

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 600*

Short Title: Rev. Laws Clarifying & Administrative Changes. (Public)

Sponsors: Representatives Howard, Setzer, and Szoka (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Finance, if favorable, Rules, Calendar, and Operations of the House

April 8, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CLARIFYING AND ADMINISTRATIVE CHANGES TO
3 THE REVENUE LAWS.

4 The General Assembly of North Carolina enacts:

5
6 **PART I. BUSINESS TAX CHANGES**

7 **SECTION 1.1.(a)** G.S. 105-154(d) reads as rewritten:

8 "(d) Payment of Tax on Behalf of Nonresident Owner or Partner. – If a business conducted
9 in this State is owned by a nonresident individual or by a partnership having one or more
10 nonresident members, the manager of the business shall report information concerning the
11 earnings of the business in this State, the distributive share of the income of each nonresident
12 owner or partner, and any other information required by the Secretary. The distributive share of
13 the income of each nonresident partner includes any guaranteed payments made to the partner.
14 The manager of the business shall pay with the return the tax on each nonresident owner or
15 partner's share of the income computed at the rate levied on individuals under G.S. 105-153.7.
16 The business may deduct the payment for each nonresident owner or partner from the owner or
17 partner's distributive share of the income of the business in this State. If the nonresident partner
18 is not an individual and the partner has executed an affirmation that the partner will pay the tax
19 with its corporate, partnership, trust, or estate income tax return, the manager of the business is
20 not required to pay the tax on the partner's share. In this case, the manager shall include a copy
21 of the affirmation with the report required by this subsection. Notwithstanding the provisions of
22 G.S. 105-241.7(b), the manager of the business may not request a refund of an overpayment made
23 on behalf of a nonresident owner or partner if the manager of the business has previously filed
24 the return and paid the tax due. The nonresident owner or partner may, on its own income tax
25 return, request a refund of an overpayment made on its behalf by the manager of the business
26 within the provisions of G.S. 105-241.6."

27 **SECTION 1.1.(b)** This section is effective for taxable years beginning on or after
28 January 1, 2019, and applies to a request for refund filed on or after that date.
29

30 **PART II. PERSONAL INCOME TAX CHANGES**

31 **SECTION 2.1.(a)** G.S. 105-153.8(e) reads as rewritten:

32 "(e) Joint Returns. – A husband and wife whose adjusted gross income is determined on a
33 joint federal return must file a single income tax return jointly if each spouse either is a resident
34 of this State or has North Carolina taxable income and may file a single income tax return jointly
35 if one spouse is not a resident and has no North Carolina taxable income. Except as otherwise



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1 provided in this Part, a wife and husband filing jointly are treated as one taxpayer for the purpose
 2 of determining the tax imposed by this Part. A husband and wife filing jointly are jointly and
 3 severally liable for the tax imposed by this Part reduced by the sum of all credits allowable
 4 including tax payments made by or on behalf of the husband and wife. However, if a spouse
 5 qualifies for relief of liability for federal tax ~~attributable to a substantial understatement by the~~
 6 ~~other spouse~~ pursuant to section 6015 of the Code, that spouse is not liable for the corresponding
 7 tax imposed by this ~~Part attributable to the same substantial understatement by the other spouse.~~
 8 Part. A wife and husband filing jointly have expressly agreed that if the amount of the payments
 9 made by them with respect to the taxes for which they are liable, including withheld and
 10 estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to
 11 both spouses jointly or, if either is deceased, to the survivor alone."

12 **SECTION 2.1.(b)** This section is effective for taxable years beginning on or after
 13 January 1, 2018.

15 **PART III. SALES AND USE TAX CHANGES**

16 **SECTION 3.1.(a)** G.S. 105-164.3 reads as rewritten:

17 **"§ 105-164.3. Definitions.**

18 The following definitions apply in this Article:

19 (1) Advertising and promotional direct mail. – Printed material that meets the
 20 definition of "direct mail" and the primary purpose of which is to attract public
 21 attention to ~~a product, an item,~~ person, business, or organization, or to attempt
 22 to sell, popularize, or secure financial support for ~~a product, an item,~~ person,
 23 business, or organization. ~~As used in this subdivision, "product" means~~
 24 ~~tangible personal property, digital property, or a service.~~

25 ...

26 (1i) Bundled transaction. – A retail sale of two or more distinct and identifiable
 27 ~~products, items,~~ at least one of which is taxable and one of which is ~~exempt,~~
 28 ~~nontaxable,~~ for one nonitemized price. The term does not apply to real
 29 property ~~and or~~ services to real property. ~~Products-Items~~ are not sold for one
 30 nonitemized price if an invoice or another sales document made available to
 31 the purchaser separately identifies the price of each ~~product, item.~~ A bundled
 32 transaction does not include the retail sale of any of the following:

- 33 a. ~~A product~~ An item and any packaging ~~item~~ that accompanies the
 34 ~~product item~~ and is exempt under G.S. 105-164.13(23).
- 35 b. A sale of two or more ~~products-items~~ whose combined price varies, or
 36 is negotiable, depending on the ~~products-items~~ the purchaser selects.
- 37 c. A sale of ~~a product~~ an item accompanied by a transfer of another
 38 ~~product item~~ with no additional consideration.
- 39 d. ~~A product~~ An item and the delivery or installation of the ~~product item.~~
- 40 e. ~~A product~~ An item and any service necessary to complete the sale.

41 ...

42 (2c) Capital improvement. – One or more of the following:

- 43 a. New construction, reconstruction, or remodeling.
- 44 b. Performance of work that requires the issuance of a permit under the
 45 State Building Code, other than repair or replacement of electrical
 46 components, gas logs, water heater, and similar ~~individual items~~
 47 tangible personal property that are not part of new construction,
 48 reconstruction, or remodeling.

49 ...

- 50 f. Replacement or installation of a septic tank system, siding, roof,
 51 plumbing, electrical, commercial refrigeration, irrigation, sprinkler, or

- 1 other similar system. The term does not include the repair,
 2 replacement, or installation of electrical or plumbing components,
 3 water heaters, gutters, and similar ~~individual items~~ tangible personal
 4 property that are not part of new construction, reconstruction, or
 5 remodeling.
- 6 g. Replacement or installation of a heating or air conditioning unit or a
 7 heating, ventilation, or air conditioning system. The term does not
 8 include the repair, replacement, or installation of gas logs, water
 9 heaters, pool heaters, and similar ~~individual items~~ tangible personal
 10 property that are not part of new construction, reconstruction, or
 11 remodeling.
- 12 ...
- 13 (2f) Certain digital property. – An item listed in this subdivision that is delivered
 14 or accessed electronically is not considered tangible personal property and
 15 would be taxable under this Article if sold in a tangible medium. The term
 16 does not include an information service. The items are:
- 17 a. An audio work.
 18 b. An audiovisual work.
 19 c. A book, magazine, a newspaper, a newsletter, a report, or another
 20 publication.
 21 d. A photograph or a greeting card.
- 22 ...
- 23 (4d) ~~Computer supply. – An item that is considered a "school computer supply"~~
 24 ~~under the Streamlined Agreement.~~
- 25 (5) Consumer. – A person who stores, uses, or otherwise consumes in this State
 26 ~~tangible personal property, digital property, or a service~~ an item purchased or
 27 received from a retailer or supplier either within or without this State.
- 28 ...
- 29 (6) Delivery charges. – Charges imposed by the retailer for preparation and
 30 delivery of ~~personal property or services~~ an item to a location designated by
 31 the consumer.
- 32 ...
- 33 (9) Engaged in business. – Any of the following:
 34 a. Maintaining, occupying, or using permanently or temporarily, directly
 35 or indirectly, or through a subsidiary or agent, by whatever name
 36 called, any office, place of distribution, sales or sample room,
 37 warehouse or storage place, or other place of business ~~for selling or~~
 38 ~~delivering tangible personal property, digital property, or a service for~~
 39 ~~storage, use, or consumption~~ in this State, or permanently or
 40 temporarily, directly or through a subsidiary, having any
 41 representative, agent, sales representative, or solicitor operating in this
 42 ~~State in the selling or delivering.~~ State. The fact that any corporate
 43 retailer, agent, or subsidiary engaged in business in this State may not
 44 be legally domesticated or qualified to do business in this State is
 45 immaterial.
 46 b. Maintaining in this State, either permanently or temporarily, directly
 47 or through a subsidiary, tangible personal property or certain digital
 48 property for the purpose of lease or rental.
- 49 ...
- 50 (12) Gross sales. – The sum total of the sales price of all ~~retail~~ sales of ~~tangible~~
 51 ~~personal property, digital property, and services.~~ items.

- 1 ...
- 2 (16a) Item. – Tangible personal property, certain digital property, or a service,
- 3 unless the context requires otherwise.
- 4 ...
- 5 (16e) Landscaping. A service that modifies the living elements of an area of land.
- 6 Examples include the installation of trees, shrubs, or flowers on land; tree
- 7 trimming; mowing; and the application of seed, mulch, pine straw, or fertilizer
- 8 to an area of land. The term does not include services to trees, shrubs, flowers,
- 9 ~~and or similar items~~ tangible personal property in pots or in buildings.
- 10 ...
- 11 (17) Lease or rental. – A transfer of possession or control of tangible personal
- 12 property or certain digital property for a fixed or indeterminate term for
- 13 consideration. The term does not include any of the following:
- 14 ...
- 15 (25) Nonresident retail or wholesale merchant. – A person who does not have a
- 16 place of business in this State, is registered for sales and use tax purposes in a
- 17 taxing jurisdiction outside the State, and is engaged in the business of
- 18 acquiring, by purchase, consignment, or otherwise, tangible personal property
- 19 or certain digital property and selling the property outside the State or in the
- 20 business of providing a service.
- 21 ...
- 22 (33j) Remote sale. – A sale of ~~tangible personal property or digital property~~ an item
- 23 ordered by mail, by telephone, via the Internet, mobile phone application, or
- 24 by another similar method, to a purchaser who is in this State at the time the
- 25 order is remitted, from method by a retailer who receives the order in another
- 26 state and delivers the property item or makes it accessible to a person in this
- 27 State or causes it the item to be delivered or made accessible to a person in
- 28 this State. ~~State or performs a service sourced to this State.~~ It is presumed that
- 29 a resident of this State who ~~remits~~ makes an order was in this State at the time
- 30 the order was ~~remitted.~~ made.
- 31 ...
- 32 (33l) Repair, maintenance, and installation services. – The term includes the
- 33 activities listed in this subdivision and applies to tangible personal property,
- 34 motor ~~vehiele,~~ vehicles, certain digital property, and real property. The term
- 35 does not include ~~services~~ a service used to fulfill a real property contract taxed
- 36 in accordance with ~~G.S. 105-164.4H;~~ G.S. 105-164.4H. The included
- 37 activities are:
- 38 ...
- 39 d. To install, apply, connect, adjust, or set into position tangible personal
- 40 property or certain digital property. The term includes floor refinishing
- 41 and the installation of carpet, flooring, floor coverings, windows,
- 42 doors, cabinets, countertops, and other installations where the item
- 43 being installed may replace a similar existing item. The replacement
- 44 of more than one of a like-kind item, such as replacing one or more
- 45 windows, is repair, maintenance, and installation services. The term
- 46 does not include an installation defined as a capital improvement under
- 47 subdivision (2c)d. of this section and substantiated as a capital
- 48 improvement under G.S. 105-164.4H(a1).
- 49 e. To inspect or monitor property or install, apply, or connect tangible
- 50 personal property or certain digital property on a motor vehicle or
- 51 adjust a motor vehicle.

- 1 ...
- 2 (35) Retailer. – Any of the following persons:
- 3 a. A person engaged in business of making sales at retail, offering to
- 4 make sales at retail, or soliciting sales at retail of ~~tangible personal~~
- 5 ~~property, digital property for storage, use, or consumption in this State,~~
- 6 ~~or services items~~ sourced to this State. When the Secretary finds it
- 7 necessary for the efficient administration of this Article to regard any
- 8 sales representatives, solicitors, representatives, consignees, peddlers,
- 9 or truckers as agents of the dealers, distributors, consignors,
- 10 supervisors, employers, or persons under whom they operate or from
- 11 whom they obtain the items sold by them regardless of whether they
- 12 are making sales on their own behalf or on behalf of these dealers,
- 13 distributors, consignors, supervisors, employers, or persons, the
- 14 Secretary may so regard them and may regard the dealers, distributors,
- 15 consignors, supervisors, employers, or persons as "retailers" for the
- 16 purpose of this Article.
- 17 b. A person, other than a real property contractor, engaged in business of
- 18 delivering, erecting, installing, or applying tangible personal property
- 19 or certain digital property for use in this State.
- 20 c. A person engaged in business of making a remote sale, if one of the
- 21 conditions listed in G.S. 105-164.8(b) is met.
- 22 d. A person, other than a facilitator, required to collect the State tax
- 23 levied under this Article or the local taxes levied under Subchapter
- 24 VIII of this Chapter and under Chapter 1096 of the 1967 Session Laws.
- 25 (36) Sale or selling. – The transfer for consideration of title, license to use or
- 26 consume, or possession of tangible personal property or certain digital
- 27 property or the performance for consideration of a service. The transfer or
- 28 performance may be conditional or in any manner or by any means. The term
- 29 applies to the following:
- 30 ...
- 31 c. A transaction in which the possession of the tangible personal property
- 32 or certain digital property is transferred but the seller retains title or
- 33 security for the payment of the consideration.
- 34 ...
- 35 (37) Sales price. – The total amount or consideration for which ~~tangible personal~~
- 36 ~~property, digital property, or services are an item~~ is sold, leased, or rented.
- 37 The consideration may be in the form of cash, credit, property, or services.
- 38 The sales price must be valued in money, regardless of whether it is received
- 39 in money.
- 40 a. The term includes all of the following:
- 41 1. The retailer's cost of the ~~property item~~ sold.
- 42 ...
- 43 (37g) Secondary metals recycler. – A person that gathers and obtains ferrous metals,
- 44 nonferrous metals, and ~~items products~~ that have served their original
- 45 economic purpose and that converts them by processes, including sorting,
- 46 cutting, classifying, cleaning, baling, wrapping, shredding, or shearing into a
- 47 new or different product for sale consisting of prepared grades.
- 48 ...
- 49 (38b) Service contract. – A contract where the obligor under the contract agrees to
- 50 maintain, monitor, inspect, repair, or provide another service included in the
- 51 definition of repair, maintenance, and installation services to certain digital

property, tangible personal property, or real property for a period of time or some other defined measure. The term does not include a single service included in repair, maintenance, or installation services, but does include a contract where the obligor may provide a service included in the definition of repair, maintenance, and installation services as a condition of the contract. The term includes a service contract for a pool, fish tank, or similar aquatic feature and a home warranty. Examples include a warranty agreement other than a manufacturer's warranty or dealer's warranty provided at no charge to the purchaser, an extended warranty agreement, a maintenance agreement, a repair agreement, or a similar agreement or contract.

...

(44) Storage. – The keeping or retention in this State for any purpose, except sale in the regular course of business, of tangible personal property or certain digital property for any period of time purchased from a person in business.

...

(45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement as amended as of ~~May 3, 2018~~. December 14, 2018.

...

(48) Telecommunications service. – The electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes any transmission, conveyance, or routing in which a computer processing application is used to act on the form, code, or protocol of the content for purposes of the transmission, conveyance, or routing, regardless of whether it is referred to as voice-over Internet protocol or the Federal Communications Commission classifies it as enhanced or value added. The term does not include the following:

...

h. ~~Digital property that is delivered or accessed electronically, including an audio work, an audiovisual work, or any other item subject to tax under G.S. 105-164.4(a)(6b).~~ Certain digital property.

(49) Use. – The exercise of any right, power, or dominion whatsoever over ~~tangible personal property, digital property, or a service-an item~~ by the purchaser of the ~~property or service-item~~. The term includes withdrawal from storage, distribution, installation, affixation to real or personal property, and exhaustion or consumption of the property or service-item by the owner or purchaser. The term does not include a sale of ~~tangible personal property, digital property, or a service-an item~~ in the regular course of business.

...

(51) Wholesale merchant. – A person engaged in the business of any of the following:

a. Making wholesale sales.

b. Buying or manufacturing ~~tangible personal property, digital property, or a service-items~~ and selling ~~it-them~~ to a registered ~~resident person~~ or nonresident retail or wholesale merchant for resale.

c. Manufacturing, producing, processing, or blending any articles of commerce and maintaining a store, warehouse, or any other place that is separate and apart from the place of manufacture or production for the sale or distribution of the articles, other than bakery products, to another for the purpose of resale.

1 (52) Wholesale sale. – A sale of ~~tangible personal property, digital property, or a~~
2 ~~service-an item~~ for the purpose of resale. The term includes a sale of certain
3 digital property for reproduction into certain digital property or tangible
4 personal property offered for sale. The term does not include a sale to a user
5 or consumer not for resale or, in the case of certain digital property, not for
6 reproduction and sale of the reproduced property."

7 **SECTION 3.1.(b)** G.S. 105-164.3(2f), as enacted by subsection (a) of this section,
8 reads as rewritten:

9 "(2f) Certain digital property. – An item listed in this subdivision that is delivered
10 or accessed ~~electronically, electronically~~ and that is not considered tangible
11 ~~personal property, and would be taxable under this Article if sold in a tangible~~
12 ~~medium-property.~~ The term does not include an information service. The
13 items are:

- 14 a. An audio work.
- 15 b. An audiovisual work.
- 16 c. A book, magazine, a newspaper, a newsletter, a report, or another
17 publication.
- 18 d. A photograph or a greeting card."

19 **SECTION 3.1.(c)** Subsection (b) of this section becomes effective October 1, 2019,
20 and applies to sales occurring on or after that date. The remainder of this section is effective when
21 it becomes law. The Revisor of Statutes is authorized to renumber the subdivisions of
22 G.S. 105-164.3 to ensure that the subdivisions are listed in alphabetical order and in a manner
23 that reduces the current use of alphanumeric designations, to make conforming changes, and to
24 reserve sufficient space to accommodate future additions to the statutory section.

25 **SECTION 3.2.(a)** G.S. 105-164.4 reads as rewritten:

26 **"§ 105-164.4. Tax imposed on retailers and certain facilitators.**

27 (a) A privilege tax is imposed on a retailer engaged in business in the State at the
28 percentage rates of the retailer's net taxable sales or gross receipts, listed in this subsection. The
29 general rate of tax is four and three-quarters percent (4.75%). The percentage rates are as follows:

30 (1) The general rate of tax applies to the ~~sales price of following items sold at~~
31 ~~retail:~~

- 32 a. each item or The sales price of each article of tangible personal
33 property that is sold at retail and is not subject to tax under another
34 subdivision in this section. property that is not subject to tax under
35 another subdivision in this section. A sale of a freestanding appliance
36 is a retail sale of tangible personal property.
- 37 b. The sales price of certain digital property. The tax applies regardless
38 of whether the purchaser of the property has a right to use it
39 permanently or to use it without making continued payments.
- 40 c. This subdivision applies to the The sales price of or gross receipts
41 derived from repair, maintenance, and installation services to tangible
42 personal property. This subdivision does not apply to repair, property
43 or certain digital property, regardless of whether the tangible personal
44 property or certain digital property is taxed under another subdivision
45 in this section or is subject to a maximum tax under another
46 subdivision in this section. Repair, maintenance, and installation
47 services generally include any tangible personal property or certain
48 digital property that becomes a part of or is applied to a purchaser's
49 property. The use tax exemption in G.S. 105-164.27A(a3) may apply
50 to these services. Repair, maintenance, and installation services for

- 1 real property; these services are property are taxable under subdivision
 2 (16) of this subsection.
- 3 (1a) The general rate applies to the sales price of each of the following items sold
 4 at retail, including all accessories attached to the item when it is delivered to
 5 the purchaser, and to the sales price of or the gross receipts derived from
 6 repair, maintenance, and installation services for each of the following items.
 7 ~~The items taxable under this subdivision are as follows:~~purchaser:
- 8 a. A manufactured home.
 - 9 b. A modular home. The sale of a modular home to a modular
 10 homebuilder is considered a retail sale, no matter that the modular
 11 home may be used to fulfill a real property contract. A person who
 12 sells a modular home at retail is allowed a credit against the tax
 13 imposed by this subdivision for sales or use tax paid to another state
 14 on tangible personal property incorporated in the modular home. The
 15 retail sale of a modular home occurs when a modular home
 16 manufacturer sells a modular home to a modular homebuilder or
 17 directly to the end user of the modular home.
 - 18 c. An aircraft. The maximum tax is two thousand five hundred dollars
 19 (\$2,500) per article. ~~The maximum tax does not apply to the sales price~~
 20 ~~of or gross receipts derived from repair, maintenance, and installation~~
 21 ~~services, but the use tax exemption in G.S. 105-164.27A(a3) may~~
 22 ~~apply to these services.~~
 - 23 d. A qualified jet engine.
- 24 (1b) The rate of three percent (3%) applies to the sales price of each boat sold at
 25 retail, including all accessories attached to the boat when it is delivered to the
 26 purchaser. The maximum tax is one thousand five hundred dollars (\$1,500)
 27 per article. ~~The maximum tax does not apply to the sales price of or gross~~
 28 ~~receipts derived from the sales price of or gross receipts derived from repair,~~
 29 ~~maintenance, and installation services, but the use tax exemption in~~
 30 ~~G.S. 105-164.27A(a3) may apply to these services.~~
- 31 ...
- 32 (6b) ~~The general rate applies to the sales price of digital property that is sold at~~
 33 ~~retail and that is listed in this subdivision, is delivered or accessed~~
 34 ~~electronically, is not considered tangible personal property, and would be~~
 35 ~~taxable under this Article if sold in a tangible medium. The tax applies~~
 36 ~~regardless of whether the purchaser of the item has a right to use it~~
 37 ~~permanently or to use it without making continued payments. This subdivision~~
 38 ~~applies to the sales price of or gross receipts derived from repair, maintenance,~~
 39 ~~and installation services to digital property. The tax does not apply to a service~~
 40 ~~that is taxed under another subdivision of this subsection or to an information~~
 41 ~~service. The following property is subject to tax under this subdivision:~~
- 42 a. ~~An audio work.~~
 - 43 b. ~~An audiovisual work.~~
 - 44 e. ~~A book, a magazine, a newspaper, a newsletter, a report, or another~~
 45 ~~publication.~~
 - 46 d. ~~A photograph or a greeting card.~~
- 47 ...
- 48 (16) The general rate applies to the sales price of or the gross receipts derived from
 49 repair, maintenance, and installation services for real property and generally
 50 includes any tangible personal property or certain digital property that
 51 becomes a part of or is applied to a purchaser's property. A mixed transaction

1 contract and a real property contract are taxed in accordance with
2 G.S. 105-164.4H."

3 **SECTION 3.3.(a)** G.S. 105-164.4B reads as rewritten:

4 "**§ 105-164.4B. Sourcing principles.**

5 (a) General Principles. – The following principles apply in determining where to source
6 the sale of ~~a product~~an item for the seller's purpose and do not alter the application of the tax
7 imposed under G.S. 105-164.6. Except as otherwise provided in this section, a service is sourced
8 where the purchaser can potentially first make use of the service. These principles apply
9 regardless of the nature of the ~~product~~item, except as otherwise noted in this section:

10 (1) When a purchaser receives ~~a product~~an item at a business location of the
11 seller, the sale is sourced to that business location.

12 (2) When a purchaser or purchaser's donee receives ~~a product~~an item at a location
13 specified by the purchaser and the location is not a business location of the
14 seller, the sale is sourced to the location where the purchaser or the purchaser's
15 donee receives the ~~product~~item.

16 ...

17 (f) Certain Digital Property. – A purchaser receives certain digital property when the
18 purchaser takes possession of the property or makes first use of the property, whichever comes
19 first."

20 **SECTION 3.3.(b)** G.S. 105-164.4D(a) reads as rewritten:

21 "(a) Tax Application. – Tax applies to the sales price of a bundled transaction unless one
22 of the following applies:

23 (1) Fifty percent (50%) test. – All of the ~~products~~items in the bundle are tangible
24 personal property, the bundle includes one or more of the exempt ~~products~~
25 items listed in this subdivision, and the price of the taxable ~~products~~items in
26 the bundle does not exceed fifty percent (50%) of the price of the bundle:

27 a. Food exempt under G.S. 105-164.13B.

28 b. A drug exempt under G.S. 105-164.13(13).

29 c. Medical devices, equipment, or supplies exempt under
30 G.S. 105-164.13(12).

31 (2) Allocation. – The bundle includes a service, and the retailer determines an
32 allocated price for each ~~product~~item in the bundle based on a reasonable
33 allocation of revenue that is supported by the retailer's business records kept
34 in the ordinary course of business. In this circumstance, tax applies to the
35 allocated price of each taxable ~~product~~item in the bundle.

36 (3) Ten percent (10%) test. – The price of the taxable ~~products~~items in the bundle
37 does not exceed ten percent (10%) of the price of the bundle, and no other
38 subdivision in this subsection applies.

39"

40 **SECTION 3.3.(c)** G.S. 105-164.4G(e) reads as rewritten:

41 "(e) Exceptions. – The tax imposed by this section does not apply to the following:

42 ...

43 (2) Tuition, registration fees, or charges to attend instructional seminars,
44 conferences, or workshops for educational ~~purposes~~purposes,
45 notwithstanding that entertainment activity may be offered as an ancillary
46 purpose of an event listed in this subdivision.

47 ...

48 (6) An amount paid for the right to participate, other than to be a spectator, in the
49 following activities:

50 a. Rock climbing, skating, skiing, snowboarding, sledding, zip lining, or
51 other similar activities.

- b. Instruction classes related to the ~~items~~ activities included in sub-subdivision a. of this subdivision.
- c. Riding on a carriage, boat, train, plane, horse, chairlift, or other similar rides.
- d. Amusement rides, including a waterslide.

...."

SECTION 3.3.(d) G.S. 105-164.4H reads as rewritten:

"§ 105-164.4H. Real property contract.

(a) Applicability. – A real property contractor is the consumer of the tangible personal property or certain digital property that the real property contractor purchases, installs, or applies for others to fulfill a real property contract and that becomes part of real property or used to fulfill the contract. A retailer engaged in business in the State shall collect tax on the sales price of ~~the tangible personal property, digital property, or service~~ an item sold at retail to a real property contractor unless a statutory exemption in G.S. 105-164.13 or G.S. 105-164.13E applies. Where a real property contractor purchases tangible personal property or certain digital property for storage, use, or consumption in this State, or a service sourced to this State, and the tax due is not paid at the time of purchase, the provisions of G.S. 105-164.6 apply except as provided in subsection (b) of this section.

...

(b) Retailer-Contractor. – This section applies to a retailer-contractor as follows:

- (1) Acting as a real property contractor. – A retailer-contractor acts as a real property contractor when it contracts to perform a real property contract. A retailer-contractor that purchases tangible personal property or certain digital property to be installed or applied to real property to fulfill the contract may purchase those items exempt from tax under a certificate of exemption pursuant to G.S. 105-164.28 provided the retailer-contractor also purchases inventory ~~items~~ or services from the seller for resale. When the property is withdrawn from inventory and installed or applied to real property, use tax must be accrued and paid on the retailer-contractor's purchase price of the property. Property that the retailer-contractor withdraws from inventory for use that does not become part of real property is also subject to the tax imposed by this Article.
- (2) Acting as a retailer. – A retailer-contractor is acting as a retailer when it makes a sale at retail.

...

(d) Mixed Transaction Contract. – A mixed transaction contract is taxable as follows:

- (1) If the allocated sales price of the taxable repair, maintenance, and installation services included in the contract is less than or equal to twenty-five percent (25%) of the contract price, then the repair, maintenance, and installation services portion of the contract, and the ~~tangible personal property, digital property, or service~~ items used to perform those services, are taxable as a real property contract in accordance with this section.
- (2) If the allocated sales price of the taxable repair, maintenance, and installation services included in the contract is greater than twenty-five percent (25%) of the contract price, then sales and use tax applies to the sales price of or the gross receipts derived from the taxable repair, maintenance, and installation services portion of the contract. The person must determine an allocated price for the taxable repair, maintenance, and installation services in the contract based on a reasonable allocation of revenue that is supported by the person's business records kept in the ordinary course of business. Any purchase of

1 tangible personal property or certain digital property to fulfill the real property
2 contract is taxed in accordance with this section."

3 **SECTION 3.3.(e)** G.S. 105-164.6 reads as rewritten:

4 "**§ 105-164.6. Complementary use tax.**

5 (a) Tax. – An excise tax at the applicable rate and maximum tax, if any, set in
6 G.S. 105-164.4 is imposed on the ~~products listed below. The applicable rate is the rate and~~
7 ~~maximum tax, if any, that would apply to the sale of the product. A product is subject to tax under~~
8 ~~this section only if it is subject to tax under G.S. 105-164.4.~~following items if the item is subject
9 to tax under G.S. 105-164.4:

10 (1) ~~Tangible personal property or digital property purchased~~purchased, leased,
11 or rented inside or outside this State for storage, use, or consumption in this
12 State. This subdivision includes tangible personal property that becomes part
13 of a building or another structure.

14 (2) ~~Tangible personal property or Certain~~ digital property ~~leased~~purchased,
15 leased, or rented inside or outside this State for storage, use, or consumption
16 in this State.

17 (3) Services sourced to this State.

18 (b) Liability. – The tax imposed by this section is payable by the person who purchases,
19 leases, or rents ~~tangible personal property or digital property or who purchases a service. the~~
20 items listed in subdivision (a) of this section. If the property an item purchased becomes a part
21 of real property in the State, the real property contractor, the retailer-contractor, the
22 subcontractor, the lessee, and the owner are jointly and severally liable for the tax, except as
23 provided in G.S. 105-164.4H(a1) regarding receipt of an affidavit of capital improvement. The
24 liability of a real property contractor, a retailer-contractor, a subcontractor, a lessee, or an owner
25 who did not purchase the ~~property item~~ is satisfied by receipt of an affidavit from the purchaser
26 certifying that the tax has been paid.

27 ...

28 (f) Registration. – A person must obtain a certificate of registration in accordance with
29 G.S. 105-164.29 under any of the following circumstances:

30 (1) Before the person engages in business in this State selling or delivering
31 ~~tangible personal property, digital property, or a service~~items for storage, use,
32 or consumption in this State.

33 (2) If the person is a facilitator that is liable for tax under this Article.

34 "

35 **SECTION 3.3.(f)** G.S. 105-164.6A(a) reads as rewritten:

36 "(a) Voluntary Collection Agreements. – The Secretary may enter into agreements with
37 sellers pursuant to which the seller agrees to collect and remit on behalf of its customers State
38 and local use taxes due on items ~~of tangible personal property, digital property, or services~~ the
39 seller sells. For the purpose of this section, a seller is a person who is engaged in the business of
40 selling ~~tangible personal property, digital property, or services~~items for use in this State and who
41 does not have sufficient nexus with this State to be required to collect use tax on the sales."

42 **SECTION 3.3.(g)** G.S. 105-164.7 reads as rewritten:

43 "**§ 105-164.7. Retailer or facilitator to collect sales tax from purchaser as trustee for State.**

44 The sales tax imposed by this Article is intended to be passed on to the purchaser of a taxable
45 item ~~or service~~ and borne by the purchaser instead of by the retailer. A retailer must collect the
46 tax due on an item ~~or service~~ when sold at retail. The requirements of this section apply to
47 facilitators liable for tax under this Article. The tax is a debt from the purchaser to the retailer
48 until paid and is recoverable at law by the retailer in the same manner as other debts. A retailer
49 is considered to act as a trustee on behalf of the State when it collects tax from the purchaser on
50 a taxable sale. The tax must be stated and charged separately on the invoices or other documents
51 of the retailer given to the purchaser at the time of the sale except for either of the following:

1 (1) Vending machine sales.

2 (2) Where a retailer displays a statement indicating the sales price includes the
3 tax."

4 **SECTION 3.3.(h)** G.S. 105-164.8(a)(2) reads as rewritten:

5 "(2) That the purchaser's order or the contract of sale is made or closed by
6 acceptance or approval outside this State, or before any tangible personal
7 property or certain digital property that is part of the order or contract enters
8 this State."

9 **SECTION 3.3.(i)** G.S. 105-164.11B reads as rewritten:

10 **"§ 105-164.11B. Recover sales tax paid.**

11 A retailer who pays sales and use tax on ~~property or services~~ an item that is separately stated
12 on an invoice or similar billing document given to the retailer at the time of sale and subsequently
13 resells the ~~property or services item~~ at retail, without the ~~property or service item~~ being used by
14 the retailer, may recover the sales or use tax originally paid to a seller as provided in this section.
15 A retailer entitled to recover tax under this section may reduce taxable receipts by the taxable
16 amount of the purchase price of the ~~property or services item~~ resold for the period in which the
17 retail sale occurs. A recovery of tax allowed under this section is not an overpayment of tax and,
18 where such recovery is taken, a refund of the tax originally paid ~~should~~ may not be requested
19 from the seller pursuant to the authority under G.S. 105-164.11. Any amount for tax recovered
20 under this section in excess of tax due for a reporting period under this Article is not subject to
21 refund. Any tax recovered under this section may be carried forward to a subsequent reporting
22 period and taken as an adjustment to taxable receipts. The records of the retailer must clearly
23 reflect and support the adjustment to taxable receipts for the period in which the adjustment is
24 made."

25 **SECTION 3.3.(j)** G.S. 105-164.12C reads as rewritten:

26 **"§ 105-164.12C. Items given away by merchants.**

27 If a retailer engaged in the business of selling prepared food ~~and or~~ drink for immediate or
28 on-premises consumption also gives prepared food or drink to its patrons or employees free of
29 charge, for the purpose of this Article, the ~~property food or drink~~ given away is considered sold
30 along with the ~~property food or drink~~ sold. If a retailer gives an item of inventory to a customer
31 free of charge on the condition that the customer purchase a similar or related property item, the
32 item given away is considered sold along with the item sold. In all other cases, ~~property items~~
33 given away or used by any retailer or wholesale merchant ~~is are~~ not considered sold, whether or
34 not the retailer or wholesale merchant recovers its cost of the ~~property items~~ from sales of other
35 ~~property items~~."

36 **SECTION 3.3.(k)** G.S. 105-164.13 reads as rewritten:

37 **"§ 105-164.13. Retail sales and use tax.**

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

41 Agricultural Group.

42 ...

43 (2b) ~~Tangible personal property, digital property, and services items~~ for a farmer
44 may be exempt as provided in G.S. 105-164.13E.

45 ...

46 (5e) Sales of mill machinery or mill machinery parts or accessories to any of the
47 persons listed in this subdivision. For purposes of this subdivision, the term
48 "accessories" does not include electricity. The persons are:

49 a. A manufacturing industry or plant. A manufacturing industry or plant
50 does not include (i) a delicatessen, cafe, cafeteria, restaurant, or
51 another similar retailer that is principally engaged in the retail sale of

- 1 (43b) Computer software or certain digital property that becomes a component part
 2 of other computer software or certain digital property that is offered for sale
 3 or of a service that is offered for sale.
 4 ...
 5 (61a) The sales price of or the gross receipts derived from the repair, maintenance,
 6 and installation services and service contracts listed in this subdivision are
 7 exempt from tax. Except as otherwise provided in this subdivision, ~~property~~
 8 ~~and services~~ an item used to fulfill either ~~a~~ repair, maintenance, ~~or~~ ~~and~~
 9 installation ~~service~~ ~~services~~ or ~~a~~ service ~~contract~~ ~~contracts~~ exempt from tax
 10 under this subdivision ~~are~~ is taxable. The list of repair, maintenance, and
 11 installation services and service contracts exempt from tax under this
 12 subdivision is as follows:
 13 a. A service and a service contract for an item exempt from tax under this
 14 Article, except as otherwise provided in this subdivision. ~~Property and~~
 15 ~~services~~ Items used to fulfill a service or service contract exempt under
 16 this sub-subdivision are exempt from tax under this Article. This
 17 exemption does not apply to water for a pool, fish tank, or similar
 18 aquatic feature or to a motor vehicle, except as provided under
 19 subdivision (62a) of this section and fees under sub-subdivision b. of
 20 this subdivision.
 21 ...
 22 c. ~~Services~~ A service performed for a person by a related member.
 23 ...
 24 e. ~~Services~~ A service on roads, driveways, parking lots, and sidewalks.
 25 f. Removal of waste, trash, debris, grease, snow, and other similar ~~items~~
 26 tangible personal property from property, other than a motor vehicle.
 27 The exemption applies to a household ~~and~~ or a commercial trash
 28 collection and removal ~~services~~ ~~service~~. The exemption applies to the
 29 removal of septage from property, including motor vehicles, but does
 30 not include removal of septage from portable toilets.
 31 ...
 32 i. Pest control service. For purposes of this exemption, the term "pest
 33 control service" means the application of pesticides to real property.
 34 j. Moving ~~services~~ ~~service~~. For purposes of this exemption, the term
 35 "moving ~~services~~" ~~service~~" means a service for hire to transport or
 36 relocate a person's existing belongings to or from any destination.
 37 k. Self-service car ~~washes and vacuums~~ wash or vacuum.
 38 ...
 39 n. Funeral-related ~~services, including services~~ service, including a
 40 service for the burial of remains. This exemption does not apply to the
 41 sale of tangible personal property, such as caskets, headstones, and
 42 monuments.
 43 o. ~~Services~~ A service performed on an animal, such as hoof shoeing and
 44 microchipping a pet.
 45 p. A security or similar monitoring contract for real property. The
 46 exemption provided in this subdivision does not apply to charges for
 47 repair, maintenance, and installation services to repair security, alarm,
 48 and other similar monitoring systems for real property.
 49 ...

1 (61b) ~~Tangible personal property, digital property, and services~~ Items purchased for
 2 resale under an exemption certificate in accordance with G.S. 105-164.28 or
 3 under a direct pay certificate in accordance with G.S. 105-164.27A.

4 ...

5 (62) ~~An item or item, including repair, maintenance, and installation services~~
 6 ~~services,~~ purchased or used to fulfill a service contract taxable under this
 7 Article if the purchaser of the contract is not charged for the ~~item or services-~~
 8 ~~item.~~ This exemption does not apply to the purchase of tangible personal
 9 property or certain digital property used to fulfill a service contract for real
 10 property where the charge being covered would otherwise be subject to tax as
 11 a real property contract. For purposes of this exemption, the term "item" does
 12 not include a tool, equipment, supply, or similar tangible personal property
 13 that is not deemed to be a component or repair part of the tangible personal
 14 property, real property, or certain digital property for which a service contract
 15 is sold to a purchaser.

16 ...

17 (63) Food and prepared food to be provided to a person entitled to the food and
 18 prepared food under a prepaid meal plan subject to tax under
 19 G.S. 105-164.4(a)(12). This exemption applies to packaging ~~items~~-including
 20 wrapping paper, labels, plastic bags, cartons, packages and containers, paper
 21 cups, napkins and drinking straws, and like articles that meet all of the
 22 following requirements:

- 23 a. Used for packaging, shipment, or delivery of the food and prepared
 24 food.
- 25 b. Constitute a part of the sale of the food and prepared food.
- 26 c. Delivered with the food and prepared food.

27 ...

28 (65) This subdivision expires January 1, 2020. Sales of the following to a
 29 professional motorsports racing team or a related member of a team for use in
 30 competition in a sanctioned race series:

- 31 a. The sale, lease, or rental of an engine.
- 32 b. The sales price of or gross receipts derived from a service contract on,
 33 or repair, maintenance, and installation services for, a transmission, an
 34 engine, rear-end gears, and any ~~other item~~ tangible personal property
 35 that is purchased, leased, or rented and that is exempt from tax under
 36 this subdivision or that is allowed a sales tax refund under
 37 G.S. 105-164.14A(a)(5).
- 38 c. The gross receipts derived from an agreement to provide an engine to
 39 a professional motorsports racing team or related member of a team
 40 for use in competition in a sanctioned race series, where such
 41 agreement does not meet the definition of a "service contract" as
 42 defined in G.S. 105-164.3 but may meet the definition of the term
 43 "lease or rental" as defined in G.S. 105-164.3.

44"

45 **SECTION 3.3.(I)** G.S. 105-164.13E(a) reads as rewritten:

46 "(a) Exemption. – A qualifying farmer is a person who has an annual income from farming
 47 operations for the preceding taxable year of ten thousand dollars (\$10,000) or more or who has
 48 an average annual income from farming operations for the three preceding taxable years of ten
 49 thousand dollars (\$10,000) or more. For purposes of this section, the term "income from farming
 50 operations" means sales plus any other amounts treated as gross income under the Code from
 51 farming operations. A qualifying farmer includes a dairy operator, a poultry farmer, an egg

1 producer, and a livestock farmer, a farmer of crops, a farmer of an aquatic species, as defined in
 2 G.S. 106-758, and a person who boards horses. A qualifying farmer may apply to the Secretary
 3 for an exemption certificate number under G.S. 105-164.28A. The exemption certificate expires
 4 when a person fails to meet the income threshold for three consecutive taxable years or ceases to
 5 engage in farming operations, whichever comes first.

6 Except as otherwise provided in this section, the items exempt under this section must be
 7 purchased by a qualifying farmer or conditional farmer and used by the qualifying or conditional
 8 farmer primarily in farming operations. For purposes of this section, an item is used by a farmer
 9 for farming operations if it is used for the planting, cultivating, harvesting, or curing of farm
 10 crops, in the production of dairy products, eggs, or animals, or by a person who boards horses.
 11 The following ~~tangible personal property and services~~ items that may be exempt from sales and
 12 use tax under this section ~~are as follows:~~ are:

13"

14 **SECTION 3.3.(m)** G.S. 105-164.13E(b)(3)a. reads as rewritten:

15 "a. Documents showing that, but for the disaster, the person would have
 16 earned ten thousand dollars (\$10,000) or more in gross sales for the
 17 year in which the disaster occurred."

18 **SECTION 3.3.(n)** G.S. 105-164.14(a) reads as rewritten:

19 "(a) Interstate Carriers. – An interstate carrier is allowed a refund, in accordance with this
 20 section, of part of the sales and use taxes paid by it on the purchase in this State of railway cars
 21 and locomotives, and fuel, lubricants, repair parts, accessories, service contracts, and repair,
 22 maintenance, and installation services for a motor vehicle, railroad car, locomotive, or airplane
 23 the carrier operates. An "interstate carrier" is a person who is engaged in transporting persons or
 24 property in interstate commerce for compensation. The Secretary shall prescribe the periods of
 25 time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may
 26 be claimed, and shall prescribe the time within which, following these periods, an application for
 27 refund may be made.

28 An applicant for refund shall furnish the following information and any proof of the
 29 information required by the Secretary:

30 ...

31 (2) The purchase price of the taxable ~~items~~ tangible personal property and
 32 services listed in subdivision (1) of this subsection. For purposes of this
 33 subdivision, the term "taxable" is based on the imposition of tax on the ~~items~~
 34 tangible personal property and services in the State.

35 ...

36 For each applicant, the Secretary shall compute the amount to be refunded as follows. First,
 37 the Secretary shall determine the mileage ratio. The numerator of the mileage ratio is the number
 38 of miles the applicant operated all motor vehicles, railroad cars, locomotives, and airplanes in
 39 this State during the refund period. The denominator of the mileage ratio is the number of miles
 40 the applicant operated all motor vehicles, railroad cars, locomotives, and airplanes both inside
 41 and outside this State during the refund period. Second, the Secretary shall determine the
 42 applicant's proportional liability for the refund period by multiplying this mileage ratio by the
 43 purchase price of the ~~items~~ tangible personal property and services identified in subdivision (1)
 44 of this subsection and then multiplying the resulting product by the tax rate that would have
 45 applied to the items if they had all been purchased in this State. Third, the Secretary shall refund
 46 to each applicant the excess of the amount of sales and use taxes the applicant paid in this State
 47 during the refund period on these items over the applicant's proportional liability for the refund
 48 period."

49 **SECTION 3.3.(o)** G.S. 105-164.15A(a) reads as rewritten:

50 "(a) General Rate Items. – The effective date of a tax change for ~~tangible personal~~
 51 ~~property, digital property, or services~~ items taxable under this Article is administered as follows:

- (1) For a taxable item that is provided and billed on a monthly or other periodic basis:
 - a. A new tax or a tax rate increase applies to the first billing period that is at least 30 days after enactment and that starts on or after the effective date.
 - b. A tax repeal or a tax rate decrease applies to bills rendered on or after the effective date.

...."

SECTION 3.3.(p) G.S. 105-164.16 reads as rewritten:

"§ 105-164.16. Returns and payment of taxes.

(a) General. – Sales and use taxes are payable when a return is due. A return is due quarterly or monthly as specified in this section. A return must be filed with the Secretary on a form prescribed by the Secretary and in the manner required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

A sales tax return must state the taxpayer's gross sales for the reporting period, the amount and type of sales made in the period that are exempt from tax under G.S. 105-164.13 or are elsewhere excluded from tax, the amount of tax due, and any other information required by the Secretary. A use tax return must state the purchase price of ~~tangible personal property, digital property, or services items~~ that were purchased or received during the reporting period and are subject to tax under G.S. 105-164.6, the amount of tax due, and any other information required by the Secretary. Returns that do not contain the required information will not be accepted. When an unacceptable return is submitted, the Secretary will require a corrected return to be filed.

...

(d) Use Tax on Out-of-State Purchases. – Use tax payable by an individual who purchases ~~the items listed in this subsection~~ an item, other than a boat or aircraft, outside the State for a nonbusiness purpose is due on an annual basis. For an individual who is not required to file an individual income tax return under Part 2 of Article 4 of this Chapter, the annual reporting period ends on the last day of the calendar year and a use tax return is due by the following April 15. For an individual who is required to file an individual income tax return, the annual reporting period ends on the last day of the individual's income tax year, and the use tax must be paid on the income tax return as provided in G.S. 105-269.14. ~~The items are:~~

- ~~(1) Tangible personal property other than a boat or an aircraft.~~
- ~~(2) Digital property.~~
- ~~(3) A service.~~

...."

SECTION 3.3.(q) G.S. 105-164.26 reads as rewritten:

"§ 105-164.26. Presumption that sales are taxable.

For the purpose of the proper administration of this Article and to prevent evasion of the retail sales tax, the following presumptions apply:

...

- (4) That certain digital property sold for delivery or access in this State is sold for storage, use, or consumption in this State.

...."

SECTION 3.3.(r) G.S. 105-164.27A reads as rewritten:

"§ 105-164.27A. Direct pay permit.

(a) General. – A general direct pay permit authorizes its holder to purchase certain ~~tangible personal property, digital property, or service items~~ without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the permit holder. A general direct pay permit may not be used for purposes identified in subsections (a1), (a2), (a3), or (b) of this section. A person who purchases an item under a direct pay permit issued under this subsection is liable for use tax due on the purchase. The tax is payable when the property is placed in use or

1 the service is received. A direct pay permit issued under this subsection does not apply to taxes
2 imposed under G.S. 105-164.4 on sales of electricity, piped natural gas, video programming,
3 spirituous liquor, or the gross receipts derived from rentals of accommodations.

4 A person who purchases an item for storage, use, or consumption in this State whose tax
5 status cannot be determined at the time of the purchase because of one of the reasons listed below
6 may apply to the Secretary for a general direct pay permit:

- 7 (1) The place of business where the item will be stored, used, or consumed in the
8 State is not known at the time of the purchase and a different tax consequence
9 applies depending on where the item is used in the State.
- 10 (2) The manner in which the item will be stored, used, or consumed in the State
11 is not known at the time of the purchase and one or more of the potential uses
12 is taxable but others are not taxable in the State.

13 ...

14 (a3) Boat and Aircraft. – A direct pay permit issued under this subsection authorizes its
15 holder to purchase tangible personal property, certain digital property, or repair, maintenance,
16 and installation services for a boat, an aircraft, or a qualified jet engine without paying tax to the
17 seller and authorizes the seller to not collect any tax on the ~~item or services~~ purchased items from
18 the permit holder. A person who purchases the ~~property or services~~ tangible personal property,
19 certain digital property, or repair, maintenance, and installation services under a direct pay permit
20 must file a return and pay the tax due to the Secretary in accordance with G.S. 105-164.16. A
21 permit holder is allowed a use tax exemption on one or more of the following: (i) the installation
22 charges that are a part of the sales price of tangible personal property or certain digital property
23 purchased by the permit holder for a boat, an aircraft, or a qualified jet engine, provided the
24 installation charges are separately stated and identified as such on the invoice or other
25 documentation given to the permit holder at the time of the sale and (ii) the sales price of or gross
26 receipts derived from repair, maintenance, and installation services provided for a ~~boat, an~~
27 ~~aircraft, or a qualified jet engine.~~ boat or an aircraft.

28 In lieu of purchasing under a direct pay permit pursuant to this subsection, a purchaser may
29 elect to have the seller collect and remit the tax due on behalf of the purchaser. Where the
30 purchaser elects for the seller to collect and remit the tax, an invoice given to the purchaser
31 bearing the proper amount of tax on a retail transaction extinguishes the purchaser's liability for
32 the tax on the transaction. Where a seller cannot or does not separately state installation charges
33 that are a part of the sales price of tangible personal property or certain digital property for a boat,
34 an aircraft, or a qualified jet engine on the invoice or other documentation given to the purchaser
35 at the time of the sale, tax is due on the total purchase price.

36 The amount of the use tax exemption is the amount of the installation charges and the sales
37 price of or gross receipts derived from the repair, maintenance, and installation services that
38 exceed twenty-five thousand dollars (\$25,000).

39"

40 **SECTION 3.3.(s)** G.S. 105-164.42I(c) reads as rewritten:

41 "(c) Liability. – A seller may contract with a certified service provider to collect and remit
42 sales and use taxes payable to the State on sales made by the seller. A certified service provider
43 with whom a seller contracts is the agent of the seller. As the seller's agent, the certified service
44 provider, rather than the seller, is liable for sales and use taxes due this State on all sales
45 transactions the certified service provider processes for the seller unless the seller misrepresents
46 the type of ~~products-items~~ it sells or commits fraud. A seller that misrepresents the type of
47 ~~products-items~~ it sells or commits fraud is liable for taxes not collected as a result of the
48 misrepresentation or fraud."

49 **SECTION 3.3.(t)** G.S. 105-467(b) reads as rewritten:

50 "(b) Exemptions and Refunds. – The State exemptions and exclusions contained in Article
51 5 of Subchapter I of this Chapter, except for the exemption for food in G.S. 105-164.13B, apply

1 to the local sales and use tax authorized to be levied and imposed under this Article. The State
2 refund provisions contained in G.S. 105-164.14 and G.S. 105-164.14A apply to the local sales
3 and use tax authorized to be levied and imposed under this Article. A refund of an excessive or
4 erroneous State sales tax collection allowed under G.S. 105-164.11 and a refund of State sales
5 tax paid on a rescinded sale or cancelled service contract under G.S. 105-164.11A apply to the
6 local sales and use tax authorized to be levied and imposed under this Article. The aggregate
7 annual local refund amount allowed an entity under G.S. 105-164.14(b) for the State's fiscal year
8 may not exceed thirteen million three hundred thousand dollars (\$13,300,000).

9 Except as provided in this subsection, a taxing county may not allow an exemption, exclusion,
10 or refund that is not allowed under the State sales and use tax. A local school administrative unit
11 and a joint agency created by interlocal agreement among local school administrative units
12 pursuant to G.S. 160A-462 to jointly purchase food service-related materials, supplies, and
13 equipment on their behalf is allowed an annual refund of sales and use taxes paid by it under this
14 Article on direct purchases of ~~tangible personal property and services.~~ items. Sales and use tax
15 liability indirectly incurred by the entity as part of a real property contract for real property that
16 is owned or leased by the entity and is a capital improvement for use by the entity is considered
17 a sales or use tax liability incurred on direct purchases by the entity for the purpose of this
18 subsection. The refund allowed under this subsection does not apply to purchases of electricity,
19 telecommunications service, ancillary service, piped natural gas, video programming, or a
20 prepaid meal plan. A request for a refund is due in the same time and manner as provided in
21 G.S. 105-164.14(c). Refunds applied for more than three years after the due date are barred."

22 **SECTION 3.3.(u)** G.S. 105-468.1 reads as rewritten:

23 **"§ 105-468.1. Certain building materials exempt from sales and use taxes.**

24 The provisions of this Article shall not be applicable with respect to any ~~tangible personal~~
25 ~~property or digital property~~ items purchased for the purpose of fulfilling a real property contract
26 for a capital improvement entered into or awarded, or entered into or awarded pursuant to any
27 bid made, before the effective date of the tax imposed by a taxing county when, absent the
28 provisions of this section, ~~such property~~ the items would otherwise be subject to tax under the
29 provisions of this Article."

30 **SECTION 3.4.(a)** G.S. 105-164.4(a) reads as rewritten:

31 **"§ 105-164.4. Tax imposed on retailers and certain facilitators.**

32 (a) A privilege tax is imposed on a retailer engaged in business in the State at the
33 percentage rates of the retailer's net taxable sales or gross receipts, listed in this subsection. The
34 general rate of tax is four and three-quarters percent (4.75%). The percentage rates are as follows:

35 ...

36 (4c) The combined general rate applies to the gross receipts derived from providing
37 telecommunications service and ancillary ~~service.~~ service, including any
38 separately stated charges billed to a customer for the installation of utilities. A
39 person who provides telecommunications service or ancillary service is
40 considered a retailer under this Article. These services are taxed in accordance
41 with G.S. 105-164.4C.

42 ...

43 (6) The combined general rate applies to the gross receipts derived from providing
44 video programming to a subscriber in this ~~State.~~ State, including any
45 separately stated charges billed to a customer for the installation of utilities. A
46 cable service provider, a direct-to-home satellite service provider, and any
47 other person engaged in the business of providing video programming is
48 considered a retailer under this Article.

49 ...

1 (9) The combined general rate applies to the gross receipts derived from sales of
2 electricity and piped natural ~~gas-gas~~, including any separately stated charges
3 billed to a customer for the installation of utilities.

4"

5 **SECTION 3.4.(b)** G.S. 105-164.3(2c), as amended by Section 3.1 of this act, reads
6 as rewritten:

7 "(2c) Capital improvement. – One or more of the following:

8 ...

9 c. Installation of utilities on utility-owned land, a utility right-of-way, or
10 a utility easement, notwithstanding that a utility may recover a portion
11 of the cost of the installation of utilities as a contribution in aid of
12 construction and those charges for such may be are included in the
13 gross receipts derived from services subject to the combined general
14 rate under G.S. 105-164.4.

15"

16 **SECTION 3.4.(c)** G.S. 105-164.13(61a), as amended by Section 3.3(l) of this act,
17 reads as rewritten:

18 "(61a) The sales price of or the gross receipts derived from the repair, maintenance,
19 and installation services and service contracts listed in this subdivision are
20 exempt from tax. Except as otherwise provided in this subdivision, an item
21 used to fulfill either repair, maintenance, and installation services or service
22 contracts exempt from tax under this subdivision is taxable. The list of repair,
23 maintenance, and installation services and service contracts exempt from tax
24 under this subdivision is as follows:

25 ...

26 l. A transmission, distribution, or other network asset contained on
27 utility-owned land, a utility right-of-way, or easement-a utility
28 easement. This exemption does not apply to charges that are included
29 in the gross receipts derived from services subject to the combined
30 general rate under G.S. 105-164.4.

31"

32 **SECTION 3.5.(a)** G.S. 105-164.3 is amended by adding two new subdivisions to
33 read:

34 "(46d) Taxing district. – A county or any other district, by or for which ad valorem
35 taxes or sales taxes are levied, excluding the State.

36 (46e) Taxing area. – Any of the following specific geographic areas:

37 a. A street address.

38 b. The area within a nine-digit zip code.

39 c. The area within a five-digit zip code."

40 **SECTION 3.5.(b)** G.S. 105-164.42L reads as rewritten:

41 "**§ 105-164.42L. Liability relief for erroneous information or insufficient notice by**
42 **Department.**

43 (a) Boundary and Rate Databases. – The Secretary may develop databases that provide
44 information on the boundaries of taxing jurisdictions-districts and the tax rates applicable to those
45 taxing jurisdictions-districts. The databases may assign the proper tax rate and taxing district to
46 each taxing area within the State. If more than one tax rate applies within a specific taxing area,
47 the Secretary shall assign the lowest combined tax rate imposed within the specific taxing area.
48 If the Secretary cannot determine the appropriate tax rate for a street address, the Secretary shall
49 assign the lowest combined tax rate imposed within the street address's nine-digit zip code. But,
50 if the Secretary cannot determine the appropriate tax rate for a street address's nine-digit zip code,

1 the Secretary shall assign the lowest combined tax rate imposed within the street address's
2 five-digit zip code.

3 A person who relies on the information provided in these databases is not liable for
4 underpayments of tax attributable to erroneous information provided by the Secretary in those
5 databases until 10 business days after the date of notification by the Secretary.

6 (b) Taxability Matrix. – The Secretary may develop a taxability matrix that provides
7 information on the taxability of certain items or certain tax administration practices. A person
8 who relies on the information provided in the taxability matrix is not liable for underpayments
9 of tax attributable to erroneous information provided by the Secretary in the taxability matrix
10 until 10 business days after the date of notification by the Secretary.

11 (c) Rate Changes. – A retailer is not liable for an underpayment of tax attributable to a
12 rate change when the State fails to provide for at least 30 days between the enactment of the rate
13 change and the effective date of the rate change if the conditions of this subsection are satisfied.
14 However, if the State establishes the retailer fraudulently failed to collect tax at the new rate or
15 solicited customers based on the immediately preceding effective rate, this liability relief does
16 not apply. Both of the following conditions must be satisfied for liability relief:

17 (1) The retailer collected tax at the immediately preceding rate.

18 (2) The retailer's failure to collect at the newly effective rate does not extend
19 beyond 30 days after the date of enactment of the new rate or the effective
20 date applicable under G.S. 105-164.15A."

21 **SECTION 3.6.** G.S. 105-244.3 reads as rewritten:

22 "**§ 105-244.3. Sales tax base expansion protection act.**

23 (a) Grace Period. – The Department shall take no action to assess any tax due for a filing
24 period beginning on or after March 1, 2016, and ending prior to January 1, 2019, if one or more
25 of the conditions of this subsection apply and the retailer did not receive specific written advice
26 from the Secretary for the transactions at issue for the laws in effect for the applicable periods.
27 Except as otherwise provided, this subsection also applies to use tax liability imposed on a
28 purchaser under G.S. 105-164.6. The conditions are as follows:

29 (1) A retailer failed to charge sales tax due on separately stated installation
30 charges that are part of the sales price of tangible personal property or certain
31 digital property sold at retail.

32 (2) A person failed to properly classify themselves as a retailer in retail trade for
33 the period beginning March 1, 2016, and ending December 31, 2016, and did
34 not charge sales tax on all retail transactions but rather treated some
35 transactions as real property contracts in error for sales and use tax purposes.
36 This subdivision does not prohibit the Secretary from assessing use tax on
37 purchases used to fulfill a transaction erroneously treated as a real property
38 contract.

39 (3) A person treated a transaction as a real property contract in error and did not
40 collect sales tax on the transaction as a retail sale. This subdivision does not
41 prohibit the Secretary from assessing use tax on purchases used to fulfill a
42 transaction erroneously treated as a real property contract.

43 ...

44 (8) A person failed to collect sales tax on the taxable portion of a mixed service
45 contract that exceeds ten percent (10%) for a transaction on or after January
46 1, 2017, and prior to January 1, 2019. This subdivision does not prohibit the
47 Secretary from assessing use tax on purchases used to fulfill a mixed contract.

48 (8a) A person failed to collect sales tax on the taxable portion of a mixed
49 transaction contract that exceeds twenty-five percent (25%) for a transaction
50 on or after January 1, 2017, and prior to January 1, 2019. This subdivision

1 does not prohibit the Secretary from assessing use tax on purchases used to
 2 fulfill a mixed transaction contract.

3 ...

4 (9) A person treats a transaction as a real property contract for remodeling instead
 5 of the retail sale of repair, maintenance, and installation services sold at retail
 6 prior to January 1, 2019. This subdivision does not prohibit the Secretary from
 7 assessing use tax on purchases used to fulfill the transaction.

8 (10) A person failed to collect sales tax on repair, maintenance, and installation
 9 services for tangible personal property, motor vehicles, ~~and or certain~~ digital
 10 property.

11 (b) Limitations. – This section does not prohibit the following assessments:

12 (1) The assessment of tax collected by a person and not remitted to the
 13 Department.

14 (2) The assessment of tax due on an amount included in the definition of sales
 15 price where a retailer failed to charge or remit the tax, except as allowed under
 16 subsection (a) of this section.

17 ~~(3) The assessment of use tax on purchases as provided in subsection (a) of this~~
 18 ~~section."~~

19 **SECTION 3.7.** G.S. 105-244.4(a) reads as rewritten:

20 "(a) Reduction – The Secretary may reduce an assessment against a taxpayer who requests
 21 relief for State and local sales and use taxes in the amount as provided in this section and waive
 22 any penalties imposed as part of the assessment when the assessment is the result of an audit of
 23 the taxpayer by the Department and all of the following apply:

24 (1) The taxpayer remitted to the Department during the period under audit all of
 25 the sales and use taxes it collected during ~~the audit period~~ that period.

26 (2) The taxpayer had not been informed by the Department in a prior audit to
 27 collect sales and use taxes in the circumstance that is the basis of the
 28 assessment, as reflected in the written audit comments of the prior audit.

29 (3) The taxpayer had not requested and received from the Department a private
 30 letter ruling advising to collect sales and use taxes in the circumstance that is
 31 the basis of the assessment.

32 (4) The assessment is based on the incorrect application of one or both of the
 33 following areas of the sales and use tax statutes:

34 a. The failure to collect sales tax on separately stated linen charges where
 35 the linens are furnished by a facilitator, rental agent, or other person
 36 and the charges are part of the gross receipts derived from the rental
 37 of the accommodation taxed in accordance with G.S. 105-164.4F.

38 b. The failure to pay sales or use tax to the lessor on the rental of the
 39 linens used by a facilitator, rental agent, or other person in providing
 40 the rental of an accommodation taxed in accordance with
 41 G.S. 105-164.4F where the facilitator, rental agent, or other person
 42 issued a certificate of exemption or the required data elements per
 43 G.S. 105-164.28 to the lessor."

44 **SECTION 3.8.(a)** G.S. 105-537(b) reads as rewritten:

45 "(b) Vote. – The board of county commissioners may direct the county board of elections
 46 to conduct an advisory referendum on the question of whether to levy a local sales and use tax in
 47 the county as provided in this Article. The election shall be held in accordance with the
 48 procedures of ~~G.S. 163A-1592~~ G.S. 163A-1592, except that the election shall not be held within
 49 one year from the date of the last preceding election under this section."

50 **SECTION 3.8.(b)** This section is effective when it becomes law, and applies to
 51 elections held on or after July 1, 2019.

1 **SECTION 3.9.(a)** Sections 38.5(x) through 38.5(z) of S.L. 2018-5 are repealed.

2 **SECTION 3.9.(b)** Section 38.5(aa) of S.L. 2018-5 reads as rewritten:

3 **"SECTION 38.5.(aa)** Except as otherwise provided, this section is effective when it
4 becomes law.

5 Subsection (a) of this section is effective retroactively to January 1, 2017. If the
6 amendment to G.S. 105-164.3(20b), as enacted by subsection (a) of this section, increases sales
7 and use tax liability, then it is effective when this section becomes law.

8 Subsection (g) of this section is effective retroactively to January 1, 2017, and applies
9 to sales and purchases made on or after that date.

10 Subsection (k) of this section is effective retroactively to July 1, 2014. A person who
11 paid sales and use tax for a return period ending prior to the date this section becomes law on an
12 item exempt from sales and use tax pursuant to G.S. 105-164.13E, as amended by subsection (k)
13 of this section, may apply to the Department of Revenue for a refund of any excess tax paid to
14 the extent the refund is the result of the change in the law enacted by subsection (k) of this section.
15 A request for a refund must be made on or before October 1, 2018. Notwithstanding
16 G.S. 105-241.6, a request for a refund received after this date is barred and the provisions of
17 G.S. 105-164.11 do not apply.

18 ~~Subsections (x) and (y) of this section become effective January 1, 2020."~~

19 **SECTION 3.9.(c)** G.S. 105-164.3, as amended by subsection (a) of this section,
20 reads as rewritten:

21 **"§ 105-164.3. Definitions.**

22 The following definitions apply in this Article:

23 ...

24 (30b) Property management contract. – A written contract obligating a person to
25 provide five or more real property management services for a specified
26 contract amount. The specified contract amount must be (i) a fixed dollar
27 amount, (ii) a percentage amount based upon rents received or some other
28 quantifiable variable, or (iii) a combination of the two, so long as the
29 calculation of the specified contract amount is determinable from the terms of
30 the contract for services provided under the contract.

31 (30c) Property management services. – One or more of the following activities:

32 a. Hiring and supervising employees for the real property.

33 b. Providing a person to manage the real property.

34 c. Receiving and applying revenues received from property owners or
35 tenants of the real property.

36 d. Directly providing repair, maintenance, and installation services to
37 comply with obligations of a homeowners' association or a landlord
38 under a lease, rental, or management agreement or to comply with
39 facility-related needs of the real property's occupants.

40 e. Arranging for the provision of repair, maintenance, and installation
41 services by a third party.

42 f. Incurring and paying expenses derived from the operation of the real
43 property.

44 g. Handling administrative affairs for the real property.

45 (30d) Property manager. – A person that provides property management services
46 pursuant to a property management contract.

47 ~~(30d)~~(30e) Prosthetic device. – A replacement, corrective, or supporting device
48 worn on or in the body that meets one of the conditions of this subdivision.
49 The term includes repair and replacement parts for the device. [The
50 conditions are as follows:]

51 a. Artificially replaces a missing portion of the body.

1 b. Prevents or corrects a physical deformity or malfunction.

2 c. Supports a weak or deformed portion of the body.

3"

4 **SECTION 3.9.(d)** G.S. 105-164.4(a)(16) reads as rewritten:

5 "(a) A privilege tax is imposed on a retailer engaged in business in the State at the
6 percentage rates of the retailer's net taxable sales or gross receipts, listed in this subsection. The
7 general rate of tax is four and three-quarters percent (4.75%). The percentage rates are as follows:

8 ...

9 (16) The general rate applies to the sales price of or the gross receipts derived from
10 repair, maintenance, and installation services for real property and generally
11 includes any tangible personal property or certain digital property that
12 becomes a part of or is applied to a purchaser's property. A mixed transaction
13 contract and a real property contract are taxed in accordance with
14 G.S. 105-164.4H. A property management contract is taxable in accordance
15 with G.S. 105-164.4K."

16 **SECTION 3.9.(e)** Article 5 of Chapter 105 of the General Statutes is amended by
17 adding a new section to read:

18 **"§ 105-164.4K. Property management contracts.**

19 (a) Taxability of Services under a Property Management Contract. – Except as provided
20 in this section, property management services provided by a property manager under a property
21 management contract are not subject to sales and use tax. Repair, maintenance, and installation
22 services taxable under this Article and provided by a property manager under a property
23 management contract are subject to sales and use tax in the following circumstances:

24 (1) Services the property manager directly provides for an additional charge that
25 the property manager is not obligated to provide under the property
26 management contract.

27 (2) The property manager arranges for a third party to provide the services and
28 the property manager imposes an additional contract amount or charge for the
29 arranging of these services.

30 (3) More than twenty-five percent (25%) of the specified contract amount payable
31 during the period of the contract or per year, whichever term is shorter, are for
32 repair, maintenance, and installation services taxable under this Article. The
33 property manager must determine an allocated price for the repair,
34 maintenance, and installation services in the contract based on a reasonable
35 allocation of revenue that is supported by the person's business records kept
36 in the ordinary course of business. The charges for the taxable repair,
37 maintenance, and installation services must be separately stated on the invoice
38 or similar billing document.

39 (b) Property Management Services. – This subsection applies when repair, maintenance,
40 and installation services otherwise taxable under this Article are excluded from sales and use tax.
41 A property manager is the consumer of the items that the property manager purchases, installs,
42 applies, or otherwise uses to fulfill a property management contract. A retailer engaged in
43 business in the State shall collect tax on the sales price of an item sold at retail to a property
44 manager unless a statutory exemption in G.S. 105-164.13 applies.

45 (c) Property Manager Acting as Retailer. – This subsection applies when repair,
46 maintenance, and installation services provided by a property manager are subject to sales and
47 use tax under subsection (a) of this section. A property manager acts as a retailer and makes a
48 sale at retail when it provides repair, maintenance, and installation services under the property
49 management contract unless a statutory exemption in G.S. 105-164.13 applies. The tax applies
50 to the sales price of or the gross receipts derived from the taxable repair, maintenance, and
51 installation services portion of the contract."

1
2 **PART IV. EXCISE TAX CHANGES**

3 **SECTION 4.1.(a)** G.S. 105-113.4A reads as rewritten:

4 **"§ 105-113.4A. Licenses.**

5 ...

6 (d) Refund. – A refund of a license tax is allowed only when the tax was collected or paid
7 in error. No refund is allowed when a licensee ~~surrenders~~cancels a license or the Secretary
8 revokes a license.

9 ...

10 (g) Records. – The Secretary must keep a record of the following:

11 (1) Applicants for a license under this Article.

12 (2) Persons to whom a license has been issued under this Article.

13 (3) Persons that hold a current license issued under this Article, by license
14 category.

15 (h) Lists. – The Secretary must provide the list required under subdivision (3) of
16 subsection (g) of this section upon request of a manufacturer that is a licensee under this Article.
17 The list must state the name, account number, and business address of each licensee on the list."

18 **SECTION 4.1.(b)** G.S. 105-113.4B reads as rewritten:

19 **"§ 105-113.4B. Cancellation or revocation of license.**

20 (a) Reasons. – The Secretary may cancel a license issued under this Article upon the
21 written request of the licensee.~~licensee and the immediate return of the license to the Secretary.~~
22 The Secretary may summarily revoke a license issued under this Article when the Secretary finds
23 that the licensee is incurring liability for the tax imposed under this Article after failing to pay a
24 tax when due under this Article. In addition, the Secretary may revoke the license of a licensee
25 that commits one or more of the following acts after holding a hearing on whether the license
26 should be revoked:

27 ...

28 (b) Procedure. – The Secretary must send a person whose license is summarily revoked
29 a notice of the revocation and must give the person an opportunity to have a hearing on the
30 revocation within 10 days after the revocation. The Secretary must give a person whose license
31 may be revoked after a hearing at least 10 days' written notice of the date, time, and place of the
32 hearing. A notice of a summary license revocation and a notice of hearing must be sent by
33 ~~registered~~certified mail to the last known address of the licensee.

34"

35 **SECTION 4.1.(c)** G.S. 105-113.21 reads as rewritten:

36 **"§ 105-113.21. Discount; refund.**

37 ...

38 (a1) Discount. – A licensed distributor who files a timely report under G.S. 105-113.18
39 and who sends a timely payment may deduct from the amount due with the report a discount of
40 two percent (2%). This discount covers expenses incurred in preparing the records and reports
41 required by this Part, and the expense of furnishing a bond.

42 (b) Refund. – A licensed distributor in possession of packages of stale or otherwise
43 unsalable cigarettes upon which the tax has been paid may return the cigarettes to the
44 manufacturer as provided in this subsection and apply to the Secretary for refund of the tax. The
45 application shall be in the form prescribed by the Secretary and shall be accompanied by an
46 affidavit from the manufacturer stating the number of cigarettes returned to the manufacturer by
47 the applicant. The Secretary shall refund the tax paid, less the discount allowed, on the unsalable
48 cigarettes. The licensed distributor must return the cigarettes to the manufacturer of the cigarettes
49 or to the affiliated manufacturer who is contracted by the manufacturer of the cigarettes to serve
50 as the manufacturer's agent for the purposes of validating quantities and disposing of unsalable
51 cigarettes."

1 **SECTION 4.1.(d)** G.S. 105-113.10 reads as rewritten:

2 "**§ 105-113.10. Manufacturers exempt from paying tax.**

3 (a) Shipping to Other Licensed Distributors. – ~~Any~~ A licensed manufacturer shipping
4 cigarettes to other distributors who are licensed under G.S. 105-113.12 may, upon application to
5 the Secretary and upon compliance with requirements prescribed by the Secretary, be relieved of
6 paying the taxes levied in this ~~Part.~~ Part, but is not relieved from filing a report as required by
7 this Part.

8 (a1) Shipping to Retailers. – No manufacturer may be relieved of the requirement to be
9 licensed as a distributor in order to make shipments, including drop shipments, to a retail dealer
10 or ultimate user.

11 (b) Shipping for Affiliated Manufacturer. – A manufacturer may, upon application to the
12 Secretary and upon compliance with requirements prescribed by the Secretary, be relieved of
13 paying the taxes levied in this Part on cigarettes that are manufactured by an affiliated
14 manufacturer and temporarily stored at and shipped from its ~~facilities.~~ facilities, but is not relieved
15 from filing a report as required by this Part."

16 **SECTION 4.1.(e)** G.S. 105-113.5 reads as rewritten:

17 "**§ 105-113.5. Tax on cigarettes.**

18 (a) Rate. – A tax is levied on the sale or possession for sale in this State, by a licensed
19 distributor, of all cigarettes at the rate of two and one-fourth cents (2.25¢) per individual cigarette.

20 (b) Primary Liability. – The licensed distributor who first acquires or otherwise handles
21 cigarettes subject to the tax imposed by this section is liable for the tax imposed by this section.
22 A licensed distributor who brings into this State cigarettes made outside the State is the first
23 person to handle the cigarettes in this State. A licensed distributor who is the original consignee
24 of cigarettes made outside the State and is shipped into the State is the first person to handle the
25 cigarettes in this State."

26 **SECTION 4.2.(a)** G.S. 105-113.4A, as amended by Section 4.1(a) of this act, reads
27 as rewritten:

28 "**§ 105-113.4A. Licenses.**

29 (a) General. – To obtain or renew a license required by this Article, an applicant must
30 file an application with the Secretary on a form provided by the Secretary and pay the tax due for
31 the license. An application must include the applicant's name, address, federal employer
32 identification number, and any other information required by the Secretary. A license is not
33 transferable or assignable and must be displayed at the place of business for which it is issued.

34 (b) Requirements. – An applicant for a license must meet the following requirements:

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

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

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

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

45 (c) Denial. – The Secretary may investigate an applicant for a license required under this
46 Article to determine if the information the applicant submits with the application is accurate and
47 if the applicant is eligible to be licensed under this Article. The Secretary may refuse to issue or
48 renew a license to an applicant that has done any of the following:

49 (1) Submitted false or misleading information on its application.

50 (2) Had a license issued under this Article revoked by the Secretary.

51 (3) Had a tobacco products license or registration issued by another state revoked.

- 1 (4) Been convicted of fraud or misrepresentation.
 2 (5) Been convicted of any other offense that indicates the applicant may not
 3 comply with this Article if issued a license.
 4 (6) Failed to remit payment for a tax debt under this Chapter. The term "tax debt"
 5 has the same meaning as defined in G.S. 105-243.1.
 6 (7) Failed to file a return due under this Chapter.
 7 (8) Failed to meet the requirements set out in subsection (b) of this section.

8"

9 **SECTION 4.2.(b)** G.S. 105-113.4B(a), as amended by Section 4.1(b) of this act,
 10 reads as rewritten:

11 "(a) Reasons. – The Secretary may cancel a license issued under this Article upon the
 12 written request of the licensee and the immediate return of the license to the Secretary. The
 13 Secretary may summarily revoke a license issued under this Article when the Secretary finds that
 14 the licensee is incurring liability for the tax imposed under this Article after failing to pay a tax
 15 when due under this Article. In addition, the Secretary may revoke the license of a licensee that
 16 commits one or more of the following acts after holding a hearing on whether the license should
 17 be revoked:

- 18 (1) Fails to obtain a license in a timely manner or for all places of business as
 19 required by this Article.
 20 (2) Willfully fails to file a return required by this Article.
 21 (3) Willfully fails to pay a tax when due under this Article.
 22 (4) Makes a false statement in an application or return required under this Article.
 23 (5) Fails to keep records as required by this Article.
 24 (6) Refuses to allow the Secretary or a representative of the Secretary to examine
 25 the person's books, accounts, and records concerning tobacco product.
 26 (7) Fails to disclose the correct amount of tobacco product taxable in this State.
 27 (8) Fails to file a replacement bond or an additional bond if required by the
 28 Secretary under this Article.
 29 (9) Violates G.S. 14-401.18.
 30 (10) Fails to meet or maintain the requirements set out in G.S. 105-113.4A(b)."

31 **SECTION 4.2.(c)** G.S. 105-113.12 reads as rewritten:

32 **"§ 105-113.12. Distributor must obtain license.**

33 (a) A distributor shall obtain for each place of business a ~~continuing~~-distributor's license
 34 and shall pay a tax of twenty-five dollars (\$25.00) for the license. A license is in effect until June
 35 30 of the year following the second calendar year after the date of issuance or renewal. A license
 36 for each place of business is renewable upon signed application with no renewal license tax,
 37 unless applied for after the June 30 expiration date.

38 (b) For the purposes of this section, a "place of business" is a place where a distributor
 39 receives or stores non-tax-paid cigarettes.

40 (c) An out-of-state distributor may obtain a distributor's license upon compliance with
 41 the provisions of G.S. 105-113.4A and G.S. 105-113.24 and payment of a tax of twenty-five
 42 dollars (\$25.00)."

43 **SECTION 4.2.(d)** G.S. 105-113.36 reads as rewritten:

44 **"§ 105-113.36. Wholesale dealer and retail dealer must obtain license.**

45 (a) Required Licenses. – The entities listed in this subsection shall obtain for each place
 46 of business a tobacco products license and shall pay a license tax in the amounts listed. As used
 47 in this section, a "place of business" is a place where a wholesale dealer makes tobacco products
 48 other than cigarettes or where a wholesale dealer or a retail dealer receives or stores non-tax-paid
 49 tobacco products other than cigarettes. The entities and license tax amounts are as follows:

- 50 (1) Wholesale dealer. \$25.00.
 51 (2) Retail dealer. \$10.00.

1 (b) Term of License. – A license is in effect until June 30 of the year following the second
2 calendar year after the date of issuance or renewal, unless cancelled or revoked prior to
3 expiration. A license for each place of business is renewable upon signed application with no
4 renewal license tax, unless applied for after the June 30 expiration date.

5 (c) Out-of-State Wholesale Dealers. – An out-of-state wholesale dealer of tobacco
6 products other than cigarettes may obtain a wholesale dealer's license upon compliance with the
7 provisions of G.S. 105-113.4A and payment of a tax of twenty-five dollars (\$25.00).

8 ~~A wholesale dealer shall obtain for each place of business a continuing tobacco products~~
9 ~~license and shall pay a tax of twenty five dollars (\$25.00) for the license. A retail dealer shall~~
10 ~~obtain for each place of business a continuing tobacco products license and shall pay a tax of ten~~
11 ~~dollars (\$10.00) for the license. A "place of business" is a place where a wholesale dealer makes~~
12 ~~tobacco products other than cigarettes or a wholesale dealer or a retail dealer receives or stores~~
13 ~~non-tax-paid tobacco products other than cigarettes."~~

14 **SECTION 4.2.(e)** This section becomes effective January 1, 2020. Any license
15 issued under Article 2A of Chapter 105 of the General Statutes on or before January 1, 2020,
16 shall expire on June 30, 2020. As soon as practicable after the effective date of this section, the
17 Department of Revenue shall notify each licensee that he or she must renew the license by filing
18 an application with the Secretary in accordance with G.S. 105-113.4A before June 30, 2020.

19 **SECTION 4.3.(a)** G.S. 105-113.18 reads as rewritten:

20 **"§ 105-113.18. Payment of tax; reports.**

21 The taxes levied in this Part are payable when a report is required to be filed. The following
22 reports are required to be filed with the Secretary:

23 (1) Distributor's Report. – A licensed distributor shall file a monthly report in the
24 form prescribed by the Secretary. The report covers sales and other activities
25 occurring cigarettes sold, shipped, delivered, or otherwise disposed of in this
26 State in a calendar month and is due within 20 days after the end of the month
27 covered by the report. The report shall show the quantity of all cigarettes
28 transported or caused to be transported into the State by the licensed
29 distributor or licensed manufacturer in the State for sales in this State and state
30 the amount of tax due and shall identify any transactions to which the tax does
31 not apply.

32 (1a) ~~Report of Free Cigarettes. – A manufacturer who distributes cigarettes without~~
33 ~~charge shall file a monthly report in the form prescribed by the Secretary. The~~
34 ~~report covers cigarettes distributed without charge in a calendar month and is~~
35 ~~due within 20 days after the end of the month covered by the report. The report~~
36 ~~shall state the number of cigarettes distributed without charge and the amount~~
37 ~~of tax due.~~

38 (2) Use Tax Report. – Every other person who has acquired non-tax-paid
39 cigarettes for sale, use, or consumption subject to the tax imposed by this Part
40 shall, within 96 hours after receipt of the cigarettes, file a report in the form
41 prescribed by the Secretary showing the amount of cigarettes so received and
42 any other information required by the Secretary. The report shall be
43 accompanied by payment of the full amount of the tax.

44 (3) Shipping Report. – Any person, except a licensed distributor, who transports
45 cigarettes upon the public highways, roads, or streets of this State, upon notice
46 from the Secretary, shall file a report in the form prescribed by the Secretary
47 and containing the information required by the Secretary.

48 (4) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1209, s. 1."

49 **SECTION 4.3.(b)** G.S. 105-113.37 reads as rewritten:

50 **"§ 105-113.37. Payment of tax.**

1 (a) Monthly Report. – ~~Except for tax on a designated sale under subsection (b), the taxes~~
2 Taxes levied by this Article are payable when a report is required to be filed. A report is due on
3 a monthly basis. A monthly report covers ~~sales and other activities~~ tobacco products sold,
4 shipped, delivered, or otherwise disposed of in this State occurring in a calendar month and is
5 due within 20 days after the end of the month covered by the report. A report shall be filed on a
6 form provided by the Secretary and shall contain the information required by the Secretary.

7 (b) ~~Designation of Exempt Sale.— A wholesale dealer who sells a tobacco product to a~~
8 ~~person who has notified the wholesale dealer in writing that the person intends to resell the item~~
9 ~~in a transaction that is exempt from tax under G.S. 105-113.35(a2)(1) or G.S. 105-113.35(a2)(2)~~
10 ~~may, when filing a monthly report under subsection (a), designate the quantity of tobacco~~
11 ~~products sold to the person for resale. A wholesale dealer shall report a designated sale on a form~~
12 ~~provided by the Secretary.~~

13 ~~A wholesale dealer is not required to pay tax on a designated sale when filing a monthly~~
14 ~~report. The wholesale dealer shall pay the tax due on all other sales in accordance with this~~
15 ~~section. A wholesale dealer or a customer of a wholesale dealer may not delay payment of the~~
16 ~~tax due on a tobacco product by failing to pay tax on a sale that is not a designated sale or by~~
17 ~~overstating the quantity of tobacco products that will be resold in a transaction exempt under~~
18 ~~G.S. 105-113.35(a2)(1) or G.S. 105-113.35(a2)(2).~~

19 ~~A person who does not sell a tobacco product in a transaction exempt under~~
20 ~~G.S. 105-113.35(a2)(1) or G.S. 105-113.35(a2)(2) after a wholesale dealer has failed to pay the~~
21 ~~tax due on the sale of the item to the person in reliance on the person's written notification of~~
22 ~~intent is liable for the tax and any penalties and interest due on the designated sale. If the Secretary~~
23 ~~determines that a tobacco product reported as a designated sale is not sold as reported, the~~
24 ~~Secretary shall assess the person who notified the wholesale dealer of an intention to resell the~~
25 ~~item in an exempt transaction for the tax due on the sale and any applicable penalties and interest.~~
26 ~~A wholesale dealer who does not pay tax on a tobacco product in reliance on a person's written~~
27 ~~notification of intent to resell the item in an exempt transaction is not liable for any tax assessed~~
28 ~~on the item.~~

29 (c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 955, s. 12.

30 (d) Shipping Report. – Any person who transports other tobacco products upon the public
31 highways, roads, or streets of this State must, upon notice from the Secretary, file a report in a
32 form prescribed by and containing the information required by the Secretary."

33 **SECTION 4.4.(a)** G.S. 105-113.26 reads as rewritten:

34 "**§ 105-113.26. Records to be kept.**

35 Every person required to be licensed under this Article and every person required to make
36 reports under this Article shall keep complete and accurate records of all ~~sales~~ purchases,
37 inventories, sales, shipments, deliveries, and other information as required under this Article. The
38 records shall be in the form prescribed by the Secretary. Secretary and shall be open at all times
39 for inspection by the Secretary or an authorized representative of the Secretary.

40 These records shall be safely preserved for a period of three years in a manner to ensure their
41 security and accessibility for inspection by the Department. The Secretary may consent to the
42 destruction of any records at any time within this three-year period."

43 **SECTION 4.4.(b)** G.S. 105-113.40 reads as rewritten:

44 "**§ 105-113.40. Records of sales, inventories, and purchases to be kept.**

45 Every wholesale dealer and retail dealer shall keep complete and accurate records of the
46 dealer's purchases, inventories, ~~and sales~~ sales, shipments, and deliveries of tobacco products,
47 products, and any other information as required under this Article. These records shall be in the
48 form prescribed by the Secretary, open at all times for inspection by the Secretary or an
49 authorized representative of the Secretary. Secretary, and safely preserved for a period of three
50 years in a manner to ensure their security and accessibility for inspection by the Department."

51 **SECTION 4.5.** G.S. 105-113.35 reads as rewritten:

1 **"§ 105-113.35. Tax on tobacco products other than cigarettes.**

2 (a) Tax on Tobacco Products. – An excise tax is levied on tobacco products at the rate of
3 twelve and eight-tenths percent (12.8%) of the cost price of the products. The tax rate does not
4 apply to the following:

5 (1) Cigarettes subject to the tax in G.S. 105-113.5.

6 (2) Vapor products subject to the tax in subsection (a1) of this section.

7 (a1) Tax on Vapor Products. – An excise tax is levied on vapor products at the rate of five
8 cents (5¢) per fluid milliliter of consumable product. All invoices for vapor products issued by
9 manufacturers must state the amount of consumable product in milliliters.

10 (a2) Limitation. – The taxes imposed under this section do not apply to the following:

11 (1) A tobacco product sold outside the State.

12 (2) A tobacco product sold to the federal government.

13 (3) A sample tobacco ~~product~~ product, other than cigarettes, distributed without
14 charge. A sample tobacco product, other than cigarettes, may only be
15 distributed in a "qualified adult-only facility" as that term is defined in 21
16 C.F.R. § 1140.16(d)(2).

17 ...

18 (d) Manufacturer's Option. – A manufacturer who is not a retail dealer and who ships
19 tobacco products other than cigarettes to either a wholesale dealer or retail dealer licensed under
20 this Part may apply to the Secretary to be relieved of paying the tax imposed by this section on
21 the tobacco products. A manufacturer who is not a retail dealer and who ships vapor products to
22 either a wholesale dealer or retail dealer licensed under this Part may apply to the Secretary to be
23 relieved of paying the tax imposed by this section on the vapor products shipped to either a
24 wholesale dealer or retail dealer. Once granted permission, a manufacturer may choose not to
25 pay the tax until otherwise notified by the ~~Secretary~~ Secretary but is not relieved from filing a
26 report as required by this Part. To be relieved of payment of the tax imposed by this section, a
27 manufacturer must comply with the requirements set by the Secretary.

28 Permission granted under this subsection to a manufacturer to be relieved of paying the tax
29 imposed by this section applies to an integrated wholesale dealer with whom the manufacturer is
30 an affiliate. A manufacturer must notify the Secretary of any integrated wholesale dealer with
31 whom it is an affiliate when the manufacturer applies to the Secretary for permission to be
32 relieved of paying the tax and when an integrated wholesale dealer becomes an affiliate of the
33 manufacturer after the Secretary has given the manufacturer permission to be relieved of paying
34 the tax.

35 If a person is both a manufacturer of cigarettes and a wholesale dealer of tobacco products
36 other than cigarettes and the person is granted permission under G.S. 105-113.10 to be relieved
37 of paying the cigarette excise tax, the permission applies to the tax imposed by this section on
38 tobacco products other than cigarettes. A cigarette manufacturer who becomes a wholesale dealer
39 after receiving permission to be relieved of the cigarette excise tax must notify the Secretary of
40 the permission received under G.S. 105-113.10 when applying for a license as a wholesale dealer.

41 (d1) Limitation. – Except as otherwise provided in this Article, a licensed wholesale dealer
42 may not sell, borrow, loan, or exchange non-tax-paid tobacco products other than cigarettes to,
43 from, or with another licensed wholesale dealer, and an integrated wholesale ~~dealers~~ dealer may
44 not sell, borrow, loan, or exchange non-tax-paid tobacco products other than cigarettes to, from,
45 or with ~~other~~ another integrated wholesale ~~dealers~~ dealer.

46 (e) Repealed by Session Laws 2009-451, s. 27A.5(c), effective September 1, 2009."

47 **SECTION 4.6.(a)** Part 3 of Article 2A of Chapter 105 of the General Statutes is
48 amended by adding a new section to read:

49 **"§ 105-113.35A. Use tax levied.**

50 A tax is levied upon the sale or possession for sale by a person other than a licensed wholesale
51 dealer or licensed retail dealer, and upon the use, consumption, and possession for use or

1 consumption of tobacco products other than cigarettes within this State at the rate set in
2 G.S. 105-113.35. This tax does not apply to tobacco products other than cigarettes upon which
3 the tax levied in G.S. 105-113.35 has been paid."

4 **SECTION 4.6.(b)** This section is effective for taxable years beginning on or after
5 January 1, 2019.

6 **SECTION 4.7.(a)** G.S. 105-113.4 reads as rewritten:

7 **"§ 105-113.4. Definitions.**

8 The following definitions apply in this Article:

9 ...

10 (1n) Consumer. – An individual who purchases, receives, or possesses tobacco
11 products for personal consumption and not for resale.

12 ...

13 (2d) Delivery sale. – A sale of tobacco products to a consumer in this State in which
14 either of the following apply:

15 a. The consumer submits the order for the sale by telephone, mail, the
16 Internet or other online service or application, or when the seller is
17 otherwise not in the physical presence of the consumer when the
18 consumer submits the order.

19 b. The tobacco products are delivered via mail or a delivery service.

20 (2e) Delivery seller. – A person that makes a delivery sale.

21 (2f) Delivery service. – A person engaged in the commercial delivery of letters,
22 packages, or other containers.

23"

24 **SECTION 4.7.(b)** Part 1 of Article 2A of Chapter 105 of the General Statutes is
25 amended by adding a new section to read:

26 **"§ 105-113.4F. Delivery sales of certain tobacco products; age verification.**

27 (a) Scope. – This section applies to delivery sales of tobacco products, other than cigars,
28 to consumers in this State regardless of whether the delivery seller is located inside or outside
29 this State. For purposes of this section, the term "tobacco product" is as defined in
30 G.S. 105-113.4, except that it does not include cigars.

31 (b) Delivery Seller Requirements. – A delivery seller shall do all of the following with
32 respect to a delivery sale:

33 (1) Obtain a license from the Secretary pursuant to the requirements of this Article
34 before accepting an order.

35 (2) Comply with the age verification requirements in G.S. 14-313(b2).

36 (3) Report, collect, and remit to the Secretary all taxes levied on tobacco products
37 as set out in this Article and Article 5 of this Chapter.

38 (c) Delivery Service Requirements. – A delivery seller must use a delivery service that
39 requires obtaining the following:

40 (1) The signature of a person who is at least 18 years of age to accept delivery at
41 the delivery address.

42 (2) Proof from the person who accepts delivery at the delivery address in the form
43 of a valid, government-issued identification bearing a photograph of the
44 person that the person is at least 18 years of age.

45 (d) Additional Filing Requirements. – A delivery seller who has made a delivery sale, or
46 shipped or delivered tobacco products in connection with a delivery sale, during the previous
47 month shall, not later than the tenth day of each month, file with the Secretary a memorandum
48 or a copy of the invoice for every delivery sale made during the previous month. A delivery seller
49 who complies with 15 U.S.C. § 376 with respect to tobacco products covered by that section is
50 considered to have complied with this subsection. The memorandum or invoice shall contain the
51 following information:

- 1 (1) The name, address, telephone number, and e-mail address of the consumer.
 2 (2) The type and the brand, or brands, of tobacco products that were sold.
 3 (3) The quantity of tobacco products that were sold.
 4 (e) Penalties. – A person who violates this section is subject to the following penalties:
 5 (1) For the first violation, a penalty of one thousand dollars (\$1,000).
 6 (2) For a subsequent violation, a penalty not to exceed five thousand dollars
 7 (\$5,000), as determined by the Secretary.
 8 (f) Exception. – This section does not apply to sales of tobacco products by a retail dealer
 9 who purchased the tobacco products from a licensed distributor or wholesale dealer.
 10 (g) State Laws Apply. – All State laws that apply to tobacco product retailers in this State
 11 shall apply to delivery sellers that sell tobacco products into this State."

12 **SECTION 4.7.(c)** This section is effective October 1, 2019, and applies to delivery
 13 sales occurring on or after that date.

14 **SECTION 4.8.** G.S. 105-113.68 reads as rewritten:

15 "**§ 105-113.68. Definitions; scope.**

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

17 ...

18 (13) Wholesaler or importer. – When used with reference to ~~wholesalers~~–a
 19 ~~wholesaler or importers~~–an importer of wine or malt beverages, the term
 20 includes a resident ~~wineries~~–winery and a wine producer that ~~sell their wines~~
 21 sells its wines, or wine produced for the permittee under contract, at wholesale
 22 to a retailer or at retail and a resident ~~breweries~~–brewery that ~~produce fewer~~
 23 ~~than 25,000 barrels of malt beverages per year~~–sells its malt beverages, or malt
 24 beverages produced for the permittee under contract, at wholesale to a retailer
 25 or at retail. This subdivision applies to a person that holds any of the following
 26 permits issued by the ABC Commission:

27 a. Unfortified Winery Permit under G.S. 18B-1101.

28 b. Fortified Winery Permit under G.S. 18B-1102.

29 c. Brewery Permit under G.S. 18B-1104.

30 d. Wine Importer Permit under G.S. 18B-1106.

31 e. Wine Wholesaler Permit under G.S. 18B-1107.

32 f. Malt Beverages Importer Permit under G.S. 18B-1108.

33 g. Malt Beverages Wholesaler Permit under G.S. 18B-1109.

34 h. Wine Producer Permit issued under G.S. 18B-1114.3.

35 "

36 **SECTION 4.9.** G.S. 105-113.84 reads as rewritten:

37 "**§ 105-113.84. Report of resident brewery, resident winery, resident wine producer,**
 38 **nonresident vendor, or wine shipper permittee.**

39 (a) A resident brewery, resident winery, resident wine producer, and nonresident vendor
 40 must file a monthly informational report with the Secretary.

41 (b) A wine shipper permittee must file an annual report with the Secretary.

42 (c) The report required by this section must list the amount of beverages ~~delivered-sold,~~
 43 delivered, or shipped to North Carolina wholesalers, importers, and purchasers under
 44 G.S. 18B-1001.1 during the period covered by the report. The report is due by the 15th day of
 45 the month following the period covered by the ~~report–report,~~ unless otherwise provided. The
 46 report must be filed on a form approved by the Secretary and must contain the information
 47 required by the Secretary."

48 **SECTION 4.10.** G.S. 105-449.47A reads as rewritten:

49 "**§ 105-449.47A. Denial of license application and decal issuance.**

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

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

14 **SECTION 4.11.** G.S. 105-449.60 reads as rewritten:

15 **"§ 105-449.60. Definitions.**

16 The following definitions apply in this Article:

- 17 ...
- 18 (8) Bulk end-user. – A person who maintains bulk storage facilities for motor fuel
- 19 and uses part or all of the stored fuel to operate a highway vehicle.
- 20 ...
- 21 (33) Motor fuel transporter. – A person who transports motor fuel by pipeline,
- 22 transport truck, tank wagon for-hire, railroad tank car, or marine vessel.
- 23 ...
- 24 (48) Tank wagon. – A truck that is not a transport truck and is designed or used to
- 25 carry at least 1,000 gallons of motor ~~fuel~~ fuel and the motor fuel is owned by
- 26 the transporter.
- 27 (48a) Tank wagon for-hire. – A truck designed or used to carry at least 1,000 gallons
- 28 of motor fuel and the transporter is compensated for transporting motor fuel
- 29 owned by another person.
- 30 ...
- 31 (51) Terminal. – A motor fuel storage and distribution facility that ~~has been~~
- 32 ~~assigned a terminal control number by the Internal Revenue Service,~~ is
- 33 supplied by pipeline or marine vessel, and from which motor fuel, jet fuel, or
- 34 aviation gasoline may be removed at a rack.
- 35 ...
- 36 (55) Transport truck. – A tractor trailer designed or used to transport loads of motor
- 37 fuel over a highway. For the purposes of this definition, a tank wagon for-hire
- 38 is considered a transport truck.

39"

40 **SECTION 4.12.** G.S. 105-449.81 reads as rewritten:

41 **"§ 105-449.81. Excise tax on motor fuel.**

42 An excise tax at the motor fuel rate is imposed on motor fuel that is:

- 43 (1) Removed from a refinery or a terminal and, upon removal, is subject to the
- 44 federal excise tax imposed by § 4081 of the Code.
- 45 (2) Imported by a system transfer to a refinery or a terminal and, upon
- 46 importation, is subject to the federal excise tax imposed by § 4081 of the Code.
- 47 (3) Imported by a means of transfer outside the terminal transfer system for sale,
- 48 use, or storage in this State and would have been subject to the federal excise
- 49 tax imposed by § 4081 of the Code if it had been removed at a terminal or
- 50 bulk plant rack in this State instead of imported.
- 51 (3a) Repealed by Session Laws 2007-527, s. 38(a), effective January 1, 2008.

- 1 (3b) Fuel ~~grade ethanol alcohol~~ or biodiesel fuel if the fuel meets at least one of the
 2 following descriptions:
 3 a. Is produced in this State and is removed from the storage facility at the
 4 production location.
 5 b. Is imported to this State by means of a transport truck, a railroad tank
 6 car, a tank wagon, or a marine vessel where ~~ethanol-fuel alcohol~~ or
 7 biodiesel from the vessel is not delivered to a terminal that has been
 8 assigned a terminal control number by the Internal Revenue Service.
 9 c. Repealed by Session Laws 2009-445, s. 34(a), effective January 1,
 10 2010.
- 11 (4) Blended fuel made in this State or imported to this State.
 12 (5) Transferred within the terminal transfer system and is subject, upon transfer,
 13 to the federal excise tax imposed by section 4081 of the Code or is transferred
 14 to a person who is not licensed under this Article as a supplier."

15 **SECTION 4.13.** G.S. 105-449.105A reads as rewritten:

16 **"§ 105-449.105A. Monthly refunds for kerosene.**

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

- 24 (1) ~~Heating.~~
 25 (2) Drying crops.
 26 (3) A manufacturing process.

27 (b) Liability. – If the Secretary determines that the Department overpaid a distributor by
 28 refunding more tax to the distributor than is due under this section, the distributor is liable for the
 29 amount of the overpayment."

30 **SECTION 4.14.** G.S. 105-449.115 reads as rewritten:

31 **"§ 105-449.115. Shipping document required to transport motor fuel by railroad tank car
 32 or transport truck.**

33 (a) Issuance. – A person may not transport motor fuel by railroad tank car or transport
 34 truck unless the person has a shipping document for its transportation that complies with this
 35 section. A refiner, a terminal operator, a fuel alcohol provider, a biodiesel provider, and the
 36 operator of a bulk plant must give a shipping document to the person who operates a railroad
 37 tank car or a transport truck into which motor fuel is loaded at the terminal rack or bulk plant
 38 rack.

39"

40 **SECTION 4.15.** G.S. 105-449.115A reads as rewritten:

41 **"§ 105-449.115A. Shipping document required to transport fuel by tank wagon.**

42 (a) Issuance. – A person who operates a tank wagon into which motor fuel is loaded at
 43 the terminal must comply with the document requirements in G.S. 105-449.115(b). A person who
 44 operates a tank wagon into which motor fuel is loaded from some other source must have an
 45 invoice, bill of sale, or shipping document containing the following information and any other
 46 information required by the Secretary:

- 47 (1) The name and address of the person from whom the motor fuel was received.
 48 (2) The date the fuel was loaded.
 49 (3) The type of fuel.
 50 (4) The gross number of gallons loaded.
 51 (5) The destination state of the fuel.

1"

2
3 **PART V. TAX COMPLIANCE CHANGES**

4 **SECTION 5.1.(a)** G.S. 105-243.1(d) reads as rewritten:

5 "(d) Fee. – A collection assistance fee is imposed on an overdue tax debt that remains
6 unpaid ~~30–60~~ days or more after the ~~fee notice required by this subsection is mailed to the~~
7 ~~taxpayer.~~ tax debt is deemed collectible under G.S. 105-241.22. In order to impose a collection
8 assistance fee on a tax debt, the Department must notify the taxpayer that the fee will be imposed
9 if the tax debt is not paid in full within ~~30–60~~ days after the date the ~~fee notice~~ notice of collection
10 was mailed to the taxpayer. ~~The Department may not mail the fee notice earlier than 60 days after~~
11 ~~the tax debt becomes collectible under G.S. 105-241.22.~~ The fee is collectible as part of the debt.
12 The Secretary may waive the fee pursuant to G.S. 105-237 to the same extent as if it were a
13 penalty."

14 **SECTION 5.1.(b)** This section is effective when it becomes law, and applies to tax
15 debts that become collectible on or after that date.

16 **SECTION 5.2.(a)** G.S. 105-236(a) reads as rewritten:

17 "(a) Penalties. – The following civil penalties and criminal offenses apply:

18 ...

19 (10) Penalties Regarding Informational Returns. – The following penalties apply
20 with regard to an informational return required by Article 2A, 2C, 4, 4A, 5, 9,
21 36C, or 36D of this Chapter:

22 ...

23 c. For failure to file with the Secretary by the date the return is due, the
24 Secretary shall assess a penalty of fifty dollars (\$50.00) per day, up to
25 a maximum penalty of one thousand dollars (\$1,000).

26 d. For failure to file in the format prescribed by the Secretary, the
27 Secretary shall assess a penalty of two hundred dollars (\$200.00).

28"

29 **SECTION 5.2.(b)** This section is effective January 1, 2020, and applies to
30 informational returns due to be filed on or after that date.

31 **SECTION 5.3.** G.S. 105-251.2 is amended by adding a new subsection to read:

32 "(c1) Franchisor. – A franchisor with at least one franchisee located within North Carolina
33 must give information to the Secretary when the Secretary requests the information. The
34 Secretary may not request the information more than one time per calendar year. The Secretary
35 may request the franchisor to provide on a return, a report, or otherwise, a franchisee's name, tax
36 identification number, business address, and any other information pertaining to the franchisee
37 in possession of the franchisor that the Secretary deems necessary to determine the franchisee's
38 compliance with this Chapter. For purposes of this subsection, the terms "franchisor" and
39 "franchisee" have the same meaning as defined in 16 C.F.R. § 436.1."

40 **SECTION 5.4.** Article 9 of Chapter 105 of the General Statutes is amended by
41 adding a new section to read:

42 **"§ 105-251.3. Information required on real property transactions.**

43 Every person that buys real property located in this State from a nonresident seller must give
44 information to the Secretary within 15 days of the closing date of the sale. The report must contain
45 seller's name, seller's address, seller's tax identification number if known, sales price, property
46 address, and any other information required by the Secretary. The Secretary may prescribe the
47 manner of the report."

48
49 **PART VI. GENERAL TAX ADMINISTRATION CHANGES**

50 **SECTION 6.1.(a)** G.S. 105-241.6 reads as rewritten:

51 **"§ 105-241.6. Statute of limitations for refunds.**

1 (a) General. – The general statute of limitations for obtaining a refund of an overpayment
 2 applies unless a different period applies under subsection (b) of this section. The general statute
 3 of limitations for obtaining a refund of an overpayment is the later of the following:

- 4 (1) Three years after the due date of the return.
- 5 (2) Two years after payment of the tax.

6 (b) Exceptions. – The exceptions to the general statute of limitations for obtaining a
 7 refund of an overpayment are as follows:

8 ...

9 (5) Contingent Event. – The period to request a refund of an overpayment may be
 10 extended once as provided in this subdivision ~~if an event or condition prevents~~
 11 ~~the taxpayer from possessing the information necessary to file an accurate and~~
 12 ~~definite request for a refund of an overpayment under this~~
 13 ~~Chapter:~~subdivision:

14 a. Litigation or a State Tax Audit. – If a taxpayer is subject to a
 15 contingent event and files written notice with the Secretary, litigation
 16 or a state tax audit that prevents the taxpayer from filing an accurate
 17 and definite request for a refund of an overpayment within the period
 18 under this section, the period to request a refund of an overpayment is
 19 six months after the contingent event litigation or state tax audit
 20 concludes. For purposes of this subdivision, a "contingent event"
 21 means litigation or a state tax audit initiated prior to the expiration of
 22 the statute of limitations under subsection (a) of this section, the
 23 pendency of which prevents the taxpayer from possessing the
 24 information necessary to file an accurate and definite request for a
 25 refund of an overpayment under this Chapter. The taxpayer must file
 26 written notice to the Secretary must be filed prior to expiration of the
 27 statute of limitations under subsection (a) of this section for a return or
 28 payment in which a contingent event prevents a taxpayer from filing a
 29 definite request for a refund of an overpayment. section. The notice
 30 must identify and describe the contingent event, litigation or state tax
 31 audit, identify the type of tax, list the return or payment affected by the
 32 contingent event, affected, and state in clear terms the basis for and an
 33 estimated amount of the overpayment.

34 b. Other Event. – If a taxpayer contends that an event ~~or condition other~~
 35 ~~than a contingent event, as defined in this subdivision,~~ has occurred
 36 that prevents the taxpayer from filing an accurate and definite request
 37 for a refund of an overpayment within the period under ~~subsection (a)~~
 38 ~~of this section, the taxpayer may submit a written request to the~~
 39 ~~Secretary seeking an extension of the statute of limitations allowed~~
 40 ~~under this subdivision. limitations. The taxpayer must file a written~~
 41 ~~request to the Secretary prior to expiration of the statute of limitations~~
 42 ~~under this section. The request must establish by clear, convincing~~
 43 ~~proof that the event or condition is beyond the taxpayer's control and~~
 44 ~~that it prevents the taxpayer's taxpayer from timely filing of an~~
 45 ~~accurate and definite request for a refund of an overpayment. The~~
 46 ~~request must be filed within the period under subsection (a) of this~~
 47 ~~section. The Secretary's decision on the request is final and is not~~
 48 ~~subject to administrative or judicial review.~~

49"

50 **SECTION 6.1.(b)** This section becomes effective when it becomes law, and applies
 51 to a request for a refund of an overpayment of tax filed on or after that date.

1 **SECTION 6.2.(a)** G.S. 105-241.8(b)(1a) reads as rewritten:

2 "(1a) Federal amended return. – If a taxpayer files a return as a result of filing a
3 federal amended return and the return is filed within the time required by this
4 Subchapter, the period for proposing an assessment of any tax due is one year
5 after the return is filed or three years after the original return was filed or due
6 to be filed, whichever is later. If the taxpayer does not file the return within
7 the required time, the period for proposing an assessment of any tax due is
8 three years after the date the federal amended return was filed with the
9 Commissioner of Internal Revenue. The date the federal amended return was
10 filed is presumed to be the date recorded by the Internal Revenue Service."

11 **SECTION 6.2.(b)** This section becomes effective when it becomes law, and applies
12 to an assessment proposed on or after that date.

13 **SECTION 6.3.(a)** G.S. 105-228.90(b)(3a) reads as rewritten:

14 "(3a) Federal determination. – A change or correction ~~of the amount of a federal tax~~
15 ~~due arising from an audit by the Commissioner of Internal Revenue.~~Revenue
16 or an agreement of the U.S. competent authority, and the change or correction
17 has become final. A federal determination is final when the determination is
18 not subject to administrative or judicial review. Additionally, audit findings
19 made by the Internal Revenue Service are deemed final in the following
20 circumstances:

21 a. The taxpayer has received audit findings from the Internal Revenue
22 Service for the tax period and the taxpayer does not timely file an
23 administrative appeal with the Internal Revenue Service.

24 b. The taxpayer consented to any of the audit findings for the tax period
25 through a form or other written agreement with the Internal Revenue
26 Service."

27 **SECTION 6.3.(b)** G.S. 105-130.20(a) reads as rewritten:

28 "(a) Federal Determination. – If a taxpayer's federal taxable income or a federal tax credit
29 is changed or corrected by the Commissioner of Internal Revenue ~~or other officer of the United~~
30 ~~States or other~~an agreement of the U.S. competent authority, and the change or correction affects
31 the amount of State tax payable, the taxpayer must file an income tax return reflecting each
32 change or correction from a federal determination within six months after being notified of each
33 change or correction. The Secretary must propose an assessment for any additional tax due from
34 the taxpayer as provided in Article 9 of this Chapter. The Secretary must refund any overpayment
35 of tax as provided in Article 9 of this Chapter. A federal determination has the same meaning as
36 defined in G.S. 105-228.90."

37 **SECTION 6.3.(c)** G.S. 105-159 reads as rewritten:

38 "(a) Federal Determination. – If a taxpayer's adjusted gross income, filing status, personal
39 exemptions, standard deduction, itemized deductions, or federal tax credit are changed or
40 corrected by the Commissioner of Internal Revenue ~~or other officer of the United States or an~~
41 agreement of the U.S. competent authority, and the change or correction affects the amount of
42 State tax payable, the taxpayer must file an income tax return reflecting each change or correction
43 from a federal determination within six months after being notified of each change or correction.
44 The Secretary must propose an assessment for any additional tax due from the taxpayer as
45 provided in Article 9 of this Chapter. The Secretary must refund any overpayment of tax as
46 provided in Article 9 of this Chapter. A federal determination has the same meaning as defined
47 in G.S. 105-228.90."

48 **SECTION 6.3.(d)** This section becomes effective when it becomes law, and applies
49 to a federal determination on or after that date.

50 **SECTION 6.4.(a)** G.S. 105-163.1 reads as rewritten:

51 "§ 105-163.1. **Definitions.**

1 The following definitions apply in this Article:

- 2 (1) Compensation. – Consideration a payer pays to ~~any of the following:~~ a payee.
- 3 a. ~~A nonresident individual or nonresident entity for personal services~~
- 4 ~~performed in this State.~~
- 5 b. ~~An ITIN holder who is a contractor and not an employee for services~~
- 6 ~~performed in this State.~~
- 7 (2) Repealed by Session Laws 2009-476, s. 1, effective for taxable years
- 8 beginning on or after January 1, 2010.
- 9 (3) Repealed by Session Laws 2014-3, s. 14.4(a), effective for taxable years
- 10 beginning on or after January 1, 2014.
- 11 (4) Employee. – An individual, whether a resident or a nonresident of this State,
- 12 who performs services in this State for wages or an individual who is a resident
- 13 of this State and performs services outside this State for wages. The term
- 14 includes an ordained or licensed member of the clergy who elects to be
- 15 considered an employee under G.S. 105-163.1A, an officer of a corporation,
- 16 and an elected public official.
- 17 (5) Employer. – A person for whom an individual performs services for wages.
- 18 In applying the requirements to withhold income taxes from wages and pay
- 19 the withheld taxes, the term includes a person who:
- 20 a. Controls the payment of wages to an individual for services performed
- 21 for another.
- 22 b. Pays wages on behalf of a person who is not engaged in trade or
- 23 business in this State.
- 24 c. Pays wages on behalf of a unit of government that is not located in this
- 25 State.
- 26 d. Pays wages for any other reason.
- 27 (6) Individual. – Defined in G.S. 105-153.3.
- 28 (6a) Individual Taxpayer Identification Number (ITIN). – A taxpayer
- 29 identification number issued by the Internal Revenue Service to an individual
- 30 who is required to have a U.S. taxpayer identification number but who does
- 31 not have, or is not eligible to obtain, a Social Security number (SSN) from the
- 32 Social Security Administration.
- 33 ~~(6a)~~ (6b) ITIN contractor. – An ITIN holder who performs services in this State for
- 34 compensation other than wages.
- 35 ~~(6b)~~ (6c) ITIN holder. – A person whose taxpayer identification number is an
- 36 Individual Taxpayer Identification Number ~~(ITIN)~~-(ITIN), including applied
- 37 for and expired numbers.
- 38 (7) Miscellaneous payroll period. – A payroll period other than a daily, weekly,
- 39 biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll
- 40 period.
- 41 (7a) Nonresident contractor. – Either of the following:
- 42 a. A nonresident individual who performs in this State for compensation
- 43 other than wages any personal services in connection with a
- 44 performance, an entertainment, an athletic event, a speech, or the
- 45 creation of a film, radio, or television program.
- 46 b. A nonresident entity that provides for the performance in this State for
- 47 compensation of any personal services in connection with a
- 48 performance, an entertainment, an athletic event, a speech, or the
- 49 creation of a film, radio, or television program.
- 50 (8) Nonresident entity. – Any of the following:

- 1 a. A foreign limited liability company, defined using the same definition
 2 for the term "foreign LLC" in G.S. 57D-1-03, that has not obtained a
 3 certificate of authority from the Secretary of State pursuant to Article
 4 7 of Chapter 57D of the General Statutes.
- 5 b. A foreign limited partnership as defined in G.S. 59-102 or a general
 6 partnership formed under the laws of any jurisdiction other than this
 7 State, unless the partnership maintains a permanent place of business
 8 in this State.
- 9 c. A foreign corporation, as defined in G.S. 55-1-40, that has not
 10 obtained a certificate of authority from the Secretary of State pursuant
 11 to Article 15 of Chapter 55 of the General Statutes.
- 12 (9) Pass-through entity. – Defined in G.S. 105-228.90.
- 13 (9a) Payee. – Any of the following:
- 14 a. A nonresident contractor.
- 15 b. An ITIN contractor.
- 16 c. A person who performs services in this State for compensation that
 17 fails to provide the payer a taxpayer identification number.
- 18 d. A person who performs services in this State for compensation that
 19 fails to provide the payer a valid taxpayer identification number. The
 20 Secretary must notify a payer that a taxpayer identification number is
 21 not valid.
- 22 (10) Payer. – A person who, in the course of a trade or business, pays ~~compensation~~
 23 compensation. to any of the following:
- 24 a. ~~A nonresident individual or a nonresident entity compensation for personal~~
 25 ~~services performed in this State.~~
- 26 b. ~~An ITIN holder who is a contractor and not an employee for services~~
 27 ~~performed in this State.~~
- 28 (11) Payroll period. – A period for which an employer ordinarily pays wages to an
 29 employee of the employer.
- 30 (11a) Pension payer. – A payor or a plan administrator with respect to a pension
 31 payment under section 3405 of the Code.
- 32 (11b) Pension payment. – A periodic payment or a nonperiodic distribution as those
 33 terms are defined in section 3405 of the Code.
- 34 (12) Taxable year. – Defined in section 441(b) of the Code.
- 35 (12a) Taxpayer Identification Number (TIN). – An identification number issued by
 36 the Social Security Administration or the Internal Revenue Service excluding
 37 Taxpayer Identification Number for Pending U.S. Adoptions (ATIN) and
 38 Preparer Taxpayer Identification Number (PTIN).
- 39 (13) Wages. – The term has the same meaning as in section 3401 of the Code.
- 40 (14) Withholding agent. – An employer, a pension payer, or a payer."

41 **SECTION 6.4.(b)** G.S. 105-163.3 reads as rewritten:

42 **"§ 105-163.3. Certain payers must withhold taxes.**

43 (a) Requirement. – Every payer who pays more than one thousand five hundred dollars
 44 (\$1,500) during a calendar year to ~~either a nonresident contractor or an ITIN contractor a payee~~
 45 must deduct and withhold from compensation paid to the ~~contractor payee~~ payee the State income taxes
 46 payable by the ~~contractor payee~~ on the compensation as provided in this section. The amount of
 47 taxes to be withheld is four percent (4%) of the compensation paid to the ~~contractor payee~~. The
 48 taxes a payer withholds are held in trust for the Secretary.

49 ...

50 (d) Returns, Annual Statement, and Report. – A payer required to deduct and withhold
 51 from a ~~contractor's payee's~~ payee's compensation under this section must file a return, pay the withheld

1 taxes, and report the amount withheld in the time and manner required under G.S. 105-163.6 and
2 G.S. 105-163.7 as if the compensation were wages.

3 ...

4 (f) Payer May Repay Amounts Withheld Improperly. – A payer may refund to a person
5 any amount the payer withheld improperly from the person under this section, if the refund is
6 made before the end of the calendar year and before the payer furnishes the person the annual
7 statement required by subsection (d) of this section. An amount is withheld improperly if it is
8 withheld from a payment to a person who is not a ~~nonresident contractor or an ITIN contractor,~~
9 ~~payee,~~ if it is withheld from a payment that is not compensation, or if it is in excess of the amount
10 required to be withheld under this section. A payer who makes a refund under this section must
11 take the following actions:

- 12 (1) Not report the amount refunded on the annual statement required by
13 subsection (d) of this section.
- 14 (2) Either not pay to the Secretary the amount refunded or, if the amount refunded
15 has already been paid to the Secretary, reduce by the amount refunded the next
16 payments to the Secretary of taxes withheld from the person."

17 **SECTION 6.4.(c)** This section becomes effective January 1, 2020.

18 **SECTION 6.5.** G.S. 105-241.20(a) reads as rewritten:

19 "(a) Scope. – This section applies to the following notices:

- 20 (1) A proposed denial of a ~~refund~~ refund or a denial of a refund.
- 21 (2) A proposed assessment.
- 22 (3) A notice of collection.
- 23 (4) A final determination."

24 **SECTION 6.6.(a)** G.S. 105-128 is recodified as G.S. 105-258.3.

25 **SECTION 6.6.(b)** G.S. 105-128, recodified as G.S. 105-258.3 by subsection (a) of
26 this section, reads as rewritten:

27 "**§ 105-258.3. Power of attorney.**

28 The Secretary of Revenue ~~shall have the authority to~~ may require a proper power of attorney
29 of each and every agent for any ~~taxpayer under this Article.~~ taxpayer."

30 **PART VII. EFFECTIVE DATE**

31 **SECTION 7.1.** Except as otherwise provided, this act is effective when it becomes
32 law.
33