing club, cleaning plant, hat blocking establishment, dry-~~  
39             ~~cleaning plant, laundry (including wet or damp wash laundries and~~  
40             ~~businesses known as launderettes and launderalls), or any similar type~~  
41             ~~business, or engaged in the business of renting clean linen or towels or~~  
42             ~~wearing apparel, or any similar type business, or engaged in the~~  
43             ~~business of soliciting cleaning, pressing, hat blocking, laundering or~~  
44             ~~rental business for any of the aforementioned businesses, shall be~~

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**GENERAL ASSEMBLY OF NORTH CAROLINA**

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

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

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

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



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**GENERAL ASSEMBLY OF NORTH CAROLINA**

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1                   This subdivision shall not apply to telephone membership corporations  
2                   as described in Chapter 117 of the General Statutes.

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

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

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

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

34           Sec. 3.3. G.S. 105-164.6 reads as rewritten:

35    "**§ 105-164.6. Imposition of tax.**

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

- 40           (1)    At the rate of three percent (3%) of the cost price of each item or  
41           article of tangible personal property when the same is not sold but  
42           used, consumed, distributed or stored for use or consumption in this  
43           State; except that, whenever a rate of less than three percent (3%) is  
44           applicable under the sales tax schedule set out in G.S. 105-164.4 to the

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**GENERAL ASSEMBLY OF NORTH CAROLINA**

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1                    ~~sale at retail of an item or article of tangible personal property, the~~  
2                    ~~same rate, and maximum tax if any, shall be used in computing any~~  
3                    ~~use tax due under this subdivision. The separate sale of a new motor~~  
4                    ~~vehicle chassis and a new motor vehicle body to be installed thereon,~~  
5                    ~~whether by the same retailer or by different retailers, shall be subject~~  
6                    ~~only to the tax herein prescribed with respect to a single motor~~  
7                    ~~vehicle.~~

8  
9  
10            (2)    ~~At the rate of three percent (3%) of the monthly lease or rental price~~  
11            ~~paid by the lessee or rentee, or contracted or agreed to be paid by the~~  
12            ~~lessee or rentee, to the owner of the tangible personal property; except~~  
13            ~~that, whenever a rate of less than three percent (3%) is applicable~~  
14            ~~under the sales tax schedule set out in G.S. 105-164.4 to the sale at~~  
15            ~~retail of an item or article of tangible personal property, then the same~~  
16            ~~rate, and maximum tax if any, shall be used in computing any use tax~~  
17            ~~due under this subdivision.~~

18            (3)    ~~There is hereby levied and there shall be collected from every person, firm, or~~  
19            ~~corporation, an excise tax of three percent (3%) of the purchase price of all tangible~~  
20            ~~personal property purchased or used which shall enter into or become a part of any~~  
21            ~~building or other kind of structure in this State, including all materials, supplies, fixtures~~  
22            ~~and equipment of every kind and description which shall be annexed thereto or in any~~  
23            ~~manner become a part thereof. Said tax shall be levied against the purchaser of such~~  
24            ~~property. Provided, that where the purchaser is a contractor, the contractor and owner~~  
25            ~~shall be jointly and severally liable for said tax, but the liability of the owner shall be~~  
26            ~~deemed satisfied if before final settlement between them the contractor furnishes to the~~  
27            ~~owner an affidavit certifying that said tax has been paid. Provided further, that where~~  
28            ~~the purchaser is a subcontractor, the contractor and subcontractor shall be jointly and~~  
29            ~~severally liable for said tax, but the liability of the contractor shall be deemed satisfied if~~  
30            ~~before final settlement between them the subcontractor furnishes to the contractor an~~  
31            ~~affidavit certifying that said tax has been paid.~~

32            (3a)   ~~Every person, firm, or corporation that purchases or acquires a motor vehicle~~  
33            ~~shall pay a tax at the rate of two percent (2%) of the sales price of the vehicle, not to~~  
34            ~~exceed three hundred dollars (\$300.00) per vehicle. This tax shall be paid to the~~  
35            ~~Commissioner of Motor Vehicles when applying for a certificate of title or registration~~  
36            ~~plate for the vehicle. A purchaser who furnishes to the Commissioner of Motor~~  
37            ~~Vehicles a certificate from a retailer of motor vehicles engaged in business in this State~~  
38            ~~stating that the purchaser has paid the tax levied on the vehicle by this Article to the~~  
39            ~~retailer is relieved of liability for the tax. No certificate of title, or registration and~~  
40            ~~license plate or plates shall be issued for any motor vehicle purchased or acquired for~~  
41            ~~use on the streets and highways of this State unless and until the tax provided for under~~  
42            ~~this Article on motor vehicles has been paid. Nothing herein is intended to relieve any~~  
43            ~~retailer of motor vehicles engaged in business in this State from his liability for~~  
44            ~~collecting and remitting sales or use tax on his sales of motor vehicles for use by the~~

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**GENERAL ASSEMBLY OF NORTH CAROLINA**

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1 purchasers thereof in this State and no retailer shall be absolved of this liability for his  
2 failure to collect the tax from such purchasers. The Commissioner of Motor Vehicles  
3 shall remit use taxes collected by him under this subdivision to the Secretary.

4       The tax levied under this section applies to all owners of motor vehicles,  
5 regardless whether the owner purchased or acquired the vehicle from a retailer of motor  
6 vehicles and regardless whether a tax has previously been paid under this Article with  
7 respect to the vehicle.

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

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

13       (4) Where a retail sales tax has already been paid with respect to said tangible  
14 personal property in this State by the purchaser thereof, said tax shall be credited upon  
15 the tax imposed by this Part. Where a retail sales and use tax is due and has been paid  
16 with respect to said tangible personal property in another state by the purchaser thereof  
17 for storage, use or consumption in this State, said tax shall be credited upon the tax  
18 imposed by this Part. If the amount of tax paid to another state is less than the amount  
19 of tax imposed by this Part, the purchaser shall pay to the Secretary an amount sufficient  
20 to make the tax paid to the other state and this State equal to the amount imposed by this  
21 Part. The Secretary of Revenue shall require such proof of payment of tax to another  
22 state as he deems to be necessary and proper. No credit shall be given under this  
23 subdivision for sales or use taxes paid in another state if that state does not grant similar  
24 credit for sales taxes paid in North Carolina.

25       (5) Every person storing, using or otherwise consuming in this State tangible  
26 personal property purchased or received at retail either within or without this State shall  
27 be liable for the tax imposed by this Article and the liability shall not be extinguished  
28 until the tax has been paid to this State. Provided, however, that a receipt from a  
29 registered retailer engaged in business in this State given to the purchaser in accordance  
30 with the provisions of this Article shall be **prima facie** sufficient to relieve the  
31 purchaser from liability for the tax to which such receipt may refer and the liability of  
32 the purchaser shall be extinguished upon payment of the tax by any retailer from whom  
33 he has purchased said property.

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

36       (7) Every retailer engaged in business in this State selling or delivering tangible  
37 personal property for storage, use or consumption in this State shall immediately after  
38 July 1, 1979, apply for and obtain from the Secretary upon the payment of the sum of  
39 five dollars (\$5.00) a license to engage in and conduct such business upon the condition  
40 that such person shall pay the tax accruing to the State of North Carolina under the  
41 provisions of this Article, and he shall thereby be duly licensed and registered to engage  
42 in and conduct such business. Except as hereinafter provided, a license issued under this  
43 subsection shall be a continuing license until revoked for failure to comply with the  
44 provisions of this Article. However, any person who has heretofore applied for and

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**GENERAL ASSEMBLY OF NORTH CAROLINA**

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1 obtained such license, and such license was in force and effect as of July 1, 1979, shall  
2 not be required to apply for and obtain a new license.

3 Any person who shall cease to be engaged in any business for which a tax is  
4 imposed by this Article, and who shall remain continuously out of business for a period  
5 of five years shall apply for and obtain a new license from the Secretary upon the  
6 payment of a tax of five dollars (\$5.00), and any license previously issued under this  
7 section shall be null, void and of no effect. The burden of proof after such period shall  
8 be upon the taxpayer to show that he did engage in such activity within the period, and  
9 that no new license is required.

10 (8) Notwithstanding any other provisions of this Article, a use tax, at the  
11 applicable use tax rate, as hereinbefore provided, is hereby levied upon the storage or  
12 use in this State of any motor vehicles, machines, machinery, tools or other equipment  
13 brought, imported or caused to be brought into this State for use in constructing,  
14 building or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or  
15 water system, drainage or dredging system, railway system, reservoir or dam, hydraulic  
16 or power plant, transmission line, tower, dock, wharf, excavation, grading or other  
17 improvement or structure, or any part thereof. The owner or, if the property is leased  
18 the lessee of any such motor vehicle, machine, machinery, tools or other equipment  
19 shall be liable for the tax provided for in this paragraph, to be computed as set out  
20 below. The useful life of such motor vehicles, machines, tools or other equipment shall  
21 be determined by the Secretary in accordance with the experience and practices of the  
22 building and construction trades. Said use tax shall be computed on the basis of such  
23 proportion of the original purchase price of such property as the duration of time of use  
24 in this State bears to the total useful life thereof. Such tax shall become due  
25 immediately upon such property being brought into this State, and in the absence of  
26 satisfactory evidence as to the period of use intended in this State, it shall be presumed  
27 that such property will remain in this State for the remainder of its useful life.

28 All provisions of this Article not directly in conflict with the provisions of this  
29 paragraph shall be applicable with respect to the matters herein set forth. The provisions  
30 of this paragraph shall not be applicable with respect to sales of such property within  
31 this State or to the use, storage or consumption of such property when purchased for use  
32 in this State, and in such cases the full sales or use tax shall be paid as in all other cases,  
33 irrespective of the period of intended use in this State."

34 Sec. 3.4. G.S. 105-164.13(16) reads as rewritten:

35 "(16) Sales of used articles other than motor vehicles taken in trade, or a series of  
36 trades, as a credit or part payment on the sale of a new article, provided the tax levied in  
37 this Article is paid on the gross sales price of the new article. In the interpretation of  
38 this subsection, new article shall be taken to mean the original stock in trade of the  
39 merchant and shall not be limited to newly manufactured articles. The resale of articles  
40 other than motor vehicles, repossessed by the vendor shall likewise be exempt from  
41 gross sales taxable under this Article."

42 Sec. 3.5. G.S. 105-164.13(32) reads as rewritten:

43 "(32) Sales of motor vehicles, as defined in G.S. 105-164.3(8a), to nonresident  
44 purchasers for immediate transportation to and use in another state in which such

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**GENERAL ASSEMBLY OF NORTH CAROLINA**

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1 vehicles are required to be registered, provided the seller obtains from the purchaser and  
2 furnishes to the Secretary of Revenue an affidavit stating the name and address of the  
3 purchaser, the state in which the vehicle will be registered and operated, the make,  
4 model, and serial number of the vehicle, and such other information as the Secretary  
5 may require, and provided further that no exemption shall be allowed unless the  
6 affidavit is filed with the seller's sales and use tax report for the month during which the  
7 sale is made and such report is timely filed. For sales made by a seller who is not a  
8 retailer, this exemption applies if the purchaser furnishes the Secretary an affidavit  
9 containing the information otherwise required from a retailer within 45 days of the  
10 date."

11           Sec. 3-6. G.S. 105-467 reads as rewritten:

12 **~~§ 105-467. Sales tax imposed; limited to items on which the State now imposes a~~**  
13 **~~three percent sales tax.~~**

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

- 16           (1) ~~The sales price of those articles of tangible personal property now~~  
17 ~~subject to the three percent (3%) sales tax imposed by the State~~  
18 ~~under G.S. 105-164.4(1);~~
- 19           (2) ~~The gross receipts derived from the lease or rental of tangible~~  
20 ~~personal property where the lease or rental of such property is an~~  
21 ~~established business now subject to the three percent (3%) sales~~  
22 ~~tax imposed by the State under G.S. 105-164.4(2);~~
- 23           (3) ~~The gross receipts derived from the rental of any room or lodging~~  
24 ~~furnished by any hotel, motel, inn, tourist camp or other similar~~  
25 ~~accommodations now subject to the three percent (3%) sales tax~~  
26 ~~imposed by the State under G.S. 105-164.4(3); and~~
- 27           (4) ~~The gross receipts derived from services rendered by laundries, dry~~  
28 ~~cleaners, cleaning plants and similar type businesses now subject to~~  
29 ~~the three percent (3%) sales tax imposed by the State under G.S.~~  
30 ~~105-164.4(4).~~

31 ~~The sales tax authorized by this Article does not apply to sales by a utility of electricity,~~  
32 ~~pipel natural gas, local, toll, or private telecommunications services as defined by G.S.~~  
33 ~~105-120(a).~~

34 ~~The exemptions and exclusions contained in G.S. 105-164.13 and the refund~~  
35 ~~provisions contained in G.S. 105-164.14 shall apply with equal force and in like manner~~  
36 ~~to the local sales and use tax authorized to be levied and imposed under this Article. A~~  
37 ~~taxing county shall have no authority, with respect to the local sales and use tax~~  
38 ~~imposed under this Article to change, alter, add to or delete any refund provisions~~  
39 ~~contained in G.S. 105-164.14, or any exemptions or exclusions contained in G.S. 105-~~  
40 ~~164.13 or which are elsewhere provided for.~~

41 ~~The local sales tax authorized to be imposed and levied under the provisions of this~~  
42 ~~Article shall be applicable to such retail sales, leases, rentals, rendering of services,~~  
43 ~~furnishing of rooms, lodgings or accommodations and other taxable transactions which~~  
44 ~~are made, furnished or rendered by retailers whose place of business is located within~~

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**GENERAL ASSEMBLY OF NORTH CAROLINA**

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1 the taxing county. The tax imposed shall apply to the furnishing of rooms, lodging or  
2 other accommodations within the county which are rented to transients. For the purpose  
3 of this Article, the situs of a transaction is the location of the retailer's place of  
4 business."

5 Sec. 3.7. G.S. 105-468 reads as rewritten:

6 **"§ 105-468. Use tax imposed; limited to items upon which the State now imposes a**  
7 **three percent use tax.**

8 The use tax which may be imposed under this Article shall be at the rate of one  
9 percent (1%) of the cost price of each item or article of tangible personal property when  
10 the same is not sold but used, consumed or stored for use or consumption in the taxing  
11 county, except that no tax shall be imposed upon such tangible personal property when,  
12 if the property were subject to the use tax imposed by G.S. 105-164.6, such property  
13 would be taxed by the State of North Carolina at a rate less than three percent (3%).

14 Every retailer engaged in business in this State and in the taxing county and required  
15 to collect the use tax levied by G.S. 105-164.6 shall also collect the one percent (1%)  
16 use tax when such property is to be used, consumed or stored in the taxing county, said  
17 one percent (1%) use tax to be collected concurrently with the State's use tax; but no  
18 retailer not required to collect the use tax levied by G.S. 105-164.6 shall be required to  
19 collect the one percent (1%) use tax. The use tax contemplated by this section shall be  
20 levied against the purchaser, and his liability for such use tax shall be extinguished only  
21 upon his payment of the use tax to the retailer, where the retailer is required to collect  
22 the tax, or to the Secretary of Revenue, or to the taxing county, as appropriate, where  
23 the retailer is not required to collect the tax.

24 Where a local sales or use tax has been paid with respect to said tangible personal  
25 property by the purchaser thereof, either in another taxing county within the State, or in  
26 a taxing jurisdiction outside the State where the purpose of the tax is similar in purpose  
27 and intent to the tax which may be imposed pursuant to this Article, said tax may be  
28 credited against the tax imposed under this section by a taxing county upon the same  
29 property. If the amount of sales or use tax so paid is less than the amount of the use tax  
30 due the taxing county under this section, the purchaser shall pay to the Secretary of  
31 Revenue or to the taxing county, as appropriate, an amount equal to the difference  
32 between the amount so paid in the other taxing county or jurisdiction and the amount  
33 due in the taxing county hereunder. The Secretary of Revenue or the taxing county, as  
34 appropriate, may require such proof of payment in another taxing county or jurisdiction  
35 as is deemed to be necessary and proper. The use tax levied hereunder shall not be  
36 subject to credit for payment of any State sales or use tax not imposed for the benefit  
37 and use of counties and municipalities. No credit shall be given under this section for  
38 sales or use taxes paid in a taxing jurisdiction outside this State if that taxing jurisdiction  
39 does not grant similar credit for sales taxes paid under this Article."

40 Sec. 3.8. Section 4 of Chapter 1096 of the 1967 Session Laws, as amended,  
41 is amended as follows:

- 42 (1) By rewriting the heading to the section to read: "Scope of Sales  
43 Tax.";

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GENERAL ASSEMBLY OF NORTH CAROLINA

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- 1 (2) By deleting the reference "105-164.4(1)" and substituting the  
2 reference "105-164.4(a)(1) and (4b)";  
3 (3) By rewriting subpart (2) of the first paragraph to read:  
4 "(2) the gross receipts derived from the lease or rental of tangible  
5 personal property when the lease or rental of the property is subject  
6 to the three percent (3%) sales tax imposed by the State under G.S.  
7 105-164.4(a)(2)";  
8 (4) By deleting the references "105-164.4(3)" and "105-164.4(4)" and  
9 substituting the references "105-164.4(a)(3)" and "105-  
10 164.4(a)(4)" respectively; and  
11 (5) By rewriting the last sentence of the first paragraph of that section  
12 to read:

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

15 ~~Sec. 3.9. Section 5 of Chapter 1096 of the 1967 Session Laws, as amended,~~  
16 ~~is amended in the first sentence by deleting the phrase "when, if the property were~~  
17 ~~subject to the use tax imposed by G.S. 105-164.6, such property would be taxed by the~~  
18 ~~State of North Carolina at a rate less than three percent (3%)" and substituting the phrase~~  
19 ~~"when the property would be taxable by the State at a rate of other than three percent~~  
20 ~~(3%) if it were taxable under G.S. 105-164.6".~~

21 ~~Sec. 3.11. G.S. 136-16.4 is repealed.~~

22 **PART IV.**

23 **MOTOR VEHICLE USE TAX.**

24 ~~Sec. 4.1. Chapter 105 of the General Statutes is amended by adding a new~~  
25 ~~Article to read:~~

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11   **PART V.**  
12   **MOTOR FUEL TAX INCREASE.**

13             ~~Sec. 5.28. G.S. 105-434(a) reads as rewritten:~~

14             ~~"(a) Tax.—An excise tax is levied on motor fuel sold, distributed, or used by a~~  
15 ~~distributor within this State at the rate of fourteen cents (14¢) per gallon plus three~~  
16 ~~percent (3%) of the average wholesale price of motor fuel, as determined semiannually~~  
17 ~~by the Secretary of Revenue from information on refiner and gas plant operator sales~~  
18 ~~prices of finished motor gasoline and No. 2 diesel fuel for resale, published by the~~  
19 ~~United States Department of Energy in the 'Monthly Energy Review,' or on equivalent~~  
20 ~~data. The Secretary shall determine the average wholesale price of motor fuel by~~  
21 ~~computing the average sales price of finished motor gasoline for the base period,~~  
22 ~~computing the average sales price for No. 2 diesel fuel for the base period, and then~~  
23 ~~computing a weighted average of the results of the first two computations based on the~~  
24 ~~proportion of tax collected under this Article on motor fuel and Article 36A on fuel for~~  
25 ~~the base period. The Secretary shall notify affected taxpayers of the tax rate to be in~~  
26 ~~effect for each six-month period.~~

27             ~~To facilitate collection of the motor fuel tax, the Secretary shall convert the~~  
28 ~~percentage rate to a cents per gallon rate to be in effect during the six-month period~~  
29 ~~beginning each January 1 and July 1. The rate to be in effect during the six-month~~  
30 ~~period beginning January 1 shall be computed from data published for the six-month~~  
31 ~~base period ending on the preceding September 30, and the rate to be in effect during~~  
32 ~~the six-month period beginning July 1 shall be computed from data published for the~~  
33 ~~six-month base period ending on the preceding March 31. The cents per gallon rate~~  
34 ~~computed by the Secretary shall be rounded to the nearest one-tenth of a cent (1/10¢). If~~  
35 ~~the cents per gallon rate computed by the Secretary is exactly between two tenths of a~~  
36 ~~cent, the rate shall be rounded up to the higher of the two."~~

37             ~~Sec. 5.29. G.S. 105-446 reads as rewritten:~~

38             ~~"§ 105-446. Refund for tax on motor fuel used other than to propel a motor vehicle.~~

39             ~~A person who purchases and uses motor fuel for a purpose other than to operate a~~  
40 ~~licensed motor vehicle may receive an annual refund, for the tax paid during the~~  
41 ~~preceding calendar year, at a rate equal to fourteen cents (14¢) per gallon plus the~~  
42 ~~average of the two wholesale cents per gallon rates of tax in effect during the year for~~  
43 ~~which refund is claimed, less one cent (1¢) per gallon. An application for a refund~~  
44 ~~allowed under this section shall be made in accordance with G.S. 105-440."~~



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**GENERAL ASSEMBLY OF NORTH CAROLINA**

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1           Sec. 5.30. G.S. 105-446.1 reads as rewritten:

2   ~~"§ 105-446.1. Refunds of taxes paid by counties and municipalities.~~

3       The following entities shall be entitled to reimbursement for the tax levied by G.S.  
4 105-434 upon filing a statement in writing with the Secretary of Revenue, which  
5 statement shall be made upon the oath or affirmation of the chief executive officer of  
6 said entity, showing the number of gallons of fuel purchased and used by said entity on  
7 which the tax levied by G.S. 105-434 has been paid: the Board of Transportation,  
8 counties, municipal corporations, volunteer fire departments, county fire departments,  
9 volunteer rescue squads, and "sheltered workshop" organizations recognized and  
10 approved by the Department of Human Resources. "Chief executive officer" shall mean  
11 the Director of Highways, the mayor, city manager or other municipal officer  
12 designated by the governing body of the municipality, the chairman of the board of  
13 county commissioners or other county officer designated by the board of county  
14 commissioners, or the president or other duly designated officer or agent of a volunteer  
15 fire department, county fire department, volunteer rescue squad or "sheltered  
16 workshop" organization. Reimbursement shall be at a rate equal to fourteen cents (14¢)  
17 per gallon plus the wholesale cents per gallon rate of tax in effect during the quarter for  
18 which the refund is claimed, less one cent (1¢) per gallon. An application for a refund  
19 under this section shall be made in accordance with G.S. 105-440.

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27       "

28           Sec. 5.31. G.S. 105-446.3 reads as rewritten:

29   ~~"§ 105-446.3. Refund of taxes paid on motor fuels used in operation of motor buses  
30       transporting fare city transit system, in operation of a taxicab  
31       transporting fare at transportation services.~~

32       (a) Any person, association, firm or corporation, who shall purchase any motor  
33 fuels, as defined in this Article, for the purpose of use, and the same is actually used, in  
34 the operation of motor buses transporting fare-paying passengers, in connection with a  
35 city transit system or in the operation of a taxicab transporting fare-paying passengers,  
36 both as hereinafter defined in subsection (b) of this section, or in the operation, by  
37 private nonprofit organizations, of motor vehicles transporting passengers under  
38 contract with or at the express designation of units of local government (such  
39 transportation above and hereinafter referred to as private nonprofit transportation  
40 services) shall be entitled to reimbursement for the tax levied by this Article upon filing  
41 with the Secretary of Revenue an application upon the oath or affirmation of the  
42 applicant or his agent showing the number of gallons of motor fuel so purchased and  
43 used. Reimbursement shall be at a rate equal to fourteen cents (14¢) per gallon plus the  
44 wholesale cents per gallon rate of tax in effect during the quarter for which the refund is

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**GENERAL ASSEMBLY OF NORTH CAROLINA**

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1 ~~claimed, less one cent (1¢) per gallon. An application for a refund allowed under this~~  
2 ~~section shall be made in accordance with G.S. 105-440.~~

3 ~~(b) For the purposes of this section the term "city transit system" means a system~~  
4 ~~of mass public transportation authorized to operate within any municipality or within~~  
5 ~~contiguous municipalities and within a zone adjacent to and commercially a part of such~~  
6 ~~municipality or contiguous municipalities as defined by the North Carolina Utilities~~  
7 ~~Commission under the provisions of G.S. 62-260. Any person, association, firm or~~  
8 ~~corporation, who, in addition to the operation of a city transit system as herein defined,~~  
9 ~~holds a certificate from the North Carolina Utilities Commission for operations outside~~  
10 ~~of the municipal limits and adjacent commercial zones or who conducts exempt~~  
11 ~~operations outside of the municipal limits or adjacent commercial zones shall be entitled~~  
12 ~~to the refund provided by this section only on taxes levied upon motor fuels actually~~  
13 ~~used in the operation of the city transit system. For the purposes of this section the term~~  
14 ~~"taxicab" shall mean a taxicab as defined in G.S. 20-87(1); provided, however, that a~~  
15 ~~city transit system as defined herein shall not include limousine operations.~~

16 "

17 ~~Sec. 5.32. G.S. 105-446.5 reads as rewritten:~~

18 ~~**"§ 105-446.5. Refund of taxes paid on motor fuel used by concrete mixing vehicles,**~~  
19 ~~**solid waste compacting vehicles, and certain agricultural vehicles.**~~

20 ~~(a) Refund:~~

21 ~~A person who purchases and uses motor fuel in one of the vehicles listed below may~~  
22 ~~receive a refund for the amount of fuel consumed by the vehicle:~~

- 23 ~~(1) A concrete mixing vehicle;~~
- 24 ~~(2) A solid waste compacting vehicle;~~
- 25 ~~(3) A bulk feed vehicle that delivers feed to poultry or livestock and~~  
26 ~~uses a power take-off to unload the feed; and~~
- 27 ~~(4) A vehicle that delivers lime or fertilizer in bulk to farms and uses a~~  
28 ~~power take-off to unload the lime or fertilizer.~~

29 ~~The refund rate shall be computed by subtracting one cent (1¢) from fourteen cents~~  
30 ~~(14¢) per gallon plus the average of the two wholesale cents per gallon rates of tax in~~  
31 ~~effect during the year for which the refund is claimed, and multiplying the difference by~~  
32 ~~thirty-three and one-third percent (33 1/3%). An application for a refund allowed under~~  
33 ~~this section shall be made in accordance with G.S. 105-440. This refund is allowed for~~  
34 ~~the amount of fuel consumed by the vehicle in its mixing, compacting, or unloading~~  
35 ~~operations, as distinguished from propelling the vehicle, which amount is considered to~~  
36 ~~be one-third of the amount of fuel consumed by the vehicle."~~

37 ~~Sec. 5.33. G.S. 105-446.6 reads as rewritten:~~

38 ~~**"§ 105-446.6. Refund on taxpaid motor fuel transported to another state.**~~

39 ~~Upon application to the Secretary, any person, association or corporation who~~  
40 ~~purchases motor fuel upon which the tax imposed by this Article has been paid, and~~  
41 ~~who transports the fuel to another state for sale or use in that statemay be reimbursed at~~  
42 ~~a rate equal to fourteen cents (14¢) per gallon plus the wholesale cents per gallon rate of~~  
43 ~~tax paid on the fuel, less one cent (1¢) per gallon. The refund application shall require~~  
44 ~~the claimant to furnish evidence satisfactory to the Secretary that the motor fuel for~~

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**GENERAL ASSEMBLY OF NORTH CAROLINA**

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1 which the refund is claimed has been reported for taxation in the state to which it was  
2 transported. As used in this section, to 'transport' means to carry motor fuel in a cargo  
3 tank, tank car, barge or barrel and does not include carrying fuel in a tank connected  
4 with or attached to the engine of a motor vehicle."

5 Sec. 5.34. G.S. 105-449.39 reads as rewritten:

6 **"§ 105-449.39. Credit for payment of motor fuel tax.**

7 Every motor carrier subject to the tax levied by this Article is entitled to a credit for  
8 tax paid on fuel purchased in the State. The credit shall be allowed at a rate equal to  
9 fourteen cents (14¢) per gallon plus the wholesale cents per gallon rate of tax in effect  
10 during the quarter for which the credit is claimed. Evidence of the payment of such tax  
11 in such form as may be required by, or is satisfactory to, the Secretary shall be furnished  
12 by each such carrier claiming the credit herein allowed. When the amount of the credit  
13 herein provided to which any motor carrier is entitled for any quarter exceeds the  
14 amount of the tax for which such carrier is liable for the same quarter, such excess may  
15 under regulations of the Secretary be allowed as a credit on the tax for which such  
16 carrier would be otherwise liable for another quarter or quarters; or upon application  
17 duly verified and presented in accordance with regulations promulgated by the  
18 Secretary and supported by such evidence as may be satisfactory to the Secretary, such  
19 excess may be refunded to said motor carrier.

20 Unless the Secretary of Revenue exercises his discretion as hereinafter provided, or  
21 as provided in G.S. 105-449.40, he shall allow such refund only after an audit of the  
22 applicant's records. However, he may, in his sole discretion, make refunds without prior  
23 audit or without having been furnished a bond pursuant to G.S. 105-449.40 if the motor  
24 carrier has complied with the provisions of this Subchapter and rules and regulations  
25 promulgated thereunder for a period of one full prior registration year.

26  
27  
28 " "

29 Sec. 5.35. August 1, 1989, Inventory of Motor Fuel. Every distributor of  
30 motor fuel, both at wholesale and at retail, must inventory all motor fuel on hand or in  
31 his possession as of 12:01 a.m., August 1, 1989, and, on or before September 1, 1989,  
32 must report to the Secretary of Revenue the amount of the motor fuel. When filing the  
33 report, the distributor must remit to the Secretary of Revenue an additional tax on the  
34 motor fuel of three cents (3¢) per gallon plus an amount equal to the increase in the tax  
35 based on the increase in the variable cents per gallon tax effective August 1, 1989. The  
36 report required must be in a form prescribed by the Secretary.

37 Sec. 5.36. August 1, 1989, Inventory of Special Fuel. Every supplier or  
38 reseller of special fuel must inventory all special fuel on hand or in his possession as of  
39 12:01 a.m., August 1, 1989, and, on or before September 1, 1989, must report to the  
40 Secretary of Revenue the amount of the special fuel. When filing the report, the  
41 supplier or reseller must remit to the Secretary of Revenue an additional tax on the  
42 special fuel of three cents (3¢) per gallon plus an amount equal to the increase in the tax  
43 based on the increase in the variable cents per gallon tax effective August 1, 1989. The  
44 report required must be in a form prescribed by the Secretary.

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## GENERAL ASSEMBLY OF NORTH CAROLINA

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1            ~~Sec. 5.37. Motor Carrier Refund and Report. Notwithstanding G.S. 105-~~  
2 ~~449.39 to the contrary, a motor carrier that as of 12:01 a.m. on August 1, 1989, has on~~  
3 ~~hand or in its possession motor fuel or special fuel upon which it has paid the tax in~~  
4 ~~effect on July 31, 1989, is allowed a credit of only the amount of tax paid on the fuel~~  
5 ~~when filing the report required by G.S. 105-449.45. Notwithstanding G.S. 105-449.45,~~  
6 ~~a motor carrier must file a report in accordance with that section for the period July 1,~~  
7 ~~1989, through July 31, 1989, and for the period August 1, 1989, through September 30,~~  
8 ~~1989.~~

9            ~~Sec. 5.38. Annual Refund Rate. Notwithstanding G.S. 105-446, 105-446.5,~~  
10 ~~and 105-449.24 to the contrary, the annual refund rate for tax paid on motor fuel or~~  
11 ~~special fuel for calendar year 1989 is at a rate equal to the weighted average of the two~~  
12 ~~flat cents-per-gallon rates plus the weighted average of the two variable cents-per-gallon~~  
13 ~~rates in effect during that year, less one cent (1¢) per gallon.~~

14            ~~Sec. 5.39. Quarterly Refund Rate. Notwithstanding G.S. 105-446.1, 105-~~  
15 ~~446.3, and 105-449.24 to the contrary, the entities eligible under those statutes for a~~  
16 ~~refund of tax paid on motor fuel or special fuel are entitled to a refund at the rate of~~  
17 ~~fourteen and seven tenths cents (14.7¢) per gallon for tax paid or accrued on fuel~~  
18 ~~purchased before August 1, 1989, but used on or after August 1, 1989.~~

### PART VI.

#### ESTIMATED INCOME TAX AMENDMENTS.

21            ~~Sec. 6.1. G.S. 105-163.15 reads as rewritten:~~

22        **~~"§ 105-163.15. Failure by individual to pay estimated income tax; penalty.~~**

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

27            ~~(b) For purposes of subsection (a), the amount of the underpayment shall be the~~  
28 ~~excess of the required installment, over the amount, if any, of the installment paid on or~~  
29 ~~before the due date for the installment. The period of the underpayment shall run from~~  
30 ~~the due date for the installment to whichever of the following dates is the earlier: (i) the~~  
31 ~~fifteenth day of the fourth month following the close of the taxable year, or (ii) with~~  
32 ~~respect to any portion of the underpayment, the date on which such portion is paid. A~~  
33 ~~payment of estimated tax shall be credited against unpaid required installments in the~~  
34 ~~order in which such installments are required to be paid.~~

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

37                    ~~(1) First installment—April 15 of taxable year;~~

38                    ~~(2) Second installment—June 15 of taxable year;~~

39                    ~~(3) Third installment—September 15 of taxable year; and~~

40                    ~~(4) Fourth installment—January 15 of following taxable year.~~

41            ~~(d) Except as provided in subsection (c) the amount of any required installment~~  
42 ~~shall be twenty five percent (25%) of the required annual payment. The term 'required~~  
43 ~~annual payment' means the lesser of:~~

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**GENERAL ASSEMBLY OF NORTH CAROLINA**

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1           (1)     Eighty percent (80%) of the tax shown on the return for the taxable  
2                     year, or, if no return is filed, eighty percent (80%) of the tax for  
3                     that year; or

4           (2)     One hundred percent (100%) of the tax shown on the return of the  
5                     individual for the preceding taxable year, if the preceding taxable  
6                     year was a taxable year of 12 months and the individual filed a  
7                     return for that year.

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

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

- 22                   (1)     First installment—twenty percent (20%);  
23                   (2)     Second installment—forty percent (40%);  
24                   (3)     Third installment—sixty percent (60%); and  
25                   (4)     Fourth installment—eighty percent (80%).

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

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

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

42           (i)     Notwithstanding the other provisions of this section, an individual who is a  
43                    farmer or fisherman for a taxable year is required to make only one installment payment  
44                    of tax for that year. This installment is due on or before January 15 of the following

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## GENERAL ASSEMBLY OF NORTH CAROLINA

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1 taxable year but may be paid without penalty or interest on or before March 1 of that  
2 year. The amount of the installment payment shall be the lesser of:

- 3 (1) Sixty-six and two-thirds percent ( $66 \frac{2}{3}\%$ ) of the tax shown on the  
4 return for the taxable year, or, if no return is filed, sixty-six and  
5 two-thirds percent ( $66 \frac{2}{3}\%$ ) of the tax for that year; or  
6 (2) One hundred percent (100%) of the tax shown on the return of the  
7 individual for the preceding taxable year, if the preceding taxable  
8 year was a taxable year of 12 months and the individual filed a  
9 return for that year.

10 An individual is a farmer or fisherman for any taxable year if the individual's gross  
11 income from farming or fishing, including oyster farming, for the taxable year is at least  
12 sixty-six and two-thirds percent ( $66 \frac{2}{3}\%$ ) of the total gross income from all sources for  
13 the taxable year, or the individual's gross income from farming or fishing, including  
14 oyster farming, shown on the return of the individual for the preceding taxable year is at  
15 least sixty-six and two-thirds percent ( $66 \frac{2}{3}\%$ ) of the total gross income from all  
16 sources shown on the return.

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

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

### **PART VII.**

#### **EFFECTIVE DATES.**

24 Sec. 7.1. The prohibition imposed by G.S. 136-44.7(b) on changing the order  
25 of unpaved roads set out in a published list of the top ten roads to be paved in a county  
26 applies to lists adopted for fiscal years beginning with the 1988-89 fiscal year.

27 Sec. 7.2. This act does not affect the rights or liabilities of the State, a  
28 taxpayer, or another person arising under a statute amended or repealed by this act  
29 before its amendment or repeal; nor does it affect the right to any refund or credit of a  
30 tax that would otherwise have been available under the amended or repealed statute  
31 before its amendment or repeal.

32 Sec. 7.3. Part VI of this act is effective for taxable years beginning on and  
33 after January 1, 1990. Except as otherwise provided in this act, the remainder of this act  
34 shall become effective August 1, 1989. Part IV of this act shall not apply to a sale of a  
35 motor vehicle made on or after that date pursuant to a written contract of sale entered  
36 into before that date.

37 Sec. 7.4. On the date that contracts for all the projects in Article 14 of  
38 Chapter 136 have been let, G.S. 20-85(b) is repealed, G.S. 105-171 is repealed, and Part  
39 I and Part V of this act shall expire.