

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

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**SENATE BILL 159**

Short Title: Revenue Laws Technical Changes. (Public)

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Sponsors: Senators Hartsell, Clodfelter, Dalton, Hoyle, Kerr, and Webster.

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Referred to: Finance.

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February 16, 2005

A BILL TO BE ENTITLED  
AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE  
REVENUE LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

**SECTION 1.(a)** G.S. 105-113.68(a) reads as rewritten:

"(a) Definitions. – As used in this Article, unless the context clearly requires otherwise:

(1) ~~"ABC Commission" means ABC Commission. – the The North Carolina Alcoholic Beverage Control Commission established under G.S. 18B-200.~~

(2) Repealed by Session Laws 2004-170, s. 6, effective August 2, 2004.

(3) ~~"ABC permit" means a written or printed authorization issued by the ABC Commission pursuant to Chapter 18B, other than a purchase transportation permit. Unless the context clearly requires otherwise, "ABC permit" means a presently valid permit.~~ABC permit. – Defined in G.S. 18B-101.

(4) ~~"Alcoholic beverage" means a beverage containing at least one half of one percent (0.5%) alcohol by volume, including malt beverages, unfortified wine, fortified wine, spirituous liquor, and mixed beverages.~~Alcoholic beverage. – Defined in G.S. 18B-101.

(5) ~~"Fortified wine" means any wine, of more than sixteen percent (16%) and no more than twenty-four percent (24%) alcohol by volume, made by fermentation from grapes, fruits, berries, rice, or honey; or by the addition of pure cane, beet, or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine and produced in accordance with the regulations of the United States.~~Fortified wine. – Defined in G.S. 18B-101.

- 1 (6) ~~"License" means a License.~~ – A certificate, issued pursuant to this  
2 Article by a city or county, that authorizes a person to engage in a  
3 phase of the alcoholic beverage industry.
- 4 (7) ~~"Malt beverage" means beer, lager, malt liquor, ale, porter, and any  
5 other brewed or fermented beverage containing at least one half of one  
6 percent (0.5%) and not more than six percent (6%) alcohol by  
7 volume.~~Malt beverage. – Defined in G.S. 18B-101.
- 8 (8) ~~"Person" has the same meaning as in G.S. 105-228.90.~~Person. –  
9 Defined in G.S. 105-228.90.
- 10 (9) ~~"Sale" means a transfer, trade, exchange, or barter, in any manner or  
11 by any means, for consideration.~~Sale. – Defined in G.S. 18B-101.
- 12 (10) ~~"Secretary" means the Secretary.~~ – The Secretary of Revenue.
- 13 (11) ~~"Spirituous liquor" or "liquor" means distilled spirits or ethyl alcohol,  
14 including spirits of wine, whiskey, rum, brandy, gin, and all other  
15 distilled spirits and mixtures of cordials, liqueurs, and premixed  
16 cocktails in closed containers for beverage use regardless of the  
17 dilution.~~Spirituous liquor or liquor. – Defined in G.S. 18B-101.
- 18 (12) ~~"Unfortified wine" means any wine of sixteen percent (16%) or less  
19 alcohol by volume made by fermentation from grapes, fruits, berries,  
20 rice, or honey; or by the addition of pure cane, beet, or dextrose sugar;  
21 or by the addition of pure brandy from the same type of grape, fruit,  
22 berry, rice, or honey that is contained in the base wine, and produced  
23 in accordance with the regulations of the United States.~~Unfortified  
24 wine. – Defined in G.S. 18B-101.
- 25 (13) ~~"Wholesaler or importer" when~~ Wholesaler or importer. – When used  
26 with reference to wholesalers or importers of wine or malt beverages  
27 includes resident wineries that sell their wines at retail and resident  
28 breweries that produce fewer than 310,000 gallons of malt beverages  
29 per year.
- 30 (14) ~~"Wine" means unfortified~~ Wine. – Unfortified and fortified wine.
- 31 (15) ~~"Wine shipper permittee" means a~~ Wine shipper permittee. – A winery  
32 that holds a wine shipper permit issued by the ABC Commission under  
33 G.S. 18B-1001.1."

34 **SECTION 1.(b)** G.S. 18B-101(15) reads as rewritten:

35 "(15) 'Unfortified wine' means any wine of sixteen percent (16%) or less  
36 alcohol by volume made by fermentation from ~~pure~~ grapes, fruits,  
37 berries, rice, or honey; or by the addition of pure cane, beet, or  
38 dextrose sugar; or by the addition of pure brandy from the same type  
39 of grape, fruit, berry, rice, or honey that is contained in the base wine  
40 and produced in accordance with the regulations of the United States."

41 **SECTION 2.** G.S. 105-129.8(a2) reads as rewritten:

42 "(a2) Installments. – The credit may not be taken in the taxable year in which the  
43 additional employee is hired. Instead, the credit must be taken in equal installments over  
44 the four years following the taxable year in which the additional employee was hired

1 and is conditioned on the taxpayer's continued employment by the taxpayer in this State  
2 of the number of full-time employees the taxpayer had upon hiring the employee that  
3 caused the taxpayer to qualify for the credit.

4 If, in one of the four years in which the installment of a credit accrues, the number of  
5 the taxpayer's full-time employees in this State falls below the number of full-time  
6 employees the taxpayer had in this State in the year in which the taxpayer qualified for  
7 the credit, the credit expires and the taxpayer may not take any remaining installment of  
8 the credit. The taxpayer may, however, take the portion of an installment that accrued in  
9 a previous year and was carried forward to the extent permitted under G.S. 105-129.5."

10 **SECTION 3.(a)** G.S. 105-129.62(c) reads as rewritten:

11 "(c) Environmental Impact. – A taxpayer is eligible for the credit allowed under  
12 ~~this section~~ Article with respect to a facility in this State only if as of the last day of the  
13 taxable year for which a credit or carryforward is claimed the taxpayer and the  
14 taxpayer's related entities and strategic partners whose employees are included in the  
15 taxpayer's increased employment level have no pending administrative, civil, or  
16 criminal enforcement actions based on alleged significant violations of any program  
17 implemented by an agency of the Department of Environment and Natural Resources,  
18 and have had no final determination of responsibility for any significant administrative,  
19 civil, or criminal violation of any program implemented by an agency of the Department  
20 of Environment and Natural Resources within the last five years. For the taxpayer's  
21 related entities and strategic partners, this subsection applies only to the activities of the  
22 related entity or strategic partner at the facility with respect to which a credit is claimed.  
23 A significant violation is a violation or alleged violation that does not satisfy any of the  
24 conditions of G.S. 143-215.6B(d). Upon request, the Secretary of Environment and  
25 Natural Resources must notify the Department of Revenue of whether a person  
26 currently has any of these pending actions or has had any of these final determinations  
27 within the last five years."

28 **SECTION 3.(b)** G.S. 105-129.62(d) reads as rewritten:

29 "(d) Safety and Health Programs. – A taxpayer is eligible for the credit allowed  
30 under ~~this section~~ Article with respect to a facility in this State only if as of the last day  
31 of the taxable year for which a credit or carryforward is claimed the taxpayer and the  
32 taxpayer's related entities and strategic partners whose employees are included in the  
33 taxpayer's increased employment level have no citations under the Occupational Safety  
34 and Health Act at the facility with respect to which the credit is claimed that have  
35 become a final order within the past three years for willful serious violations or for  
36 failing to abate serious violations. For the purposes of this subsection, "serious violation"  
37 has the same meaning as in G.S. 95-127. Upon request, the Secretary of Labor must  
38 notify the Department of Revenue of whether a person has had these citations become  
39 final orders within the past three years."

40 **SECTION 3.(c)** G.S. 105-129.62(e) reads as rewritten:

41 "(e) Overdue Tax Debts. – A taxpayer is eligible for the credit allowed under this  
42 ~~section~~ Article with respect to a facility only if as of the last day of the taxable year for  
43 which a credit or carryforward is claimed the taxpayer and the taxpayer's related entities  
44 and strategic partners whose employees are included in the taxpayer's increased

1 employment level have no overdue tax debts that have not been satisfied or otherwise  
2 resolved."

3 **SECTION 3.(d)** G.S. 105-129.63 reads as rewritten:

4 "**§ 105-129.63. Determination by the Secretary of Commerce.**

5 The taxpayer must apply to the Secretary of Commerce for the determination  
6 required under G.S. 105-129.62. The application must be made under oath and must  
7 provide any information the Secretary requires in order to make the determination. The  
8 determination by the Secretary of Commerce is a factual determination. The Secretary  
9 must make this determination in any case in which the taxpayer can demonstrate  
10 performance or can provide a credible plan for performance.

11 If the taxpayer fails to create the required number of new jobs or to make the  
12 required investment, the information provided by the taxpayer on the application proves  
13 to have been false at the time it was given, and the person making the application knew  
14 or should have known that the information was false, the taxpayer forfeits any credits  
15 claimed under this Article with respect to the facility. A taxpayer that forfeits a credit  
16 under this ~~section~~-Article is liable for all past taxes avoided as a result of the credit plus  
17 interest at the rate established under G.S. 105-241.1(i), computed from the date the  
18 taxes would have been due if the credit had not been allowed. The past taxes and  
19 interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay  
20 the past taxes and interest by the due date is subject to the penalties provided in  
21 G.S. 105-236."

22 **SECTION 4.(a)** G.S. 105-164.14(j) is amended by adding a new  
23 sub-subdivision to read:

24 "(5) Sunset. – Sub-subdivisions a., d., g., and m. of subdivision (3) of this  
25 subsection expire effective for sales made on or after July 1, 2009."

26 **SECTION 4.(b)** Section 32B.5 of S.L. 2004-124 reads as rewritten:

27 "**SECTION 32B.5.** The amendment to G.S. 105-164.14(j)(2) made by this part is  
28 effective on and after January 1, 2004, and applies to sales made on or after that date.  
29 Sections 32B.2 and 32B.3 of this part become effective October 1, 2004, and apply to  
30 sales made on or after that date. Section 32B.4 of this part becomes effective July 1,  
31 2005, and applies to sales made on or after that date. The remainder of this part  
32 becomes effective July 1, 2004, and applies to sales made on or after that date. ~~The~~  
33 ~~amendments to G.S. 105-164.14(j)(3) made by this part are repealed effective for sales~~  
34 ~~made on or after July 1, 2009.~~"

35 **SECTION 5.** G.S. 105-278.1(c)(2) reads as rewritten:

36 "(c) For purposes of this section:

37 ...

38 (2) By way of illustration but not by way of limitation, the following  
39 boards, commissions, authorities, and institutions are units of State  
40 government:

41 a. The State Marketing Authority established by G.S. 106-529.

42 b. The Board of Governors of the University of North Carolina  
43 incorporated under the provisions of G.S. 116-3 and known as  
44 "The University of North Carolina."

1 c. The North Carolina Museum of Art made an agency of the State  
2 under ~~G.S. 140-1~~G.S. 140-5.12.

3 ...."

4 **SECTION 6.** G.S. 106-516.1 reads as rewritten:

5 **"§ 106-516.1. Carnivals and similar amusements not to operate without permit.**

6 Every person, firm, or corporation engaged in the business of a carnival company or  
7 a show of like kind, including menageries, merry-go-rounds, Ferris wheels, riding  
8 devices, circus and similar amusements and enterprises operated and conducted for  
9 profit, shall, prior to exhibiting in any county annually staging an agricultural fair, apply  
10 to the sheriff of the county in which the exhibit is to be held for a permit to exhibit. The  
11 sheriff of the county shall issue a permit without charge; provided, however, that no  
12 permit shall be issued if he shall find the requested exhibition date is less than 30 days  
13 prior to a regularly advertised agricultural ~~fair and so in conflict with~~  
14 ~~G.S. 105-37.1(d) fair.~~ Exhibition without a permit from the sheriff of the county in  
15 which the exhibition is to be held shall constitute a Class 1 misdemeanor: Provided,  
16 that nothing contained in this section shall prevent veterans' organizations and posts  
17 chartered by Congress or organized and operated on a statewide or nationwide basis  
18 from holding fairs or tobacco festivals on any dates which they may select if such fairs  
19 or festivals have heretofore been held as annual events."

20 **SECTION 7.** G.S. 146-22.5 reads as rewritten:

21 **"§ 146-22.5. Reimbursement of payment in lieu of future ad valorem taxes.**

22 (a) If a State agency acquires land under G.S. 146-22.3 or G.S. 146-22.4 and  
23 later uses this land to mitigate wetlands permitted to be lost in the same county, then the  
24 county shall reimburse the State ~~agency for a percentage of agency.~~ The reimbursement  
25 shall equal the estimated amount of ad valorem taxes paid for the land in accordance  
26 with G.S. 146-22.3 minus ten percent (10%) of this amount ~~times multiplied by the~~  
27 number of years the State agency held the land before the wetlands were lost.

28 (b) Application. – This section applies only to land acquired in counties  
29 designated as an enterprise tier one or enterprise tier two area under G.S. 105-129.3."

30 **SECTION 8.** G.S. 160A-215(d) reads as rewritten:

31 "(d) Administration. – The taxing city shall administer a room occupancy tax it  
32 levies. A room occupancy tax is due and payable to the city finance officer in monthly  
33 installments on or before the ~~20<sup>th</sup>~~15<sup>th</sup> day of the month following the month in which the  
34 tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or  
35 before the ~~fifteenth~~20<sup>th</sup> day of each month, prepare and render a return on a form  
36 prescribed by the taxing city. The return shall state the total gross receipts derived in the  
37 preceding month from rentals upon which the tax is levied. A room occupancy tax  
38 return filed with the city finance officer is not a public record and may not be disclosed  
39 except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1."

40 **SECTION 9.(a)** S.L. 2004-123 is amended by adding a new section to  
41 read:

42 **"SECTION 3.1.** This act applies to Dare County only."

43 **SECTION 9.(b)** S.L. 2004-123, as amended by this act, is reenacted.

44 **SECTION 10.** Section 5 of S.L. 2004-204 reads as rewritten:

1       **"SECTION 5.** Section 3 of this act becomes effective January 1, 2005, and applies  
2 to sales made on or after that date. The remainder of this act is effective for business  
3 activities occurring on or after November 1, 2004, and for taxable years beginning on or  
4 after January 1, 2005. Section 4 of this act is repealed for business activities occurring  
5 in taxable years beginning on or after January 1, 2020."

6               **SECTION 11.** This act is effective when it becomes law.