

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**SESSION LAW 2004-170
SENATE BILL 1145**

AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE REVENUE LAWS AND RELATED STATUTES, TO CLARIFY THAT THE CREDIT FOR CREATING JOBS IS ALLOWED ONLY FOR NEW JOBS CREATED IN THIS STATE, AND TO PROHIBIT THE USE OF FUTURE ROOM TAX COLLECTIONS IN CERTAIN COUNTIES AND CITIES TO DEVELOP OR CONSTRUCT A HOTEL OR SIMILAR LODGING FACILITY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 30C.3(b) of S.L. 2002-126, as amended by Section 37A.4 of S.L. 2003-284, reads as rewritten:

"**SECTION 30C.3.(b)** This section is effective on and after January 1, 2002, and applies to the estates of decedents dying on or after that date. This section ~~is and~~ Section 37A.5 of S.L. 2003-284 are repealed effective for the estates of decedents dying on or after July 1, 2005."

SECTION 2. The lead-in language of Section 2 of S.L. 2003-360 reads as rewritten:

"**SECTION 2.** The capital improvements projects, and their respective costs, authorized by this act to be constructed and financed as provided in Sections 4-1, 5, and 6 of this act are as follows:"

SECTION 3.(a) S.L. 2003-405 is reenacted.

SECTION 3.(b) This section is effective on and after August 12, 2003, and is repealed effective on the date that S.L. 2003-405 is repealed.

SECTION 4.(a) G.S. 105-32.2(b) reads as rewritten:

"(b) Amount. – The amount of the estate tax imposed by this section for estates of decedents dying on or after January 1, 2002, is the maximum credit for state death taxes allowed under section 2011 of the Code without regard to the phase-out and termination of that credit under subdivision (b)(2) and subsection (f) of that ~~section~~ section and without regard to the deduction for state death taxes allowed under section 2058 of the Code. If any property in the estate is located in a state other than North Carolina, the amount of tax payable depends on whether the decedent was a resident of this State at death. If the decedent was a resident of this State at death, the amount of tax due under this section is reduced by the lesser of the amount of the death tax paid the other state or an amount computed by multiplying the credit by a fraction, the numerator of which is the gross value of the estate that has a tax situs in another state and the denominator of which is the value of the decedent's gross estate. If the decedent was not a resident of this State at death, the amount of tax due under this section is an amount computed by multiplying the credit by a fraction, the numerator of which is the gross value of real property that is located in North Carolina plus the gross value of any personal property that has a tax situs in North Carolina and the denominator of which is the value of the decedent's gross estate. For purposes of this section, the gross value of property is its gross value as finally determined in the federal estate tax proceedings."

SECTION 4.(b) This section is repealed effective for the estates of decedents dying on or after July 1, 2005.

SECTION 5. G.S. 105-113.5 reads as rewritten:

"§ 105-113.5. Tax on cigarettes.

A tax is levied on the sale or possession for sale in this State, by a distributor, of all cigarettes at the rate of two and one-half mills per individual cigarette.

~~This tax does not apply to any of the following:~~

- ~~(1) Sample cigarettes distributed without charge in packages containing five or fewer cigarettes.~~
- ~~(2) Cigarettes in a package of cigarettes given without charge by the manufacturer of the cigarettes to an employee of the manufacturer who works in a factory where cigarettes are made, if the cigarettes are not taxed by the federal government."~~

SECTION 6. G.S. 105-113.68(a)(2) is repealed.

SECTION 7. G.S. 105-113.83(b) reads as rewritten:

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

SECTION 8. G.S. 105-113.108(a) reads as rewritten:

"(a) Revenue Stamps. – The Secretary shall issue stamps to affix to unauthorized substances to indicate payment of the tax required by this Article. Dealers shall report the taxes payable under this Article at the time and on the ~~form~~ return prescribed by the Secretary. ~~Dealers~~ Notwithstanding any other provision of law, dealers are not required to give their name, address, social security number, or other identifying information on the ~~form~~ return, and the return is not required to be verified by oath or affirmation. Upon payment of the tax, the Secretary shall issue stamps in an amount equal to the amount of the tax paid. Taxes may be paid and stamps may be issued either by mail or in person."

SECTION 8.1. G.S. 105-114.1(b), as amended by ratified Senate Bill 51, 2003 General Assembly, reads as rewritten:

"(b) Controlled Companies. – If a corporation or an affiliated group of corporations owns seventy percent (70%) or more of the capital interests in a limited liability company, the corporation or group of corporations must include in its three tax bases pursuant to G.S. 105-122 under this Article the same percentage of (i) the limited liability company's capital stock, surplus, and undivided profits; (ii) fifty-five percent (55%) of the limited liability company's appraised ad valorem tax value of property; and (iii) the limited liability company's actual investment in tangible property in this State, as appropriate, the limited liability company's net assets."

SECTION 9. G.S. 105-129.2 is amended by adding a new subdivision to read:

"§ 105-129.2. **Definitions.**

The following definitions apply in this Article:

(12a) Interstate air courier. – Defined in G.S. 105-164.3."

SECTION 10. 105-129.4(b2) reads as rewritten:

"(b2) Health Insurance. – A taxpayer is eligible for a credit for creating jobs or for worker training under this Article if the taxpayer provides health insurance for the positions for which the credit is claimed when the jobs are created and each year it

claims an installment or carryforward of the credit. A taxpayer is eligible for the other credits under this Article if the taxpayer provides health insurance for all of the full-time positions at the location with respect to which the credit is claimed when the taxpayer engages in the activity that qualifies for the credit and each year it claims an installment or carryforward of the credit. For the purposes of this subsection, a taxpayer provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

Each year that a taxpayer claims a credit or an installment or carryforward of a credit allowed under this Article, the taxpayer must provide with the tax return the taxpayer's certification that the taxpayer continues to provide health insurance for the jobs for which the credit was claimed or the full-time jobs at the location with respect to which the credit was claimed. If the taxpayer ceases to provide health insurance for the jobs during a taxable year, the credit expires and the taxpayer may not take any remaining installment or carryforward of the credit."

SECTION 11. G.S. 105-129.4(b6) reads as rewritten:

"(b6) Overdue Tax Debts. – A taxpayer is not eligible for a credit allowed under this Article if, at the time the taxpayer claims the credit or an installment or carryforward of the credit, the taxpayer has received a notice of an overdue tax debt and that overdue tax debt has not been satisfied or otherwise resolved."

SECTION 12. G.S. 105-129.6(b) reads as rewritten:

"(b) Reports. – The Department of Revenue shall publish by ~~March~~ April 1 of each year the following information itemized by credit and by taxpayer for the 12-month period ending the preceding December 31:

- (1) The number of claims for each credit allowed in this Article.
- (2) The number and enterprise tier area of new jobs with respect to which credits were generated and to which credits were claimed.
- (3) The cost and enterprise tier area of machinery and equipment with respect to which credits were generated and to which credits were claimed.
- (4) The number of new jobs created by businesses located in development zones, and the percentage of jobs at those locations that were filled by residents of the zones.
- (5) The amount and enterprise tier area of worker training expenditures with respect to which credits were generated and to which credits were claimed.
- (6) The amount and enterprise tier area of new research and development expenditures with respect to which credits were generated and to which credits were claimed.
- (7) The cost and enterprise tier area of real property investment with respect to which credits were generated and to which credits were claimed."

SECTION 13. G.S. 105-129.9(d) reads as rewritten:

"(d) Expiration. – As used in this subsection, the term 'disposed of' means disposed of, taken out of service, or moved out of State.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are disposed of, ~~taken out of service, or moved out of State~~, the credit expires and the taxpayer may not take any remaining installment of the credit for that machinery and equipment unless the cost of that machinery and equipment is offset in the same taxable year by the taxpayer's new investment in eligible machinery and equipment placed in service in the same enterprise tier, as provided in this subsection. If, during the taxable year the taxpayer disposed of the machinery and equipment for which installments remain, there has been a net reduction in the cost of all the taxpayer's eligible machinery and

equipment that are in service in the same enterprise tier as the machinery and equipment that were disposed of, and the amount of this reduction is greater than twenty percent (20%) of the cost of the machinery and equipment that were disposed of, then the taxpayer forfeits the remaining installments of the credit for the machinery and equipment that were disposed of. If the amount of the net reduction is equal to twenty percent (20%) or less of the cost of the machinery and equipment that were disposed of, or if there is no net reduction, then the taxpayer does not forfeit the remaining installments of the expired credit. In determining the amount of any net reduction during the taxable year, the cost of machinery and equipment the taxpayer placed in service during the taxable year and for which the taxpayer claims a credit under Article 3B of this Chapter may not be included in the cost of all the taxpayer's eligible machinery and equipment that are in service. If in a single taxable year machinery and equipment with respect to two or more credits in the same tier are disposed of, the net reduction in the cost of all the taxpayer's eligible machinery and equipment that are in service in the same tier is compared to the total cost of all the machinery and equipment for which credits expired in order to determine whether the remaining installments of the credits are forfeited.

The expiration of a credit does not prevent the taxpayer from taking the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, or are moved from a development zone to an area that is not a development zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved."

SECTION 14. G.S. 105-129.35(c)(4) reads as rewritten:

"(4) State Historic Preservation Officer. – Defined in G.S. ~~105-129.6~~.105-129.36."

SECTION 15. G.S. 105-130.4(a)(6) reads as rewritten:

"(a) As used in this section, unless the context otherwise requires:

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

SECTION 16.(a) G.S. 105-130.46 reads as rewritten:

§ 105-130.46. Credit for manufacturing cigarettes for exportation while increasing employment and utilizing State Ports.

(a) Purpose. – The credit authorized by this section is intended to enhance the economy of this State by encouraging qualifying cigarette manufacturers to increase employment in this State with the purpose of expanding this State's economy, the use of the North Carolina State Ports, and the use of other State goods and services, including tobacco.

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

(1) Employment level. – The total number of full-time jobs and part-time jobs converted into full-time equivalences. A job is included in the

employment level for a year only if that job is located within the State for more than six months of the year. A job is located in this State if more than fifty percent (50%) of the employee's duties are performed in this State.

- (2) Exportation. – The shipment of cigarettes manufactured in the United States to a foreign country sufficient to relieve the cigarettes in the shipment of the federal excise tax on cigarettes.
- (3) Full-time job. – A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year.
- (4) Successor in business. – A corporation that through amalgamation, merger, acquisition, consolidation, or other legal succession becomes invested with the rights and assumes the burdens of the predecessor corporation and continues the cigarette exportation business.

(c) Employment Level. – In order to be eligible for a full credit allowed under this section, the corporation must maintain an employment level in this State for the taxable year that exceeds the corporation's employment level in this State at the end of the 2004 calendar year by at least 800 full-time jobs. In the case of a successor in business, the corporation must maintain an employment level in this State for the taxable year that exceeds all its predecessor corporations' combined employment levels in this State at the end of the 2004 calendar year by at least 800 full-time jobs. ~~A job is located in this State if more than fifty percent (50%) of the employee's duties are performed in this State.~~

(d) Credit. – A corporation that satisfies the employment level requirement under subsection ~~(b)~~(c) of this section, is engaged in the business of manufacturing cigarettes for exportation, and exports cigarettes and other tobacco products through the North Carolina State Ports during the taxable year is allowed a credit as provided in this section. The amount of credit allowed under this section is equal to forty cents (40¢) per one thousand cigarettes exported. The amount of credit earned during the taxable year may not exceed ten million dollars (\$10,000,000).

(e) Reduction of Credit. – A corporation that has previously satisfied the qualification requirements of this section but that fails to satisfy the employment level requirement in a succeeding year may still claim a partial credit for the year in which the employment level requirement is not satisfied. The partial credit allowed is equal to the credit that would otherwise be allowed under subsection ~~(e)~~(d) of this section multiplied by a fraction. The numerator of the fraction is the number of full-time jobs by which the corporation's employment level in this State for the taxable year exceeds the corporation's employment level in this State at the end of the 2004 calendar year. The denominator of the fraction is 800. In the case of a successor in business, the numerator of the fraction is the number of full-time jobs by which the corporation's employment level in this State for the taxable year exceeds all its predecessor corporations' combined employment levels in this State at the end of the 2004 calendar year.

(f) Allocation. – The credit allowed by this section may be taken against the income taxes levied under this Part or the franchise taxes levied under Article 3 of this Chapter. When the taxpayer claims a credit under this section, the taxpayer must elect the percentage of the credit to be applied against the taxes levied under this Part with any remaining percentage to be applied against the taxes levied under Article 3 of this Chapter. This election is binding for the year in which it is made and for any carryforwards. A taxpayer may elect a different allocation for each year in which the taxpayer qualifies for a credit.

(g) Ceiling. – The total amount of credit that may be taken in a taxable year under this section may not exceed the lesser of the amount of credit which may be earned for that year under subsection ~~(e)~~(d) of this section or fifty percent (50%) of the amount of tax against which the credit is taken for the taxable year reduced by the sum of all other credits allowable, except tax payments made by or on behalf of the taxpayer.

This limitation applies to the cumulative amount of the credit allowed in any tax year, including carryforwards claimed by the taxpayer under this section or G.S. 105-130.45 for previous tax years.

(h) Carryforward. – Any unused portion of a credit allowed in this section may be carried forward for the next succeeding 10 years. All carryforwards of a credit must be taken against the tax against which the credit was originally claimed. A successor in business may take the carryforwards of a predecessor corporation as if they were carryforwards of a credit allowed to the successor in business.

(i) Documentation of Credit. – A corporation that claims the credit under this section must include the following with its tax return:

- (1) A statement of the exportation volume on which the credit is based.
- (2) A list of the corporation's export volumes shown on its monthly reports to the Alcohol and Tobacco Tax and Trade Bureau of the United States Treasury for the months in the tax year for which the credit is claimed.
- (3) Any other information required by the Department of Revenue.

(j) No Double Credit. – A taxpayer may not claim this credit and the credit allowed under G.S. 105-130.45 for the same activity.

(k) Reports. – Any corporation that takes a credit under this section must submit an annual report by May 1 of each year to the Senate Finance Committee, the House of Representatives Finance Committee, the Senate Appropriations Committee, the House of Representatives Appropriations Committee, and the Fiscal Research Division of the General Assembly. The report must state the amount of credit earned by the corporation during the previous year, the amount of credit including carryforwards claimed by the corporation during the previous year, and the percentage of domestic leaf content in cigarettes produced by the corporation during the previous year. The first reports required under this section are due by May 1, 2006."

SECTION 16.(b) This section is effective for taxable years beginning on or after January 1, 2006, and expires for exports occurring on or after January 1, 2018.

SECTION 17. G.S. 105-160.3(b)(6) is repealed.

SECTION 18. G.S. 105-164.3(28) reads as rewritten:

"(28) Prepared food. – Food that meets at least one of the conditions of this subdivision. Prepared food does not include food the retailer sliced, repackaged, or pasteurized but did not ~~otherwise process, heat, mix, or sell with eating utensils.~~

- a. It is sold in a heated state or it is heated by the retailer.
- b. It consists of two or more foods mixed or combined by the retailer for sale as a single item. This sub-subdivision does not include foods containing raw eggs, fish, meat, or poultry that require cooking by the consumer as recommended by the Food and Drug Administration to prevent food borne illnesses.
- c. It is sold with eating utensils provided by the retailer, such as plates, knives, forks, spoons, glasses, cups, napkins, and straws."

SECTION 19. G.S. 105-164.3(37) reads as rewritten:

"(37) Sales price. – The total amount or consideration for which personal property or services are sold, leased, or rented. The consideration may be in the form of cash, credit, property, or services. The sales price must be valued in money, regardless of whether it is received in money.

- a. The term includes all of the following:
 1. The retailer's cost of the property sold.
 2. The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the retailer,

- all taxes imposed on the retailer, and any other expense of the retailer.
- 3. Charges by the retailer for any services necessary to complete the sale.
- 4. Delivery charges.
- 5. Installation charges.
- 6. The value of exempt personal property given to the consumer when taxable and exempt personal property are bundled together and sold by the retailer as a single product or piece of merchandise.
- 7. Credit for trade-in.
- b. The term does not include any of the following:
 - 1. Discounts, including cash, term, or coupons, that are not reimbursed by a third party, are allowed by the retailer, and are taken by a consumer on a sale.
 - 2. Interest, financing, and carrying charges from credit extended on the sale, if the amount is separately stated on the invoice, bill of sale, or a similar document given to the consumer.
 - 3. Any taxes imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the consumer."

SECTION 20. G.S. 105-164.4B(a)(3) reads as rewritten:

- "(3) Delivery address unknown. – When a seller of a product does not know the address where a product is received, the sale is sourced to the first address or location listed in this subdivision that is known to the seller:
- a. The business or home address of the purchaser.
 - b. The billing address of the purchaser or, if the product is a prepaid telephone calling service that authorizes the purchase of mobile telecommunications service, the location associated with the mobile telephone number.
 - c. The billing address of the purchaser address from which tangible personal property was shipped or from which a service was provided."

SECTION 21.(a) G.S. 105-164.14(e) reads as rewritten:

"(e) State Agencies. – **(Effective July 1, 2004 and applicable to sales made on or after that date)** The State is allowed quarterly refunds of 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 for use by the State agency. ~~services and of~~

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."

SECTION 21.(b) This section becomes effective July 1, 2004.

SECTION 22. G.S. 105-164.29A reads as rewritten:

"§ 105-164.29A. State government exemption process.

(a) Application. – To be eligible for the exemption provided in G.S. ~~105-164.13(51),105-164.13(52)~~, a State agency must obtain from the Department a sales tax exemption number. The application for exemption must be in the form required by the Secretary, be signed by the State agency's head, and contain any information required by the Secretary. The Secretary must assign a sales tax exemption number to a State agency that submits a proper application.

(b) Liability. – A State agency that does not use the items purchased with its exemption number must pay the tax that should have been paid on the items purchased, plus interest calculated from the date the tax would otherwise have been paid."

SECTION 22.5. G.S. 105-243.1(e) reads as rewritten:

"(e) Use. – The fee is a receipt of the Department and must be applied to the costs of collecting overdue tax debts. The proceeds of the fee must be credited to a special account within the Department and may be expended only as provided in this subsection. The proceeds of the fee may not be used for any purpose that is not directly and primarily related to collecting overdue tax debts. The Department may apply the proceeds of the fee to pay contractors for collecting tax debts under subsection (b) of this section and to pay the fee the United States Department of the Treasury charges for setoff to recover tax owed to North Carolina. The remaining proceeds of the fee may be spent only pursuant to appropriation by the General Assembly. The fee proceeds do not revert but remain in the special account until spent for the costs of collecting overdue tax debts."

SECTION 23. G.S. 105-259(b)(7) reads as rewritten:

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

(7) To exchange information with the Division of the State Highway Patrol of the Department of Crime Control and Public ~~Safety~~ Safety, the Division of Motor Vehicles of the Department of Transportation, or the International Fuel Tax Association, Inc., when the information is needed to fulfill a duty imposed on the Department of ~~Revenue~~ Revenue, the Division of the State Highway Patrol of the Department of Crime Control and Public Safety, or the Division of Motor Vehicles of the Department of Transportation. ~~Safety.~~"

SECTION 24. G.S. 105-449.47(a1) reads as rewritten:

"(a1) Registration and Identification Marker. – When the Secretary registers a motor carrier, the Secretary must issue at least one identification marker for each motor vehicle operated by the motor carrier. A motor carrier must keep records of identification markers issued to it and must be able to account for all identification markers it receives from the Secretary. Registrations and identification markers issued by the Secretary are for a calendar year. ~~The Secretary may renew a registration or an identification marker without issuing a new registration or identification marker.~~ All identification markers issued by the Secretary remain the property of the State. The

Secretary may withhold or revoke a registration or an identification marker when a motor carrier fails to comply with this Article, former Article 36 or 36A of this Subchapter, or Article 36C or 36D of this Subchapter.

A motor carrier must carry a copy of its registration in each motor vehicle operated by the motor carrier when the vehicle is in this State. A motor vehicle must clearly display an identification marker at all times. The identification marker must be affixed to the vehicle for which it was issued in the place and manner designated by the authority that issued it."

SECTION 25. G.S. 105-449.52(a) reads as rewritten:

"(a) Penalty. – A motor carrier who does any of the following is subject to a civil penalty:

- (1) Operates in this State or causes to be operated in this State a motor vehicle that ~~does not~~either fails to carry the registration card required by this Article or ~~does not~~fails to display an identification marker in accordance with this Article. The amount of the penalty is one hundred dollars (\$100.00).
- (2) Is unable to account for identification markers the Secretary issues the motor carrier, as required by G.S. 105-449.47. The amount of the penalty is one hundred dollars (\$100.00) for each identification marker the carrier is unable to account for.
- (3) Displays an identification marker on a motor vehicle operated by a motor carrier that was not issued to the carrier by the Secretary under G.S. 105-449.47. The amount of the penalty is one thousand dollars (\$1,000) for each identification marker unlawfully obtained. Both the licensed motor carrier to whom the Secretary issued the identification marker and the motor carrier displaying the unlawfully obtained identification marker are jointly and severally liable for the penalty under this subdivision.

A penalty imposed under this section is payable to the Department of ~~Revenue~~Revenue, the Department of Crime Control and Public Safety, or the Division of Motor Vehicles. When a motor vehicle is found to be operating without a registration card or an identification marker or with an identification marker the Secretary did not issue for the vehicle, the motor vehicle may not be driven for a purpose other than to park the motor vehicle until the penalty imposed under this section is paid unless the officer that imposes the penalty determines that operation of the motor vehicle will not jeopardize collection of the penalty."

SECTION 26. G.S. 105-449.54 reads as rewritten:

"§ 105-449.54. **Commissioner of Motor Vehicles made process agent of nonresident motor carriers.**

~~The acceptance by~~By operating a motor vehicle on the highways of this State, a nonresident motor carrier consents to the appointment of ~~of the rights and privileges conferred by the laws now or hereafter in force in this State permitting the operation of motor vehicles, as evidenced by the operation of a motor vehicle by such nonresident, either personally or through an agent or employee, on the public highways of this State, or the operation by such nonresident, either personally or through an agent or employee, of a motor vehicle on the public highways of this State other than as so permitted or regulated, shall be deemed equivalent to the appointment by such nonresident motor carrier of the Commissioner of Motor Vehicles as its attorney in fact and process agent for Vehicles, or his successor in office, to be his true and lawful attorney and the attorney of his executor or administrator, upon whom may be served all summonses or other lawful process or notice in any action, assessment proceeding~~assessment, or other proceeding against him or his executor or administrator, arising out of or by reason of any provisions of this Article relating to such vehicle or relating to the liability for tax with respect to operation of such vehicle on the highways of this State. Said acceptance or operation shall be a signification by such nonresident motor carrier of his agreement

~~that any such process against or notice to him or his executor or administrator shall be of the same legal force and validity as if served on him personally, or on his executor or administrator. All of the provisions of G.S. 1-105 following the first paragraph thereof shall be applicable with respect to the service of process or notice pursuant to this section under this Chapter."~~

SECTION 27. G.S. 105-449.60(7) reads as rewritten:

"§ 105-449.60. Definitions.

The following definitions apply in this Article:

- (7) Diesel fuel. – Any liquid, other than gasoline, that is suitable for use as a fuel in a diesel-powered highway vehicle. The term includes ~~kerosene and biodiesel~~ biodiesel, fuel oil, heating oil, high-sulfur dyed diesel fuel, and kerosene. The term does not include jet fuel sold to a buyer who is certified to purchase jet fuel under the Code."

SECTION 28. The lead-in language of G.S. 105-449.72(a) reads as rewritten:

"(a) Initial Bond. – An applicant for a license as a refiner, a terminal operator, a supplier, an importer, a blender, a permissive supplier, or a distributor must file with the Secretary a bond or an irrevocable letter of credit. A bond or an irrevocable letter of credit must be conditioned upon compliance with the requirements of this Article, be payable to the State, and be in the form required by the Secretary. The amount of the bond or irrevocable letter of credit is determined as follows:"

SECTION 29. G.S. 105-449.74 reads as rewritten:

"§ 105-449.74. Issuance of license.

Upon approval of an application, the Secretary must issue a license to the applicant ~~as well as a duplicate copy of the license for each place of business of the applicant~~. A supplier's license must indicate the category of the supplier. A license holder must maintain and display a copy of the license issued under this Part in a conspicuous place at each place of business of the license holder. A license is not transferable and remains in effect until surrendered or cancelled."

SECTION 30. G.S. 105-449.81(3a) reads as rewritten:

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

- (3a) ~~Fuel grade ethanol alcohol or biodiesel, if it meets either that meets~~ any of the following descriptions:
- a. Is removed from a terminal or another storage and distribution facility, unless the removed fuel is received by a supplier for subsequent sale.
 - b. Is imported to this State outside the terminal transfer system by a means other than a marine vessel, a transport truck, or a railroad tank car."

SECTION 31. G.S. 105-449.123 reads as rewritten:

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

(a) Requirements. – A person who is a retailer of dyed ~~diesel motor~~ fuel or who stores both dyed and undyed ~~diesel motor~~ fuel for use by that person or another person must mark the storage facility for the dyed ~~diesel motor~~ fuel as follows in a manner that clearly indicates the fuel is not to be used to operate a highway vehicle. The storage facility must be marked "Dyed Diesel, Nontaxable Use Only, Penalty For Taxable Use" or "Dyed Kerosene, Nontaxable Use Only, Penalty for Taxable Use" or a similar phrase that clearly indicates the fuel is not to be used to operate a highway vehicle.

- (1) The storage tank of the storage facility must be marked if the storage tank is visible.
- (2) The fillcap or spill containment box of the storage facility must be marked.
- (3) The dispensing device that serves the storage facility must be marked.

(4) The retail pump or dispensing device at any level of the distribution system must comply with the marking requirements.

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

SECTION 32. 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. As directed by G.S. 105-164.13B, taxes levied by a county on food are administered as if they were levied by the State under Article 5 of this Chapter. The Secretary must, on a monthly basis, distribute local taxes levied on food to the taxing counties as follows:

(1) The Secretary must allocate one-half of the net proceeds on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Budget Officer. The Secretary must then adjust the amount allocated to each county as provided in G.S. 105-486(b).

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

(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."

SECTION 33. G.S. 119-15.1 reads as rewritten:

"§ 119-15.1. List of persons who must have a license.

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

- (1) A kerosene supplier.
- (2) A kerosene distributor.
- (3) A kerosene terminal operator.

(b) Exception. – A kerosene supplier license is not required if the supplier is licensed as a supplier under Part 2 of Article 36C of Chapter 105 of the General Statutes. A kerosene distributor is required to have a kerosene distributor license only if the distributor imports kerosene. Other kerosene distributors may elect to have a kerosene license. A kerosene terminal operator license is not required if the supplier terminal operator is licensed as a supplier terminal operator under Part 2 of Article 36C of Chapter 105 of the General Statutes."

SECTION 34. G.S. 119-19 reads as rewritten:

"§ 119-19. Authority of Secretary to cancel a license.

The Secretary of Revenue may cancel a license issued under ~~G.S. 119-16.2~~ this Article upon the written request of the license holder. The Secretary may summarily cancel a license issued under ~~G.S. 119-16.2~~ or this Article or under Article 36C or 36D of Chapter 105 of the General Statutes when the Secretary finds that the license holder is incurring liability for the tax imposed by this Article after failing to pay a tax when due under this Article. The Secretary may cancel the license of a license holder who files a false report under this Article or fails to file a report required under this Article after holding a hearing on whether the license should be cancelled.

The Secretary must send a person whose license is summarily cancelled a notice of the cancellation and must give the person an opportunity to have a hearing on the cancellation within 10 days after the cancellation. The Secretary must give a person whose license may be cancelled after a hearing at least 10 days' written notice of the date, time, and place of the hearing. A notice of a summary license cancellation and a notice of hearing must be sent by registered mail to the last known address of the license holder.

When the Secretary cancels a license and the license holder has paid all taxes and penalties due under this Article, the Secretary must either return to the license holder the bond filed by the license holder or notify the person liable on the bond and the license holder that the person is released from liability on the bond."

SECTION 35. G.S. 120-70.108(a) reads as rewritten:

"(a) The Revenue Laws Study Committee shall establish a Property Tax Subcommittee consisting of ~~six~~ up to eight members. The Senate cochair of the Committee shall designate ~~three~~ up to four members appointed by the President Pro Tempore of the Senate to serve on the Subcommittee and shall name one of those members a cochair of the Subcommittee. The House cochair of the Committee shall designate ~~three~~ up to four members appointed by the Speaker of the House of Representatives to serve on the Subcommittee and shall name one of those members a cochair of the Subcommittee. The Subcommittee shall meet upon the call of the Subcommittee cochairs."

SECTION 36.(a) G.S. 153A-155(d) reads as rewritten:

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

SECTION 36.(b) G.S. 160A-215(d) reads as rewritten:

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

SECTION 36.(c) This section becomes effective October 1, 2004.

SECTION 37. The title of Article 16 of Chapter 153A of the General Statutes reads as rewritten:

"Article 16.

County Service Districts; County Research and Production Service ~~Districts~~; Districts;
County Economic Development and Training Districts."

SECTION 38. G.S. 153A-317.11 reads as rewritten:

"§ ~~153A-317.11. Purpose for which districts may be created and nature of~~
districts.

The board of commissioners of any county may define a county economic development and training district, as provided in this Part, to finance, provide, and maintain for the district a skills training center in cooperation with its community college branch in or for the county to prepare residents of the county to perform manufacturing, research and development, and related service and support jobs in the

pharmaceutical, biotech, life sciences, chemical, telecommunications, and electronics industries, and allied, ancillary, and subordinate industries, to provide within the district any of the education, training, and related services, facilities, or functions that a county or a city is authorized by general law to provide, finance, or maintain, and to promote economic development in the county. The skills training center and related services shall be financed, provided, or maintained in the district either in addition to or to a greater extent than training facilities and services are financed, provided, or maintained in the entire county. A district created under this Part is a special tax area under Section 2(4) of Article V of the North Carolina Constitution."

SECTION 39. G.S. 153A-317.17 reads as rewritten:

"§ 153A-317.17. Taxes authorized; rate limitation.

A county may levy property taxes within an economic development and training district, in addition to those levied throughout the county, ~~in order to finance, provide, or maintain for the district a skills training center provided therein for the purposes listed in G.S. 153A-317.11 within the district~~ in addition to or to a greater extent than ~~worker training facilities the same purposes~~ provided for the entire county. In addition, a county may allocate to a district any other revenues whose use is not otherwise restricted by law. The proceeds of taxes within a district may be expended only to pay annual debt service on up to one million two hundred thousand dollars (\$1,200,000) of the capital costs of a skills training center provided for the district and any other services or facilities provided by a county in response to a recommendation of an advisory committee.

Property subject to taxation in a newly established district or in an area annexed to an existing district is subject to taxation by the county as of the preceding January 1.

Such additional property taxes may not be levied within any district established pursuant to this Article in excess of a rate of eight cents (8¢) on each one hundred dollars (\$100.00) value of property subject to taxation."

SECTION 40.(a) Section 6 of Chapter 650 of the 1987 Session Laws is codified as the first two paragraphs of G.S. 159-99.

SECTION 40.(b) Sections 7 and 5 of Chapter 650 of the 1987 Session Laws are codified as the second and third paragraphs, respectively, of G.S. 159-100.

SECTION 40.(c) Article 5A of Chapter 159 of the General Statutes, as amended by this section, reads as rewritten:

"Article 5A.

"Capital Appreciation Bonds.

"§ 159-99. Issuance of capital appreciation bonds pursuant to the Local Government Bond Act. Definition; terms and conditions.

(a) Capital Appreciation Bond Defined. – For purposes of this act, ~~Article~~, the term 'capital appreciation bonds' ~~means any bond or bonds~~ means a bond that meets all of the following conditions:

- (1) It is sold, at public or private sale, at a price substantially less, as conclusively determined by the issuer thereof, of the bond, than the principal amount thereof and compounded of the bond.
- (2) Compounded interest thereon on the bond is payable at maturity, but only if such bond or bonds are maturity.
- (3) The bond is designated as a capital appreciation bonds-bond within the meaning of this act-Article by the proceedings of the issuer thereof providing for the issuance of such bonds-of the bond providing for its issuance.

(b) Calculating Principal Amount. – For purposes of calculating the aggregate principal amount of bonds within the meaning of any constitutional or statutory limitation on the incurrence of debt, the aggregate principal amount of any capital appreciation bonds ~~shall be~~ is the aggregate of the initial offering prices at which ~~such the bonds~~ are offered for sale to the public, including private or negotiated sales, or sold to the initial purchaser ~~thereof of the bonds~~ in a private placement, in either case without

reduction to reflect underwriters' discount or placement agents' or other intermediaries' fees.

(c) Terms and Conditions. – The proceedings providing for the issuance of any ~~such capital appreciation~~ bonds may provide for the issuance of terms bonds or serial bonds, or both, the establishment of sinking funds for or the redemption of term bonds, the issuance of capital appreciation bonds at the same time and as part of the same issue of any other type of bonds, the method of calculating the principal amount of any ~~such~~ capital appreciation bonds outstanding for the purpose of determining, within the meaning of ~~such the~~ proceedings and otherwise, application of debt service provisions, funds into which debt service payments are to be deposited, application of redemption provisions, bondowners' voting rights and consents, pro rata application of available ~~funds and such other matters as may be deemed appropriate by the issuer.~~ funds, and any other matters the issuer considers appropriate.

~~Local governmental units are hereby authorized to issue capital appreciation bonds pursuant to the provisions of The Local Government Bond Act and to the extent that the provisions of said act are inconsistent with the issuance of such bonds, such inconsistent provisions are hereby amended to the extent of such inconsistency so as to permit the issuance of such bonds.~~

"§ 159-100. Issuance of capital appreciation bonds pursuant to The State and Local Government Revenue Bond Act. Authorization.

(a) Revenue Bond Act. – The State and local governmental units are hereby authorized to issue capital appreciation bonds pursuant to the provisions of The State and Local Government Revenue Bond Act ~~and to the extent that the provisions of said act are inconsistent with the issuance of such bonds, such inconsistent provisions are hereby amended to the extent of such inconsistency so as to permit the issuance of such bonds.~~ Act.

(b) Local Government Bond Act. – Local governmental units are authorized to issue capital appreciation bonds pursuant to the provisions of The Local Government Bond Act. In connection with the issuance of a series of bonds containing capital appreciation bonds issued by local governmental units pursuant to The Local Government Bond Act, the Local Government Commission is ~~hereby authorized to may~~ require that annual debt service on ~~such the~~ series of bonds be as nearly level or equal as possible taking into consideration prevailing financial techniques, including, without limitation, the postponement of principal maturities in early years of the issue and the use of capitalized interest. The Local Government Commission is ~~hereby further authorized to may~~ also limit the amount of a series of bonds that may be issued as capital appreciation bonds and to make the issuance of any ~~such~~ capital appreciation bonds subject to a finding by the Commission or the issuer that the issuance of ~~such the~~ bonds will not increase the aggregate amount of debt service payable on ~~such the~~ series of bonds of which ~~such the~~ capital appreciation bonds constitute a part.

(c) Future Acts. – ~~The State and local~~ Local governmental units are hereby authorized to issue capital appreciation bonds pursuant to the provisions of any law enacted in the future hereafter enacted, including laws enacted at the same session of the General Assembly at which this act is enacted, and to the extent that the provisions of such laws are inconsistent with the issuance of such bonds and provided such provisions are not expressly contrary, such inconsistent provisions are hereby amended to the extent of such inconsistency so as to permit the issuance of such bonds."

SECTION 41.(a) Sections 2, 4, and 5 of Chapter 650 of the 1987 Session Laws are codified as G.S. 142-15.3.

SECTION 41.(b) G.S. 142-15.3, as codified by this section, reads as rewritten:

"§ 142-15.3. Capital appreciation bonds.

(a) Cross-Reference. – The provisions of G.S. 159-99 govern capital appreciation bonds.

~~(b) Authorization. – The State and local governmental units are hereby authorized to issue capital appreciation bonds pursuant to the provisions of The State and Local Government Revenue Bond Act and to the extent that the provisions of said act are inconsistent with the issuance of such bonds, such inconsistent provisions are hereby amended to the extent of such inconsistency so as to permit the issuance of such bonds. Act. The State is hereby authorized to issue capital appreciation bonds pursuant to the provisions of applicable law and law and to the extent that the provisions of such law are inconsistent with the issuance of such bonds, such inconsistent provisions are hereby amended to the extent of such inconsistency so as to permit the issuance of such bonds. The State and local governmental units are hereby authorized to issue capital appreciation bonds pursuant to the provisions of any law enacted in the future hereafter enacted, including laws enacted at the same session of the General Assembly at which this act is enacted, and to the extent that the provisions of such laws are inconsistent with the issuance of such bonds and provided such provisions are not expressly contrary, such inconsistent provisions are hereby amended to the extent of such inconsistency so as to permit the issuance of such bonds."~~

SECTION 42.(a) G.S. 153A-155 is amended by adding a new subsection to read:

"(f1) Use. – The proceeds of a room occupancy tax shall not be used directly or indirectly for development or construction of a hotel or another transient lodging facility."

SECTION 42.(b) G.S. 160A-215 is amended by adding a new subsection to read:

"(f1) Use. – The proceeds of a room occupancy tax shall not be used directly or indirectly for development or construction of a hotel or another transient lodging facility."

SECTION 42.(c) This section becomes effective July 1, 2004, and applies to taxes that accrue on or after that date.

SECTION 43.(a) G.S. 105-129.8 reads as rewritten:

"§ 105-129.8. Credit for creating jobs.

(a) Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more full-time employees, and hires an additional full-time employee during the taxable year to fill a new position located in this State is allowed a credit for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is located. In addition, if the position is located in a development zone, the amount of the credit is increased by four thousand dollars (\$4,000) per job.

Area Enterprise Tier	Amount of Credit
Tier One	\$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

(a1) Positions. – A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area. The number of new positions a taxpayer fills during the taxable year is determined by subtracting the highest number of full-time employees the taxpayer had in this State at any time during the 12-month period preceding the beginning of the taxable year from the number of full-time employees the taxpayer has in this State at the end of the taxable year.

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

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

(a3) Transferred Jobs. – Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, or is moved from a development zone to an area that is not a development zone, the remaining installments of the credit must be calculated as if the position had been created initially in the area to which it was moved.

(b) Repealed by Session Laws 1989, c. 111, s. 1.

(b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

(d) Planned Expansion. – A taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by this section based on the area's enterprise tier and development zone designation for that year even though the employees are not hired that year. In the case of an interstate air courier that has or is constructing a hub in this State, the applicable time period is seven years. The credit shall be available in the taxable year after at least twenty employees have been hired if the hirings are within the applicable commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the area is redesignated to a higher-numbered enterprise tier or loses its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not hire the employees within the applicable period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, the taxpayer may take the credit under that subsection.

(e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3."

SECTION 43.(b) This section becomes effective for taxable years beginning on or after January 1, 2004.

SECTION 44. Except as otherwise provided in this act, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of July, 2004.

s/ Beverly E. Perdue
President of the Senate

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

s/ Michael F. Easley
Governor

Approved 4:57 p.m. this 2nd day of August, 2004