

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 17
SENATE BILL 104

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

The General Assembly of North Carolina enacts:

Section 1. Effective July 1, 1995, G.S. 105-113.82(a) reads as rewritten:

"(a) Amount, Method. – The Secretary shall distribute annually the following percentages of the net amount of excise taxes collected on the sale of malt beverages and wine during the preceding 12-month period ending March 31, less the amount of the net proceeds credited to the Department of Agriculture under ~~G.S. 105-113.81A~~, G.S. 105-113.81A, to the counties and cities in which the retail sale of these beverages is authorized:

- (1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty-three and three-fourths percent (23 3/4%);
- (2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), sixty-two percent (62%); and
- (3) Of the tax on fortified wine levied under G.S. 105-113.80(b), twenty-two percent (22%).

If malt beverages, unfortified wine, or fortified wine may be licensed to be sold at retail in both a county and a city located in the county, both the county and city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. If one of these beverages may be licensed to be sold at retail in a city located in a county in which the sale of the beverage is otherwise prohibited, only the city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. The amounts distributed under subdivisions (1), (2), and (3) shall be computed separately."

Sec. 2. G.S. 105-130.25(b) reads as rewritten:

"(b) Cogenerating Power Plant Defined. – For purposes of this section, a cogenerating power plant is a power plant that ~~that~~ sequentially produces electrical or mechanical power and useful thermal energy from the same primary energy source. The credit allowed by this section does not apply to construction of a cogenerating power plant whose combustion equipment uses residual oil, middle distillate oil, gasoline, or liquid propane gas (LPG) as a primary fuel."

Sec. 3. G.S. 105-130.2(5c) reads as rewritten:

"(5c) State net income. —~~Federal~~ The taxpayer's federal taxable income as determined under the Code, adjusted as provided in G.S. 105-130.5 and, in the case of a corporation that has income from business activity

that is taxable both within and without this State, allocated and apportioned to this State as provided in G.S. 105-130.4."

Sec. 4. G.S. 105-134.5 reads as rewritten:

"§ 105-134.5. North Carolina taxable income defined.

(a) Residents. — For residents of this State, the term 'North Carolina taxable income' means the taxpayer's taxable income as ~~ealeulated~~ determined under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7.

(b) Nonresidents. — For nonresident individuals, the term 'North Carolina taxable income' means the taxpayer's taxable income as ~~ealeulated~~ determined under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, multiplied by a fraction the denominator of which is the taxpayer's gross income as ~~ealeulated~~ determined under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, and the numerator of which is the amount of that gross income, as adjusted, that is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State or is derived from a business, trade, profession, or occupation carried on in this State.

(c) Part-year Residents. — If an individual was a resident of this State for only part of the taxable year, having moved into or removed from the State during the year, the term 'North Carolina taxable income' has the same meaning as in subsection (b) except that the numerator shall include gross income, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, derived from all sources during the period the individual was a resident.

(d) S Corporations and Partnerships. — In order to calculate the numerator of the fraction provided in subsection (b), the amount of a shareholder's pro rata share of S Corporation income that is includable in the numerator shall be the shareholder's pro rata share of the S Corporation's income attributable to the State, as defined in G.S. 105-131(b)(4). In order to calculate the numerator of the fraction provided in subsection (b) for a member of a partnership or other unincorporated business with one or more nonresident members that operates in one or more other states, the amount of the member's distributive share of income of the business that is includable in the numerator shall be determined by multiplying the total net income of the business by the ratio ascertained under the provisions of G.S. 105-130.4. As used in this subsection, total net income means the entire gross income of the business less all expenses, taxes, interest, and other deductions allowable under the Code which were incurred in the operation of the business."

Sec. 5. Effective for taxable years beginning on or after January 1, 1995, G.S. 105-134.6(c) is amended by adding a new subdivision to read:

"(7) The amount of federal estate tax that is attributable to an item of income in respect of a decedent and is deducted from gross income under section 691(c) of the Code."

Sec. 6. G.S. 105-164.4(c) reads as rewritten:

"(c) Any person who engages in any business for which a privilege tax is imposed by this Article shall apply for and obtain from the Secretary upon payment of fifteen dollars (\$15.00) a license to engage in and conduct the business upon the condition that

the person shall pay the tax accruing to the State under this Article; the person shall thereby be duly licensed and registered to engage in the business.

A license issued under this subsection shall be a continuing license until it becomes void or is revoked for failure to comply with the provisions of this Article. A license issued under this ~~section~~ subsection to a person, other than a person who makes only wholesale sales or only exempt sales, becomes void if, for a period of eighteen months, the license holder files no return or files returns showing no sales.

A retailer who sells tangible personal property at a flea market shall conspicuously display the retailer's sales tax license when making sales at the flea market."

Sec. 7. G.S. 105-164.6(f) reads as rewritten:

"(f) Every retailer engaged in business in this State selling or delivering tangible personal property for storage, use, or consumption in this State shall apply for and obtain from the Secretary upon payment of fifteen dollars (\$15.00) a license to engage in and conduct the business upon the condition that the person shall pay the tax accruing to the State under this Article; the person shall thereby be duly licensed and registered to engage in the business. ~~Except as hereinafter provided, a~~ A license issued under this subsection shall be a continuing license until it becomes void or is revoked for failure to comply with the provisions of this Article. A license issued under this subsection to a person, other than a person who makes only wholesale sales or only exempt sales, becomes void if, for a period of 18 months, the license holder files no return or files returns showing no sales.

~~A license issued under this section becomes void if the license holder ceases to be engaged in a business for which a tax is imposed by this Article and remains continuously out of business for a period of five years. The burden of proving that a license is still valid is on the license holder."~~

Sec. 8. G.S. 105-164.14 reads as rewritten:

"§ 105-164.14. Certain refunds authorized.

(a) Interstate Carriers. ~~– An interstate carrier is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on lubricants, repair parts, and accessories purchased in this State for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. Any person~~ An 'interstate carrier' is a person who is engaged in transporting persons or property in interstate commerce for ~~compensation who compensation~~, is subject to regulation by, and to the jurisdiction of, the Interstate Commerce Commission or the United States Department of ~~Transportation and who Transportation~~, and is required by either ~~such~~ federal agency to keep records according to ~~its standard classification of accounting generally accepted accounting principles (GAAP) or, in the case of a small certificated air carrier, is required by the U.S. Department of Transportation to make reports of financial and operating statistics, may secure a refund from the Secretary of Revenue with respect to sales or use tax paid by such person on purchases or acquisitions of lubricants, repair parts and accessories in this State for motor vehicles, railroad cars, locomotives, and airplanes operated by such person, upon the conditions described below.~~ statistics. The Secretary of Revenue shall prescribe the periods of time, whether monthly, quarterly, ~~semiannually~~ semiannually,

or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following ~~such~~ these periods, an application for refund may be made.

An applicant for refund shall furnish ~~such~~ the following information as ~~the Secretary may require~~, and any proof of the information required by the Secretary:

- (1) A list identifying the lubricants, repair parts, and accessories purchased by the applicant inside or outside this State during the refund period.
- (2) The purchase price of the items listed in subdivision (1) of this subsection.
- (3) The sales and use taxes paid in this State on the listed items.
- (4) The number of miles the applicant's motor vehicles, railroad cars, locomotives, and airplanes were operated both inside and outside this State during the refund period.
- (5) Any other information required by the Secretary.

~~including detailed information as to lubricants, repair parts and accessories wherever purchased, whether within or without the State, acquired during the period with respect to which a refund is sought, and the purchase price thereof, detailed information as to sales and use tax paid in this State thereon, and detailed information as to the number of miles such motor vehicles, railroad cars, locomotives, and airplanes were operated both within this State, and without this State, during such period, together with satisfactory proof thereof. The~~

~~For each applicant, the Secretary shall thereupon compute the amount to be refunded as follows. First, the Secretary shall determine the ratio of the number of miles the applicant operated its motor vehicles, railroad cars, locomotives, and airplanes in this State during the refund period to the number of miles it operated them both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the items identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period. tax which would be due with respect to all lubricants, repair parts and accessories acquired during the refund period as though all such purchases were made in this State, but only on such proportion of the total purchase prices thereof as the total number of miles of operation of such applicants' motor vehicles, railroad cars, locomotives, and airplanes within this State bears to the total number of miles of operation of such applicants' motor vehicles, railroad cars, locomotives and airplanes within and without this State, and such amount of sales and use tax as the applicant has paid in this State during said refund period in excess of the amounts so computed shall be refunded to the applicant.~~

(b) Nonprofit Corporations. ~~—~~ The Secretary of Revenue shall make refunds semiannually to hospitals not operated for profit (including hospitals and medical accommodations operated by an authority created under the Hospital Authorities Law, Article 2 of Chapter 131E of the General Statutes), educational institutions not operated

for profit, ~~churches, orphanages and churches, orphanages,~~ and other charitable or religious institutions and organizations not operated for profit of sales and use taxes paid under this Article, except under G.S. 105-164.4(4a) and G.S. 105-164.4(4e), 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c), by ~~such these~~ institutions and organizations on direct purchases of tangible personal property for use in carrying on the work of ~~such the~~ institutions or organizations. Sales and use tax liability indirectly incurred by ~~such one of these~~ institutions ~~and or~~ organizations on building materials, supplies, ~~fixtures fixtures,~~ and equipment ~~which shall that~~ become a part of or annexed to any building or structure that is owned or leased by the institution or organization and is being erected, ~~altered altered,~~ or repaired for ~~such use by the institution or organization~~ institutions and organizations for carrying on ~~their its~~ nonprofit activities shall ~~be construed as is~~ considered a sales or use tax liability incurred on direct purchases by ~~such institutions and organizations,~~ and ~~such the institutions and organizations may obtain refunds of such these taxes indirectly paid the institution or organization.~~ The Secretary of Revenue shall also make refunds semiannually to all other hospitals not excluded by this subsection (not specifically excluded herein) of sales and use tax paid by them on medicines and drugs purchased for use in carrying out ~~the work of such hospitals their work.~~ This subsection does not apply to organizations, corporations, and institutions that are owned and controlled by the United States, the State, or a unit of local government, except hospital facilities created under Article 2 of Chapter 131E of the General Statutes and nonprofit hospitals owned and controlled by a unit of local government that elect to receive semiannual refunds under this subsection instead of annual refunds under subsection (c). ~~In order to receive the refunds herein provided for, such institutions and organizations shall file a written request for refund covering the first six months of the calendar year on or before the fifteenth day of October next following the close of said period, and shall file a written request for refund covering the second six months of the calendar year on or before the fifteenth day of April next following the close of that period. Such requests for refund shall be substantiated by such proof as the Secretary of Revenue may require, and no refund shall be made on applications not filed within the time allowed by this section and in such manner as the Secretary may require. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund for the first six months of a calendar year is due the following October 15; a request for a refund for the second six months of a calendar year is due the following April 15.~~

(c) Certain Governmental Entities. A governmental entity listed in this subsection is allowed an annual refund ~~Upon receipt of timely applications for refund, the Secretary of Revenue shall make refunds annually to all governmental entities, as hereinafter defined, of sales and use tax paid by it under this Article, except under G.S. 105-164.4(4a) and G.S. 105-164.4(4e), by said governmental entities 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c),~~ on direct purchases of tangible personal property. Sales and use tax liability indirectly incurred by ~~such governmental entities a governmental entity~~ on building materials, supplies, ~~fixtures fixtures,~~ and equipment ~~which shall that~~ become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, ~~altered altered,~~ or repaired ~~which is owned or~~

~~leased by such governmental entities shall be construed as for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection. such governmental entities, and such entities may obtain refunds of such taxes indirectly paid. The refund provisions contained in this subsection shall not apply to any governmental entities not specifically named herein. In order to receive the refund—A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year. herein provided for, governmental entities shall file a written request for said refund within six months of the close of the fiscal year of the governmental entities seeking said refund, and such request for refund shall be substantiated by such records, receipts and information as the Secretary may require. No refunds shall be made on applications not filed within the time allowed by this section and in such manner as the Secretary may otherwise require. The term "governmental entities," for the purposes of this subsection, shall mean~~

This subsection applies only to the following governmental entities:

- (1) A county.
- (2) A city as defined in G.S. 160A-1.
- (3) A metropolitan sewerage district or a metropolitan water district in this State.
- (4) A water and sewer authority created under Chapter 162A of the General Statutes.
- (5) A lake authority created by a board of county commissioners pursuant to an act of the General Assembly.
- (6) A sanitary district.
- (7) A regional solid waste management authority created pursuant to G.S. 153A-421.
- (8) An area mental health, developmental disabilities, and substance abuse authority, other than a single-county area authority, established pursuant to Article 4 of Chapter 122C of the General Statutes.
- (9) A district health department.
- (10) A regional council of governments created pursuant to G.S. 160A-470.
- (11) A regional planning and economic development commission or a regional economic development commission created pursuant to Chapter 158 of the General Statutes.
- (12) A regional planning commission created pursuant to G.S. 153A-391.
- (13) A regional sports authority created pursuant to G.S. 160A-479.
- (14) A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes.
- (15) A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes.
- (16) A local airport authority that was created pursuant to a local act of the General Assembly and has at least one of the following characteristics:
 - a. It has all of the rights of a municipality.

- b. A local act of the General Assembly declares it to be a municipality.
- c. A local act of the General Assembly specifically authorizes it to receive a refund under this section.
- (17) A joint agency created by interlocal agreement pursuant to G.S. 160A-462 to operate a public broadcasting television station.
- (18) The North Carolina Low-Level Radioactive Waste Management Authority created pursuant to Chapter 104G of the General Statutes.
- (19) The North Carolina Hazardous Waste Management Commission created pursuant to Chapter 130B of the General Statutes.
- (20) A constituent institution of The University of North Carolina, but only with respect to sales and use tax paid by it for tangible personal property acquired by it through the expenditure of contract and grant funds.

~~all counties, incorporated cities and towns, water and sewer authorities created and existing under the provisions of Chapter 162A of the General Statutes, lake authorities created by a board of county commissioners pursuant to an act of the General Assembly, sanitary districts, regional councils of governments created pursuant to G.S. 160A 470, area mental health, developmental disabilities, and substance abuse authorities (other than single county area authorities) established pursuant to Article 4 of Chapter 122C of the General Statutes, district health departments, regional planning and economic development commissions created pursuant to G.S. 158-14, regional sports authorities created pursuant to G.S. 160A 479, regional economic development commissions created pursuant to G.S. 158-8, regional planning commissions created pursuant to G.S. 153A 391, regional solid waste management authorities created pursuant to G.S. 153A 421, public transportation authorities created pursuant to Article 25 of Chapter 160A of the General Statutes, regional public transportation authorities created pursuant to Article 26 of Chapter 160A of the General Statutes, metropolitan sewerage districts and metropolitan water districts in this State, the North Carolina Low Level Radioactive Waste Management Authority created pursuant to Chapter 104G of the General Statutes, the North Carolina Hazardous Waste Management Commission created pursuant to Chapter 130B of the General Statutes, a joint agency created by interlocal agreement pursuant to G.S. 160A 462 to operate a public broadcasting television station, and the Rockingham County Airport Authority. Notwithstanding the foregoing provisions of this subsection, the constituent institutions of The University of North Carolina may obtain in the manner prescribed by this subsection a refund of sales and use tax paid by them on or after January 1, 1992, for tangible personal property acquired by them through the expenditure of contract and grant funds.~~

(d) Penalties for Late Applications. ~~—~~ Refunds made pursuant to applications filed after the dates specified in subsections (b) and (c) above ~~shall be~~ are subject to the following penalties for late filing: applications filed within 30 days after ~~said dates,~~ the due date, twenty-five percent (25%); applications filed after 30 days but within six months after ~~said dates,~~ the due date, fifty percent (50%). ~~However, refunds which are~~

Refunds applied for after more than six months following said dates shall be months after the due date are barred.

(e) State Agencies. – The State is allowed quarterly refunds of local sales and use taxes paid by a State agency on direct purchases of tangible personal property and local sales and use taxes paid indirectly by the State agency on building materials, supplies, fixtures, and equipment that become a part of or annexed to a building or structure that is owned or leased by the State agency and is being erected, altered, or repaired ~~and is owned or leased for use~~ by the State agency. This subsection does not apply to purchases for which a State agency is allowed a refund under subsection (c) of this section.

A person who pays local sales and use taxes on building materials or other tangible personal property for a State building project shall give the State agency for whose project the property was purchased a signed statement containing all of the following information:

- (1) The date the property was purchased.
- (2) The type of property purchased.
- (3) The project for which the property was used.
- (4) If the property was purchased in this State, the county in which it was purchased.
- (5) If the property was not purchased in this State, the county in which the property was used.
- (6) The amount of sales and use taxes paid.

If the property was purchased in this State, the person shall attach a copy of the sales receipt to the statement. A State agency to whom a statement is submitted shall verify the accuracy of the statement.

Within 15 days after the end of each calendar quarter, every State agency shall file with the Secretary a written application for a refund of taxes to which this subsection applies paid by the agency during the quarter. The application shall contain all information required by the Secretary. The Secretary shall credit the local sales and use tax refunds directly to the General Fund."

Sec. 9. Effective for taxable years beginning on or after January 1, 1995, G.S. 105-228.90(b)(1) reads as rewritten:

- "(1) Code. – The Internal Revenue Code as enacted as of January 1, ~~1994,~~ 1995, including any provisions enacted as of that date which become effective either before or after that date."

Sec. 10. G.S. 105-241.2(a) reads as rewritten:

"(a) Petition for Administrative Review. – Without having to pay the tax or additional tax assessed by the Secretary under this Chapter, any taxpayer may obtain from the Tax Review Board an administrative review with respect to the taxpayer's liability for the tax or additional tax assessed by the Secretary. Such a review may be obtained only if the taxpayer has obtained a hearing before the Secretary and the Secretary has rendered a final decision with respect to the taxpayer's liability. If a taxpayer has made a timely written demand for refund of an alleged overpayment and the Secretary has issued a decision denying part or all of the claimed refund, the

taxpayer may obtain from the Tax Review Board an administrative review of the Secretary's decision. To obtain administrative review the taxpayer must take the following actions:

- (1) Within 30 days after the Secretary's final decision is issued, file with the Tax Review Board, with a copy to the Secretary, notice of intent to file a petition for review.
- (2) Within 60 days after ~~the Secretary's final decision is issued,~~ filing a notice of intent under subdivision (1) of this subsection, file with the Tax Review Board, with a copy to the Secretary, a petition requesting administrative review and stating in concise terms the grounds upon which review is sought."

Sec. 11. G.S. 105-259(b) is amended by adding the following new subdivisions to read:

- "(11a) To provide a copy of a return to the taxpayer who filed the return.
- (11b) In the case of a return filed by a corporation, a partnership, a trust, or an estate, to provide a copy of the return or information on the return to a person who has a material interest in the return if, under the circumstances, section 6103(e)(1) of the Code would require disclosure to that person of any corresponding federal return or information.
- (11c) In the case of a return of an individual who is legally incompetent or deceased, to provide a copy of the return to the legal representative of the estate of the incompetent individual or decedent."

Sec. 11.1. Effective January 1, 1995, G.S. 105-266(c) is amended by adding a new subdivision to read:

- "(4) Federal Determination. – When a taxpayer files with the Secretary a return that reflects a federal determination and the return is filed within the required time, the period in which a refund must be demanded or discovered is one year after the return reflecting the federal determination is filed or three years after the original return was filed or due to be filed, whichever is later."

Sec. 11.2. G.S. 105-266.1(a) reads as rewritten:

"(a) If a taxpayer claims that a tax or an additional tax paid by the taxpayer was excessive or incorrect, the taxpayer may apply to the Secretary for refund of the tax or additional tax at any time within ~~three years after the date set by the statute for the filing of the return or application for a license or within six months after the date of payment of the tax or additional tax, whichever is later.~~ the period set by the statute of limitations in G.S. 105-266.

The Secretary shall grant a hearing on each timely request for a refund. Within 60 days after a timely request for a refund has been filed and at least 10 days before the date set for the hearing, the Secretary shall notify the taxpayer in writing of the time and place at which the hearing will be conducted. The date set for the hearing shall be within 90 days after the timely request for a hearing was filed or at a later date mutually agreed upon by the taxpayer and the Secretary. The date set for the hearing may be

postponed once, at the request of the taxpayer or the Secretary, for a period of up to 90 days or for a longer period mutually agreed upon by the taxpayer and the Secretary.

Within 90 days after conducting a hearing under this subsection, the Secretary shall make a decision on the requested refund, notify the taxpayer of the decision, and adjust the computation of the tax in accordance with the decision. The Secretary shall refund to the taxpayer in accordance with G.S. 105-266 the amount of any tax the Secretary finds was paid incorrectly or paid in excess of the tax due, ~~except that there shall be no refund to the taxpayer of any sum set off under the provisions of Chapter 105A, the Set-off Debt Collection Act. due.~~"

Sec. 12. G.S. 105-434(a) reads as rewritten:

"(a) Tax. – An excise tax is levied on motor fuel sold, distributed, or used by a distributor within this State at a flat rate of seventeen and one-half cents (17 1/2¢) per gallon, plus a variable rate of either three and one-half cents (3 1/2¢) per gallon or seven percent (7%) of the average wholesale price of motor fuel for the applicable base period, whichever is greater. The Secretary of Revenue shall semiannually determine the average wholesale price of motor fuel using information on refiner and gas plant operator sales prices of finished motor gasoline and No. 2 diesel fuel for resale, published by the United States Department of Energy in the 'Monthly Energy Review,' or equivalent data. The Secretary shall determine the average wholesale price of motor fuel by computing the average sales price of finished motor gasoline for the base period, computing the average sales price for No. 2 diesel fuel for the base period, and then computing a weighted average of the results of the first two computations based on the proportion of tax collected under this Article on motor fuel and Article 36A on fuel for the base period. The Secretary shall notify affected taxpayers of the tax rate to be in effect for each six-month period beginning January 1 and July 1.

To facilitate administration of the motor fuel tax, the Secretary shall convert the wholesale percentage component to a cents-per-gallon rate. The rate for the six-month period beginning January 1 shall be computed from data published for the six-month base period ending on the preceding September 30, and the rate for the six-month period beginning July 1 shall be computed from data published for the six-month base period ending on the preceding March 31. The cents-per-gallon rate computed by the Secretary shall be rounded to the nearest one-tenth of a cent (1/10¢). If the cents-per-gallon rate computed by the Secretary is exactly between ~~two tenths~~ two tenths of a cent, the rate shall be rounded up to the higher of the two."

Sec. 13. G.S. 105-449.20 reads as rewritten:

"§ 105-449.20. When Secretary may estimate tax liability of supplier or user-seller.

Whenever a supplier or a user-seller fails to file a report under G.S. 105-449.19 or G.S. 105-449.21 or files a false report under one of those statutes, the Secretary shall determine, from any information obtainable, the number of gallons of fuel with respect to which the supplier or user-seller owes tax under this Article. When a user-seller sells or uses more fuel than the user-seller reports to the Secretary as having been purchased from a supplier, the user-seller is presumed to have acquired the unreported fuel tax-free to operate a motor vehicle. When a user-seller sells or uses more fuel to operate a motor vehicle than the user-seller reports to the Secretary as having been purchased from a

supplier to operate a motor vehicle, the user-seller is presumed to have acquired tax-free to operate a motor vehicle all fuel not reported as having been acquired to operate a motor vehicle."

Sec. 13.1. G.S. 105-449.45(a) reads as rewritten:

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

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

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

Sec. 14. G.S. 153A-158 reads as rewritten:

"§ 153A-158. Power to acquire property in other counties. property.

A county may acquire, by gift, grant, devise, bequest, exchange, purchase, lease, or any other lawful method, the fee or any lesser interest in real or personal property for use by the county or any department, board, commission, or agency of the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A."

Sec. 15. (a) Chapter 885 of the 1989 Session Laws, as amended by Chapters 120, 533, 832, 848, 865, and 1001 of the 1991 Session Laws, as codified as G.S. 153A-157, and as further amended by Chapters 611, 612, 614, 622, 623, 642, and 655 of the 1993 Session Laws, is recodified as G.S. 153A-158.1(a).

(b) G.S. 153A-158.1, as amended by subsection (a) of this section, reads as rewritten:

"§ 153A-158.1. ~~School property in certain counties; construction and other improvements; transfers.~~ Acquisition and improvement of school property in certain counties.

(a) **~~Power to acquire property in certain counties.~~ Acquisition by County.** – A county may ~~acquire, by gift, grant, devise, bequest, exchange, purchase, lease, or any other~~ acquire, by any lawful method, the fee or any other lesser ~~any~~ interest in real or personal property for use by ~~the county or any department, board, commission, or agency of the county~~ or a school administrative unit within the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A. ~~The~~ The county shall use its authority under this ~~section~~ subsection to acquire ~~the fee or any lesser interest in real or personal~~ property for use by a school administrative unit within the county only upon the request of the board of education of that school administrative unit and after a public hearing.

~~This section applies to Ashe, Avery, Bladen, Brunswick, Cabarrus, Carteret, Chowan, Columbus, Duplin, Forsyth, Franklin, Harnett, Haywood, Iredell, Johnston, Lee, Macon, Nash, Orange, Pasquotank, Pender, Richmond, Rowan, Sampson, and Stanly Counties.~~

(b) Construction or Improvement by County. – A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county. ~~This subsection applies only to Ashe, Avery, Brunswick, Chowan, Forsyth, Harnett, Haywood, Lee, Macon, Nash, Orange, Pasquotank, Richmond, and Sampson Counties and to local boards of education for school administrative units in or for Ashe, Avery, Brunswick, Chowan, Forsyth, Harnett, Haywood, Lee, Macon, Nash, Orange, and Pasquotank Counties.~~

(c) Lease or Sale by Board of Education. – ~~Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education may may, in connection with additions, improvements, renovations, or repairs to all or part of any of its property, lease or sell any of its the property to the board of commissioners of the county in which the property is located for any price negotiated between the two boards. This subsection applies only to Ashe, Avery, Brunswick, Cabarrus, Carteret, Chowan, Duplin, Forsyth, Harnett, Haywood, Iredell, Lee, Macon, Nash, Orange, Pasquotank, Rowan, Sampson, and Stanley Counties and to local boards of education for school administrative units in or for these counties. This subsection applies only to sales and leases of property in connection with additions, improvements, renovations, or repairs to the property or to some part of the property.~~

(d) Board of Education May Contract for Construction. – ~~Notwithstanding the provisions of G.S. 115C-40 and G.S. 115C-521, local boards of education are authorized to a local board of education may enter into contracts for the erection or repair of school buildings upon sites owned in fee simple by one or more counties in which the local school administrative units are unit is located. This subsection applies only to Ashe, Avery, Brunswick, Chowan, Forsyth, Harnett, Lee, Nash, Orange, Pasquotank, and Sampson Counties and to local boards of education for school administrative units in or for those counties.~~

(e) Scope. – ~~This section applies to Ashe, Avery, Bladen, Brunswick, Cabarrus, Carteret, Chowan, Columbus, Duplin, Forsyth, Franklin, Harnett, Haywood, Iredell, Johnston, Lee, Macon, Nash, Orange, Pasquotank, Pender, Richmond, Rowan, Sampson, Stanly, and Watauga Counties."~~

Sec. 16. As amended by this act, G.S. 153A-158.1 now incorporates and codifies, in addition to Chapter 885 of the 1989 Session Laws as amended, the following: Chapter 487 of the 1989 Session Laws, Sections 2 and 3 of Chapter 848 of the 1991 Session Laws, Sections 2 and 3 of Chapter 1001 of the 1991 Session Laws, Sections 2 and 3 of Chapter 611 of the 1993 Session Laws, Sections 2, 3, and 4 of Chapter 612 of the 1993 Session Laws, Sections 3, 4, and 5 of Chapter 614 of the 1993 Session Laws, Sections 2, 3, and 4 of Chapters 622 and 623 of the 1993 Session Laws, Section 3(c), Section 3(e), and the first sentence of Section 3(b) of Chapter 642 of the 1993 Session Laws, and Sections 2, 3, and 4 of Chapter 655 of the 1993 Session Laws.

Sec. 17. Section 4 of Chapter 681 of the 1993 Session Laws reads as rewritten:

"Sec. 4. This act is effective for taxable years beginning on or after January 1, ~~1994-1994, and ending on or before February 28, 1996.~~"

Sec. 18. Effective January 1, 1995, Section 14 of Chapter 745 of the 1993 Session Laws is repealed.

Sec. 19. Section 1 of Chapter 922 of the 1989 Session Laws reads as rewritten:

"Section 1. Part IV of Chapter 908 of the 1983 Session Laws, as amended by Chapter 821 of the 1989 Session Laws, is further amended by adding at the end of Section 7 a new subsection to read:

'(d) Refunds. ~~—~~The local administrative authority shall refund to a nonprofit or governmental entity the prepared food and beverage tax paid by the entity on eligible purchases of prepared foods and beverages. A nonprofit or governmental entity's purchase of prepared food and beverages is eligible for a refund under this subsection if the entity is entitled to a refund under G.S. ~~105-164.14-105-164.14(b) or (c)~~ of the sales and use tax paid on the purchase. The time limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(b) and (d) ~~shall~~ apply to refunds to nonprofit entities; the time limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(c) and (d) ~~shall~~ apply to refunds to governmental entities. When an entity applies for a refund of the prepared food and beverages tax paid by it on purchases, it shall attach to its application a copy of the application submitted to the Department of Revenue under G.S. 105-164.14 for a refund of the sales and use tax on the same purchases. An applicant for a refund under this subsection shall provide any information required by the local administrative authority to substantiate the claim."

Sec. 20. Subsection 4(e) of Chapter 449 of the 1985 Session Laws, as amended by Chapter 826 of the 1985 Session Laws and Chapter 177 of the 1991 Session Laws, reads as rewritten:

"(e) Refunds. ~~—~~The county shall refund to a nonprofit or governmental entity the prepared food and beverage tax paid by the entity on eligible purchases of prepared food and beverages. A nonprofit or governmental entity's purchase of prepared food and beverages is eligible for a refund under this subsection if the entity is entitled to a refund under G.S. ~~105-164.14-105-164.14(b) or (c)~~ of the sales and use tax paid on the purchase. The time limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(b) and (d) ~~shall~~ apply to refunds to nonprofit entities; the time, limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(c) and (d) ~~shall~~ apply to refunds to governmental entities. When an entity applies for a refund of the prepared food and beverages tax paid by it on purchases, it shall attach to its application a copy of the application submitted to the Department of Revenue under G.S. 105-164.14 for a refund of the sales and use tax on the same purchases. An applicant for a refund under this subsection shall provide any information required by the county to substantiate the claim."

Sec. 21. Section 6 of Chapter 413 of the 1993 Session Laws reads as rewritten:

"Sec. 6. Refunds. – The county shall refund to a nonprofit or governmental entity the prepared food and beverage tax paid by the entity on eligible purchases of prepared food and beverages. A nonprofit or governmental entity's purchase of prepared food and beverages is eligible for a refund under this section if the entity is entitled to a refund under G.S. ~~105-164.14~~ 105-164.14(b) or (c) of ~~local~~ the sales and use tax paid on the purchase. The time limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(b) and (d) ~~shall~~ apply to refunds to nonprofit entities; the time, limitations, application requirements, penalties, and restrictions provided in G.S. ~~105-164.14(e), (d), and (e)~~ 105-164.14(c) and (d) ~~shall~~ apply to refunds to governmental entities. When an entity applies for a refund of the prepared food and beverages tax paid by it on purchases, it shall attach to its application a copy of the application submitted to the Department of Revenue under G.S. 105-164.14 for a refund of the sales and use tax on the same purchases. An applicant for a refund under this section shall provide any information required by the county to substantiate the claim."

Sec. 22. Subsection 1(f) of Chapter 449 of the 1993 Session Laws reads as rewritten:

"(f) Refunds. – The town shall refund to a nonprofit or governmental entity the prepared food and beverage tax paid by the entity on eligible purchases of prepared food and beverages. A nonprofit or governmental entity's purchase of prepared food and beverages is eligible for a refund under this subsection if the entity is entitled to a refund under G.S. ~~105-164.14~~ 105-164.14(b) or (c) of ~~local~~ the sales and use tax paid on the purchase. The time limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(b) and (d) ~~shall~~ apply to refunds to nonprofit entities; the time, limitations, application requirements, penalties, and restrictions provided in G.S. ~~105-164.14(e), (d), and (e)~~ 105-164.14(c) and (d) ~~shall~~ apply to refunds to governmental entities. When an entity applies for a refund of the prepared food and beverage tax paid by it on purchases, it shall attach to its application a copy of the application submitted to the Department of Revenue under G.S. 105-164.14 for a refund of the sales and use tax on the same purchases. An applicant for a refund under this subsection shall provide any information required by the town to substantiate the claim."

Sec. 23. Chapters 781 and 782 of the 1971 Session Laws are repealed.

Sec. 24. Except as otherwise provided in this act, this act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of March, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives