

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE DRS75334-TDxz-35* (02/08)

Short Title: Rev. Laws Technical & Admin. Changes. (Public)

Sponsors: Senators Clodfelter, Blue, Brunstetter, Hartsell, Hoyle, Jenkins, Stein, and Tillman.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES
3 TO THE TAX AND RELATED LAWS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** The introductory language to G.S. 105-113.40A reads as rewritten:

6 "The Secretary must credit the net proceeds of the tax collected under this ~~Article~~ Part as
7 follows:"

8 **SECTION 2.** G.S. 105-129.16D(b1) reads as rewritten:

9 "(b1) Alternative Production Credit. – In lieu of the credit allowed under subsection (b) of
10 this section, a taxpayer that constructs and places in service in this State three or more
11 commercial facilities for processing renewable fuel and that invests a total amount of at least
12 four hundred million dollars (\$400,000,000) in the facilities is allowed a credit equal to
13 thirty-five percent (35%) of the cost to the taxpayer of constructing and equipping the facilities.
14 In order to claim the credit, the taxpayer must obtain a written determination from the Secretary
15 of Commerce that the taxpayer is expected to invest within a five-year period a total amount of
16 at least four hundred million dollars (\$400,000,000) in three or more facilities. The credit must
17 be taken in seven equal annual installments beginning with the taxable year in which the first
18 facility is placed in service. If, in one of the years in which the installment of credit accrues, a
19 facility with respect to which the credit was claimed is disposed of or taken out of service and
20 the investment requirements of this subsection are no longer satisfied, the credit expires and the
21 taxpayer may take any remaining installment of the credit only to the extent allowed under
22 subsection (b) of this section. The taxpayer may, however, take the portion of an installment
23 under this subsection that accrued in a previous year and was carried forward to the extent
24 permitted under G.S. 105-129.17. Notwithstanding the provisions of G.S. 105-129.17, a
25 taxpayer may carry forward unused portions of the credit allowed under this subsection for the
26 succeeding 10 years.

27 If a taxpayer that claimed a credit under this subsection fails to meet the requirements of
28 this subsection but meets the requirements of subsection (b) of this section, the taxpayer forfeits
29 the difference between the alternative credit claimed under this subsection and the credit
30 allowed under subsection (b) of this section. A taxpayer that forfeits part of the alternative
31 credit under this subsection is liable for the additional taxes avoided plus interest at the rate
32 established under ~~G.S. 105-241.1(i)~~, G.S. 105-241.21, computed from the date the additional
33 taxes would have been due if the credit had not been allowed. The additional taxes and interest



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1 are due 30 days after the date the credit is forfeited. A taxpayer that fails to pay the additional
2 taxes and interest by the due date is subject to penalties provided in G.S. 105-236."

3 **SECTION 3.** G.S. 105-159.1(a) reads as rewritten:

4 "(a) Every individual whose income tax liability for the taxable year is three dollars
5 (\$3.00) or more may designate on his or her income tax return that three dollars (\$3.00) of the
6 tax shall be credited to the North Carolina Political Parties Financing Fund for the use of the
7 political party designated by the taxpayer. In the case of a married couple filing a joint return
8 whose income tax liability for the taxable year is six dollars (\$6.00) or more, each spouse may
9 designate on the income tax return that three dollars (\$3.00) of the tax shall be credited to the
10 North Carolina Political Parties Financing Fund for the use of the political party designated by
11 the taxpayer. Amounts credited to the Fund shall be allocated among the political parties
12 according to the designation of the taxpayer. Where any taxpayer elects to designate but does
13 not specify a particular political party, those funds shall be distributed among the political
14 parties on a pro rata basis according to their respective party voter registrations as determined
15 by the most recent certification of the State Board of Elections. As used in this section, the term
16 "political party" has the same meaning as defined in G.S. 163-96,~~means one of the following~~
17 ~~that has at least one percent (1%) of the total number of registered voters in the State:~~

- 18 (1) ~~A political party that at the last preceding general State election received at~~
19 ~~least ten percent (10%) of the entire vote cast in the State for Governor or for~~
20 ~~presidential electors.~~
21 (2) ~~A group of voters who by July 1 of the preceding calendar year, by virtue of~~
22 ~~a petition as a new political party, had duly qualified as a new political party~~
23 ~~within the meaning of Chapter 163 of the General Statutes."~~

24 **SECTION 4.(a)** G.S. 105-164.14(c) is amended by adding a new subdivision to
25 read:

26 "(23) A public library created pursuant to an act of the General Assembly."

27 **SECTION 4.(b)** This section becomes effective July 1, 2008, and applies to
28 purchases made on or after that date.

29 **SECTION 5.** G.S. 105-187.3 reads as rewritten:

30 "...

31 (b) Retail Value. – The retail value of a motor vehicle for which a certificate of title is
32 issued because of a sale of the motor vehicle by a retailer is the sales price of the motor vehicle,
33 including all accessories attached to the vehicle when it is delivered to the purchaser, less the
34 amount of any allowance given by the retailer for a motor vehicle taken in trade as a full or
35 partial payment for the purchased motor vehicle. ~~The~~

36 The retail value of a motor vehicle for which a certificate of title is issued because of a sale
37 of the motor vehicle by a seller who is not a retailer is the market value of the vehicle, less the
38 amount of any allowance given by the seller for a motor vehicle taken in trade as a full or
39 partial payment for the purchased motor vehicle. A transaction in which two parties exchange
40 motor vehicles is considered a sale regardless of whether either party gives additional
41 consideration as part of the transaction. ~~The~~

42 The retail value of a motor vehicle for which a certificate of title is issued because of a
43 reason other than the sale of the motor vehicle is the market value of the vehicle. The market
44 value of a vehicle is presumed to be the value of the vehicle set in a schedule of values adopted
45 by the Commissioner.

46 ~~(b1) Retail Value of Transferred Department of Defense Vehicles.—~~The retail value of a
47 vehicle for which a certificate of title is issued because of a transfer by a State agency that
48 assists the United States Department of Defense with purchasing, transferring, or titling a
49 vehicle to another State agency, a unit of local government, a volunteer fire department, or a
50 volunteer rescue squad is the sales price paid by the State agency, unit of local government,
51 volunteer fire department, or volunteer rescue squad.

1 ..."

2 **SECTION 6.** G.S. 105-187.6(a) is amended by adding a new subdivision to read:

3 "(a) Full Exemptions. – The tax imposed by this Article does not apply when a
4 certificate of title is issued as the result of a transfer of a motor vehicle:

5 ...

6 (11) To a revocable trust from an owner who is the sole beneficiary of the trust."

7 **SECTION 7.(a)** G.S. 105-241.9(c) is amended by adding a new subdivision to
8 read:

9 "(c) Notice. – The Secretary must give a taxpayer written notice of a proposed
10 assessment. The notice of a proposed assessment must contain the following information:

11 (1) The basis for the proposed assessment. The statement of the basis for the
12 proposed assessment does not limit the Department from changing the basis.

13 (2) The amount of tax, interest, and penalties included in the proposed
14 assessment. The amount for each of these must be stated separately.

15 (2a) The date a failure to pay penalty will apply to the proposed assessment if the
16 proposed assessment is not paid by that date and the amount of the penalty.
17 If the proposed assessment is not paid by the specified date, the failure to
18 pay penalty is considered to be assessed and applies to the proposed
19 assessment without further notice.

20 (3) The circumstances under which the proposed assessment will become final
21 and collectible."

22 **SECTION 7.(b)** G.S. 105-241.11 is amended by adding a new subsection to read:

23 "(c) FTP Penalty. – A request for a Departmental review of a proposed assessment is
24 considered a request for a Departmental review of a failure to pay penalty that is based on the
25 assessment. A taxpayer who does not request a Departmental review of a proposed assessment
26 may not request a Departmental review of a failure to pay penalty that is based on the
27 assessment."

28 **SECTION 8.** G.S. 105-241.16 reads as rewritten:

29 **"§ 105-241.16. Judicial review of decision after contested case hearing.**

30 A taxpayer aggrieved by the final decision in a contested case commenced at the Office of
31 Administrative Hearings may seek judicial review of the decision in accordance with Article 4
32 of Chapter 150B of the General Statutes. Notwithstanding G.S. 150B-45, a petition for judicial
33 review must be filed in the Superior Court of Wake County and in accordance with the
34 procedures for a mandatory business case set forth in G.S. 7A-45.4(b) through (f). ~~A taxpayer~~
35 ~~who files~~ Before filing a petition for judicial review, a taxpayer must pay the amount of
36 tax, penalties, and interest the final decision states is due. A taxpayer may appeal a decision of
37 the Business Court to the appellate division in accordance with G.S. 150B-52."

38 **SECTION 9.(a)** G.S. 105-263 reads as rewritten:

39 ~~"§ 105-263. Extensions of time for filing a report or return.~~ Timely filing of mailed
40 documents and requests for extensions.

41 (a) Mailed Document. – Section 7502 of the Code governs when a return, report,
42 payment, or any other document that is mailed to the Department is timely filed.

43 (b) Extension. – The Secretary may extend the time in which a person must file a report
44 or return with the Secretary. To obtain an extension of time for filing a report or return, a
45 person must comply with any application requirement set by the Secretary. An extension of
46 time for filing a franchise tax return or an income tax return does not extend the time for paying
47 the tax due or the time when a penalty attaches for failure to pay the tax. An extension of time
48 for filing a report or any return other than a franchise tax return or an income tax return extends
49 the time for paying the tax due and the time when a penalty attaches for failure to pay the tax.
50 When an extension of time for filing a report or return extends the time for paying the tax
51 expected to be due with the report or return, interest, at the rate established pursuant to

1 G.S. 105-241.21, accrues on the tax due from the original due date of the report or return to the
2 date the tax is paid."

3 **SECTION 9.(b)** G.S. 105-241.11(b) reads as rewritten:

4 "(b) Filing. – A request for a Departmental review of a proposed denial of a refund or a
5 proposed assessment is considered filed on the following dates:

6 (1) For a request that is delivered in person, the date it is delivered.

7 (2) For a request that is mailed, the date determined in accordance with
8 G.S. 105-263.

9 (3) For a request not delivered in person, delivered by another method, the date
10 the Department receives it."

11 **SECTION 10.** G.S. 105-259(b) is amended by adding a new subdivision to read:

12 "(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has
13 access to tax information in the course of service to or employment by the State may not
14 disclose the information to any other person except as provided in this subsection. Standards
15 used or to be used for the selection of returns for examination and data used or to be used for
16 determining the standards may not be disclosed for any purpose. All other tax information may
17 be disclosed only if the disclosure is made for one of the following purposes:

18 ...

19 (40) To furnish a nonparticipating manufacturer, as defined in G.S. 66-292, the
20 amount of the manufacturer's tobacco products that a taxpayer sells in this
21 State and that the Secretary reports to the Attorney General under
22 G.S. 105-113.4C."

23 **SECTION 11.** G.S. 105-466(c) reads as rewritten:

24 "(c) Collection of the tax, and liability therefor, must begin and continue only on and
25 after the first day of ~~the month of either January or July, a calendar quarter,~~ as set by the board
26 of county commissioners in the resolution levying the tax. In no event may the tax be imposed,
27 or the tax rate changed, earlier than the first day of the second succeeding calendar month after
28 the date of the adoption of the resolution. The county must give the Secretary at least ~~90~~60 days
29 advance notice of a new tax levy or tax rate change. The applicability of a new tax or a tax rate
30 change to purchases from printed catalogs becomes effective on the first day of a calendar
31 quarter after a minimum of 120 days from the date the Secretary notifies the seller that receives
32 orders by means of a catalog or similar publication of the new tax or tax rate change."
33

34 PROPERTY TAX CHANGES

35 **SECTION 12.** G.S. 105-275(29a) reads as rewritten:

36 "**§ 105-275. Property classified and excluded from the tax base.**

37 The following classes of property are designated special classes under Article V, Sec. 2(2),
38 of the North Carolina Constitution and are excluded from tax:

39 ...

40 (29a) Land that is within an historic district and is held by a nonprofit corporation
41 organized for historic preservation purposes for use as a future site for an
42 historic structure that is to be moved to the site from another location.
43 Property may be classified under this subdivision for no more than five
44 years. The taxes that would otherwise be due on land classified under this
45 subdivision shall be a lien on the real property of the taxpayer as provided in
46 G.S. 105-355(a). The taxes shall be carried forward in the records of the
47 taxing unit or units as deferred taxes. The deferred taxes are due and payable
48 in accordance with G.S. 105-277.1F when the property loses its eligibility
49 for deferral as a result of a disqualifying event. A disqualifying event occurs
50 when an historic structure is not moved to the property within five years
51 from the first day of the fiscal year the property was classified under this

subdivision. In addition to the provisions in G.S. 105-277.1F, all liens arising under this subdivision are extinguished upon the location of an historic structure on the site within the time period allowed under this subdivision."

SECTION 13. G.S. 105-277.1C(b)(1) reads as rewritten:

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

(1) Disabled veteran. – A veteran of any branch of the Armed Forces of the United States whose character of service at separation was honorable or under honorable conditions and who satisfies one of the following requirements:

a. As of January 1 preceding the taxable year for which the exclusion allowed by this section is claimed, the veteran had received benefits under 38 U.S.C. § 2101.

b. The veteran has received a certification by the United States Department of Veterans Affairs or another federal agency indicating that, as of January 1 preceding the taxable year for which the exclusion allowed by this section is claimed, he or she has a service-connected, permanent, and total disability.

c. If the veteran is deceased, the certificate must indicate that he or she had the disability prior to the date of death or that the death was The veteran is deceased and the United States Department of Veterans Affairs or another federal agency has certified that, as of January 1 preceding the taxable year for which the exclusion allowed by this section is claimed, the veteran's death was the result of a service-connected condition.

(2) Repealed by Session Laws 2009-445, s. 22(c), effective for taxes imposed for taxable years beginning on or after July 1, 2009.

(3) Permanent residence. – Defined in G.S. 105-277.1.

(4) Property tax relief. – Defined in G.S. 105-277.1.

(4a) Qualifying owner. – An owner, as defined in G.S. 105-277.1, who is a North Carolina resident and one of the following:

a. A disabled veteran.

b. The surviving spouse of a disabled veteran who has not remarried.

(5), (6) Repealed by Session Laws 2009-445, s. 22(c), effective for taxes imposed for taxable years beginning on or after July 1, 2009.

(7) Service-connected. – Defined in 38 U.S.C. § 101."

SECTION 14. G.S. 105-277.8 reads as rewritten:

"§ 105-277.8. Taxation of property of nonprofit homeowners' association.

(a) The value of real and personal property owned by a nonprofit homeowners' association shall be included in the appraisals of property owned by members of the association and shall not be assessed against the association ~~if~~ if the following requirements are met:

(1) All property owned by the association is held for the use, benefit, and enjoyment of all members of the association ~~equally~~ equally.

(2) Each member of the association has an irrevocable right to use and enjoy, on an equal basis, all property owned by the association, subject to any restrictions imposed by the instruments conveying the right or the rules, regulations, or bylaws of the ~~association~~ association.

(3) Each irrevocable right to use and enjoy all property owned by the association is appurtenant to taxable real property owned by a member of the association.

1 (4) All property owned by the association and all taxable property owned by the
2 members of the association to which it is appurtenant are subject to the same
3 taxing jurisdictions.

4 The assessor may allocate the value of the association's property among the property of the
5 association's members on any fair and reasonable basis.

6 (b) As used in this section, "nonprofit homeowners' association" means a homeowners'
7 association as defined in § 528(c) of the Internal Revenue Code."

8 **SECTION 15.** G.S. 105-278(b) reads as rewritten:

9 "(b) The difference between the taxes due on the basis of fifty percent (50%) of the true
10 value of the property and the taxes that would have been payable in the absence of the
11 classification provided for in subsection (a) shall be a lien on the property of the taxpayer as
12 provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit
13 or units as deferred taxes. The deferred taxes for the preceding three fiscal years are due and
14 payable in accordance with G.S. 105-277.1F when the property loses the benefit of this
15 classification as a result of a disqualifying event. A disqualifying event occurs when there is a
16 change in an ordinance designating a historic property or a change in the property, other than
17 by fire or other natural disaster, that causes the property's historical significance to be lost or
18 substantially impaired. In addition to the provisions in G.S. 105-277.1F, no deferred taxes are
19 due and all liens arising under this subsection are extinguished when the property's historical
20 significance is lost or substantially impaired due to fire or other natural disaster."

21 **SECTION 16.** G.S. 105-278.6(e) reads as rewritten:

22 "(e) Real property held by an organization described in subdivision (a)(8) for a
23 charitable purpose under this section as a future site for housing for individuals or families with
24 low or moderate incomes may be classified under this section for no more than five years. The
25 taxes that would otherwise be due on real property exempt under this subsection shall be a lien
26 on the property as provided in G.S. 105-355(a). The taxes shall be carried forward in the
27 records of the taxing unit as deferred taxes. The deferred taxes are due and payable in
28 accordance with G.S. 105-277.1F when the property loses its eligibility for deferral as a result
29 of a disqualifying event. A disqualifying event occurs when the organization fails to construct
30 low- or moderate-income housing on the site within five years from the first day of the fiscal
31 year the property was classified under this subsection. In addition to the provisions in
32 G.S. 105-277.1F, all liens arising under this subdivision are extinguished when the property is
33 used for low- or moderate-income housing within the time period allowed under this
34 subsection."

35 **SECTION 17.** G.S. 105-333(14) reads as rewritten:

36 "(14) Public service company. – A railroad company, a pipeline company, a gas
37 company, an electric power company, an electric membership corporation, a
38 telephone company, a telegraph company, a bus line company, an airline
39 company, or a motor freight carrier company. The term also includes any
40 company performing a public service that is regulated by the United States
41 Department of Energy, the United States Department of Transportation, the
42 Federal Communications Commission, the Federal Aviation Agency, or the
43 North Carolina Utilities Commission, except that the term does not include a
44 water company, ~~a radio common carrier company as defined in~~
45 ~~G.S. 62-119(3)~~, a cable television company, or a radio or television
46 broadcasting company."

47 **SECTION 18.** G.S. 105-333 is amended by adding a new subdivision to read:

48 "(21) Terminal. – A motor freight carrier facility that includes buildings for the
49 handling and temporary storage of freight pending transfer between
50 locations. The term also includes a facility that handles truckloads only and

1 typically consists of a wide, open space where rolling stock is parked and a
2 building for offices and maintenance of rolling stock."

3 **SECTION 19.** Section 4 of S.L. 2009-308 reads as rewritten:

4 "**SECTION 4.** This act is effective for taxes imposed for taxable years beginning on or
5 after July 1, 2010. This act is repealed effective for taxes imposed for taxable years beginning
6 on or after July 1, 2013. ~~Residences receiving the property tax benefit provided by this act are~~
7 ~~not affected by the repeal of this act until the occurrence of a disqualifying~~
8 ~~event.~~ Notwithstanding the repeal of this act, residences that are receiving the property tax
9 benefit provided by this act in the year immediately prior to the repeal are not affected by the
10 repeal of this act and remain eligible for approval of this benefit for subsequent taxable years
11 until the occurrence of a disqualifying event."

12 **SECTION 20.(a)** Section 22(d) of S.L. 2007-527 reads as rewritten:

13 "**SECTION 22.(d)** Subsection (c) of this section becomes effective ~~January 1, 2010~~ July 1,
14 2010. The remainder of this section is effective when it becomes law."

15 **SECTION 20.(b)** Section 22(d) of S.L. 2007-527, as amended by Section 66 of
16 S.L. 2008-134, reads as rewritten:

17 "**SECTION 22.(d)** Subsection (c) of this section becomes effective ~~January 1, 2011~~ July 1,
18 2013, or when the Division of Motor Vehicles of the Department of Transportation and the
19 Department of Revenue certify that the integrated computer system for registration renewal and
20 property tax collection for motor vehicles is in operation, whichever occurs first. The remainder
21 of this section is effective when it becomes law."

22 **SECTION 20.(c)** Section 24(c) of S.L. 2009-445 reads as rewritten:

23 "**SECTION 24.(c)** G.S. 105-330.9 and G.S. 105-330.11, as amended in subsection (a) of
24 this section, are effective when this act becomes law. Subsection (b) of this section and the
25 remainder of subsection (a) of this section become effective ~~July 1, 2011~~ July 1, 2013, and
26 apply to combined tax and registration notices issued on or after that date, or when the Division
27 of Motor Vehicles and the Department of Revenue certify that the integrated computer system
28 or registration renewal and property tax collection for motor vehicles is in operation, whichever
29 occurs first. The remainder of this section is effective when it becomes law."

30 **SECTION 20.(d)** Section 8 of S.L. 2007-471, as amended by Section 25(a) of S.L.
31 2009-445, reads as rewritten:

32 "**SECTION 8.** Unless otherwise stated, this act becomes effective ~~July 1, 2011~~ July 1,
33 2013, and applies to combined tax and registration notices issued on or after that date, or when
34 the Division of Motor Vehicles and the Department of Revenue certify that the integrated
35 computer system for registration renewal and property tax collection for motor vehicles is in
36 operation, whichever occurs first."

37 **SECTION 20.(e)** Section 79 of S.L. 2008-134, as amended by Section 25(b) of
38 S.L. 2009-445, reads as rewritten:

39 "**SECTION 79.** Sections 16 through 60 of this act become effective January 1, 2009.
40 Except as otherwise provided, the remainder of this act is effective when it becomes law.
41 Section 63 of this act is repealed July 1, 2013."

42 43 **MOTOR FUEL TAX CHANGES**

44 **SECTION 21.** G.S. 105-241(b)(2a) reads as rewritten:

45 "(b) Electronic Funds Transfer. – Payment by electronic funds transfer is required as
46 provided in this subsection.

47 ...

48 (2a) Motor fuel taxes. – A taxpayer that is required to file an electronic return
49 under ~~Article 36C or Article 36D~~ Subchapter V of this Chapter or Article 3
50 of Chapter 119 of the General Statutes must pay the tax by electronic funds
51 transfer.

1 **SECTION 22.(a)** G.S. 105-449.39 reads as rewritten:

2 "**§ 105-449.39. Credit for payment of motor fuel tax.**

3 Every motor carrier subject to the tax levied by this Article is entitled to a credit on its
4 quarterly ~~report~~return for tax paid by the carrier on fuel purchased in the State. The amount of
5 the credit is determined using the flat cents-per-gallon rate plus the variable cents-per-gallon
6 rate of tax in effect during the quarter covered by the ~~report~~return. To obtain a credit, the
7 motor carrier must furnish evidence satisfactory to the Secretary that the tax for which the
8 credit is claimed has been paid.

9 If the amount of a credit to which a motor carrier is entitled for a quarter exceeds the motor
10 carrier's liability for that quarter, the excess is refundable in accordance with G.S. 105-241.7."

11 **SECTION 22.(b)** G.S. 105-449.40(a) reads as rewritten:

12 "(a) Authority. – The Secretary may require a motor carrier to furnish a bond when any
13 of the following occurs:

- 14 (1) The motor carrier fails to file a ~~report~~return within the time required by this
15 Article.
- 16 (2) The motor carrier fails to pay a tax when due under this Article.
- 17 (3) After auditing the motor carrier's records, the Secretary determines that a
18 bond is needed to protect the State from loss in collecting the tax due under
19 this Article."

20 **SECTION 22.(c)** G.S. 105-449.42 reads as rewritten:

21 "**§ 105-449.42. Payment of tax.**

22 The tax levied by this Article is due when a motor carrier files a quarterly ~~report~~return
23 under G.S. 105-449.45. The amount of tax due is calculated on the amount of motor fuel or
24 alternative fuel used by the motor carrier in its operations within this State during the quarter
25 covered by the ~~report~~return."

26 **SECTION 22.(d)** G.S. 105-449.42A reads as rewritten:

27 "**§ 105-449.42A. Leased motor vehicles.**

28 (a) Lessor in Leasing Business. – A lessor who is regularly engaged in the business of
29 leasing or renting motor vehicles without drivers for compensation is the motor carrier for a
30 leased or rented motor vehicle unless the lessee of the leased or rented motor vehicle gives the
31 Secretary written notice, by filing a ~~report~~return or otherwise, that the lessee is the motor
32 carrier. In that circumstance, the lessee is the motor carrier for the leased or rented motor
33 vehicle.

34 Before a lessee gives the Secretary written notice under this subsection that the lessee is the
35 motor carrier, the lessee and lessor must make a written agreement for the lessee to be the
36 motor carrier. Upon request of the Secretary, the lessee must give the Secretary a copy of the
37 agreement.

38 (b) Independent Contractor. – The lessee of a motor vehicle that is leased from an
39 independent contractor is the motor carrier for the leased motor vehicle unless ~~either of the~~
40 ~~following applies:~~one of the circumstances listed in this subsection applies. If either of these
41 circumstances applies, the lessor is the motor carrier for the leased motor vehicle.

- 42 (1) The motor vehicle is leased for fewer than 30 days.
- 43 (2) The motor vehicle is leased for at least 30 days and the lessor gives the
44 Secretary written notice, by filing a ~~report~~return or otherwise, that the lessor
45 is the motor carrier. Before a lessor gives the Secretary written notice that
46 the lessor is the motor carrier, the lessor and lessee must make a written
47 agreement for the lessor to be the motor carrier. Upon request of the
48 Secretary, the lessor must give the Secretary a copy of the agreement.

49 ~~If either of these circumstances applies, the lessor is the motor carrier for the leased motor~~
50 ~~vehicle.~~

1 Before a lessor gives the Secretary written notice under subdivision (2) that the lessor is the
2 motor carrier, the lessor and lessee must make a written agreement for the lessor to be the
3 motor carrier. Upon request of the Secretary, the lessor must give the Secretary a copy of the
4 agreement.

5 (c) Liability. – An independent contractor who leases a motor vehicle to another for
6 fewer than 30 days is liable for compliance with this Article and the person to whom the motor
7 vehicle is leased is not liable. Otherwise, both the lessor and lessee of a motor vehicle are
8 jointly and severally liable for compliance with this Article."

9 **SECTION 22.(e)** G.S. 105-449.44(b) reads as rewritten:

10 "(b) Presumption. – The Secretary must check ~~reports~~returns filed under this Article
11 against the weigh station records and other records of the Division of Motor Vehicles of the
12 Department of Transportation and the State Highway Patrol of the Department of Crime
13 Control and Public Safety concerning motor carriers to determine if motor carriers that are
14 operating in this State are filing the ~~reports~~returns required by this Article. If the records
15 indicate that a motor carrier operated in this State in a quarter and either did not file a ~~report~~
16 return for that quarter or understated its mileage in this State on a ~~report~~return filed for that
17 quarter by at least twenty-five percent (25%), the Secretary may assess the motor carrier for an
18 amount based on the motor carrier's presumed operations. The motor carrier is presumed to
19 have mileage in this State equal to 10 trips of 450 miles each for each of the motor carrier's
20 qualified motor vehicles and to have fuel usage of four miles per gallon."

21 **SECTION 22.(f)** G.S. 105-449.45 reads as rewritten:

22 "**§ 105-449.45. ~~Reports~~Returns of carriers.**

23 (a) ~~Report~~Return. – A motor carrier must report its operations to the Secretary on a
24 quarterly basis unless subsection (b) of this section exempts the motor carrier from this
25 requirement. A quarterly ~~report~~return covers a calendar quarter and is due by the last day in
26 April, July, October, and January. A ~~report~~return must be filed in the form required by the
27 Secretary.

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

30 (1) All the motor carrier's operations during the quarter were made under a
31 temporary permit issued under G.S. 105-449.49.

32 (2) The motor carrier is an intrastate motor carrier, as indicated on the motor
33 carrier's application for registration with the Secretary.

34 (c) ~~Other Reports~~Informational Returns. – A motor carrier must file with the Secretary
35 ~~other reports~~any informational returns concerning its operations that the Secretary requires.

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

38 **SECTION 23.** G.S. 105-449.37(a)(1) reads as rewritten:

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

40 (1) International Fuel Tax Agreement. – The Articles of Agreement adopted by
41 the International Fuel Tax Association, Inc., as amended as of ~~June 1,~~
42 2008; June 1, 2010.

43"

44 **SECTION 24.** G.S. 105-449.47A reads as rewritten:

45 "**§ 105-449.47A. Reasons why the Secretary can deny an application for a registration**
46 **and decals.**

47 The Secretary may refuse to register and issue a decal to an applicant that does not meet the
48 requirements set out in G.S. 105-449.69(b) or that has done any of the following:

49 (1) Had a registration issued under Chapter 105 or Chapter 119 of the General
50 Statutes cancelled by the Secretary for cause.

- 1 (2) Had a registration issued by another jurisdiction, pursuant to the
2 International Fuel Tax Agreement, cancelled for cause.
- 3 (3) Been convicted of fraud or misrepresentation.
- 4 (4) Been convicted of any other offense that indicates that the applicant may not
5 comply with this Article if registered and issued a decal.
- 6 (5) Failed to remit payment for a tax debt under Chapter 105 or Chapter 119 of
7 the General Statutes. The term "tax debt" has the same meaning as defined in
8 G.S. 105-243.1.
- 9 (6) Failed to file a return due under Chapter 105 or Chapter 119 of the General
10 Statutes."

11 **SECTION 25.(a)** G.S. 105-449.105A reads as rewritten:

12 **"§ 105-449.105A. Monthly refunds for kerosene.**

13 (a) ~~Refund.—A distributor who sells kerosene to any of the following may obtain a~~
14 ~~monthly refund for the excise tax the distributor paid on the kerosene, less the amount of any~~
15 ~~discount allowed on the kerosene under G.S. 105-449.93:~~

- 16 (1) ~~The end user of the kerosene, if the distributor dispenses the kerosene into a~~
17 ~~storage facility of the end user that contains fuel used only for one of the~~
18 ~~following purposes and the storage facility is installed in a manner that~~
19 ~~makes use of the fuel for any other purpose improbable:~~
 - 20 a. ~~Heating.~~
 - 21 b. ~~Drying crops.~~
 - 22 c. ~~A manufacturing process.~~
- 23 (2) ~~A retailer of kerosene, if the distributor dispenses the kerosene into a storage~~
24 ~~facility that meets both of the following conditions:~~
 - 25 a. ~~It is marked with the phrase "Undyed, Untaxed Kerosene,~~
26 ~~Nontaxable Use Only" or a similar phrase that clearly indicates that~~
27 ~~the fuel is not to be used to operate a highway vehicle.~~
 - 28 b. ~~It either has a dispensing device that is not suitable for use in fueling~~
29 ~~a highway vehicle or is kept locked by the retailer and must be~~
30 ~~unlocked by the retailer for each sale of kerosene.~~
- 31 (3) ~~An airport, if the distributor dispenses the kerosene into a storage facility~~
32 ~~that contains fuel used only for fueling airplanes and that meets at least one~~
33 ~~of the following conditions:~~
 - 34 a. ~~It is marked with the phrase "Undyed, Untaxed Kerosene,~~
35 ~~Nontaxable Use Only" or a similar phrase that clearly indicates that~~
36 ~~the fuel is not to be used to operate a highway vehicle.~~
 - 37 b. ~~It has a dispensing device that is not suitable for use in fueling a~~
38 ~~highway vehicle.~~

39 Refund for Undyed Kerosene Sold to an End User for Non-Highway Use. – A distributor who
40 sells kerosene to an end-user for one of the purposes listed in this subsection may obtain a
41 monthly refund for the excise tax the distributor paid on the kerosene, less the amount of any
42 discount allowed on the kerosene under G.S. 105-449.93, if the distributor dispenses the
43 kerosene into a storage facility of the end user that contains fuel used only for one of those
44 purposes and the storage facility is installed in a manner that makes use of the fuel for any other
45 purpose improbable.

- 46 (1) Heating.
- 47 (2) Drying crops.
- 48 (3) A manufacturing process.

49 (b) Liability. – If the Secretary determines that the Department overpaid a distributor by
50 refunding more tax to the distributor than is due under this section, the distributor is liable for

1 the amount of the overpayment. This liability applies regardless of whether the actions of a
2 retailer of kerosene contributed to the overpayment."

3 **SECTION 25.(b)** This section becomes effective January 1, 2011, and applies to
4 sales of kerosene made by a distributor on or after that date.

5 **SECTION 26.** G.S. 105-449.105B reads as rewritten:

6 "**§ 105-449.105B. Monthly hold harmless refunds for licensed distributors and some**
7 **licensed importers.**

8 ~~quarter~~

9 If a licensed distributor or licensed importer purchases motor fuel from a licensed supplier
10 during a month and the discount the distributor or importer receives under G.S. 105-449.93(b)
11 on the motor fuel is less than the amount the distributor or importer would have received during
12 that month if the distributor or importer had been allowed a discount on taxable gasoline
13 purchased by the distributor or importer from a supplier under the following schedule, the
14 distributor or importer is allowed a monthly refund of the difference:

<u>Amount of Gasoline Purchased</u>	<u>Percentage</u>
<u>Each Month</u>	<u>Discount</u>
First 150,000 gallons	2%
Next 100,000 gallons	1 1/2%
Amount over 250,000 gallons	1%.

20 In determining the amount of discounts a distributor or importer received under
21 G.S. 105-449.93(b) for motor fuel purchased in a month, a distributor or importer is considered
22 to have received the amount of any discounts the distributor or importer could have received
23 under that subsection but did not receive because the distributor or importer failed to pay the
24 tax due to the supplier by the date the supplier had to pay the tax to the State."

25 **SECTION 27.(a)** G.S. 105-449.106(b) reads as rewritten:

26 "(b) Taxi. – A person who purchases and uses motor fuel in a ~~taxicab, as defined in~~
27 ~~G.S. 20-87(1), taxicab~~ while the taxicab is engaged in transporting passengers for hire, or in a
28 bus operated as part of a city transit system that is exempt from regulation by the North
29 Carolina Utilities Commission under G.S. 62-260(a)(8), may receive a quarterly refund, for the
30 excise tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon rate plus
31 the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed,
32 less one cent (1¢) per gallon. For purposes of this subsection, the term "taxicab" means a motor
33 vehicle that seats no more than nine passengers, transports passengers for hire, operates on call
34 or demand, and accepts and solicits passengers indiscriminately. An application for a refund
35 must be made in accordance with this Part."

36 **SECTION 27.(b)** G.S. 105-449.106(c) reads as rewritten:

37 "(c) Special Mobile Equipment. – A person who purchases and uses motor fuel ~~to~~
38 ~~operate special mobile equipment off highway for the off-highway operation of special mobile~~
39 equipment registered under Chapter 20 of the General Statutes may receive a quarterly refund,
40 for the excise tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon
41 rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is
42 claimed, less the amount of sales and use tax or privilege tax due on the fuel under this Chapter,
43 as determined in accordance with G.S. 105-449.107(c). An application for a refund must be
44 made in accordance with this Part."

45 **SECTION 27.(c)** Subsection (b) of this section becomes effective October 1, 2010,
46 and applies to motor fuel purchased on or after that date. The remainder of this section is
47 effective when it becomes law.

48 **SECTION 28.** G.S. 105-449.108(b) reads as rewritten:

49 "(b) Requirements. – An application for ~~an annual~~ a refund allowed under this Part must
50 be filed with the Secretary and be in the form required by the Secretary. The application must
51 state whether or not the applicant has filed a North Carolina income tax return for the preceding

1 ~~taxable year. An application for a refund allowed under this Part must state that the applicant~~
2 ~~has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured~~
3 ~~to the seller's satisfaction. An application for an annual refund must state whether or not the~~
4 ~~applicant has filed a North Carolina income tax return for the preceding taxable year.~~
5

6 OTHER CHANGES

7 **SECTION 29.(a)** G.S. 55-16-22(c) reads as rewritten:

8 "(c) Due Date. – An annual report eligible to be delivered to the Secretary of Revenue is
9 due by the due date for filing the corporation's income and franchise tax returns. An extension
10 of time to file a return is an extension of time to file an annual report. At the option of the filer,
11 an annual report may be filed directly with the Secretary of State in electronic form. An annual
12 report required to be delivered to the Secretary of State is due by the fifteenth day of the ~~third~~
13 fourth month following the close of the corporation's fiscal year."

14 **SECTION 29.(b)** G.S. 57C-2-23 reads as rewritten:

15 "**§ 57C-2-23. Annual report for Secretary of State.**

16 (a) Requirement and Content. – Each domestic limited liability company other than a
17 professional limited liability company governed by G.S. 57C-2-01(c) and each foreign limited
18 liability company authorized to transact business in this State, ~~shall deliver to the Secretary of~~
19 ~~State for filing an annual report, in State must file an annual report with the Secretary of State~~
20 ~~on a form prescribed by the Secretary of State, that sets forth all of the following: and in the~~
21 ~~manner required by the Secretary. The annual report must specify the year to which the report~~
22 ~~applies and must set out the information listed in this subsection. The information must be~~
23 ~~current as of the date the company completes the report. If the information in the company's~~
24 ~~most recent annual report has not changed, the company may certify on its annual report that~~
25 ~~the information has not changed in lieu of restating the information.~~

26 The following information must be included on an annual report of a limited liability
27 company:

- 28 (1) The name of the limited liability or foreign limited liability company and the
29 state or country under whose law it is formed.
- 30 (2) The street address, and the mailing address if different from the street
31 address, of the registered office, the county in which the registered office is
32 located, and the name of its registered agent at that office in this State, and a
33 statement of any change of the registered office or registered agent, or both.
- 34 (3) The address and telephone number of its principal office.
- 35 (4) The names and business addresses of its managers or, if the limited liability
36 company has never had members, its organizers.
- 37 (5) A brief description of the nature of its business.

38 ~~If the information contained in the most recently filed annual report has not changed, a~~
39 ~~certification to that effect may be made instead of setting forth the information required by~~
40 ~~subdivisions (2) through (5) of this subsection. The Secretary of State shall make available the~~
41 ~~form required to file an annual report.~~

42 (b) ~~Information in the annual report must be current as of the date the annual report is~~
43 ~~executed on behalf of the limited liability company or the foreign limited liability company.~~

44 (c) Notice and Due Date. – The Secretary of State must notify limited liability
45 companies of the annual report filing requirement. ~~The first annual report shall be delivered to~~
46 ~~the Secretary of State of a limited liability company is due by April 15th of each year the year~~
47 ~~following the calendar year in which the company files its articles of organization with the~~
48 Secretary of State. Each subsequent annual report is due on April 15.

49 (d) Incomplete Report. – If an annual report does not contain the information required
50 by this section, the Secretary of State shall promptly notify the reporting domestic or foreign
51 limited liability company in writing and return the report to it for correction. If the report is

1 corrected to contain the information required by this section and delivered to the Secretary of
2 State within 30 days after the effective date of notice, it is deemed to be timely filed.

3 (e) Amendments. – Amendments to any previously filed annual report may be filed
4 with the Secretary of State at any time for the purpose of correcting, updating, or augmenting
5 the information contained in the annual report."

6 **SECTION 29.(c)** This section is effective when it becomes law. A limited liability
7 company whose articles of organization were filed on or after January 1, 2010, but before April
8 15, 2010, is not required to file an annual report until April 15, 2011. A limited liability
9 company that was formed during this period and that has filed an annual report that is not
10 required is considered to have filed the annual report due April 15, 2011. A limited liability
11 company that was formed before January 1, 2009, and has filed an annual report in each year
12 after the calendar year in which its articles of organization were filed is considered to have met
13 its annual report filing requirements.

14 **SECTION 30.(a)** G.S. 143B-437.012(j) reads as rewritten:

15 "(j) Agreement. – Unless the Secretary of Commerce determines that the project is no
16 longer eligible or appropriate for a grant under this section, the Department shall enter into an
17 agreement to provide a grant or grants for a project recommended by the Committee. Each
18 grant agreement is binding and constitutes a continuing contractual obligation of the State and
19 the business. The grant agreement shall include the performance criteria, remedies, and other
20 safeguards recommended by the Committee or required by the Department.

21 Each grant agreement ~~for a business that is a major employer under subdivision (1) of~~
22 ~~subsection (d) of this section~~ shall contain a provision prohibiting a business from receiving a
23 payment or other benefit under the agreement at any time when the business has received a
24 notice of an overdue tax debt and the overdue tax debt has not been satisfied or otherwise
25 resolved. Each grant agreement for a business that is a major employer under subdivision (1) of
26 subsection (d) of this section shall contain a provision requiring the business to maintain the
27 employment level at the project that is the subject of the agreement that is the lesser of the level
28 it had at the time it applied for a grant under this section or that it had at the time that the
29 investment required under subsection (d) of this section began. For the purposes of this
30 subsection, the employment level includes full-time employees and equivalent full-time
31 contract employees. The agreement shall further specify that the amount of a grant shall be
32 reduced in proportion to the extent the business fails to maintain employment at this level and
33 that the business shall not be eligible for a grant in any year in which its employment level is
34 less than eighty percent (80%) of that required.

35 Each grant agreement for a business that is a large manufacturing employer under
36 subdivision (2) of subsection (d) of this section shall contain a provision requiring the business
37 to maintain the employment level required under that subdivision at the project that is the
38 subject of the grant. The agreement shall further specify that the business is not eligible for a
39 grant in any year in which the business fails to maintain the employment level.

40 A grant agreement may obligate the State to make a series of grant payments over a period
41 of up to 10 years. Nothing in this section constitutes or authorizes a guarantee or assumption by
42 the State of any debt of any business or authorizes the taxing power or the full faith and credit
43 of the State to be pledged.

44 The Department shall cooperate with the Attorney General's office in preparing the
45 documentation for the grant agreement. The Attorney General shall review the terms of all
46 proposed agreements to be entered into under this section. To be effective against the State, an
47 agreement entered into under this section shall be signed personally by the Attorney General."

48 **SECTION 30.(b)** This section becomes effective July 1, 2010.

49 **SECTION 31.(a)** G.S. 143B-437.012(l)(4) reads as rewritten:

50 "(4) Ninety-five percent (95%) of the sales and use taxes paid on
51 ~~electricity, electricity and the excise tax paid on piped natural gas, and the~~

1 ~~privilege tax paid on other fuel for electricity, piped natural gas, and other~~
2 ~~fuel consumed at the project that is the subject of the agreement.gas."~~

3 **SECTION 31.(b)** This section becomes effective July 1, 2010.

4 **SECTION 32.** G.S. 159-107(e) reads as rewritten:

5 "(e) ~~Increment Agreements.~~—Effect of Annexation on District Established by a County.

6 – If a city annexes land in a development financing district established by a county pursuant to
7 G.S. 158-7.3, the proceeds of all taxes levied by the city on property within the district shall be
8 paid to the city unless the city enters into an agreement with the county pursuant to this
9 subsection, and the annexed land in the county's district that subsequently becomes a part of the
10 city does not count against the city's five-percent (5%) limit under G.S. 158-7.3 or
11 G.S. 160A-515.1 unless the city and the county enter into an agreement pursuant to this section.
12 The city and the county may enter into an increment agreement under which the city agrees that
13 city taxes on part or all of the incremental valuation in the district shall be paid into the revenue
14 increment fund for the district. An increment agreement may be entered into when the district is
15 established or at any time after the district is established. The increment agreement may extend
16 for the duration of the district or for a shorter time agreed to by the parties."

17 **SECTION 33.** G.S. 160A-239.4(b) reads as rewritten:

18 "(b) ~~Assessments Pledged.~~ – An assessment imposed under this Article may be pledged
19 to secure revenue bonds under ~~G.S. 153A-210.6~~G.S. 160A-239.6 or as additional security for a
20 project development financing debt instrument under G.S. 159-111. If an assessment imposed
21 under this Article is pledged to secure financing, the city council must covenant to enforce the
22 payment of the assessments."

23 **SECTION 34.** G.S. 160A-613(b) is repealed.

24 **SECTION 35.** Section 27A.3(c) of S.L. 2005-451 is repealed.

25
26 **EFFECTIVE DATE**

27 **SECTION 36.** Except as otherwise provided, this act is effective when it becomes
28 law.