

GENERAL ASSEMBLY OF NORTH CAROLINA  
SECOND EXTRA SESSION 1996

CHAPTER 14  
SENATE BILL 6

AN ACT TO PROVIDE TAX REFORM AND TAX RELIEF FOR THE CITIZENS OF NORTH CAROLINA BY REPEALING THE UNCONSTITUTIONAL CORPORATE TAX CREDIT FOR NORTH CAROLINA WINE, REPEALING THE UNCONSTITUTIONAL CORPORATE TAX DEDUCTION FOR NORTH CAROLINA DIVIDENDS, REPEALING THE UNCONSTITUTIONAL INDIVIDUAL INCOME TAX CREDIT FOR NORTH CAROLINA DIVIDENDS, REVISING THE UNCONSTITUTIONAL TAX CREDIT FOR QUALIFIED BUSINESS INVESTMENTS, CLARIFYING THE TAX TREATMENT OF REFUNDS OF UNCONSTITUTIONAL TAXES, CLARIFYING THE SALES AND USE TAX TREATMENT OF ITEMS GIVEN AWAY BY MERCHANTS, PROVIDING THE SECRETARY OF REVENUE AUTHORITY TO IMPROVE USE TAX COLLECTION, EXEMPTING FROM SALES AND USE TAX INVENTORY THAT IS DONATED BY A MERCHANT TO A CHARITABLE NONPROFIT ORGANIZATION, AND REPEALING MOST STATE PRIVILEGE LICENSE TAXES.

The General Assembly of North Carolina enacts:

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PART I. REFORM UNCONSTITUTIONAL TAX PROVISIONS

Section 1. G.S. 105-130.38 and G.S. 105-151.15 are repealed.

Sec. 2. G.S. 105-151.19 is repealed.

Sec. 3. G.S. 105-130.7 reads as rewritten:

**"§ 105-130.7. Deductible portion of dividends.**

Dividends from stock issued by ~~any a~~ corporation shall be deducted to the extent ~~herein provided.~~ are deductible to the extent provided in this section.

- (1) ~~As soon as may be practicable after September 30 of each year, the Secretary of Revenue shall determine from the corporate income tax return filed during the year ending September 30 by each corporation required to file a return during that period the proportion of the entire net income or loss of the corporation allocable to this State under the provisions of G.S. 105-130.4, except as provided herein. If a~~

~~corporation has a net income in North Carolina and a net loss from all sources wherever located, or if a corporation has a net loss in North Carolina and a net income from all sources wherever located, the Secretary shall require the use of the allocation fraction determined under the provisions of G.S. 105-130.4. A corporation which is a stockholder in any such corporation shall be allowed to deduct the same proportion of the dividends received by it from such corporation during its income year ending on or after September 30. No deduction shall be allowed for any part of any dividend received from any corporation that was required to file an income tax return during the year ending September 30 but failed to file the return. In the case of dividends received from a corporation that was not required to file a return during the year ending September 30, the proportion of dividends deductible by the stockholder shall be determined by the Secretary from the best information available.~~

- ~~(2) Dividends received by a corporation from stock in any insurance company of this State taxed under the provisions of G.S. 105-228.5 shall be deductible by such corporation, and a proportionate part of any dividends received from stock in any foreign insurance corporation shall be deductible, such part to be determined on the basis of the ratio of premiums reported for taxation in this State to total premiums collected both in and out of this State.~~
- (3) A corporation shall be allowed to may deduct such proportionate part of dividends received by it from a regulated investment company or a real estate investment trust, as defined in G.S. 105-130.12, as represents and corresponds to income received by such regulated investment company or real estate investment trust which would not be taxed by this State if received directly by the corporation.
- ~~(3a) Dividends received on shares of capital stock owned in a stock-owned savings and loan association taxed under Article 8D of this Chapter shall be deductible.~~
- (4) Notwithstanding the provisions of subdivisions (1) through (3a) of this section, ~~a corporation which,~~ A corporation that, at the close of its taxable year, has its commercial domicile within North Carolina shall be allowed to deduct all dividends received from corporations in which it owns more than fifty percent (50%) of the outstanding voting stock.
- ~~(5) Notwithstanding any other provisions of this Division, a corporation which is a shareholder in a holding company shall be allowed as a deduction an amount equal to those dividends received by it from such holding company, multiplied by a fraction, the numerator of which shall be the dividends received by such holding company attributable to North Carolina, and the denominator of which shall be the gross dividends received by such holding company; provided, however, that no deduction shall be allowed where the fraction is smaller than one-~~

~~third (1/3). For purposes of this section, "dividends attributable to North Carolina" shall be the amount of dividend income received by the holding company on stock owned in other corporations equal to the total of the proportion of each of such corporation's dividends as shall be determined deductible by the Secretary under subdivisions (1) through (3a) of this section; provided that a holding company which owns more than fifty percent (50%) of the outstanding voting stock of one or more holding companies as defined in this subdivision shall be permitted a deduction for all dividends received from such holding companies and all other corporations in which it owns more than fifty percent (50%) of the outstanding voting stock except that no deduction shall be allowed if less than one-third (1/3) of the dividends received by the holding company are attributable to North Carolina. A shareholder of such a holding company shall determine the deductible portion of its dividends received from such holding company as hereinabove provided except that the amounts received from a subsidiary holding company as "dividends attributable to North Carolina" shall be determined as though the subsidiary corporation of the subsidiary holding company had paid the dividends directly to the parent holding company. For the purposes of this section and unless the context clearly requires a different meaning, "holding company" shall mean any corporation subject to the tax imposed by G.S. 105-130.3 whose ordinary gross income consists of fifty percent (50%) or more of dividend income received from corporations in which it owns more than fifty percent (50%) of the outstanding voting stock, and "subsidiary" shall mean any corporation, more than fifty percent (50%) of whose outstanding voting stock is owned by another corporation. For the purposes of this subsection, the term "dividend" includes, in addition to corporate dividends, distributions received from a partnership by a corporation owning more than a fifty percent (50%) interest in the partnership.~~

- (6) In no case shall the total amount of dividends that are allowed as a deduction to a corporation as a result of the application of subdivisions (1) through (3a) under subdivision (3) of this section be in excess of exceed fifteen thousand dollars (\$15,000) for the taxable year."

Sec. 4. G.S. 105-130.5(b)(3) reads as rewritten:

- "(3) The deductible portion of dividends from stock issued ~~by any corporation~~ as provided under G.S. 105-130.7."

Sec. 5. G.S. 105-130.4(f) reads as rewritten:

"(f) Interest and net dividends are allocable to this State if the corporation's commercial domicile is in this State ~~subject to the following limitations:~~ State. For

- (1) Net dividends received by a corporation from another corporation in which the recipient corporation owns fifty (50%) or more per centum of the paying corporation's voting stock, shall be allocated to this State

~~if the paying corporation is subject to income tax in this State. In such case, the net amount of such dividends received by the recipient corporation from the paying corporation is allocable to this State by use of the same percentage figure used in determining the portion of the paying corporation's dividends deductible under the provisions of G.S. 105-130.7.~~

(2)

~~For purposes of this section, the net amount of dividends shall mean term 'net dividends' means gross dividend income received less related expenses and less that portion of such the dividends deductible under the provisions of G.S. 105-130.7."~~

Sec. 6. G.S. 105-163.012(b) reads as rewritten:

"(b) The total amount of all tax credits allowed to taxpayers under G.S. 105-163.011 for investments made in a calendar year may not exceed ~~twelve million dollars (\$12,000,000)~~ six million dollars (\$6,000,000). The Secretary of Revenue shall calculate the total amount of tax credits claimed from the applications filed pursuant to G.S. 105-163.011(c). If the total amount of tax credits claimed for investments made in a calendar year exceeds ~~twelve million dollars (\$12,000,000)~~ six million dollars (\$6,000,000) the Secretary shall allow a portion of the credits claimed ~~on the following basis: by allocating a total of six million dollars (\$6,000,000) in tax credits in proportion to the size of the credit claimed by each taxpayer.~~

- ~~(1) A total of six million dollars (\$6,000,000) in tax credits for investments in North Carolina Enterprise Corporations shall be allocated among all taxpayers claiming the credits in proportion to the size of the credit claimed by each taxpayer.~~
- ~~(2) A total of six million dollars (\$6,000,000) in tax credits for investments in qualified business ventures and qualified grantee businesses shall be allocated among all taxpayers claiming the credits in proportion to the size of the credit claimed by each taxpayer.~~
- ~~(3) If the total amount of the credits claimed by taxpayers for the investments described in either subdivision (1) or (2) is less than six million dollars (\$6,000,000), the Secretary shall allow additional credits for the investments described in the other subdivision until the total amount of all tax credits allowed equals twelve million dollars (\$12,000,000)."~~

Sec. 7. Division V of Article 4 of Chapter 105 of the General Statutes, as amended by this act, reads as rewritten:

"DIVISION V. TAX CREDITS FOR QUALIFIED BUSINESS INVESTMENTS.

**"§ 105-163.010. (Repealed effective for investments made on or after January 1, 1999) Definitions.**

The following definitions apply in this Division:

- (1) Affiliate. – An individual or business that controls, is controlled by, or is under common control with another individual or business.

- (2) Business. – A corporation, partnership, association, or sole proprietorship operated for profit.
- (3) Control. – A person controls an entity if the person owns, directly or indirectly, more than ten percent (10%) of the voting securities of that entity. As used in this subdivision, the term 'voting security' means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote. A general partnership interest is a voting security.
- (4) Equity security. – Common stock, preferred stock, or an interest in a partnership, or subordinated debt that is convertible into, or entitles the holder to receive upon its exercise, common stock, preferred stock, or an interest in a partnership.
- (5) Financial institution. – A business that is (i) a bank holding company, as defined in the Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841 et seq., or its wholly-owned subsidiary, (ii) registered as a broker-dealer under the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a et seq., or its wholly-owned subsidiary, (iii) an investment company as defined in the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq., whether or not it is required to register under that act, (iv) a small business investment company as defined in the Small Business Investment Act of 1958, 15 U.S.C. §§ 661 et seq., (v) a pension or profit-sharing fund or trust, or (vi) a bank, savings institution, trust company, financial services company, or insurance company; provided, however, that a business, other than a small business investment company, is not a financial institution if its net worth, when added to the net worth of all of its affiliates, is less than ten million dollars (\$10,000,000); provided further, however, that a business is not a financial institution if it does not generally market its services to the public and it is controlled by a business that is not a financial institution.
- (6) Repealed by Session Laws 1991, c. 637.
- (6a) North Carolina Enterprise Corporation. – A corporation established in accordance with Article 3 of Chapter 53A of the General Statutes or a limited partnership in which a North Carolina Enterprise Corporation is the only general partner.
- (6b) Pass-through entity. – An entity or business, including a limited partnership, a general partnership, a joint venture, a Subchapter S Corporation, or a limited liability company, all of which is treated as owned by individuals or other entities under the federal tax laws, in which the owners report their share of the income, losses, and credits from the entity or business on their income tax returns filed with this State. For the purpose of this Division, an owner of a pass-through

entity is an individual or entity who is treated as an owner under the federal tax laws.

- (7) Qualified business venture. – A ~~North Carolina~~ business that (i) engages primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry, and (ii) is registered with the Secretary of State under G.S. 105-163.013.
- (8) Qualified grantee business. – A ~~North Carolina~~ business that (i) has received during the preceding three years a grant or other funding from the North Carolina Technological Development Authority, the North Carolina Technological Development Authority, Inc., North Carolina First Flight, Inc., the North Carolina Biotechnology Center, the Microelectronics Center of North Carolina, the Kenan Institute for Engineering, Technology and Science, or the Federal Small Business Innovation Research Program, and (ii) is registered with the Secretary of State under G.S. 105-163.013.
- (9) Repealed by Session Laws 1993, c. 443, s. 1.
- (9a) Real estate-related business. – A business that is involved in or related to the brokerage, selling, purchasing, leasing, operating, or managing of hotels, motels, nursing homes or other lodging facilities, golf courses, sports or social clubs, restaurants, storage facilities, or commercial or residential lots or buildings is a real estate-related business, except that a real estate-related business does not include (i) a business that purchases or leases real estate from others for the purpose of providing itself with facilities from which to conduct a business that is not itself a real estate-related business or (ii) a business that is not otherwise a real estate-related business but that leases, subleases, or otherwise provides to one or more other persons a number of square feet of space which in the aggregate does not exceed fifty percent (50%) of the number of square feet of space occupied by the business for its other activities.
- (9b) Selling or leasing at retail. – A business is selling or leasing at retail if the business either (i) sells or leases any product or service of any nature from a store or other location open to the public generally or (ii) sells or leases products or services of any nature by means other than to or through one or more other businesses.
- (9c) Service-related industry. – A business is engaged in a service-related industry, whether or not it also sells a product, if it provides services to customers or clients and does not as a substantial part of its business engage in a business described in G.S. 105-163.013(b)(4). A business is engaged as a substantial part of its business in an activity described in G.S. 105-163.013(b)(4) if (i) its gross revenues derived from all activities described in that subdivision exceed twenty-five percent (25%) of its gross revenues in any fiscal year or (ii) it is established as

one of its primary purposes to engage in any activities described in that subdivision, whether or not its purposes were stated in its articles of incorporation or similar organization documents.

- (10) Security. – A security as defined in Section 2(1) of the Securities Act of 1933, 15 U.S.C. § 77b(1).
- (11) Subordinated debt. – Indebtedness that (i) by its terms matures five or more years after its issuance, (ii) is not secured, and (iii) is subordinated to all other indebtedness of the issuer issued or to be issued to a financial institution other than a financial institution described in subdivisions (5)(ii) through (5)(v) of this section. Any portion of indebtedness that matures earlier than five years after its issuance is not subordinated debt.

**"§ 105-163.011. (Repealed effective for investments made on or after January 1, 1999) Tax credits allowed.**

(a) No Credit for Brokered Investments. – No credit is allowed under this section for a purchase of equity securities or subordinated debt if a broker's fee or commission or other similar remuneration is paid or given directly or indirectly for soliciting the purchase.

~~Corporations.~~— Subject to the limitations contained in G.S. 105-163.012, a corporation that purchases the equity securities of a North Carolina Enterprise Corporation directly from the Enterprise Corporation is allowed as a credit for the taxable year an amount equal to twenty five percent (25%) of the amount invested. The aggregate amount of credit allowed a corporation for one or more investments in a single taxable year under this Division, whether directly or indirectly as owner of a pass-through entity, may not exceed seven hundred fifty thousand dollars (\$750,000). The credit is allowed against one or more of the following taxes:

- ~~(1) The income tax imposed by Division I of this Article.~~
- ~~(2) The franchise tax imposed by G.S. 105-116, 105-120.2, and 105-122.~~
- ~~(3) The gross premiums tax imposed by G.S. 105-228.5 and G.S. 105-228.8.~~

~~The credit may not be taken for the year in which the investment is made but shall be taken for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (c) of this section. This subsection does not apply to a corporation that is also a pass-through entity.~~

(b) Individuals. – Subject to the limitations contained in G.S. 105-163.012, an individual who purchases the equity securities or subordinated debt of ~~(i) a qualified business venture, (ii) a qualified grantee business, or (iii) a North Carolina Enterprise Corporation~~ a qualified business venture or a qualified grantee business directly from that ~~entity-business~~ is allowed as a credit against the tax imposed by Division II of this Article for the taxable year an amount equal to twenty-five percent (25%) of the amount invested. The aggregate amount of credit allowed an individual for one or more investments in a single taxable year under this Division, whether directly or indirectly as owner of a pass-through entity, may not exceed fifty thousand dollars (\$50,000). The credit may not be taken for the year in which the investment is made but shall be taken

for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (c) of this section.

(b1) Pass-Through Entities. – This subsection does not apply to a pass-through entity that has committed capital under management in excess of five million dollars (\$5,000,000) or to a pass-through entity that is a qualified grantee business, a qualified business venture, or a North Carolina Enterprise Corporation. Subject to the limitations provided in G.S. 105-163.012, a pass-through entity that purchases the equity securities or subordinated debt of a qualified grantee ~~business, business or a qualified business venture, or a North Carolina Enterprise Corporation~~ venture directly from the business or Corporation is eligible for a tax credit equal to twenty-five percent (25%) of the amount invested. The aggregate amount of credit allowed a pass-through entity for one or more investments in a single taxable year under this Division, whether directly or indirectly as owner of another pass-through entity, may not exceed seven hundred fifty thousand dollars (\$750,000). The pass-through entity is not eligible for the credit for the year in which the investment by the pass-through entity is made but shall be eligible for the credit for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (c) of this section.

Each individual who is an owner of a pass-through entity is allowed as a credit against the tax imposed by Division II of this Article for the taxable year an amount equal to the owner's allocated share of the credits for which the pass-through entity is eligible under this subsection. The aggregate amount of credit allowed an individual for one or more investments in a single taxable year under this Division, whether directly or indirectly as owner of a pass-through entity, may not exceed fifty thousand dollars (\$50,000).

~~Each corporation that is an owner of a pass-through entity is allowed as a credit for the taxable year an amount equal to the corporation's allocated share of the tax credits for which the pass-through entity is eligible under this subsection as a result of the pass-through entity's investment in equity securities of a North Carolina Enterprise Corporation. The credit is allowed against one or more of the following taxes:~~

- ~~(1) The income tax imposed by Division I of this Article.~~
- ~~(2) The franchise tax imposed by G.S. 105-116, 105-120.2, and 105-122.~~
- ~~(3) The gross premiums tax imposed by G.S. 105-228.5 and G.S. 105-228.8.~~

~~The aggregate amount of credit allowed a corporation for one or more investments in a single taxable year under this Division, whether directly or indirectly as owner of a pass-through entity, may not exceed seven hundred fifty thousand dollars (\$750,000).~~

If an owner's share of the pass-through entity's credit is limited due to the maximum allowable credit under this section for a taxable year ~~or if a corporate owner is not eligible for the credit because the investment was not made in a North Carolina Enterprise Corporation, year,~~ the pass-through entity and its owners may not reallocate the unused credit among the other owners.

(c) Application. – To be eligible for the tax credit provided in this section, the taxpayer must file an application for the credit with the Secretary on or before April 15 of the year following the calendar year in which the investment was made. The



Secretary may grant extensions of this deadline, as the Secretary finds appropriate, upon the request of the taxpayer, except that the application may not be filed after September 15 of the year following the calendar year in which the investment was made. An application is effective for the year in which it is timely filed. The application shall be on a form prescribed by the Secretary and shall include any supporting documentation that the Secretary may require. If an investment for which a credit is applied for was paid for other than in money, the taxpayer shall include with the application a certified appraisal of the value of the property used to pay for the investment. The application for a credit for an investment made by a pass-through entity must be filed by the pass-through entity.

(d) Penalties. – The penalties provided in G.S. 105-236 apply in this Division.

**"§ 105-163.012. (Repealed effective for investments made on or after January 1, 1999) Limit; carry-over; ceiling; reduction in basis.**

(a) The credit allowed a taxpayer under G.S. 105-163.011 may not exceed the amount of income tax imposed by Division I or II of this Article, ~~the amount of franchise tax imposed by Article 3 of this Chapter, or the amount of gross premiums tax imposed by Article 8B of this Chapter, as appropriate,~~ Article for the taxable year reduced by the sum of all other credits allowable except tax payments made by or on behalf of the taxpayer. The amount of unused credit allowed under G.S. 105-163.011 may be carried forward for the next five succeeding years. The fifty thousand dollar (\$50,000) ~~and seven hundred fifty thousand dollar (\$750,000) limitations~~ limitation on the amount of credit allowed a taxpayer under G.S. 105-163.011 ~~do~~ does not apply to unused amounts carried forward under this subsection.

(b) The total amount of all tax credits allowed to taxpayers under G.S. 105-163.011 for investments made in a calendar year may not exceed six million dollars (\$6,000,000). The Secretary of Revenue shall calculate the total amount of tax credits claimed from the applications filed pursuant to G.S. 105-163.011(c). If the total amount of tax credits claimed for investments made in a calendar year exceeds six million dollars (\$6,000,000), the Secretary shall allow a portion of the credits claimed by allocating a total of six million dollars (\$6,000,000) in tax credits in proportion to the size of the credit claimed by each taxpayer.

(c) If a credit claimed under G.S. 105-163.011 is reduced as provided in this section, the Secretary shall notify the taxpayer of the amount of the reduction of the credit on or before December 31 of the year following the calendar year in which the investment was made. The Secretary's allocations based on applications filed pursuant to G.S. 105-163.011(c) are final and shall not be adjusted to account for credits applied for but not claimed.

(d) ~~Unless the taxpayer is required to add the amount of allowable credit to federal taxable income under G.S. 105-130.5(a)(10), the~~ The taxpayer's basis in the equity securities or subordinated debt acquired as a result of an investment in a ~~North Carolina Enterprise Corporation, qualified business venture,~~ venture or qualified grantee business shall be reduced for the purposes of this Article by the amount of allowable credit. 'Allowable credit' means the amount of credit allowed under G.S. 105-163.011 reduced as provided in subsection (c) of this section.

**"§ 105-163.013. (Repealed effective for investments made on or after January 1, 1999) Registration.**

(a) Repealed by Session Laws 1993, c. 443, s. 4.

(b) Qualified Business Ventures. – In order to qualify as a qualified business venture under this Division, a business must be registered with the Securities Division of the Department of the Secretary of State. To register, the business must file with the Secretary of State an application and any supporting documents the Secretary of State may require from time to time to determine that the business meets the requirements for registration as a qualified business venture. A business meets the requirements for registration as a qualified business venture if all of the following are true as of the date the business files the required application:

- ~~(1) Its headquarters and principal business operations are in North Carolina or it has, as a condition to approval of the registration, agreed to establish its headquarters and principal business operations in North Carolina within three months after the date the first investment eligible for a credit under this Division is made.~~
- (1b) Either (i) it was organized after January 1 of the calendar year in which its application is filed or (ii) during its most recent fiscal year before filing the application, it had gross revenues, as determined in accordance with generally accepted accounting principles, of five million dollars (\$5,000,000) or less on a consolidated basis.
- ~~(2) It has, as a condition to approval of the registration, agreed to retain its headquarters and principal business operations in North Carolina for at least three years after the date the last investment eligible for credit under this Division is made.~~
- (3) It is organized to engage primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry.
- (4) It does not engage as a substantial part of its business in any of the following:
  - a. Providing a professional service as defined in Chapter 55B of the General Statutes.
  - b. Construction or contracting.
  - c. Selling or leasing at retail.
  - d. The purchase, sale, or development, or purchasing, selling, or holding for investment of commercial paper, notes, other indebtedness, financial instruments, securities, or real property, or otherwise make investments.
  - e. Providing personal grooming or cosmetics services.
  - f. Offering any form of entertainment, amusement, recreation, or athletic or fitness activity for which an admission or a membership is charged.
- (5) It was not formed for the primary purpose of acquiring all or part of the stock or assets of one or more existing businesses.

(6) It is not a real estate-related business.

The effective date of registration for a qualified business venture whose application is accepted for registration is the filing date of its application. No credit is allowed under this Division for an investment made before the effective date of the registration or after the registration is revoked.

To remain qualified as a qualified business venture, the business must renew its registration annually as prescribed by rule by filing a financial statement for the most recent fiscal year showing gross revenues, as determined in accordance with generally accepted accounting principles, of five million dollars (\$5,000,000) or less on a consolidated basis and an application for renewal in which the business certifies the facts required in the original application ~~and that it has not moved its headquarters or principal business operations out of North Carolina.~~ application.

Failure of a qualified business venture to renew its registration by the applicable deadline shall result in revocation of its registration effective as of the next day after the renewal deadline, but shall not result in forfeiture of tax credits previously allowed to taxpayers who invested in the business except as provided in G.S. 105-163.014. The Secretary of State shall send the qualified business venture notice of revocation within 60 days after the renewal deadline. A qualified business venture may apply to have its registration reinstated by the Secretary of State by filing an application for reinstatement, accompanied by the reinstatement application fee and a late filing penalty of one thousand dollars (\$1,000), within 30 days after receipt of the revocation notice from the Secretary of State. A business that seeks approval of a new application for registration after its registration has been revoked must also pay a penalty of one thousand dollars (\$1,000). A registration that has been reinstated is treated as if it had not been revoked.

If the gross revenues of a qualified business venture exceed five million dollars (\$5,000,000) in a fiscal year, the business must notify the Secretary of State in writing of this fact by filing a financial statement showing the revenues of the business for that year.

(c) Qualified Grantee Businesses. – In order to qualify as a qualified grantee business under this Division, a business must be registered with the Securities Division of the Department of the Secretary of State. To register, the business must file with the Secretary of State an application and any supporting documents the Secretary of State may require from time to time to determine that the business meets the requirements for registration as a qualified grantee business. A business meets the requirements for registration as a qualified grantee business if ~~all of the following are true as of the date the business files the required application:~~

- ~~(1) Its headquarters and principal business operations are in North Carolina or it has, as a condition to approval of the registration, agreed to establish its headquarters and principal business operations in North Carolina within three months after the date the first investment eligible for a credit under this Division is made.~~
- ~~(2) It has, as a condition to approval of the registration, agreed to retain its headquarters and principal business operations in North Carolina for at~~

~~least three years after the date the last investment eligible for a credit under this Division is made.~~

(3) It

it has received during the preceding three years a grant or other funding from the North Carolina Technological Development Authority, the North Carolina Technological Development Authority, Inc., North Carolina First Flight, Inc., the North Carolina Biotechnology Center, the Microelectronics Center of North Carolina, the Kenan Institute for Engineering, Technology and Science, or the Federal Small Business Innovation Research Program.

The effective date of registration for a qualified grantee business whose application is accepted for registration is the filing date of its application. No credit is allowed under this Division for an investment made before the effective date of the registration or after the registration is revoked.

To remain qualified as a qualified grantee business, the business must renew its registration annually as prescribed by rule by filing an application for renewal in which the business certifies the facts listed in this subsection.

(d) Application Forms; Rules; Fees. – Applications for registration, renewal of registration, and reinstatement of registration under this section shall be in the form required by the Secretary of State. The Secretary of State may, by rule, require applicants to furnish supporting information in addition to the information required by subsections (b) and (c) of this section. The Secretary of State may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary's responsibilities under this Division. The Secretary of State shall prepare blank forms for the applications and shall distribute them throughout the State and furnish them on request. Each application shall be signed by the owners of the business or, in the case of a corporation, by its president, vice-president, treasurer, or secretary. There shall be annexed to the application the affirmation of the person making the application in the following form: 'Under penalties prescribed by law, I certify and affirm that to the best of my knowledge and belief this application is true and complete.' A person who submits a false application is guilty of a Class 1 misdemeanor.

The fee for filing an application for registration under this section is one hundred dollars (\$100.00). The fee for filing an application for renewal of registration under this section is fifty dollars (\$50.00). The fee for filing an application for reinstatement of registration under this section is fifty dollars (\$50.00).

An application for renewal of registration under this section shall indicate whether the applicant is a minority business, as defined in G.S. 143-128, and shall include a report of the number of jobs the business created during the preceding year that are attributable to investments that qualify under this section for a tax credit and the average wages paid by each job. An application that does not contain this information is incomplete and the applicant's registration may not be renewed until the information is provided.

(e) Revocation of Registration. – If the Securities Division of the Department of the Secretary of State finds that any of the information contained in an application of a business registered under this section is false, it shall revoke the registration of the

business. The Secretary of State shall not revoke the registration of a business solely because it ceases business operations for an indefinite period of time, as long as the business renews its registration each year as required under G.S. 105-163.013.

(f) **Transfer of Registration.** – A registration as a qualified business venture or qualified grantee business may not be sold or otherwise transferred, except that if a qualified business venture or qualified grantee business enters into a merger, consolidation, or other similar transaction with another business and the surviving corporation would otherwise meet the criteria for being a qualified business venture or qualified grantee business, the surviving company retains the registration without further application to the Secretary of State. In such a case, the qualified business venture or qualified grantee business shall provide the Secretary of State with written notice of the merger, consolidation, or similar transaction and the name, address, and jurisdiction of incorporation of the surviving company.

(g) **Report by Secretary of State.** – The Secretary of State shall report to the Legislative Research Commission by October 1 of each ~~odd-numbered year and by February 1 of each even-numbered year~~ all of the businesses that have registered with the Secretary of State as qualified business ventures and qualified grantee businesses. The report shall include the name and address of each business, the location of its headquarters and principal place of business, a detailed description of the types of business in which it engages, whether the business is a minority business as defined in G.S. 143-128, the number of jobs created by the business during the period covered by the report, and the average wages paid by these jobs.

**"§ 105-163.014. (Repealed effective for investments made on or after January 1, 1999) Forfeiture of credit.**

(a) **Participation in Business.** – A taxpayer who has received a credit under this Division for an investment in a qualified business venture or qualified grantee business forfeits the credit if, within three years after the investment was made, the taxpayer participates in the operation of the qualified business venture or qualified grantee business. For the purpose of this section, a taxpayer participates in the operation of a qualified business venture or a qualified grantee business if the taxpayer, the taxpayer's spouse, parent, sibling, or child, or an employee of any of these individuals or of a business controlled by any of these individuals, provides services of any nature to the qualified business venture or qualified grantee business for compensation, whether as an employee, a contractor, or otherwise. However, a person who provides services to a qualified business venture or a qualified grantee business, whether as an officer, a member of the board of directors, or otherwise does not participate in its operation if the person receives as compensation only reasonable reimbursement of expenses incurred in providing the services, participation in a stock option or stock bonus plan, or both.

(b) **False Application.** – A taxpayer who has received a credit under this Division for an investment in a qualified business venture or a qualified grantee business forfeits the credit if the registration of the qualified business venture or qualified grantee business is revoked because information in the registration application was false at the time the application was filed with the Secretary of State.

~~(e) Location Out of State.— A taxpayer who has received a credit under this Division for an investment in a qualified business venture or a qualified grantee business does not forfeit the credit if the business fails to renew its registration, except that a taxpayer forfeits the credit if the qualified business venture (i) moves its headquarters or its principal business operations outside this State within three years after the date of the taxpayer's investment or (ii) in the case of a business that promised to move its headquarters and principal business operations to this State as a condition to approval of its registration, fails to comply with this condition.~~

(d) Transfer or Redemption of Investment. – A taxpayer who has received a credit under this Division for an investment in a ~~North Carolina Enterprise Corporation,~~ a qualified business ~~venture,~~ venture or a qualified grantee business forfeits the credit in the following cases:

- (1) Within one year after the investment was made, the taxpayer transfers any of the securities received in the investment that qualified for the tax credit to another person or entity, other than in a transfer resulting from one of the following:
  - a. The death of the taxpayer.
  - b. A final distribution in liquidation to the owners of a taxpayer that is a corporation or other entity.
  - c. A merger, consolidation, or similar transaction requiring approval by the shareholders of the ~~North Carolina Enterprise Corporation,~~ qualified business ~~venture,~~ venture or qualified grantee business under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.
- (2) Within five years after the investment was made, the ~~North Carolina Enterprise Corporation,~~ qualified business ~~venture,~~ venture or qualified grantee business in which the investment was made makes a redemption with respect to the securities received in the investment.

In the event the taxpayer transfers fewer than all the securities in a manner that would result in a forfeiture, the amount of the credit that is forfeited is the product obtained by multiplying the aggregate credit attributable to the investment by a fraction whose numerator equals the number of securities transferred and whose denominator equals the number of securities received on account of the investment to which the credit was attributable. In addition, if the redemption amount is less than the amount invested by the taxpayer in the securities to which the redemption is attributable, the amount of the credit that is forfeited is further reduced by multiplying it by a fraction whose numerator equals the redemption amount and whose denominator equals the aggregate amount invested by the taxpayer in the securities involved in the redemption. The term 'redemption amount' means all amounts paid that are treated as a distribution in part or full payment in exchange for securities under section 302(a) of the Code.

(e) Effect of Forfeiture. – A taxpayer who forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been

due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer who fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236."

Sec. 8. G.S. 53A-46 is repealed.

Sec. 9. G.S. 105-134.6(d) is amended by adding a new subdivision to read:

"(3) The taxpayer shall add to taxable income the amount of any recovery during the taxable year not included in taxable income, to the extent the taxpayer's deduction of the recovered amount in a prior taxable year reduced the taxpayer's tax imposed by this Division but, due to differences between the Code and this Division, did not reduce the amount of the taxpayer's tax imposed by the Code. The taxpayer may deduct from taxable income the amount of any recovery during the taxable year included in taxable income under section 111 of the Code, to the extent the taxpayer's deduction of the recovered amount in a prior taxable year reduced the taxpayer's tax imposed by the Code but, due to differences between the Code and this Division, did not reduce the amount of the taxpayer's tax imposed by this Division."

Sec. 10. G.S. 105-130.5(c) is amended by adding a new subdivision to read:

"(4) The taxpayer shall add to federal taxable income the amount of any recovery during the taxable year not included in federal taxable income, to the extent the taxpayer's deduction of the recovered amount in a prior taxable year reduced the taxpayer's tax imposed by this Division but, due to differences between the Code and this Division, did not reduce the amount of the taxpayer's tax imposed by the Code. The taxpayer may deduct from federal taxable income the amount of any recovery during the taxable year included in federal taxable income under section 111 of the Code, to the extent the taxpayer's deduction of the recovered amount in a prior taxable year reduced the taxpayer's tax imposed by the Code but, due to differences between the Code and this Division, did not reduce the amount of the taxpayer's tax imposed by this Division."

Sec. 10.1. G.S. 105-267 reads as rewritten:

**"§ 105-267. Taxes to be paid; suits for recovery of taxes.**

No court of this State shall entertain a suit of any kind brought for the purpose of preventing the collection of any tax imposed in this subchapter. Whenever a person ~~shall have~~ has a valid defense to the enforcement of the collection of a ~~tax assessed or charged against him or his property, such tax,~~ the person shall pay ~~such the~~ tax to the proper officer, and ~~such that~~ payment shall be without prejudice to any defense of rights ~~he the person may have in the premises regarding the tax.~~ At any time within ~~30 days after payment,~~ the applicable protest period, the taxpayer may demand a refund of the tax paid in writing from the Secretary of Revenue and if the ~~same shall not be~~ tax is not refunded within 90 days thereafter, may sue the Secretary of Revenue in the courts of the State for the amount ~~so~~ demanded. The protest period for a tax levied in Article 2A,

2B, 2C, or 2D of this Chapter is 30 days after payment. The protest period for all other taxes is one year after payment.

~~Such~~The suit may be brought in the Superior Court of Wake County, or in the county in which the taxpayer resides at any time within three years after the expiration of the 90-day period allowed for making the refund. If upon the trial it ~~shall be determined that such a tax or any part thereof is determined~~ that all or part of the tax was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and ~~the same the judgment~~ shall be collected as in other cases. The amount of taxes for which judgment ~~shall be is~~ rendered in such an action shall be refunded by the State; ~~provided, nothing in this section shall be construed to conflict with or supersede the provisions of G.S. 105-241.2.~~ State. G.S. 105-241.2 provides an alternate procedure for a taxpayer to contest a tax and is not in conflict with or superseded by this section."

## PART II. SALES AND USE TAX COLLECTION

Sec. 11. Article V of Chapter 105 of the General Statutes is amended by adding a new section to read:

### **"§ 105-164.6A. Voluntary collection of use tax by sellers.**

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

(b) Mandatory Provisions. – The agreements must contain the following provisions:

- (1) The customer may elect to pay the use tax directly to the Secretary in accordance with law rather than to the seller.
- (2) A customer's payment of a use tax to the seller relieves the customer of liability for the use tax.
- (3) The seller must remit all use taxes it collects from customers on or before the due date specified in the agreement, which may not be later than 31 days after the end of a quarter or other collection period.
- (4) A seller who fails to remit use taxes collected on behalf of its customers by the due date specified in the agreement is subject to the interest and penalties provided in Article 9 of this Chapter with respect to the taxes to the same extent as if the seller were a retailer and were required to collect use taxes under this Article.

(c) Optional Provisions. – The agreements may contain the following provisions:

- (1) The seller will collect the use tax only on items that are subject to the general rate of tax.
- (2) The seller will collect local use taxes only to the extent they are at the same rate in every unit of local government in the State.



- (3) The seller will remit the tax and file reports in the form prescribed by the Secretary.
- (4) Other provisions establishing the types of transactions on which the seller will collect tax and prescribing administrative procedures and requirements."

Sec. 12. G.S. 105-469 reads as rewritten:

**"§ 105-469. Secretary to collect and administer local sales and use tax.**

(a) The Secretary shall collect and administer a tax levied by a county pursuant to this Article.

(b) The Secretary shall require retailers who collect use tax on sales to North Carolina residents to ascertain the county of residence of each buyer and provide that information to the Secretary along with any other information necessary for the Secretary to allocate the use tax proceeds to the correct taxing county."

Sec. 13. G.S. 105-164.3(15) reads as rewritten:

"(15) 'Sale' or "selling" ~~shall mean any selling. – The transfer of title or possession, or both, exchange, barter, lease, license to use or consume, or rental possession of tangible personal property, conditional or otherwise, in any manner or by any means whatsoever, however effected and by whatever name called, for a consideration paid or to be paid, and paid.~~

The term includes the fabrication of tangible personal property for consumers by persons engaged in business who furnish either directly or indirectly the materials used in the fabrication work, and work. The term also includes the furnishing, preparing, or serving furnishing or preparing for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal furnishing or preparing the property or consumed at the place at which such the property is prepared, served or sold. furnished or prepared. A transaction whereby The term also includes a transaction in which the possession of the property is transferred but the seller retains title or security for the payment of the price shall be deemed a sale. consideration.

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

Sec. 14. G.S. 105-164.3 is amended by adding a new subdivision to read:

"(11a) Prepared food and drink. – Meals, food, and beverages to which a retailer has added value or whose state the retailer has altered (other than solely by cooling) by preparing, combining, dividing, heating, or serving, in order to make them available for immediate human consumption."

Sec. 15. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(42) Tangible personal property that is purchased by a retailer for resale or is manufactured or purchased by a wholesale merchant for resale and then withdrawn from inventory and donated by the retailer or wholesale merchant to a nonprofit organization, contributions to which are deductible as charitable contributions for federal income tax purposes."

Sec. 16. G.S. 105-164.13(13a) and (31b) are repealed.

### PART III. REPEAL STATE PRIVILEGE LICENSE TAXES

Sec. 17. The following sections of Article 2 of Chapter 105 of the General Statutes are repealed:

G.S. 105-36	Amusements – Manufacturing, selling, leasing, or distributing moving picture films.
G.S. 105-36.1	Amusements – Outdoor theatres.
G.S. 105-37	Amusements – Moving pictures – Admission.
G.S. 105-42	Private detectives and investigators.
G.S. 105-45	Collecting agencies.
G.S. 105-46	Undertakers and retail dealers in coffins.
G.S. 105-50	Pawnbrokers.
G.S. 105-51.1	Alarm systems.
G.S. 105-53	Peddlers, itinerant merchants, and specialty market operators.
G.S. 105-54	Contractors and construction companies.
G.S. 105-55	Installing elevators and automatic sprinkler systems.
G.S. 105-58	Fortune tellers, palmists, etc.
G.S. 105-60	Day-care facilities.
G.S. 105-61	Hotels, motels, tourist courts and tourist homes.
G.S. 105-62	Restaurants.
G.S. 105-65	Music machines.
G.S. 105-65.1	Merchandising dispensers and weighing machines.
G.S. 105-66.1	Electronic video games.
G.S. 105-70	Packinghouses.
G.S. 105-72	Persons, firms, or corporations selling certain oils.
G.S. 105-74	Pressing clubs, dry cleaning plants, and hat blockers.
G.S. 105-75.1	Municipal license tax on barbershops and beauty salons.
G.S. 105-77	Tobacco warehouses.
G.S. 105-80	Firearms dealers and dealers in other weapons.
G.S. 105-85	Laundries.
G.S. 105-86	Outdoor advertising.

G.S. 105-89	Automobiles, wholesale supply dealers and service stations.
G.S. 105-89.1	Motorcycle dealers.
G.S. 105-90	Emigrant and employment agents.
G.S. 105-91	Plumbers, heating contractors, and electricians.
G.S. 105-97	Manufacturers of ice cream.
G.S. 105-98	Branch or chain stores.
G.S. 105-99	Wholesale distributors of motor fuels.
G.S. 105-102.1	Certain cooperative associations.
G.S. 105-102.5	General business license.

Sec. 18. G.S. 105-33(b) reads as rewritten:

"(b) If the business made taxable or the privilege to be exercised under this Article is carried on at two or more separate places, a separate State license for each place is required. ~~For the purpose of this Article, a specialty market is not considered a specialty market vendor's place of business."~~

Sec. 19. G.S. 105-33(d) reads as rewritten:

"(d) The State license issued under G.S. ~~105-41, 105-42, 105-45, 105-53, 105-54, 105-55, 105-58, and 105-91 shall be and constitute~~ 105-41 is a personal privilege to conduct the profession or business named in the State license, shall not be is not transferable to any other person, firm or corporation and shall be construed to limit the person, firm or corporation person, and does not limit the person named in the license to conducting the profession or business and exercising the privilege named in the State license to the county and/or city and location specified in the State license, unless otherwise provided in this ~~Article or schedule. Other license Article. Other licenses~~ issued for a tax year for the conduct of a business at a specified location shall upon a sale or transfer of the business be deemed a sufficient license for the succeeding purchaser for the conduct of the business specified at ~~such that~~ that location for the balance of the tax year. ~~Provided, that if year. If the holder of a license under this schedule~~ Article moves the business for which a license tax has been paid to another location, a new license may be issued to the licensee at a new location for the balance of the license year, upon surrender of the original license for cancellation and the payment of a fee of five dollars (\$5.00) for each license certificate reissued."

Sec. 20. G.S. 105-38(g) is repealed.

Sec. 21. G.S. 105-109.1 reads as rewritten:

**"§ 105-109.1. Interest.**

The taxes on gross receipts levied in G.S. ~~105-37.1(a), 105-37.1(a) and G.S. 105-38(f), and 105-65.1(b)(2)~~, the tax on installment paper dealers levied in G.S. 105-83(b), and the tax on publishers of newsprint publications levied in G.S. 105-102.6, shall bear interest at the rate established under G.S. 105-241.1(i) from the time the taxes were due until the taxes are paid."

Sec. 22. G.S. 153A-152 reads as rewritten:

**"§ 153A-152. Privilege license taxes.**

A county may levy privilege license taxes on trades, occupations, professions, businesses, and franchises to the extent authorized by ~~Schedule B of the Revenue Act (Chapter 105, Subchapter I, Article 2)~~ Article 2 of Chapter 105 of the General Statutes

and any other acts of the General Assembly. A county may levy privilege license taxes to the extent formerly authorized by the following sections of Article 2 of Chapter 105 of the General Statutes before they were repealed:

<u>G.S. 105-50</u>	<u>Pawnbrokers.</u>
<u>G.S. 105-53</u>	<u>Peddlers, itinerant merchants, and specialty market operators.</u>
<u>G.S. 105-55</u>	<u>Installing elevators and automatic sprinkler systems.</u>
<u>G.S. 105-58</u>	<u>Fortune tellers, palmists, etc.</u>
<u>G.S. 105-65</u>	<u>Music machines.</u>
<u>G.S. 105-66.1</u>	<u>Electronic video games.</u>
<u>G.S. 105-80</u>	<u>Firearms dealers and dealers in other weapons.</u>
<u>G.S. 105-89</u>	<u>Automobiles, wholesale supply dealers and service stations.</u>
<u>G.S. 105-89.1</u>	<u>Motorcycle dealers.</u>
<u>G.S. 105-90</u>	<u>Emigrant and employment agents.</u>
<u>G.S. 105-102.5</u>	<u>General business license."</u>

Sec. 23. G.S. 160A-211 reads as rewritten:

**"§ 160A-211. Privilege license taxes.**

(a) Authority. – Except as otherwise provided by law, a city shall have power to levy privilege license taxes on all trades, occupations, professions, businesses, and franchises carried on within the city. A city may levy privilege license taxes on the businesses that were formerly taxed by the State under the following sections of Article 2 of Chapter 105 of the General Statutes only to the extent the sections authorized cities to tax the businesses before the sections were repealed:

<u>G.S. 105-36</u>	<u>Amusements – Manufacturing, selling, leasing, or distributing moving picture films.</u>
<u>G.S. 105-36.1</u>	<u>Amusements – Outdoor theatres.</u>
<u>G.S. 105-37</u>	<u>Amusements – Moving pictures – Admission.</u>
<u>G.S. 105-42</u>	<u>Private detectives and investigators.</u>
<u>G.S. 105-45</u>	<u>Collecting agencies.</u>
<u>G.S. 105-46</u>	<u>Undertakers and retail dealers in coffins.</u>
<u>G.S. 105-50</u>	<u>Pawnbrokers.</u>
<u>G.S. 105-51.1</u>	<u>Alarm systems.</u>
<u>G.S. 105-53</u>	<u>Peddlers, itinerant merchants, and specialty market operators.</u>
<u>G.S. 105-54</u>	<u>Contractors and construction companies.</u>
<u>G.S. 105-55</u>	<u>Installing elevators and automatic sprinkler systems.</u>
<u>G.S. 105-61</u>	<u>Hotels, motels, tourist courts and tourist homes.</u>
<u>G.S. 105-62</u>	<u>Restaurants.</u>
<u>G.S. 105-65</u>	<u>Music machines.</u>
<u>G.S. 105-65.1</u>	<u>Merchandising dispensers and weighing machines.</u>
<u>G.S. 105-66.1</u>	<u>Electronic video games.</u>
<u>G.S. 105-74</u>	<u>Pressing clubs, dry cleaning plants, and hat blockers.</u>
<u>G.S. 105-77</u>	<u>Tobacco warehouses.</u>
<u>G.S. 105-80</u>	<u>Firearms dealers and dealers in other weapons.</u>
<u>G.S. 105-85</u>	<u>Laundries.</u>
<u>G.S. 105-86</u>	<u>Outdoor advertising.</u>

<u>G.S. 105-89</u>	<u>Automobiles, wholesale supply dealers, and service stations.</u>
<u>G.S. 105-89.1</u>	<u>Motorcycle dealers.</u>
<u>G.S. 105-90</u>	<u>Emigrant and employment agents.</u>
<u>G.S. 105-91</u>	<u>Plumbers, heating contractors, and electricians.</u>
<u>G.S. 105-97</u>	<u>Manufacturers of ice cream.</u>
<u>G.S. 105-98</u>	<u>Branch or chain stores.</u>
<u>G.S. 105-99</u>	<u>Wholesale distributors of motor fuels.</u>
<u>G.S. 105-102.1</u>	<u>Certain cooperative associations.</u>
<u>G.S. 105-102.5</u>	<u>General business license.</u>

(b) Barbershop and Salon Restriction. – A privilege license tax levied by a city on a barbershop or a beauty salon may not exceed two dollars and fifty cents (\$2.50) for each barber, manicurist, cosmetologist, beautician, or other operator employed in the barbershop or beauty salon."

Sec. 24. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 32.

"Peddlers, Itinerant Merchants, and Specialty Markets.

**"§ 66-250. Definitions.**

The following definitions apply in this Article:

- (1) Itinerant merchant. – A person, other than a merchant with an established retail store in the county, who transports an inventory of goods to a building, vacant lot, or other location in a county and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail.
- (2) Peddler. – A person who travels from place to place with an inventory of goods, who sells the goods at retail or offers the goods for sale at retail, and who delivers the identical goods.
- (3) Person. – An individual, a firm, an association, a partnership, a limited liability company, a corporation, a unit of government, or another group acting as a unit.
- (4) Specialty market. – A location, other than a permanent retail store, where space is rented to others for the purpose of selling goods at retail or offering goods for sale at retail.
- (5) Specialty market operator. – A person, other than the State or a unit of local government, who rents space, at a location other than a permanent retail store, to others for the purpose of selling goods at retail or offering goods for sale at retail.
- (6) Specialty market vendor. – A person, other than a merchant with an established retail store in the county, who transports an inventory of goods to a specialty market and, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail.

**"§ 66-251. Itinerant merchant and peddler must have permission of property owner.**

An itinerant merchant or a peddler who travels from place to place by vehicle must obtain a written statement signed by the owner or lessee of any property upon which the itinerant merchant or peddler offers goods for sale giving the owner's or lessee's permission to offer goods for sale upon the property of the owner or lessee. This statement must clearly state the name of the owner or lessee, the location of the premises for which the permission is granted, and the dates during which the permission is valid. The statement must be conspicuously and prominently displayed, so as to be visible for inspection by patrons of the itinerant merchant or peddler, at the places or locations at which the goods are to be sold or offered for sale.

**"§ 66-252. Display and possession of retail sales tax license.**

(a) When Required. – An itinerant merchant must keep the merchant's retail sales tax license conspicuously and prominently displayed, so as to be visible for inspection by patrons of the itinerant merchant at the places or locations at which the goods are to be sold or offered for sale. A peddler must carry the peddler's retail sales tax license when the peddler offers goods for sale and must produce the license upon the request of any customer, State or local revenue agent, or law enforcement agent. A specialty market vendor must keep the retail sales tax license conspicuously and prominently displayed, so as to be visible for inspection by patrons of the specialty market vendor at the places or locations at which the goods are to be sold or offered for sale. A specialty market operator must have its retail sales tax license, if any, available for inspection during all times that the specialty market is open and must produce it upon the request of any customer, State or local revenue agent, or law enforcement agent.

(b) Compliance. – The requirement that a retail sales tax license be displayed is satisfied if the vendor displays either of the following:

- (1) A copy of the license.
- (2) Evidence that the license has been applied for and the applicable license fee has been paid within 30 days before the date the license was required to be displayed.

**"§ 66-253. Display of identification upon request.**

Upon the request of any customer, State or local revenue agent, or law enforcement agent, a peddler, an itinerant merchant, a specialty market operator, or a specialty market vendor must provide its name and permanent address. A peddler, itinerant merchant, specialty market operator, or specialty market vendor who is an individual must, upon the request of any customer, State or local revenue agent, or law enforcement agent, provide a valid drivers license, a special identification card issued under G.S. 20-37.7, a military identification, or a passport bearing a physical description of the person named reasonably describing the peddler, itinerant merchant, specialty market operator, or specialty market vendor. A peddler, itinerant merchant, specialty market operator, or specialty market vendor that is a corporation must, upon the request of any customer, State or local revenue agent, or law enforcement agent, give the name and registered agent of the corporation and the address of the registered office of the corporation, as filed with the Secretary of State.

**"§ 66-254. Records of source of new merchandise.**

(a) Record Required. – Each peddler, itinerant merchant, and specialty market vendor must keep a written record of the source of new merchandise the merchant offers for sale. The record must be a receipt or an invoice from the person who sold the merchandise to the merchant. The receipt or invoice must specifically identify the product being sold by product name and quantity purchased and must contain the complete business name of the seller and a description of the type of business. If the seller was an individual, the receipt or invoice must contain the seller's drivers license number, its state of issuance and expiration date, and the seller's date of birth. The merchant must verify this information by comparing the seller's drivers license to the receipt or invoice and signing the receipt or invoice. A special identification card issued by the Division of Motor Vehicles may be used in place of the seller's drivers license for the purposes of providing and verifying information required under this section. If the seller was a corporation, the receipt or invoice must contain the corporation's federal tax identification number, the state of incorporation, the name and address of the corporation's registered agent in this State, if any, and the corporation's principal office address.

(b) Keeping the Record. – Each peddler, itinerant merchant, and specialty market vendor must keep the record required by subsection (a) of this section with the new merchandise being offered for sale. Once the new merchandise is sold, the merchant must keep the record for a period of three years after the date of the sale.

(c) Displaying Record or Affidavit. – A peddler, an itinerant merchant, or a specialty market vendor must produce either of the following upon the request of a law enforcement agent:

- (1) The record required by subsection (a) of this section of the source of new merchandise the merchant offers for sale.
- (2) An affidavit under oath or affirmation identifying the source of new merchandise the merchant offers for sale, including the name and address of the seller, the license number of any auctioneer seller, and the date and place of purchase of the merchandise.

A merchant's failure to produce the requested record or an affidavit within a reasonable time of request by a law enforcement agent is prima facie evidence of possession of stolen property. Pending the production of the requested record or affidavit, the agent may take the merchandise into custody as evidence at the time the request is made. Merchandise impounded under this subsection must be disposed of in accordance with G.S. 15-11.1.

(d) Posted Notice. – A specialty market operator must conspicuously post in plain view of all specialty market vendors a sign informing all vendors that failure to produce, upon the request of a law enforcement agent, either the records or affidavit required under this section is prima facie evidence of possession of stolen property.

**"§ 66-255. Specialty market registration list.**

A specialty market operator must maintain a daily registration list of all specialty market vendors selling or offering goods for sale at the specialty market. The registration list must clearly and legibly show each specialty market vendor's name, permanent address, and retail sales and use tax registration number. The specialty

market operator must require each specialty market vendor to exhibit a valid retail sales tax license for visual inspection by the specialty market operator at the time of registration, and must require each specialty market vendor to keep the retail sales tax license conspicuously and prominently displayed, so as to be visible for inspection by patrons of the specialty market vendor at the places or locations at which the goods are offered for sale. Each daily registration list maintained pursuant to this section must be retained by the specialty market operator for no less than two years and must at any time be made available upon request to any law enforcement officer.

**"§ 66-256. Exemptions from Article.**

This Article does not apply to the following:

- (1) A peddler or an itinerant merchant who sells only one or more of the following types of merchandise:
  - a. Farm or nursery products produced by the merchant.
  - b. Crafts or goods made by the merchant.
  - c. The merchant's own household personal property.
  - d. Printed material.
  - e. Wood for fuel.
  - f. Ice, seafood, meat, poultry, livestock, eggs, dairy products, bread, cakes, or pies.
- (2) A peddler or an itinerant merchant who is an authorized automobile dealer licensed pursuant to Chapter 20 of the General Statutes.
- (3) A peddler or an itinerant merchant who is a nonprofit charitable, educational, religious, scientific, or civic organization.
- (4) A peddler who maintains a fixed permanent location from which at least ninety percent (90%) of the peddler's sales are made but who sells some goods in the county of the fixed location by peddling.
- (5) An itinerant merchant who meets any of the following descriptions:
  - a. Locates at a farmer's market.
  - b. Is part of the State Fair or an agriculture fair that is licensed by the Commissioner of Agriculture pursuant to G.S. 106-520.3.
  - c. Sells goods at an auction conducted by an auctioneer licensed pursuant to Chapter 85B of the General Statutes.
- (6) A peddler who complies with the requirements of G.S. 25A-38 through G.S. 25A-42, or who complies with the requirements of G.S. 14-401.13.

**"§ 66-257. Misdemeanor violations.**

(a) Class 1 Misdemeanors. – A person who does any of the following commits a Class 1 misdemeanor:

- (1) Fails to keep a record of new merchandise and fails to produce a record or an affidavit pursuant to G.S. 66-254.
- (2) Falsifies a record of new merchandise required by G.S. 66-254.

(b) Class 2 Misdemeanors. – A person who does any of the following commits a Class 2 misdemeanor:



- (1) If the person is an itinerant merchant or a specialty market vendor, fails to display the retail sales tax license as required by G.S. 66-252.
- (2) If the person is a specialty market operator, fails to maintain the daily registration list as required by G.S. 66-255.

(c) Class 3 Misdemeanors. – A person who does any of the following commits a Class 3 misdemeanor:

- (1) If the person is a peddler or an itinerant merchant, fails to obtain the permission of the property owner as required by G.S. 66-251.
- (2) If the person is a peddler or a specialty market operator, fails to produce the retail sales tax license as required by G.S. 66-252.
- (3) Fails to provide name, address, or identification upon request as required by G.S. 66-253 or provides false information in response to the request.
- (4) Knowingly gives false information when registering pursuant to G.S. 66-255.

(d) Defense. – Whenever satisfactory evidence is presented in any court of the fact that permission to use property was not displayed as required by G.S. 66-251 or that a retail sales tax license was not displayed or produced as required by G.S. 66-252, the person charged may not be found guilty of that violation if the person produces in court a valid permission or a valid retail sales tax license, respectively, that had been issued prior to the time the person was charged.

**"§ 66-258. Local regulation not affected.**

This Article does not affect the authority of a county or city to impose additional requirements on peddlers, itinerant merchants, specialty market vendors, or specialty market operators by an ordinance adopted under G.S. 153A-125 or G.S. 160A-178."

#### PART IV. EFFECTIVE DATES

Sec. 25. Notwithstanding G.S. 105-163.15 and G.S. 105-163.41, no addition to tax may be made under either of those statutes for a taxable year beginning on or after January 1, 1996, and before January 1, 1997, with respect to an underpayment of individual or corporation income tax to the extent the underpayment was created or increased by this act.

Sec. 26. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Sec. 27. This act becomes effective as follows:

- (1) Unconstitutional Tax Preferences. – Sections 1 through 5 and 9 and 10 of Part I of this act are effective for taxable years beginning on or after

January 1, 1996. Section 10.1 of Part I of this act becomes effective November 1, 1996, and applies to taxes paid on or after that date.

- (2) Cap on Qualified Investments. – Section 6 of Part I of this act is effective for investments made on or after January 1, 1996.
- (3) Modify Qualified Business Investment Credits. – Sections 7 and 8 of Part I of this act become effective for investments made on or after January 1, 1997.
- (4) Sales and Use Tax Collection. – Part II of this act becomes effective August 1, 1996.
- (5) Repeal State Privilege License Taxes. – Part III of this act becomes effective July 1, 1997.
- (6) Remainder. – The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of August, 1996.

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Dennis A. Wicker  
President of the Senate

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Harold J. Brubaker  
Speaker of the House of Representatives