GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

SESSION LAW 2005-435
HOUSE BILL 105

AN ACT TO MODIFY THE TAXATION OF MOTOR FUELS, TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE REVENUE LAWS AND RELATED STATUTES, AND TO ALLOW INTERSTATE PASSENGER AIR CARRIERS A REFUND OF SALES AND USE TAXES ON FUEL.

The General Assembly of North Carolina enacts:

PART I. MOTOR FUEL TAX CHANGES

SECTION 1. G.S. 105-236(2) reads as rewritten:

"**§ 105-236. Penalties.**

Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:

…

(2) Failure to Obtain a License. – For failure to obtain a license before engaging in a business, trade or profession for which a license is required, the Secretary shall assess a penalty equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, not to exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars ($5.00). In cases in which the taxpayer fails to obtain a license as required under G.S. 105-449.65 or G.S. 105-449.131, the Secretary may assess a penalty of one thousand dollars ($1,000)."

SECTION 2. G.S. 105-241(b) is amended by adding a new subdivision to read:

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

…

(2a) Motor fuel taxes. – A taxpayer that is required to file an electronic return under Article 36C or Article 36D of this Chapter must pay the tax by electronic funds transfer."

SECTION 3. 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. 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 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 quarter exceeds the motor carrier's liability for that quarter, the Secretary must refund the excess to the motor ~~carrier.~~carrier in accordance with G.S. 105-266(a)(3)."

SECTION 4. G.S. 105-449.44(a) reads as rewritten:

"(a) Calculation. – The amount of motor fuel or alternative fuel a motor carrier uses 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 divided by the calculated miles per gallon for the motor carrier for all qualified vehicles ~~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 5. G.S. 105-449.46 reads as rewritten:

"**§ 105-449.46. Inspection of books and records.**

The Secretary and his authorized agents and representatives shall have the right at any reasonable time to inspect the books and records of any motor carrier subject to the tax imposed by this ~~Article.~~Article or to the registration fee imposed by Article 3 of Chapter 20 of the General Statutes."

SECTION 6. G.S. 105-449.47(a1) reads as rewritten:

"(a1) Registration and Identification Marker. – When the Secretary registers a motor carrier, the Secretary must issue at least one identification marker for each motor vehicle operated by the motor carrier. A motor carrier must keep records of identification markers issued to it and must be able to account for all identification markers it receives from the Secretary. Registrations and identification markers issued by the Secretary are for a calendar year. 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,~~ Article or Article 36C or 36D of this Subchapter.

A motor carrier must carry a copy of its registration in each motor vehicle operated by the motor carrier when the vehicle is in this State. 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 authority that issued it."

SECTION 7. Article 36B of Chapter 105 of the General Statutes is amended by adding a new section to read:

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

The Secretary may refuse to register and issue an identification marker to an applicant that has done any of the following:

(1) Had a registration issued under Chapter 105 or Chapter 119 of the General Statutes cancelled by the Secretary for cause.
(2) Had a registration issued by another jurisdiction, pursuant to G.S. 105-449.57, cancelled for cause.
(3) Been convicted of fraud or misrepresentation.
(4) Been convicted of any other offense that indicates that the applicant may not comply with this Article if registered and issued an identification marker.
(5) Failed to remit payment for a tax debt under Chapter 105 or Chapter 119 of the General Statutes. The term 'tax debt' has the same meaning as defined in G.S. 105-243.1.
(6) Failed to file a return due under Chapter 105 or Chapter 119 of the General Statutes."

SECTION 8. G.S. 105-449.51 reads as rewritten:

"**§ 105-449.51. Violations declared to be misdemeanors.**

Any person who operates or causes to be operated on a highway in this State a motor vehicle that does not carry a registration card as required by this Article, does not properly display an identification marker as required by this Article, or is not registered in accordance with this Article is guilty of a Class 3 misdemeanor and, upon conviction thereof, shall ~~only~~ be fined ~~no less than ten dollars ($10.00) nor more than~~ two hundred dollars ($200.00). Each day's operation in violation of any provision of this section shall constitute a separate offense."

SECTION 9. G.S. 105-449.65(b) reads as rewritten:

"(b) Multiple Activity. – A person who is engaged in more than one activity for which a license is required must have a separate license for each activity, unless this subsection provides otherwise. A person who is licensed as a supplier ~~is not required to obtain a separate license for any other activity for which a license is required and~~ is considered to have a license as a distributor. A person who is licensed as an occasional importer or a tank wagon importer is not required to obtain a separate license as a ~~distributor.~~ distributor unless the importer is also purchasing motor fuel, at the terminal rack, from an elective or permissive supplier who is authorized to collect and remit the tax to the State. A person who is licensed as a distributor is not required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or a permissive supplier and is not required to obtain a separate license as an exporter. A person who is licensed as a distributor or a blender is not required to obtain a separate license as a motor fuel transporter if the distributor or blender does not transport motor fuel for others for hire."

SECTION 10. G.S. 105-449.69(b) reads as rewritten:

"(b) Most Licenses. – An applicant for a license as a refiner, a supplier, a terminal operator, an importer, a blender, ~~a bulk end user of undyed diesel fuel, a retailer of undyed diesel fuel,~~ or a distributor must meet the following requirements:

(1) If the applicant is a corporation, the applicant must either be incorporated in this State or be authorized to transact business in this State.

(2) If the applicant is a limited liability company, the applicant must either be organized in this State or be authorized to transact business in this State.

(3) If the applicant is a limited partnership, the applicant must either be formed in this State or be authorized to transact business in this State.

(4) If the applicant is an individual or a general partnership, the applicant must designate an agent for service of process and give the agent's name and address."

SECTION 11. G.S. 105-449.73 reads as rewritten:

"**§ 105-449.73. Reasons why the Secretary can deny an application for a license.**

The Secretary may refuse to issue a license to an ~~individual~~ applicant that ~~has done any of the following and may refuse to issue a license to an applicant that is a business entity if any principal in the business~~ has done any of the following:

(1) Had a license or registration issued under this Article or former Article 36 or 36A of this Chapter cancelled by the Secretary for cause.

(1a) Had a motor fuel license or registration issued by another state cancelled for cause.

(2) Had a federal Certificate of Registry issued under § 4101 of the Code, or a similar federal authorization, revoked.

(3) Been convicted of fraud or misrepresentation.

(4) Been convicted of any other offense that indicates that the applicant may not comply with this Article if issued a license.

(5) Failed to remit payment for ~~an overdue tax debt~~ a tax debt under Chapter 105 or Chapter 119 of the General Statutes. The term ~~"overdue tax debt"~~ "tax debt" has the same meaning as defined in G.S. 105-243.1.

(6) Failed to file a return due under Chapter 105 or Chapter 119 of the General Statutes."

SECTION 12. G.S. 105-449.86(a) reads as rewritten:

"(a) Tax. – An excise tax at the motor fuel rate is imposed on dyed diesel fuel acquired to operate any of the following:

(1) Repealed by Session Laws 2003-349, s. 10.8, effective January 1, 2004.

(2) ~~Either a~~ A local bus ~~or an intercity bus~~ that is allowed by § 4082(b)(3) of the Code to use dyed diesel fuel.

(3) A highway vehicle that is owned by or leased to an educational organization that is not a public school and is allowed by § 4082(b)(1) or (b)(3) of the Code to use dyed diesel fuel.

~~(4) A highway vehicle that is owned by or leased to the American Red Cross and is allowed by § 4082 of the Code to use dyed diesel fuel.~~"

SECTION 13. G.S. 105-449.90A reads as rewritten:

"**§ 105-449.90A. Payment by supplier of destination state tax collected on exported motor fuel.**

Tax collected by a supplier on exported motor fuel is payable by the supplier to the destination ~~state if the supplier is licensed in that state for payment of motor fuel excise taxes.~~state. ~~Tax collected by a supplier on exported motor fuel is payable to the Secretary for remittance to the destination state if the supplier is not licensed in that state for payment of motor fuel excise taxes.~~Payments of destination state tax are due to the destination state ~~or the Secretary, as appropriate,~~ on the date set by the law of the destination state. ~~Payments of destination state tax to the Secretary must be accompanied by a form provided by the Secretary that contains the information required by the Secretary.~~"

SECTION 14. G.S. 105-449.96 is amended by adding a new subdivision to read:

"**§ 105-449.96. Information required on return filed by supplier.**

A return of a supplier must list all of the following information and any other information required by the Secretary:

…

(7) The number of gallons of motor fuel the supplier exchanged during the month with another licensed supplier pursuant to a two-party exchange agreement, sorted by type of fuel, licensed supplier receiving the fuel, and terminal code."

SECTION 15. The catch line for G.S. 105-449.106 reads as rewritten:

"**§ 105-449.106. Quarterly refunds for ~~certain local governmental entities,~~ nonprofit organizations, taxicabs, and special mobile equipment.**"

SECTION 16. G.S. 105-449.115 reads as rewritten:

"**§ 105-449.115. Shipping document required to transport motor fuel by railroad tank car or transport truck.**

…

(f) Sanctions Against Transporter. – The following acts are grounds for a civil penalty payable to the ~~Department of Transportation, Division of Motor Vehicles,~~Department of Crime Control and Public Safety or the Department of Revenue:

(1) Transporting motor fuel in a railroad tank car or transport truck without a shipping document or with a false or an incomplete shipping document.

(2) Delivering motor fuel to a destination state other than that shown on the shipping document.

The penalty imposed under this subsection is payable by the person in whose name the conveyance is registered, if the conveyance is a transport truck, and is payable by the person responsible for the movement of motor fuel in the conveyance, if the conveyance is a railroad tank car. The amount of the penalty is five thousand dollars ($5,000). A penalty imposed under this subsection is in addition to any motor fuel tax assessed.

(g) Penalty Defense. – Compliance with the conditions set out in this subsection is a defense to a civil penalty imposed under subsection (f) of this section as a result of the delivery of fuel to a state other than the destination state printed on the shipping document for the fuel. The Secretary must waive a penalty imposed against a person

under that subsection if the person establishes a defense under this subsection. The conditions for the defense are:

(1) The person notified the Secretary of the diversion within seven days after the diversion occurred and received a confirmation number for the diversion.

(2) Tax was timely paid on the diverted fuel.

(h) Sanctions Against Terminal Operator. – The Secretary may assess a civil penalty of five thousand dollars ($5,000) against a terminal operator who intentionally issues a shipping document that does not satisfy the requirements of subsection (b) of this section."

SECTION 17. G.S. 105-449.115A reads as rewritten:

"**§ 105-449.115A. Shipping document required to transport fuel by tank wagon.**

(a) Issuance. – A person who operates a tank wagon into which motor fuel is loaded at the terminal must comply with the document requirements in G.S. 105-449.115(b). A person ~~may not transport motor fuel by~~ who operates a tank wagon into which motor fuel is loaded from some other source must have ~~unless that person has~~ an invoice, bill of sale, or shipping document containing the following information and any other information required by the Secretary:

(1) The name and address of the person from whom the motor fuel was received.

(2) The date the fuel was loaded.

(3) The type of fuel.

(4) The gross number of gallons loaded.

(b) Duties of Transporter. – A person to whom an invoice, bill of sale, or shipping document was issued must do all of the following:

(1) Carry the invoice, bill of sale, or shipping document in the conveyance for which it is issued when transporting the motor fuel described in it.

(2) Show the invoice, bill of sale, or shipping document upon request when transporting the motor fuel described in it.

(3) Keep a copy of the invoice, bill of sale, or shipping document at a centralized place of business for at least three years from the date of delivery.

(c) Sanctions. – Transporting motor fuel in a tank wagon without an invoice, bill of sale, or shipping document containing the information required by this section is grounds for a civil penalty payable to the ~~Department of Transportation, Division of Motor Vehicles,~~ Department of Crime Control and Public Safety or the Department of Revenue. The penalty imposed under this subsection is payable by the person in whose name the tank wagon is registered. The amount of the penalty is one thousand dollars ($1,000). A penalty imposed under this subsection is in addition to any motor fuel tax assessed."

SECTION 18. G.S. 105-449.123 reads as rewritten:

"**§ 105-449.123. Marking requirements for dyed fuel storage facilities.**

(a) Requirements. – A person who is a retailer of dyed motor fuel or who stores both dyed and undyed motor fuel for use by that person or another person must mark the storage facility for the dyed motor fuel as follows in a manner that clearly indicates the fuel is not to be used to operate a highway vehicle. The storage facility must be marked "Dyed Diesel, Nontaxable Use Only, Penalty For Taxable Use" or "Dyed Kerosene, Nontaxable Use Only, Penalty for Taxable Use" or a similar phrase that clearly indicates the fuel is not to be used to operate a highway vehicle. A person who intentionally fails to mark the storage facility as required by this section is subject to a civil penalty equal to the excise tax at the motor fuel rate on the inventory held in the storage tank at the time of the violation. If the inventory cannot be determined, then the penalty is calculated on the capacity of the storage tank.

(1) The storage tank of the storage facility must be marked if the storage tank is visible.

(2) The fillcap or spill containment box of the storage facility must be marked.
(3) The dispensing device that serves the storage facility must be marked.
(4) The retail pump or dispensing device at any level of the distribution system must comply with the marking requirements.

(b) Exception. – The marking requirements of this section do not apply to a storage facility that contains fuel used only for one of the purposes listed in G.S. 105-449.105A(a)(1) and is installed in a manner that makes use of the fuel for any other purpose improbable."

SECTION 19. G.S. 119-15 is amended by adding the following two new subdivisions to read:

"**§ 119-15. Definitions that apply to Article.**

The following definitions apply in this Article:

…

(1a) Dyed diesel fuel distributor. – A person who acquires dyed diesel fuel from either of the following:

a. A person who is not required to be licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and who maintains storage facilities for dyed diesel fuel to be used for nonhighway purposes.

b. Another dyed diesel fuel distributor.

(1b) Dyed diesel fuel. – Defined in G.S. 105-449.60."

SECTION 20. G.S. 119-15.1(a) reads as rewritten:

"(a) License. – A person may not engage in business in this State as any of the following unless the person has a license issued by the Secretary authorizing the person to engage in business:

(1) A kerosene supplier.
(2) A kerosene distributor.
(3) A kerosene terminal operator.
(4) A dyed diesel fuel distributor."

SECTION 21. G.S. 119-15.3(a) reads as rewritten:

"(a) Initial Bond. – An applicant for a license as a kerosene supplier, kerosene distributor, or kerosene terminal operator must file with the Secretary of Revenue a bond or an irrevocable letter of credit. A bond or irrevocable letter of credit must be conditioned upon compliance with the requirements of this Article, be payable to the State, and be in the form required by the Secretary. The amount of the bond or irrevocable letter of credit may not be less than five hundred dollars ($500.00) and may not be more than twenty thousand dollars ($20,000)."

SECTION 22. G.S. 20-91 reads as rewritten:

"**§ 20-91. Audit of vehicle registrations under the International Registration Plan.**

(a) Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 9.

(b) The ~~Division~~ Department of Revenue may audit a person who registers or is required to register a vehicle under the International Registration Plan to determine if the person has paid the registration fees due under this Article. A person who registers a vehicle under the International Registration Plan must keep any records used to determine the information ~~provided to the Division~~ when registering the vehicle. The records must be kept for three years after the date of the registration to which the records apply. The ~~Division~~ Department of Revenue may examine these records during business hours. If the records are not located in North Carolina and an auditor must travel to the location of the records, the registrant shall reimburse North Carolina for per diem and travel expense incurred in the performance of the audit. If more than one registrant is audited on the same out-of-state trip, the per diem and travel expense may be prorated.

The ~~Commissioner~~ Secretary of Revenue may enter into reciprocal audit agreements with other agencies of this State or agencies of another jurisdiction for the purpose of conducting joint audits of any registrant subject to audit under this section.

(c) If an audit is conducted and it becomes necessary to assess the registrant for deficiencies in registration fees or taxes due based on the audit, the assessment will be determined based on the schedule of rates prescribed for that registration year, adding thereto and as a part thereof an amount equal to five percent (5%) of the tax to be collected. If, during an audit, it is determined that:

(1) A registrant failed or refused to make acceptable records available for audit as provided by law; or

(2) A registrant misrepresented, falsified or concealed records, then all plates and cab cards shall be deemed to have been issued erroneously and are subject to cancellation. The ~~Commissioner~~ Commissioner, based on information provided by the Department of Revenue audit, may assess the registrant for an additional percentage up to one hundred percent (100%) North Carolina registration fees at the rate prescribed for that registration year, adding thereto and as a part thereof an amount equal to five percent (5%) of the tax to be collected. The Commissioner may cancel all registration and reciprocal privileges.

As a result of an audit, no assessment shall be issued and no claim for refund shall be allowed which is in an amount of less than ten dollars ($10.00).

The results of any audit conducted under this section shall be provided to the Division. The notice of any assessments ~~will~~ shall be sent by the Division to the registrant by registered or certified mail at the address of the registrant as it appears in the records of the Division of Motor Vehicles in Raleigh. The notice, when sent in accordance with the requirements indicated above, will be sufficient regardless of whether or not it was ever received.

The failure of any registrant to pay any additional registration fees or tax within 30 days after the billing date, shall constitute cause for revocation of registration license plates, cab cards and reciprocal privileges.

(d) Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 9."

SECTION 23. G.S. 105-449.115(g), as enacted by Section 16 of this part, is effective when it becomes law and applies to penalties imposed on or after January 1, 2005. Sections 1, 7, 8, 9, and 18 and the remainder of Section 16 of this part become effective January 1, 2006. The remainder of this part is effective when it becomes law.

PART II. REVENUE LAWS TECHNICAL CHANGES

SECTION 24. 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 gross estate tax imposed under section 2001 of the Code or the amount of the maximum state death tax credit allowed an estate under section ~~6166~~2011 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 forfeits the right to any refund due by reason of the determination."

SECTION 25.(a) G.S. 18B-101(15) reads as rewritten:

"(15) 'Unfortified wine' means any wine of sixteen percent (16%) or less alcohol by volume made by fermentation from ~~pure~~ 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."

SECTION 25.(b) G.S. 105-113.68(a) reads as rewritten:

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

(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.

(6) ~~"License" means a~~ License. – A certificate, issued pursuant to this Article by a city or county, that authorizes a person to engage in a phase of the alcoholic beverage industry.

(7) ~~"Malt beverage" means beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage containing at least one half of one percent (0.5%) and not more than six percent (6%) alcohol by volume.~~Malt beverage. – Defined in G.S. 18B-101.

(8) ~~"Person" has the same meaning as in G.S. 105-228.90.~~Person. – Defined in G.S. 105-228.90.

(9) ~~"Sale" means a transfer, trade, exchange, or barter, in any manner or by any means, for consideration.~~Sale. – Defined in G.S. 18B-101.

(10) ~~"Secretary" means the~~ Secretary. – The Secretary of Revenue.

(11) ~~"Spirituous liquor" or "liquor" means distilled spirits or ethyl alcohol, including spirits of wine, whiskey, rum, brandy, gin, and all other distilled spirits and mixtures of cordials, liqueurs, and premixed cocktails in closed containers for beverage use regardless of the dilution.~~Spirituous liquor or liquor. – Defined in G.S. 18B-101.

(12) ~~"Unfortified wine" means any wine of sixteen percent (16%) or less 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.~~Unfortified wine. – Defined in G.S. 18B-101.

(13) ~~"Wholesaler or importer" when~~ Wholesaler or importer. – When used with reference to wholesalers or importers of wine or malt ~~beverages~~ beverages, the term includes resident wineries that sell their wines at retail and resident breweries that produce fewer than ~~310,000 gallons~~ 25,000 barrels of malt beverages per year.

(14) ~~"Wine" means unfortified~~ Wine. – Unfortified and fortified wine.

(15) ~~"Wine shipper permittee" means a~~ Wine shipper permittee. – A winery that holds a wine shipper permit issued by the ABC Commission under G.S. 18B-1001.1."

SECTION 26. G.S. 105-113.83(b) reads as rewritten:

"(b) Beer and Wine. – The excise taxes on malt beverages and wine levied under G.S. 105-113.80(a) and (b), respectively, are payable to the Secretary by the resident wholesaler or importer who first handles the beverages in this State. The excise taxes levied under G.S. 105-113.80(b) on wine shipped directly to consumers in this State pursuant to G.S. 18B-1001.1 must be paid by the wine shipper permittee. The taxes on malt beverages and wine ~~shall be paid~~ are payable only once on the same beverages. The tax ~~shall be paid~~ is due on or before the 15th day of the month following the month in which the beverage is first sold or otherwise disposed of in this State by the wholesaler, importer, or wine shipper permittee. When excise taxes are paid on wine or malt beverages, the wholesaler, importer, or wine shipper permittee ~~shall~~ must submit to the Secretary verified reports on forms provided by the Secretary detailing sales records for the month for which the taxes are paid. The report ~~shall~~ must indicate the amount of excise tax due, contain the information required by the Secretary, and indicate separately any transactions to which the excise tax does not apply."

SECTION 27. G.S. 105-113.112 reads as rewritten:

"**§ 105-113.112. Confidentiality of information.**

~~Notwithstanding any other provision of law, information obtained pursuant to this Article is confidential and may not be disclosed or, unless independently obtained, used in a criminal prosecution other than a prosecution for a violation of this Article. Stamps issued pursuant to this Article may not be used in a criminal prosecution other than a prosecution for a violation of this Article. A person who discloses information obtained pursuant to this Article is guilty of a Class 1 misdemeanor. This section does not prohibit the Secretary from publishing statistics that do not disclose the identity of dealers or the contents of particular returns or reports.~~Information obtained by the Department in the course of administering the tax imposed by this Article, including information on whether the Department has issued a revenue stamp to a person, is confidential tax information and is subject to the following restrictions on disclosure:

(1) G.S. 105-259 prohibits the disclosure of the information, except in the limited circumstances provided in that statute.

(2) The information may not be used as evidence, as defined in G.S. 15A-971, in a criminal prosecution for an offense other than an offense under this Article or under Article 9 of this Chapter. Under this prohibition, no officer, employee, or agent of the Department may testify about the information in a criminal prosecution for an offense other than an offense under this Article or under Article 9 of this Chapter. This subdivision implements the protections against double jeopardy and self-incrimination set out in Amendment V of the United States Constitution and the restrictions in it apply regardless of whether information may be disclosed under G.S. 105-259. This subdivision does not apply to information obtained from a source other than an employee, officer, or agent of the Department. An officer, employee, or agent of the Department who provides evidence or

testifies in violation of this subdivision is guilty of a Class 1 misdemeanor."

SECTION 28. G.S. 105-129.8(a2) reads as rewritten:

"(a2) Installments. – The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit must be taken in equal installments over the four years following the taxable year in which the additional employee was hired and is conditioned on the taxpayer's continued employment ~~by the taxpayer~~ in this State of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

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

SECTION 29.(a) G.S. 105-129.62(c) reads as rewritten:

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

SECTION 29.(b) G.S. 105-129.62(d) reads as rewritten:

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

SECTION 29.(c) G.S. 105-129.62(e) reads as rewritten:

"(e) Overdue Tax Debts. – A taxpayer is eligible for the credit allowed under this ~~section~~ Article with respect to a facility only if as of the last day of the taxable year for which a credit or carryforward is claimed the taxpayer and the taxpayer's related entities and strategic partners whose employees are included in the taxpayer's increased employment level have no overdue tax debts that have not been satisfied or otherwise resolved."

SECTION 29.(d) G.S. 105-129.63 reads as rewritten:

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

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

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

SECTION 30. G.S. 105-164.13(29) is repealed.

SECTION 31. G.S. 105-164.13(39) reads as rewritten:

"**§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property and services are specifically exempted from the tax imposed by this Article:

…

(39) **(Effective July 1, 2005 – see note)** Sales of paper, ink, and other tangible personal property to commercial printers and commercial publishers for use as ingredients or component parts of free distribution periodicals and sales by printers of free distribution periodicals to the publishers of these periodicals. As used in this subdivision, the term "free distribution periodical" means a publication that is continuously published on a periodic basis monthly or more frequently, is provided without charge to the recipient, and is distributed in any manner other than by mail."

SECTION 32.(a) G.S. 105-164.14(f) reads as rewritten:

"(f) Information to ~~Counties.~~ Counties and Cities. – The Secretary must give information on refunds of tax made under this section to a designated county or city official within 30 days after the official makes a ~~Upon~~ written request ~~of a county,~~ to the Secretary for the information. ~~shall, within 30 days after the request, provide the designated county official a list of each claimant that has, within the past 12 months,~~For a request made by a county official, the Secretary must give the official a list of each claimant that received a refund ~~under subsection (b), (c), or (g) of this section~~ in the past 12 months of at least one thousand dollars ($1,000) of tax paid to the county. For a request made by a city official, the Secretary must give the official a list of each claimant that received a refund in the past 12 months of at least one thousand dollars ($1,000) of tax paid to all the counties in which the city is located. The list ~~shall~~ must include the name and address of each ~~claimant~~ of these claimants and the amount of the refund ~~it has~~ received from ~~that county.~~ each county covered by the request.

~~Upon written request of a county, a~~ A claimant that has received a refund under ~~subsection (b), (c), or (g) of~~ this section ~~shall provide the~~of tax paid to a county must give information on the refund to a designated ~~county~~ official of the county or a city located in the county. The claimant must give the information to the county or city official within 30 days after the official makes a written request to the claimant for the information. For a request by a county or city official, the claimant must give the official a copy of the request for the refund and any supporting documentation requested by the ~~county~~ official to verify the request. If a claimant determines that a refund it has

received under this section is incorrect, the claimant must file an amended request for a refund.

For the purpose of this subsection, ~~the~~ a designated county official is the chair of the board of county commissioners or a county official designated in a resolution adopted by the ~~board.~~ Board, and a designated city official is the mayor of the city or a city official designated in a resolution adopted by the city's governing board. Information ~~provided to a county~~ given to a county or city official under this ~~subsection~~ section is not a public record and may not be disclosed except ~~in accordance with G.S. 153A-148.1.~~ as provided in G.S. 153A-148.1 or G.S. 160A-208.1. ~~If a claimant determines that a refund it has received under subsection (b), (c), or (g) of this section is incorrect, it shall file an amended request for the refund.~~"

SECTION 32.(b) G.S. 105-259(a)(2) reads as rewritten:

"(2) Tax information. – Any information from any source concerning the liability of a taxpayer for a tax, as defined in G.S. 105-228.90. The term includes the following:

a. Information contained on a tax return, a tax report, or an application for a license for which a tax is imposed.

b. Information obtained through an audit of a taxpayer or by correspondence with a taxpayer.

c. Information on whether a taxpayer has filed a tax return or a tax report.

d. A list or other compilation of the names, addresses, social security numbers, or similar information concerning taxpayers.

The term does not include (i) statistics classified so that information about specific taxpayers cannot be identified, (ii) an annual report required to be filed under G.S. 55-16-22 or (iii) ~~information submitted to the Business License Information Office of the Department of Secretary of State on a master application form for various business licenses.~~the amount of tax refunds paid to a governmental entity listed in G.S. 105-164.14(c) or to a State agency."

SECTION 32.(c) G.S. 105-259(b)(6a) reads as rewritten:

"(6a) To furnish the county or city official designated under G.S. 105-164.14(f) a list of claimants that have received a refund of ~~the~~ county sales or use tax to the extent authorized in G.S. 105-164.14(f)."

SECTION 33.(a) G.S. 105-164.14(j)(3) reads as rewritten:

"(3) Industries. – This subsection applies to the following industries:

a. Air courier services. Air courier services has the same meaning as in G.S. 105-129.2.

b. Aircraft manufacturing. Aircraft manufacturing means manufacturing or assembling complete aircraft.

c. Bioprocessing. Bioprocessing means biomanufacturing or processing that includes the culture of cells to make commercial products, the purification of biomolecules from cells, or the use of these molecules in manufacturing.

d. Computer manufacturing. Computer manufacturing means manufacturing or assembling electronic computers, such as personal computers, workstations, laptops, and computer servers. The term includes the assembly or integration of processors, coprocessors, memory, storage, and input/output devices into a user-programmable final product. The term includes manufacturing or assembling computer peripheral equipment, such as storage devices, printers, monitors, input/output devices, and terminals only if the manufacture or assembly of this peripheral equipment occurs at a facility or

campus at which the taxpayer also manufactures or assembles electronic computers.

g. Motor vehicle manufacturing. Motor vehicle manufacturing means any of the following:
   1. Manufacturing complete automobiles and light-duty motor vehicles.
   2. Manufacturing heavy-duty truck chassis and assembling complete heavy-duty trucks, buses, heavy-duty motor homes, and other special purpose heavy-duty motor vehicles for highway use.
   3. Manufacturing complete military armored vehicles, nonarmored military universal carriers, combat tanks, and specialized components for combat tanks.

j. Pharmaceutical and medicine manufacturing and distribution of pharmaceuticals and medicines. Pharmaceutical and medicine manufacturing means any of the following:
   1. Manufacturing biological and medicinal products. For the purpose of this sub-subdivision, a biological product is a preparation that is synthesized from living organisms or their products and used medically as a diagnostic, preventive, or therapeutic agent. For the purpose of this sub-subdivision, bacteria, viruses, and their parts are considered living organisms.
   2. Processing botanical drugs and herbs by grading, grinding, and milling.
   3. Isolating active medicinal principals from botanical drugs and herbs.
   4. Manufacturing pharmaceutical products intended for internal and external consumption in forms such as ampoules, tablets, capsules, vials, ointments, powders, solutions, and suspensions.

m. Semiconductor manufacturing. Semiconductor manufacturing means development and production of semiconductor material, devices, or components."

SECTION 33.(b) G.S. 105-164.14(j), as amended by Section 10(a) of this act, is further amended by adding a new subdivision to read:

"(j) Certain Industrial Facilities. – The owner of an eligible facility is allowed an annual refund of sales and use taxes as provided in this subsection.

…

(5) Sunset. – This subsection is repealed for sales made on or after January 1, 2010."

SECTION 33.(c) Section 32B.5 of S.L. 2004-124 reads as rewritten:

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

SECTION 33.(d) This section becomes effective August 1, 2005, and applies to sales made on or after that date.

SECTION 34.(a) G.S. 105-113.82(h) reads as rewritten:

"(h) Disqualification. – No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is

disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets ~~are~~ is open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999."

SECTION 34.(b) G.S. 105-116.1(e) reads as rewritten:

"(e) Disqualification. – No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets ~~are~~ is open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999."

SECTION 34.(c) G.S. 105-164.44F(e) reads as rewritten:

"(e) Ineligible Cities. – An ineligible city is disregarded for all purposes under this section. A city incorporated on or after January 1, 2000, is not eligible for a distribution under this section unless it meets both of the following requirements:

(1) It is eligible to receive funds under G.S. 136-41.2.

(2) A majority of the mileage of its streets ~~are~~ is open to the public."

SECTION 35. G.S. 105-187.20 reads as rewritten:

"**§ 105-187.20. Definitions.**

The definitions in G.S. 105-164.3 apply to this Article, except that the term "sale" does not include lease or rental, and the following ~~definitions apply~~ definition applies to this Article:

~~(1) Chlorofluorocarbon refrigerant. – Defined in G.S. 130A-290(a).~~

(2) White goods. – Defined in G.S. 130A-290(a)."

SECTION 36. G.S. 105-241.1(e) reads as rewritten:

"(e) Statute of Limitations. – There is no statute of limitations and the Secretary may propose an assessment of tax due from a taxpayer at any time if (i) the taxpayer did not file a proper application for a license or did not file a return, (ii) the taxpayer filed a false or fraudulent application or return, or (iii) the taxpayer attempted in any manner to fraudulently evade or defeat the tax.

If a taxpayer files a return reflecting a federal determination as provided in ~~G.S. 105-29,~~ G.S. 105-32.8, 105-130.20, 105-159, 105-160.8, 105-163.6A, or 105-197.1, the Secretary must propose an assessment of any tax due within one year after the return is filed or within three years of when the original return was filed or due to be filed, whichever is later. If there is a federal determination and the taxpayer does not file the required return, the Secretary must propose an assessment of any tax due within three years after the date the Secretary received the final report of the federal determination.

If a taxpayer forfeits a tax credit or tax benefit pursuant to forfeiture provisions of this Chapter, the Secretary must assess any tax due as a result of the forfeiture within three years after the date of the forfeiture. If a taxpayer elects under section 1033(a)(2)(A) of the Code not to recognize gain from involuntary conversion of property into money, the Secretary must assess any tax due as a result of the conversion or election within the applicable period provided under section 1033(a)(2)(C) or section 1033(a)(2)(D) of the Code. If a taxpayer sells at a gain the taxpayer's principal residence, the Secretary must assess any tax due as a result of the sale within the period provided under section 1034(j) of the Code.

In all other cases, the Secretary must propose an assessment of any tax due from a taxpayer within three years after the date the taxpayer filed an application for a license or a return or the date the application or return was required by law to be filed, whichever is later.

If the Secretary proposes an assessment of tax within the time provided in this section, the final assessment of the tax is timely.

A taxpayer may make a written waiver of any of the limitations of time set out in this subsection, for either a definite or an indefinite time. If the Secretary accepts the taxpayer's waiver, the Secretary may propose an assessment at any time within the time extended by the waiver."

SECTION 37. G.S. 105-259(b) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

…

(17) To inform the Business License Information Office of the Department of ~~Secretary of State~~ Commerce of the status of an application for a license for which a tax is imposed and of any information needed to process the application.

…

(32) To furnish to a taxpayer claiming a credit under Article 3G of this Chapter information from a related entity or strategic partner to the extent that information was used by the Secretary to adjust the amount of tax credit claimed by the taxpayer.

…."

SECTION 38. G.S. 105-278(a) reads as rewritten:

"(a) Real property designated as a historic structure or site by a local ordinance adopted pursuant to ~~G.S. 160A-399.4~~ G.S. 160A-400.7 or designated as a historic landmark by a local ordinance adopted pursuant to G.S. 160A-400.5 is ~~hereby~~ designated a special class of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution. Property so classified shall be taxed uniformly as a class in each local taxing unit on the basis of fifty percent (50%) of the true value of the property as determined pursuant to G.S. 105-285 and 105-286, or 105-287."

SECTION 39. G.S. 105-278.1(c) reads as rewritten:

"(c) For purposes of this section:

(1) A specified unit of government (federal, State, or local) includes its departments, institutions, and agencies.

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

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

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

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

(3) By way of illustration but not by way of limitation, the following boards, commissions, authorities, and institutions are units of local government of this State:

a. An airport authority, board, or commission created as a separate and independent body corporate and politic by an act of the General Assembly.

b. An airport authority, board, or commission created as a separate and independent body corporate and politic by one or more counties or municipalities or combinations thereof under the authority of an act of the General Assembly.

c. A hospital authority created under ~~G.S. 131-93.~~G.S. 131E-17.

d. A housing authority created under G.S. 157-4 or G.S. 157- 4.1.

e. A municipal parking authority created under G.S. 160-477.

f. A veterans' recreation authority created under G.S. 165-26."

SECTION 40. G.S. 20-81.12(b7) reads as rewritten:

"(b7) Scenic Rivers Plates. – The Division must receive 300 or more applications for a Scenic Rivers plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Scenic Rivers plates to the Clean Water Management Trust Fund established in ~~G.S. 113-45.3.~~G.S. 113A-253."

SECTION 41. G.S. 105-469(a) reads as rewritten:

"(a) The Secretary shall collect and administer a tax levied by a county pursuant to this Article. As directed by G.S. 105-164.13B, taxes levied by a county on food are administered as if they were levied by the State under Article 5 of this Chapter. The Secretary must, on a monthly basis, distribute local taxes levied on food to the taxing counties as follows:

(1) The Secretary must allocate one-half of the net proceeds on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Budget Officer. The Secretary must then adjust the amount allocated to each county as provided in G.S. 105-486(b). The Secretary must include one-half of the amount allocated under this subdivision in the distribution made under Article 40 of this Chapter and must include the remaining one-half in the distribution made under Article 42 of this Chapter.

(2) The Secretary must allocate the remaining net proceeds proportionately to each taxing county based upon the amount of sales tax on food collected in the taxing county in the 1997-1998 fiscal year under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws relative to the total amount of sales tax on food collected in all taxing counties in the 1997-1998 fiscal year under Article 39 of this Chapter and under Chapter 1096 of the 1967 Session Laws. The Secretary must include the amount allocated under this subdivision in the distribution made under Article 39 of this Chapter."

SECTION 42. G.S. 105A-8(a) reads as rewritten:

"**§ 105A-8. State agency notice, hearing, decision, and refund of setoff.**

(a) Notice. – Within 10 days after a State agency receives a refund of a debtor, the agency must send the debtor written notice that the agency has received the debtor's refund. The notice must explain the debt that is the basis for the agency's claim to the debtor's refund and that the agency intends to apply the refund against the debt. The notice must also inform the debtor that the debtor has the right to contest the matter by filing a request for a hearing, must state the time limits and procedure for requesting the hearing, and must state that failure to request a hearing within the required time will result in setoff of the debt. A State agency that does not send a debtor a notice within the time required by this subsection must refund the amount set off plus the collection assistance fee, in accordance with subsection ~~(e)~~(d) of this section."

SECTION 43. G.S. 106-516.1 reads as rewritten:

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

Every person, firm, or corporation engaged in the business of a carnival company or a show of like kind, including menageries, merry-go-rounds, Ferris wheels, riding devices, circus and similar amusements and enterprises operated and conducted for profit, shall, prior to exhibiting in any county annually staging an agricultural fair, apply to the sheriff of the county in which the exhibit is to be held for a permit to exhibit. The sheriff of the county shall issue a permit without charge; provided, however, that no permit shall be issued if he shall find the requested exhibition date is less than 30 days prior to a regularly advertised agricultural ~~fair and so in conflict with G.S. 105-37.1(d).~~fair. Exhibition without a permit from the sheriff of the county in which the exhibition is to be held shall constitute a Class 1 misdemeanor: Provided, that nothing contained in this section shall prevent veterans' organizations and posts chartered by Congress or organized and operated on a statewide or nationwide basis

from holding fairs or tobacco festivals on any dates which they may select if such fairs or festivals have heretofore been held as annual events."

SECTION 44. G.S. 146-22.5 reads as rewritten:

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

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

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

SECTION 45. G.S. 160A-215(d) reads as rewritten:

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

SECTION 46. G.S. 59-35.2 reads as rewritten:

"**§ 59-35.2. ~~Fees.~~Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are submitted by a partnership to the Secretary of State for filing:

	Document	Fee
(1)	Application for reserved name	$10.00
(2)	Notice of transfer of reserved name	10.00
(3)	Application for registered name	10.00
(4)	Application for renewal of registered name	10.00
(5)	Registered limited liability partnership's or foreign limited liability partnership's statement of change of registered agent or registered office or both	5.00
(6)	Agent's statement of change of registered office for each affected registered limited liability partnership or foreign limited liability partnership	5.00
(7)	Agent's statement of resignation	No Fee
(8)	Designation of registered agent or registered office or both	5.00
(9)	Articles of conversion (other than articles of conversion included as part of another document)	50.00
(10)	Articles of merger	50.00
(11)	Application for registration as a registered limited liability partnership	125.00
(12)	Certificate of amendment of registration as a registered limited liability partnership	25.00
(13)	Cancellation of registration as a registered limited liability partnership	25.00
(14)	Application for registration as a foreign limited liability partnership	125.00
(15)	Certificate of amendment of registration as a foreign limited liability partnership	25.00

(16) Cancellation of registration as a foreign limited liability partnership 25.00
(17) Application for certificate of withdrawal by reason of merger, consolidation, or conversion 10.00
(18) Annual report 200.00
(19) Articles of correction 10.00
(20) Any other document required or permitted to be filed pursuant to this ~~act~~ Act..... 10.00

(b) Whenever the Secretary of State is deemed appointed as a registered agent under this ~~act~~ Act or under Chapter 55D of the General Statutes, the Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary of State under this ~~act.~~ Act. The party to the proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of a ~~document filed pursuant to this act:~~filed partnership document:

(1) One dollar ($1.00) a page for copying or comparing a copy to the ~~original; and~~original.
(2) ~~Five dollars ($5.00) for the certificate.~~Fifteen dollars ($15.00) for a paper certificate.
(3) Ten dollars ($10.00) for an electronic certificate."

SECTION 47.(a) S.L. 2004-123 is amended by a adding a new section to read:

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

SECTION 47.(b) S.L. 2004-123, as amended by this act, is reenacted.

SECTION 48. Section 5 of S.L. 2004-204 reads as rewritten:

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

SECTION 49. The introductory language in Section 1 of S.L. 2005-53 reads as rewritten:

"**SECTION 1.** Chapter ~~377~~317 of the 1987 Session Laws reads as rewritten:".

SECTION 50. Section 1(a) of S.L. 2005-68 reads as rewritten:

"**SECTION 1.** Occupancy tax. (a) Authorization and Scope. – Upon receiving written confirmation from the National Association ~~of~~ for Stock Car Auto Racing, Inc., (NASCAR) that it will license or otherwise legally authorize the location of the NASCAR Hall of Fame Museum facility in Charlotte, North Carolina, the Mecklenburg County Board of Commissioners may levy a room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of any accommodation subject to the tax under Section 6 of Chapter 908 of the 1983 Session Laws, as amended by Chapter 821 of the 1989 Session Laws. The tax authorized by this section is in addition to any other State or local sales and use tax and any other State or local occupancy tax authorized by law."

SECTION 51. Section 43.4 of S.L. 2003-284 reads as rewritten:

"**SECTION 43.4.** This part is effective for taxable years beginning on or after January 1, 2004. ~~The Commissioner of Insurance must make a certification to the Secretary of Revenue and to the Revisor of Statutes when there are no Article 65 corporations that offer medical service plans or hospital service plans. This part is repealed effective for taxable years beginning on or after the January 1 immediately following the certification required by this section.~~"

SECTION 52. S.L. 2005-120 is reenacted.

SECTION 53. G.S. 105-130.4(a)(6) reads as rewritten:

"(6) "Public utility" means any corporation that is subject to control of one ~~of~~ or more of the following entities: the North Carolina Utilities Commission, the Federal Communications Commission, the Interstate Commerce Commission, the Federal Energy Regulatory Commission, or the Federal Aviation Agency; and that owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, the transportation of goods or persons, or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam, oil, oil products, or gas. The term also includes a motor carrier of property whose principal business activity is transporting property by motor vehicle for hire over the public highways of this State."

SECTION 54.(a) Section 2(c) of S.L. 2005-233 reads as rewritten:

"**SECTION 2.(c)** Distribution and Use of Tax Revenue. – The City of Eden shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied under this Part to the Rockingham County Tourism Development Authority. The net proceeds under this Part shall be deposited into a separate Eden Account. Based on recommendations from and in consultation with the Eden City Council, the Authority shall use at least two-thirds of the funds in the Eden Account ~~for tourism promotion~~to promote travel and tourism and the remainder for tourism-related expenditures. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of the City of Eden. None of the proceeds may be used to promote travel and tourism or for tourism-related expenditures in areas within Rockingham County that are outside of the City of Eden.

The following definitions apply in this Part:

(1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures."

SECTION 54.(b) Section 3(c) of S.L. 2005-233 reads as rewritten:

"**SECTION 3.(c)** Distribution and Use of Tax Revenue. – The City of Reidsville shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied under this Part to the Rockingham County Tourism Development Authority. The net proceeds under this Part shall be deposited into a separate Reidsville Account. Based on recommendations from and in consultation with the Reidsville City Council, the Authority shall use at least two-thirds of the funds in the Reidsville Account ~~for tourism promotion~~to promote travel and tourism and the remainder for tourism-related expenditures. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of the City of Reidsville. None of the proceeds may be used to promote travel and tourism or for tourism-related expenditures in areas within Rockingham County that are outside of the City of Reidsville.

The following definitions apply in this Part:

(1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance

officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures."

SECTION 55. If Senate Bill 622, 2005 Regular Session, becomes law, then G.S. 105-134.6(c)(9), as enacted by that act, reads as rewritten:

"(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

…

(9) The amount of qualifying expenses for which the taxpayer claims a credit under ~~G.S. 105 130.47.~~G.S. 105-151.29."

SECTION 56.(a) If Senate Bill 622, 2005 Regular Session, becomes law, then G.S. 105-187.51(b) reads as rewritten:

"(b) Rate. – The tax is one percent (1%) of the sales price of the machinery, part, or accessory purchased. The maximum tax is eighty dollars ($80.00) per article. As used in this section, the term 'accessories' does not include electricity."

SECTION 56.(b) This section becomes effective January 1, 2006.

SECTION 57.(a) If Senate Bill 622, 2005 Regular Session, becomes law, then G.S. 105-228.5(d)(2) reads as rewritten:

"(d) Tax Rates; Disposition. –

…

(2) Other Insurance Contracts. – The tax rate to be applied to gross premiums on all other taxable contracts issued by insurers or health maintenance organizations and to be applied to gross premiums and gross collections from membership dues, exclusive of receipts from cost plus plans, received by Article 65 corporations is one and nine-tenths percent (1.9%). The net proceeds shall be credited to the General Fund."

SECTION 57.(b) This section is effective for taxable years beginning on or after January 1, 2007.

SECTION 58. If Senate Bill 622, 2005 Regular Session, becomes law, then Section 33.34, as enacted by that act, reads as rewritten:

"**SECTION 33.34.** Sections 33.1, 33.24, and 33.31 through 33.34 of this part are effective when they become law. Sections 33.4(b), 33.5, 33.9, 33.12, 33.14, and 33.20 through 33.23 become effective January 1, 2006. Section 33.25 of this part is effective for taxable years beginning on or after January 1, 2006. The remainder of this part becomes effective October 1, 2005. For prepayments of telecommunications and direct-to-home satellite services, the first billing period is considered to start on or after November 1, 2005. For prepayments of satellite digital audio radio services or cable services, the first billing period is considered to start on or after February 1, 2006. Section 33.19 of this part applies to distributions to cities of the net proceeds of the sales tax imposed on telecommunications service under G.S. 105-164.4(a)(4c) collected during calendar quarters that begin on or after January 1, 2006."

SECTION 59.(a) G.S. 105-278.3(d)(4) reads as rewritten:

"(d) Within the meaning of this section:

…

(4) A literary purpose is one that pertains to letters or ~~literature (including drama),~~ literature, especially writing, publishing, and the study of literature. It includes the literature of the stage and screen as well as the performance or exhibition of works based on literature."

SECTION 59.(b) G.S. 105-278.7(a) reads as rewritten:

"(a) Buildings, the land they actually occupy, and additional adjacent land necessary for the convenient use of any such building shall be exempted from taxation if wholly owned by an agency listed in subsection (c), below, and if:

(1) Wholly and exclusively used by its owner for nonprofit educational, scientific, literary, or charitable purposes as defined in subsection (f), below; or

(2) Occupied gratuitously by an agency listed in subsection (c), below, other than the owner, and wholly and exclusively used by the occupant for nonprofit educational, scientific, literary, ~~or charitable~~ charitable, or cultural purposes."

SECTION 59.(c) G.S. 105-278.7(f) reads as rewritten:

"(f) Within the meaning of this section:

(1) An educational purpose is one that has as its objective the education or instruction of human beings; it comprehends the transmission of information and the training or development of the knowledge or skills of individual persons.

(2) A scientific purpose is one that yields knowledge systematically through research, experimentation, or other work done in one or more of the natural sciences.

(3) A literary purpose is one that pertains to letters or ~~literature (including drama),~~ literature, especially writing, publishing, and the study of literature. It includes the literature of the stage and screen as well as the performance or exhibition of works based on literature.

(4) A charitable purpose is one that has humane and philanthropic objectives; it is an activity that benefits humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward. The humane treatment of animals is also a charitable purpose.

(5) A cultural purpose is one that is conducive to the enlightenment and refinement of taste acquired through intellectual and aesthetic training, education, and discipline."

SECTION 59.1.(a) If Senate Bill 622, 2005 Regular Session, becomes law, then Section 6.12(b) of that act reads as rewritten:

"**SECTION 6.12.(b)** If this section, or any portion of the amendment made to G.S. 66-291(b)(2) by this section, is held by a court of competent jurisdiction to be unconstitutional, then G.S. 66-291(b)(2) shall be deemed to be repealed in its entirety. If G.S. ~~66-291(b)(2)~~66-291(b) shall thereafter be held by a court of competent jurisdiction to be unconstitutional, then this section shall be repealed, and G.S. 66-291(b)(2) shall be restored as if no amendments had been made by this section. Neither any judicial holding of unconstitutionality nor the repeal of G.S. 66-291(b)(2) shall affect, impair, or invalidate any other portion of Part 1 of Article 37 of Chapter 66 of the General Statutes or the application of Part 1 of Article 37 of Chapter 66 of the General Statutes to any other person or circumstance, and the remaining portions of Part 1 of Article 37 of Chapter 66 of the General Statutes shall at all times continue in full force and effect."

SECTION 59.1.(b) This section becomes effective January 1, 2006.

SECTION 59.2.(a) G.S. 105-114.1(a4) reads as rewritten:

"(a4) No Double Taxation. – G.S. 105-122 does not apply to holding companies taxed under G.S. 105-120.2. G.S. 105-122 applies to a corporation taxed under another section of this Article only to the extent the taxes levied on the corporation in G.S.

105-122 exceed the taxes levied ~~on the corporation~~ in other sections of this ~~Article.~~Article on the corporation or on a limited liability company whose assets must be included in the corporation's tax base under G.S. 105-114.1."

SECTION 59.2.(b) This section is effective for taxable years beginning on or after January 1, 2006.

SECTION 60. Except as otherwise provided in this part, this part is effective when it becomes law.

PART III. REFUND OF SALES AND USE TAXES ON FUEL

SECTION 61. G.S. 105-164.14 is amended by adding a new subsection to read:

"(a1) Passenger Plane Maximum. – An interstate passenger air carrier is allowed a refund of the net amount of sales and use tax paid by it in this State on fuel during a calendar year in excess of two million five hundred thousand dollars ($2,500,000). The 'net amount of sales and use tax paid' is the amount paid less the refund allowed under subsection (a) of this section. A request for a refund must be in writing and must include any information and documentation the Secretary requires. A request for a refund is due within six months after the end of the calendar year for which the refund is claimed. The refund allowed by this subsection is in addition to the refund allowed in subsection (a) of this section."

SECTION 61.1. G.S. 105-164.14, as amended by Section 61 of this act, is further amended by adding a new subdivision to read:

"(k) Motorsports Events. – A motorsports racing team or a motorsports sanctioning body is allowed a refund of the sales and use tax paid by it in this State on aviation fuel that is used to travel to or from a motorsports event in this State, to travel to a motorsports event in another state from a location in this State, or to travel to this State from a motorsports event in another state. For the purposes of this subsection, a "motorsports event" includes a motorsports race, a motorsports sponsor event, and motorsports testing. A request for a refund must be in writing and must include any information and documentation the Secretary requires. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred."

SECTION 62. This part becomes effective January 1, 2005, and applies to purchases made on or after that date. This part is repealed effective for purchases made on or after January 1, 2007. This part does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this part 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.

PART IV. EFFECTIVE DATES

SECTION 63. 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 24th day of August, 2005.

s/ Beverly E. Perdue
President of the Senate

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

s/ Michael F. Easley
Governor

Approved 3:00 p.m. this 27th day of September, 2005