

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 1999-337
SENATE BILL 55

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

The General Assembly of North Carolina enacts:

Section 1. Section 7 of S.L. 1998-158 reads as rewritten:

"Section 7. ~~Section 5 of this act is effective for taxable years beginning on or after October 1, 1998. The remainder of this~~ This act is effective when it becomes law."

Section 2. G.S. 1C-1601(a)(9) reads as rewritten:

"(a) Exempt property. – Each individual, resident of this State, who is a debtor is entitled to retain free of the enforcement of the claims of ~~his~~ creditors:

...

- (9) ~~Individual retirement accounts as described in Section 408(a) of the Internal Revenue Code, individual retirement annuities as described in Section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in Section 408(c) of~~ plans as defined in the Internal Revenue Code and any plan treated in the same manner as an individual retirement plan under the Internal Revenue Code. For purposes of this subdivision, 'Internal Revenue Code' means Code as defined in G.S. 105-228.90."

Section 3.(a) G.S. 10A-4(b) reads as rewritten:

"(b) A person qualified for a notarial commission shall meet all of the following requirements:

- (1) Be at least 18 years of age.
- (2) Reside or work in this State.
- (3) Satisfactorily complete a course of study that is approved by the Secretary and consists of not less than three hours nor more than six hours of classroom instruction provided by community colleges throughout the State, unless the person is a licensed member of the Bar of this State.
- (4) Purchase and keep as a reference a manual approved by the Secretary that describes the duties, authority, and ethical responsibilities of notaries public.
- (5) Submit an application containing no significant misstatement or omission of fact. The application form shall be provided by the Secretary and be available at the register of deeds office in each

county. Every application shall bear the signature of the applicant written with pen and ink, and the signature shall be acknowledged by the applicant before a person authorized to administer oaths. The applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application.

- (6) Pay a nonrefundable fee of ~~twenty five dollars (\$25.00)~~ thirty dollars (\$30.00)."

Section 3.(b) G.S. 10A-7(a) reads as rewritten:

"(a) The course of study required by G.S. 10A-4(b) shall be taught by an instructor certified in accordance with rules adopted by the Secretary. An instructor must meet the following requirements to be certified to teach a course of study for notaries public:

- (1) Complete and pass a six-hour instructor's course taught by the Director or other person approved by the Secretary.
- (2) Have six months of active experience as a notary public.
- (3) Maintain a current commission as a notary public.
- (4) Purchase the current notary public guidebook.
- (5) Pay a nonrefundable fee of fifty dollars (\$50.00).

~~thirty dollars (\$30.00)~~ thirty dollars (\$30.00)"

Section 3.(c) This section becomes effective October 1, 1999.

Section 4. G.S. 28A-21-2(a) reads as rewritten:

"(a) Unless the time for filing the final account has been extended by the clerk of superior court, the personal representative or collector must file ~~his~~ the final account for settlement within one year ~~of his qualification~~ after qualifying or within six months after ~~his receipt of the State~~ receiving a State estate or inheritance tax release, whichever is later. If no estate or inheritance tax return was required to be filed for the ~~estate under G.S. 105-23 because the estate met the requirements of subsection (b) of that section,~~ estate, the personal representative or collector shall so certify in the final account filed with the clerk of superior court. Such certification shall list the amount and value of all of the decedent's property, and with respect to real estate, its particular location within or outside the State, including any property transferred by the decedent over which ~~he~~ the decedent had retained any ~~interest as described in G.S. 105-2(a)(3),~~ interest, or any property transferred within three years prior to the date of the decedent's death, and after being filed and accepted by the clerk of the superior court shall be prima facie evidence that such property is free of any State inheritance or State estate tax liability. The personal representative or collector shall produce vouchers for all payments or verified proof for all payments in lieu of vouchers. With the approval of the clerk of superior court, such account may be filed voluntarily at any time. In all cases, the accounting shall be reviewed, audited and recorded by the clerk of superior court in the manner prescribed in G.S. 28A-21-1."

Section 5. G.S. 29-13 reads as rewritten:

"§ 29-13. Descent and distribution upon intestacy.

All the estate of a person dying intestate shall descend and be distributed, subject to the payment of costs of administration and other lawful claims against the estate, and subject to the payment ~~by the recipient~~ of State inheritance or estate taxes, as provided in this Chapter."

Section 6. G.S. 29-20 reads as rewritten:

"§ 29-20. Descent and distribution upon intestacy of illegitimate children.

All the estate of a person dying illegitimate and intestate shall descend and be distributed, subject to the payment of costs of administration and other lawful claims against ~~his the~~ estate, and subject to the payment ~~by the recipient~~ of State inheritance or estate taxes, as provided in this Article."

Section 7. G.S. 36A-100(c) reads as rewritten:

"(c) A person having the right to designate the beneficiary under a life insurance policy, employee benefit plan or group life insurance policy described in subsection (a) or (b) of this section may designate as such beneficiary a trustee named or to be named in his will whether or not the will is in existence at the time of the designation. The proceeds received by the trustee shall be held and disposed of as part of the trust estate under the terms of the will as they exist at the death of the testator. If no qualified trustee makes claim to the proceeds within six months after the death of the decedent or if within that period it is established that no trustee can qualify to receive the proceeds, payments shall be made to the personal representative of the estate of the person making the designation unless it is otherwise provided by an alternative designation or by the policy or plan. The proceeds received by the trustee shall not be subject to claims against the estate of the decedent or to estate or inheritance taxes to any greater extent than if the proceeds were payable directly to the beneficiary or beneficiaries named in the trust. The proceeds may be commingled with any other assets which may properly become part of such trust, but the proceeds shall not become part of the decedent's estate for purposes of trust administration unless the will of the decedent expressly so provides."

Section 8. G.S. 36A-125(a) reads as rewritten:

"(a) If at any time the trustee of a noncharitable irrevocable trust determines in good faith that the value of the assets held in trust is ten thousand dollars (\$10,000) or less, and the continuance of the trust pursuant to its terms in relation to the cost of its administration would defeat or substantially impair the accomplishment of the purposes of the trust, the trustee, without approval of the court, may, but is not required to, terminate the trust and distribute the trust property, including principal and undistributed income, to the beneficiaries in a manner which conforms as nearly as possible to the intention of the settlor as determined by the trustee from the trust agreement; provided, however, that the trust property, including principal and undistributed income, shall be distributed to the income beneficiary of the trust if the trust otherwise qualifies for the marital deduction for federal estate tax or North Carolina estate or inheritance tax purposes, or is a Qualified Subchapter S Trust as defined in the Internal Revenue Code. The trustee may enter into an agreement or make such other provisions that the trustee deems necessary or appropriate to protect the interests of the beneficiaries and to carry out the intent and purpose of the trust."

Section 9. G.S. 41-2.1(f) reads as rewritten:

"(f) This section does not repeal or modify any provisions of the law relating to estate or inheritance taxes."

Section 10. G.S. 41-2.2(d) reads as rewritten:

"(d) This section does not repeal or modify any provisions of the law relating to estate or inheritance taxes."

Section 11. G.S. 41-2.5(d) reads as rewritten:

"(d) ~~Nothing herein contained shall be construed to repeal or modify any of the provisions of Article 1 of Chapter 105 relating to the administration of the inheritance tax laws or any other provision of the law relating to~~ This section does not repeal or modify any provisions of the law relating to estate or inheritance taxes."

Section 12. G.S. 93B-15 reads as rewritten:

"§ 93B-15. Payment of license fees by members of the armed forces.

An individual who is serving in the armed forces of the United States and to whom G.S. 105-249.2 grants an extension of time to file a tax return is granted an extension of time to pay any license fee charged by an occupational licensing board ~~or~~ as a condition of retaining a license granted by the board. The extension is for the same period that would apply if the license fee were a tax."

Section 13. G.S. 105-32.8 reads as rewritten:

"§ 105-32.8. Federal determination that changes the amount of tax payable to the State.

If the federal government corrects or otherwise determines the amount of the maximum state death tax credit allowed an estate under section 6166 of the Code, the personal representative must, within two years after being notified of the correction or final determination by the federal government, file an estate tax return with the Secretary reflecting the correct amount of tax payable under this Article. If the federal government corrects or otherwise determines the amount of the maximum state generation-skipping transfer tax credit allowed under section 2604 of the Code, the person who made the transfer must, within two years after being notified of the correction or final determination by the federal government, file a tax return with the Secretary reflecting the correct amount of tax payable under this Article.

The Secretary must assess and collect any additional tax due as provided in Article 9 of this Chapter and must refund any overpayment of tax as provided in Article 9 of this Chapter. A person who fails to report a federal correction or determination in accordance with this section ~~is subject to the penalties in G.S. 105-236 and forfeits the right to any refund due by reason of the determination.~~

Section 14.(a) G.S. 105-37.1 reads as rewritten:

~~"§ 105-37.1. (Effective July 1, 1999) Amusements — Forms of amusement not otherwise taxed.~~

~~(a) Every person engaged in the business of giving, offering, or managing any form of entertainment or amusement not otherwise taxed under this Article, for which an admission is charged, shall pay a tax upon the gross receipts of the business at the rate of three percent (3%). Reports shall be made to the Secretary within the first 10~~

days of each month covering all the gross receipts for the previous month, and the tax shall be paid monthly at the time the reports are made.

Every person giving, offering, or managing any dance or athletic contest of any kind, except high school and elementary school athletic contests, for which an admission fee in excess of fifty cents (50¢) is charged, shall pay a tax upon the gross receipts derived from admission charges at the rate of three percent (3%). The tax upon gross receipts shall be levied and collected as prescribed by the Secretary.

(b) Counties shall not levy any license tax on the business taxed under this section, but cities may levy a license tax not in excess of twenty five dollars (\$25.00).

(c), (d) Repealed by Session Laws 1998-95, s. 4, effective July 1, 1999.

"§ 105-37.1. (Effective July 1, 1999) Dances, athletic events, shows, exhibitions, and other entertainments.

(a) Scope. – A privilege tax is imposed on the gross receipts of a person who is engaged in any of the following:

- (1) Giving, offering, or managing a dance or an athletic contest for which an admission fee in excess of fifty cents (50¢) is charged.
- (2) Giving, offering, or managing a form of amusement or entertainment that is not taxed by another provision of this Article and for which an admission fee is charged.
- (3) Exhibiting a performance, show, or exhibition, such as a circus or dog show, that is not taxed by another provision of this Article.

(b) Rate and Payment. – The rate of the privilege tax is three percent (3%) of the gross receipts from the activities described in subsection (a) of this section. The tax is due when a return is due. A return is due by the 10th day after the end of each month and covers the gross receipts received during the previous month.

(c) Advance Report. – A person who owns or controls a performance, show, or exhibition subject to the tax imposed by this section and who plans to bring the performance to this State from outside the State must file a statement with the Secretary that lists the dates, times, and places of the performance, show, or exhibition. The statement must be filed no less than five days before the first performance, show, or exhibition in this State.

(d) Local Taxes. – Cities may levy a license tax on a person taxed under subdivision (a)(1) or (a)(2) of this section; however, the tax may not exceed twenty-five dollars (\$25.00). Cities may levy a license tax on a person taxed under subdivision (a)(3) of this section; however, the tax may not exceed twenty-five dollars (\$25.00) for each day or part of a day the performance, show, or exhibition is given at each location.

Counties may not levy a license tax on a person taxed under subdivision (a)(1) or (a)(2) of this section. Counties may levy a license tax on a person taxed under subdivision (a)(3) to the same extent as a city."

Section 14.(b) G.S. 105-38 is repealed.

Section 15.(a) G.S. 105-38.1 reads as rewritten:

"§ 105-38.1. Amusements--Motion picture shows.

(a) Tax.—A privilege tax at the rate of one percent (1%) is imposed on the gross receipts of a person who is engaged in the business of operating a motion picture show

for which an admission is charged. The tax is due when a return is due. A return is due by the 10th day after the end of each month and covers the gross receipts received during the previous month. If a person offers an entertainment or amusement that includes both a motion picture taxable under this section and an entertainment or amusement taxable under ~~G.S. 105-37.1 or G.S. 105-38~~, G.S. 105-37.1, the tax in ~~G.S. 105-37.1 or G.S. 105-38~~, as appropriate, ~~that statute~~ applies to the entire gross receipts and the tax levied in this section does not apply.

(b) ~~Exemption.—Gross receipts from a motion picture show promoted and managed by a qualifying corporation that operates a center for the performing and visual arts is exempt from the tax imposed under this section if the motion picture is shown at the center and if the showing of motion pictures is not the primary purpose of the center. As used in this subsection, "qualifying corporation" and "center for the performing and visual arts" have the same meaning as in G.S. 105-40.~~

Section 15.(b) G.S. 105-40(7) reads as rewritten:

"(7) ~~All dances—dances, motion picture shows,~~ and other amusements promoted and managed by a qualifying corporation that operates a center for the performing and visual arts if the dance or other amusement is held at the center. "Qualifying corporation" means a corporation that is exempt from income tax under G.S. 105-130.11(a)(3). "Center for the performing and visual arts" means a facility, having a fixed location, that provides space for dramatic performances, studios, classrooms, and similar accommodations to organized arts groups and individual artists. This exemption does not apply to athletic events."

Section 16. G.S. 105-109.1 is repealed.

Section 17. G.S. 105-113 is repealed.

Section 18. G.S. 105-113.27(c) reads as rewritten:

"(c) The possession of more than six hundred cigarettes ~~bearing the tax stamp of~~ on which tax has been paid to another state or country, by any person other than a licensed distributor, ~~shall be~~ is prima facie evidence that the cigarettes are possessed in violation of this Part."

Section 19. G.S. 105-113.106(4c) reads as rewritten:

"(4c) Low-street-value drug. – Any of the following controlled substances:

- a. An anabolic steroid as defined in G.S. 90-91(k).
- b. A depressant described in ~~G.S. 90-89(d), 90-90(d), G.S. 90-89(4), 90-90(4),~~ 90-91(b), or 90-92(a).
- c. A hallucinogenic substance described in ~~G.S. 90-89(e) or G.S. 90-90(e), G.S. 90-89(3) or G.S. 90-90(5),~~ 90-91(j), ~~90-92(d), 90-92(a)(3), or 90-93(a)3.~~ 90-92(d), 90-92(a)(3), or 90-93(a)(3).
- e. A controlled substance described in G.S. 90-91(c), (d), or (e), ~~90-92(e), (e), or (f), 90-92(a)(3), or (a)(5), or 90-93(a)1.~~

Section 20. G.S. 105-114(b)(2) reads as rewritten:

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

...

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

Section 21. G.S. 105-122(c)(1) reads as rewritten:

- "(c) (1) After ascertaining and determining the amount of its capital stock, surplus and undivided profits, as provided herein, every corporation permitted to allocate and apportion its net income for income tax purposes under the provisions of Article 4 of this Chapter shall apportion said capital stock, surplus and undivided profits to this State through use of the fraction computed for apportionment of its business income under said Article. A corporation that is subject to franchise tax under this Article but is not subject to income tax under Article 4 of this Chapter must apportion its capital stock, surplus, and undivided profits to this State by using the apportionment formula that would apply to the corporation if it were subject to Article 4.

Provided, that although a corporation is authorized by the Tax Review Board to apportion its business income by use of an alternative formula or method, the corporation may not use such alternative formula or method for apportioning its capital stock, surplus and undivided profits unless specifically authorized to do so by order of the Tax Review Board.

Provided, further, that a corporation which is required to pay an income tax to this State on its entire net income shall apportion its entire capital stock, surplus and undivided profits to this State."

Section 22. G.S. 105-130.16 reads as rewritten:

"§ 105-130.16. Returns.

(a) Return. – Every corporation doing business in this State ~~shall file with the Secretary of Revenue~~ must file with the Secretary an income tax return ~~under affirmation, showing therein~~ under affirmation, showing therein specifically the items of gross income and the deductions allowed by this Part, ~~Part and such other facts as the Secretary may require for the purpose of making any other facts the Secretary requires to make any computation required by this Part.~~ Part and such other facts as the Secretary may require for the purpose of making any other facts the Secretary requires to make any computation required by this Part. The return of a corporation ~~shall be signed by either~~ shall be signed by either ~~must be signed by~~ must be signed by its president, vice-president, treasurer, assistant treasurer, ~~secretary~~ secretary, or assistant secretary. ~~There shall be annexed to the return the affirmation of the officer signing the same, which shall be in the form prescribed in G.S. 105-130.17 of this Part, and the same penalties prescribed in G.S. 105-236 shall apply to any person making~~

~~wilful misstatements in said returns.~~ The officer signing the return must furnish an affirmation verifying the return. The affirmation must be in the form required by the Secretary.

(b) Correction of Distortions. – ~~When the Secretary of Revenue has reason to believe that any corporation so conducts its trade or business in such manner as to either directly or indirectly distort its true net income and the net income properly attributable to the State, whether by the arbitrary shifting of income, through price fixing, charges for service, or otherwise, whereby the net income is arbitrarily assigned to one or another unit in a group of taxpayers carrying on business under a substantially common control, he may require such facts as he deems the Secretary may require any facts the Secretary considers necessary for the proper computation of the entire net income and the net income properly attributable to the State, and in determining same the Secretary of Revenue shall these computations, the Secretary must have regard to the fair profit which that would normally arise from the conduct of the trade or business.~~

(c) Other Corrections. – ~~When any corporation liable to taxation under this Part conducts its business in such a manner as to either directly or indirectly benefit the members or stockholders thereof or any person interested in such the business by selling its products or goods or commodities in which it deals at less than the fair price which might be obtained therefor, or where when a corporation, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, acquires and disposes of the products of the corporation so owning a substantial portion of its stock in such a manner as to create a loss or improper net income for either of said the corporations, or where when a corporation, owning directly or indirectly a substantial portion of the stock of another corporation, acquires and disposes of the products of the corporation of which it so owns a substantial portion of the stock in such manner as to create a loss or improper net income for either of said the corporations, the Secretary of Revenue may determine the amount of taxable income of any the such corporations for the calendar or fiscal year, having due regard to the reasonable profits which, but for such arrangement or understanding, might or could have been obtained by the corporation or corporations liable to taxation under this Part from dealing in such products, goods or commodities."~~

Section 23. G.S. 105-130.33(a) reads as rewritten:

"(a) Any corporation that constructs or installs a hydroelectric generator with a capacity of at least three kilowatts (3KW) at an existing dam or free flowing stream located in this State shall be allowed a credit against the tax imposed by this Part equal to ten percent (10%) of the installation and equipment costs of the hydroelectric generator paid during the taxable year. The credit allowed under this section may not exceed five thousand dollars (\$5,000) for any single installation. No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the hydroelectric generator is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this Part for the taxable year reduced by the sum of all credits ~~allowable under this Part, allowable,~~ except payments of tax made by or on behalf of the taxpayer."

Section 24. G.S. 105-131.7(d) reads as rewritten:

"(d) The agreements required to be filed pursuant to subsection (c) of this section shall be filed at the following times:

- (1) At the time the annual return is required to be filed for the first taxable period for which the S Corporation becomes subject to the provisions of this ~~Division; and Part.~~
- (2) At the time the annual return is required to be filed for any taxable period in which the corporation has a nonresident shareholder on whose behalf such an agreement has not been previously filed."

Section 25. G.S. 105-152(e) reads as rewritten:

"(e) Joint Returns. – A husband and wife shall file a single income tax return jointly if (i) their federal taxable income is determined on a joint federal return and (ii) both spouses are residents of this State or both spouses have North Carolina taxable income. Except as otherwise provided in this Part, a wife and husband filing jointly are treated as one taxpayer for the purpose of determining the tax imposed by this Part. A husband and wife filing jointly are jointly and severally liable for the tax imposed by this Part reduced by the sum of all credits allowable including tax payments made by or on behalf of the husband and wife. However, if a spouse has been relieved of liability for federal tax attributable to a substantial understatement by the other spouse pursuant to section ~~6013-6015~~ of the Code, that spouse is not liable for the corresponding tax imposed by this Part attributable to the same substantial understatement by the other spouse. A wife and husband filing jointly have expressly agreed that if the amount of the payments made by them with respect to the taxes for which they are liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses jointly or, if either is deceased, to the survivor alone."

Section 26. G.S. 105-154(c) reads as rewritten:

"(c) Information Returns of Partnerships. – A partnership doing business in this State and required to file a return under the Code shall file an information return with the Secretary. A partnership that the Secretary believes to be doing business in this State and to be required to file a return under the Code shall file an information return when requested to do so by the Secretary. The information return shall contain all information required by the Secretary. It shall state specifically the items of the partnership's gross income, the deductions allowed under the Code, and the adjustments required by this Part. The information return shall also include the name and address of each person who would be entitled to share in the partnership's net income, if distributable, and the amount each person's distributive share would be. The information return shall specify the part of each person's distributive share of the net income that represents corporation dividends. The information return shall be signed by one of the partners under affirmation in the form ~~prescribed in G.S. 105-155. required by the Secretary.~~

A partnership that files an information return under this subsection shall furnish to each person who would be entitled to share in the partnership's net income, if distributable, any information necessary for that person to properly file a State income

tax return. The information shall be in the form prescribed by the Secretary and must be furnished on or before the due date of the information return."

Section 27. G.S. 105-163.011 reads as rewritten:

"§ 105-163.011. (Repealed effective for investments made on or after January 1, 2003) Tax credits allowed.

(a) No Credit for Brokered Investments. – No credit is allowed under this section for a purchase of equity securities or subordinated debt if a broker's fee or commission or other similar remuneration is paid or given directly or indirectly for soliciting the purchase.

(b) Individuals. – Subject to the limitations contained in G.S. 105-163.012, an individual who purchases the equity securities or subordinated debt of a qualified business venture or a qualified grantee business directly from that business is allowed as a credit against the tax imposed by Part 2 of this Article for the taxable year an amount equal to twenty-five percent (25%) of the amount invested. The aggregate amount of credit allowed an individual for one or more investments in a single taxable year under this ~~Division, Part~~, whether directly or indirectly as owner of a pass-through entity, may not exceed fifty thousand dollars (\$50,000). The credit may not be taken for the year in which the investment is made but shall be taken for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (c) of this section.

(b1) Pass-Through Entities. – This subsection does not apply to a pass-through entity that has committed capital under management in excess of five million dollars (\$5,000,000) or to a pass-through entity that is a qualified grantee business, a qualified business venture, or a North Carolina Enterprise Corporation. Subject to the limitations provided in G.S. 105-163.012, a pass-through entity that purchases the equity securities or subordinated debt of a qualified grantee business or a qualified business venture directly from the business is eligible for a tax credit equal to twenty-five percent (25%) of the amount invested. The aggregate amount of credit allowed a pass-through entity for one or more investments in a single taxable year under this ~~Division, Part~~, whether directly or indirectly as owner of another pass-through entity, may not exceed seven hundred fifty thousand dollars (\$750,000). The pass-through entity is not eligible for the credit for the year in which the investment by the pass-through entity is made but shall be eligible for the credit for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (c) of this section.

Each individual who is an owner of a pass-through entity is allowed as a credit against the tax imposed by Part 2 of this Article for the taxable year an amount equal to the owner's allocated share of the credits for which the pass-through entity is eligible under this subsection. The aggregate amount of credit allowed an individual for one or more investments in a single taxable year under this ~~Division, Part~~, whether directly or indirectly as owner of a pass-through entity, may not exceed fifty thousand dollars (\$50,000).

If an owner's share of the pass-through entity's credit is limited due to the maximum allowable credit under this section for a taxable year, the pass-through entity and its owners may not reallocate the unused credit among the other owners.

(c) Application. – To be eligible for the tax credit provided in this section, the taxpayer must file an application for the credit with the Secretary on or before April 15 of the year following the calendar year in which the investment was made. The Secretary may grant extensions of this deadline, as the Secretary finds appropriate, upon the request of the taxpayer, except that the application may not be filed after September 15 of the year following the calendar year in which the investment was made. An application is effective for the year in which it is timely filed. The application shall be on a form prescribed by the Secretary and shall include any supporting documentation that the Secretary may require. If an investment for which a credit is applied for was paid for other than in money, the taxpayer shall include with the application a certified appraisal of the value of the property used to pay for the investment. The application for a credit for an investment made by a pass-through entity must be filed by the pass-through entity.

(d) Penalties. – The penalties provided in G.S. 105-236 apply in this ~~Division-Part.~~

Section 28.(a) G.S. 105-164.3(8b) is recodified as G.S. 105-164.3(8c) and reads as rewritten:

"§ 105-164.3. Definitions.

The following definitions apply in this Article, except when the context clearly indicates a different meaning:

- ...
- ~~(8b)~~(8c) "Motor vehicle" means a vehicle that is designed primarily for use upon the highways and is either self-propelled or propelled by a self-propelled vehicle, but does not include:
- a. A ~~moped as defined in G.S. 20-4.01(27) (d1).~~ moped.
 - b. ~~Special mobile equipment as defined in G.S. 20-4.01(44).~~ equipment.
 - c. A tow dolly that is exempt from motor vehicle title and registration requirements under G.S. 20-51(10) or (11).
 - d. A farm tractor or other implement of husbandry.
 - e. A manufactured home, a mobile office, or a mobile classroom.
 - f. Road construction or road maintenance machinery or equipment."

Section 28.(b) G.S. 105-164.3 is amended by adding the following new subdivisions in the appropriate alphabetical order:

- (8b) Moped. – A vehicle that has two or three wheels, no external shifting device, and a motor that does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 20 miles per hour on a level surface.

- ...
- (16b) Special mobile equipment. – Any of the following:

- a. A vehicle that has a permanently attached crane, mill, well-boring apparatus, ditch-digging apparatus, air compressor, electric welder, feed mixer, grinder, or other similar apparatus is driven on the highway only to get to and from a nonhighway job and is not designed or used primarily for the transportation of persons or property.
- b. A vehicle that has permanently attached special equipment and is used only for parade purposes.
- c. A vehicle that is privately owned, has permanently attached fire-fighting equipment, and is used only for fire-fighting purposes.
- d. A vehicle that has permanently attached playground equipment and is used only for playground purposes."

Section 28.(c) G.S. 20-4.01(21a) reads as rewritten:

"(21a) Moped. – A type of passenger vehicle as defined in G.S. 20-4.01(27)-G.S. 105-164.3."

Section 28.(d) G.S. 20-4.01(27)d1. reads as rewritten:

"d1. Moped. —~~A vehicle that has two or three wheels, no external shifting device, and a motor that does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 20 miles per hour on a level surface.~~ Defined in G.S. 105-164.3."

Section 28.(e) G.S. 20-4.01(44) reads as rewritten:

"(44) Special Mobile Equipment. – Any of the following:

- a. ~~A vehicle that has a permanently attached crane, mill, well-boring apparatus, ditch digging apparatus, air compressor, electric welder, feed mixer, grinder, or other similar apparatus, is driven on the highway only to get to and from a nonhighway job, and is not designed or used primarily for the transportation of persons or property.~~
- b. ~~A vehicle that has permanently attached special equipment and is used only for parade purposes.~~
- c. ~~A vehicle that is privately owned, has permanently attached fire-fighting equipment, and is used only for fire-fighting purposes.~~
- d. ~~A vehicle that has permanently attached playground equipment and is used only for playground purposes.~~ Defined in G.S. 105-164.3."

Section 29. G.S. 105-164.4(a)(4) reads as rewritten:

"§ 105-164.4. Tax imposed on retailers.

(a) **(Effective July 1, 1999)** A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four percent (4%).

...

- (4) Every person engaged in the business of operating a dry cleaning, pressing, or hat-blocking establishment, a laundry, or any similar business, engaged in the business of renting clean linen or towels or wearing apparel, or any similar business, or engaged in the business of soliciting cleaning, pressing, hat blocking, laundering or linen rental business for any of these businesses, is considered a retailer under this Article. A tax at the general rate of tax is levied on the gross receipts derived by these retailers from services rendered in engaging in any of the occupations or businesses named in this subdivision. The tax imposed by this subdivision does not apply to receipts derived from ~~coin or token-operated~~ coin, token, or card-operated washing machines, extractors, and dryers. The tax imposed by this subdivision does not apply to gross receipts derived from services performed for resale by a retailer that pays the tax on the total gross receipts derived from the services."

Section 30. G.S. 105-164.4(c) reads as rewritten:

"(c) Certificate of Registration. – Before a person may engage in business as a retailer or a wholesale merchant, the person must obtain a certificate of registration from the Department. To obtain a certificate of registration, a person must register with the Department and pay fifteen dollars (\$15.00).

A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer who makes taxable sales becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales."

Section 31. G.S. 105-164.13(4d) reads as rewritten:

"(4d) The lease or rental of ~~burlap~~ tobacco sheets used in handling tobacco in the warehouse and transporting tobacco to and from the warehouse."

Section 32.(a) G.S. 105-187.43 reads as rewritten:

"§ 105-187.43. (Effective July 1, 1999) Payment of the tax.

(a) ~~Monthly Return Payment.~~ – The tax imposed by this Article is payable monthly to the Secretary. A monthly tax payment is due by the last day of the month that follows the month in which the tax accrues. The tax imposed by this Article on piped natural gas delivered to a sales or transportation customer accrues when the gas is delivered. The tax payable on piped natural gas received by a person who has direct access to an interstate pipeline for consumption by that person accrues when the gas is received.

(b) Small Underpayments. – A person is not subject to interest on or penalties for an underpayment of a monthly amount due if the person timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next return the person files.

(c) Return. – A return is due quarterly. A quarterly return covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the return."

Section 32.(b) G.S. 105-187.44 reads as rewritten:

"§ 105-187.44. (Effective July 1, 1999) Distribution of part of tax proceeds to cities.

(a) City Information. – A ~~monthly~~quarterly return filed under this Article must indicate the amount of tax attributable to the following:

- (1) Piped natural gas delivered during the ~~month~~quarter to sales or transportation customers in each city in the State.
- (2) Piped natural gas received during the ~~month~~quarter in each city in the State by persons who have direct access to an interstate gas pipeline and who receive the gas for their own consumption.

If a tax return does not state this information, the Secretary must determine how much of the tax proceeds are to be attributed to each city.

(b) Distribution. – Within 75 days after the end of each calendar quarter, the Secretary must distribute to the cities part of the tax proceeds collected under this Article during that quarter. The amount to be distributed to a city is one-half of the amount of tax attributable to that city for that quarter under subsection (a) of this section."

Section 33. G.S. 105-194 reads as rewritten:

"§ 105-194. Death of donor within three years; time of assessment.

~~Where~~If a donor dies within three years after filing a return, gift taxes may be assessed at any time within ~~said~~those three years, or on or before the date of final settlement of the donor's State estate or inheritance taxes, whichever is later."

Section 34. G.S. 105-253(a) reads as rewritten:

"(a) Any officer, trustee, or receiver of any corporation or limited liability company required to file a report with the Secretary who has custody of funds of the corporation or company and who allows the funds to be paid out or distributed to the stockholders of the corporation or to the members of the company without having remitted to the Secretary any State taxes that are due is personally liable for the payment of the tax."

Section 35.(a) G.S. 105-275 is amended by adding a new subdivision to read:

"(41) Objects of art held by the North Carolina Art Society, Incorporated."

Section 35.(b) G.S. 140-15 reads as rewritten:

~~**"§ 140-15. Exemption from taxes.**~~

~~All gifts made to the North Carolina State Art Society, Incorporated, shall be exempt from State gift and inheritance taxes, and objects of art held by the Society shall be exempt from ad valorem taxes."~~

Section 36. G.S. 105-449.37(a)(1a) reads as rewritten:

"§ 105-449.37. Definitions; tax liability.

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

- ...
- (1a) Motor vehicle. – A motor vehicle as defined in ~~G.S. 20-4.01(23)~~, G.S. 105-164.3(8c), other than special mobile equipment as defined in ~~G.S. 20-4.01(44)~~. G.S. 105-164.3(16b)."

Section 37. G.S. 105-449.39 reads as rewritten:

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

Every motor carrier subject to the tax levied by this Article is entitled to a credit on its quarterly report for tax paid by the carrier on fuel purchased in the State. ~~A motor carrier who files a quarterly report is entitled to a credit at a rate equal to~~ The amount of the credit is determined using the flat cents-per-gallon rate plus the variable cents-per-gallon rate of tax in effect during the quarter ~~for which the credit is claimed. A motor carrier who files an annual report is entitled to a credit at a rate equal to the flat cents-per-gallon rate plus the average of the two variable cents per gallon rates of tax in effect during the year for which the credit is claimed.~~ covered by the report. To obtain a credit, the motor carrier must furnish evidence satisfactory to the Secretary that the tax for which the credit is claimed has been paid.

If the amount of a credit to which a motor carrier is entitled for a ~~reporting period~~ quarter exceeds the motor carrier's liability for that ~~reporting period,~~ quarter, the Secretary must refund the excess to the motor carrier."

Section 38. G.S. 105-449.42 reads as rewritten:

"§ 105-449.42. Payment of tax.

The tax levied by this Article is due when a motor carrier files a quarterly ~~or an annual~~ report under G.S. 105-449.45. The amount of tax due ~~shall be~~ is calculated ~~upon~~ on the amount of ~~gasoline or other~~ motor fuel or alternative fuel used by the motor carrier in its operations within this State during the ~~reporting period~~ quarter covered by the report."

Section 39. G.S. 105-449.44(a) reads as rewritten:

"(a) Calculation. – The amount of ~~gasoline or other~~ motor fuel ~~used in the operations of any motor carrier within this State shall be such proportion of the total amount of such gasoline or other motor fuel used in its entire operations within and without this State as the total number of miles traveled within this State bears to the total number of miles traveled within and without this State.~~ or alternative fuel a motor carrier carries in its operations in this State for a reporting period is the ratio of the number of miles the motor carrier travels in this State during that period to the total number of miles the motor carrier travels inside and outside this State during that period, multiplied by the total amount of fuel the motor carrier uses in its operations inside and outside the State during that period."

Section 40. G.S. 105-449.45 reads as rewritten:

"§ 105-449.45. Reports of carriers.

(a) ~~Quarterly~~ Report. – A motor carrier ~~shall~~ must report its operations to the Secretary on a quarterly basis unless ~~this subsection~~ subsection (b) of this section exempts the motor carrier from this ~~requirement~~ or permits the motor carrier to report on a different basis. A motor carrier is not required to file a quarterly report if:

- (1) ~~All the motor carrier's operations during the quarter were made under a temporary permit issued under G.S. 105-449.49.~~
- (2) ~~The motor carrier is an intrastate motor carrier, as indicated on the motor carrier's application for registration with the Secretary.~~
- (3) ~~The motor carrier has been granted permission to file an annual report under subsection (b).~~

requirement. A quarterly report covers a calendar quarter and is due by the last day in April, July, October, and January.

(b) Exemptions. – A motor carrier is not required to file a quarterly report if any of the following applies:

- (1) All the motor carrier's operations during the quarter were made under a temporary permit issued under G.S. 105-449.49.
- (2) The motor carrier is an intrastate motor carrier, as indicated on the motor carrier's application for registration with the Secretary.

~~Annual Report. — The Secretary may authorize a motor carrier whose estimated annual tax liability under this Article does not exceed two hundred dollars (\$200.00) to file an annual report of its operations. The tax liability of a motor carrier that files an annual report shall be computed at a rate equal to the flat cents per gallon rate plus the average of the two cents per gallon rates in effect during the year for which the liability is computed.~~

~~An annual report covers a fiscal year beginning on July 1 and ending on the following June 30 and is due by July 31 after the end of a fiscal year. To file an annual report, a motor carrier must apply to the Secretary for permission to file on an annual basis. An application must be submitted by the date set by the Secretary. Once granted permission, a motor carrier may continue to file an annual report until notified by the Secretary to file a quarterly report.~~

(c) ~~Other Reports. – A motor carrier shall~~ must file with the Secretary other reports concerning its operations that the Secretary requires.

(d) ~~Penalties. – A motor carrier that fails to file a report under this section by the required date is subject to a penalty of fifty dollars (\$50.00)."~~

Section 41. G.S. 105-449.47 reads as rewritten:

"§ 105-449.47. Registration of vehicles.

(a) Requirement. – A motor carrier that is subject to the International Fuel Tax Agreement may not operate or cause to be operated in this State any vehicle listed in the definition of motor vehicle unless both the motor carrier and the motor vehicle are registered with the motor carrier's base state jurisdiction. A motor carrier that is not subject to the International Fuel Tax Agreement may not operate or cause to be operated in this State any vehicle listed in the definition of motor carrier-vehicle unless both the motor carrier and the motor vehicle are registered with the Secretary for purposes of the tax imposed by this Article.

~~Upon application, When the Secretary shall register registers a motor carrier and shall carrier, the Secretary must issue at least one identification marker for each motor vehicle operated by the motor carrier. Registrations and identification markers issued by the Secretary are for a calendar year. The Secretary may renew a registration or an identification marker without issuing a new registration or identification marker. All identification markers issued by the Secretary remain the property of the State. The Secretary may withhold or revoke a registration or an identification marker when a motor carrier fails to comply with this Article, former Article 36 or 36A of this Subchapter, or Article 36C or 36D of this Subchapter.~~

~~A motor carrier must carry a copy of the its registration of a motor carrier shall be carried~~ in each motor vehicle operated by the motor carrier when the vehicle is in this State. ~~An identification marker shall be clearly displayed at all times and shall~~ A motor vehicle must clearly display an identification marker at all times. ~~The identification marker must be affixed to the vehicle for which it was issued in the place and manner designated by the Secretary.~~ authority that issued it. ~~Registrations and identification markers required by this section shall be issued on a calendar year basis. The Secretary may renew a registration or an identification marker without issuing a new registration or identification marker. All identification markers issued by the Secretary remain the property of the State. The Secretary may withhold or revoke a registration or an identification marker when a motor carrier fails to comply with this Article or Article 36C or 36D of this Subchapter.~~

(b) Exemption. – This section does not apply to the operation of a vehicle that is registered in another state and is operated temporarily in this State by a public utility, a governmental or cooperative provider of utility services, or a contractor for one of these entities for the purpose of restoring utility services in an emergency outage."

Section 42. G.S. 105-449.57 reads as rewritten:

"§ 105-449.57. Cooperative agreements between jurisdictions.

(a) Authority. – The Secretary may enter into cooperative agreements with other jurisdictions for exchange of information in administering the tax imposed by this Article. No agreement, arrangement, declaration, or amendment to an agreement is effective until stated in writing and approved by the Secretary.

(b) Content. – An agreement may provide for determining the base state for motor carriers, records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods, including defining uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of ~~gasoline or other~~ motor fuel ~~carrier~~ taxes and penalties to another jurisdiction, and ~~such any other provisions as that~~ will facilitate the administration of the agreement.

(c) Disclosure. – In accordance with G.S. 105-259, the Secretary may, as required by the terms of an agreement, forward to officials of another jurisdiction any information in the Department's possession relative to the use of ~~gasoline or other motor fuels~~ motor fuel or alternative fuel by any motor carrier. The Secretary may disclose to officials of another jurisdiction the location of offices, motor vehicles, and other real and personal property of motor carriers.

(d) Audits. – An agreement may provide for each jurisdiction to audit the records of motor carriers based in the jurisdiction to determine if the ~~gasoline or other motor fuel~~ taxes due each jurisdiction are properly reported and paid. Each jurisdiction ~~shall~~ must forward the findings of the audits performed on motor carriers based in the jurisdiction to each jurisdiction in which the carrier has taxable use of ~~gasoline or other motor fuels.~~ motor fuel or alternative fuel. For motor carriers not based in this ~~State who have taxable use of gasoline or other motor fuels in this~~ State, the Secretary may utilize the audit findings received from another jurisdiction as the basis upon which to propose

assessments of ~~gasoline or other motor fuel~~ taxes against the carrier as though the audit had been conducted by the Secretary. Penalties and interest ~~shall~~ must be assessed at the rates provided in the agreement.

No agreement entered into pursuant to this section may preclude the Department from auditing the records of any motor carrier covered by this Chapter.

The provisions of Article 9 of this Chapter apply to any assessment or order made under this section.

(e) Restriction. ~~—~~ The Secretary may not enter into any agreement that would increase or decrease taxes and fees imposed under Subchapter V of Chapter 105 of the General Statutes, Statutes, and any ~~Any~~ provision to the contrary is void."

Section 43. G.S. 105-449.52(b) reads as rewritten:

"(b) Hearing. ~~—Any person denying liability for a penalty imposed under this section must pay the penalty under protest and apply to the Department of Revenue for a hearing. Upon receiving a request for a hearing, the Secretary shall schedule a hearing before a duly designated employee or agent of the Department within 30 days after receipt of the request. If after the hearing the Department determines that the person was not liable for the penalty, the amount collected shall be refunded. If after the hearing the Department determines that the person was liable for the penalty, the person paying the penalty may bring an action in the Superior Court of Wake County against the Secretary of Revenue for refund of the penalty. No restraining order or injunction shall issue from any court of the State to restrain or enjoin the collection of the penalty or to permit the operation of the vehicle without payment of the penalty. The procedure set out in G.S. 105-449.119 for protesting a penalty imposed under Article 36C, Part 6, of this Chapter applies to a penalty imposed under this section.~~"

Section 44. G.S. 105-449.119 reads as rewritten:

"§ 105-449.119. Hearing on civil penalty assessment.

A person who denies liability for a penalty imposed under this Part must pay the penalty under protest and make a written demand to the Department of Revenue for a refund. The written demand must be made within 30 days after the penalty is ~~imposed.~~ imposed and must explain why the person is not liable for the penalty. Upon receiving a demand for a refund, the Secretary ~~shall~~ must schedule a hearing on the matter before an employee or an agent of the Department. The hearing must be held within 30 days after receiving the written demand for a refund. If, after the hearing, the Department determines that the person was not liable for the penalty, the amount collected ~~shall~~ must be refunded. ~~If~~ If, after the ~~hearing~~ hearing, the Department determines that the person was liable for the penalty, the person paying the penalty may appeal the imposition of the penalty in accordance with G.S. 105-241.2, 105-241.3, and 105-241.4."

Section 45. G.S. 160A-31(e2), as enacted by S.L. 1999-19, as it applies to the Town of Huntersville, reads as rewritten:

"(e2) Annexation of property subject to annexation under subsection (e1) of this section shall become effective as to each tract of such property or such part thereof on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to ~~G.S. 105-227.4~~ G.S. 105-277.4 and no longer meets the

requirements of subdivision (e1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subsection, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General Statutes, nor is the tract or part of the tract entitled to services provided by the city. When annexation becomes effective pursuant to this subsection as to a tract or part of a tract, the city shall provide all required services upon payment of city taxes."

Section 46. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.

Section 47. Except as otherwise provided in this act, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 1999.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 8:30 p.m. this 22nd day of July, 1999