

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

S

1

SENATE BILL 363

Short Title: Business Tax Reduction and Reforms. (Public)

Sponsors: Senators Brock (Primary Sponsor); Hise, Rabin, and Rucho.

Referred to: Finance.

March 20, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO REDUCE AND SIMPLIFY BUSINESS TAXES AND TO TAX ALL
3 BUSINESS ENTITIES WITH LIMITED LIABILITY PROTECTION THE SAME.
4 The General Assembly of North Carolina enacts:

5
6 **PART I. GENERAL FINDINGS AND INTENT**

7 **SECTION 1.(a)** The General Assembly of North Carolina finds the following:

- 8 (1) North Carolina's franchise tax is imposed on corporations for the privilege of
9 engaging in business in this State in a form of ownership that limits the
10 liability of individual owners of the business.
11 (2) North Carolina's franchise tax was enacted in the early years of the 20th
12 century when the corporate form of ownership was the form of ownership
13 that conferred the privilege of limited liability for its owners.
14 (3) Today many forms of business entities enjoy the privilege of limited
15 liability, but they are not subject to the corporate franchise tax.
16 (4) Businesses in North Carolina are subject to a myriad of different State,
17 county, and municipal privilege taxes.
18 (5) North Carolina relies increasingly on volatile income taxes for its General
19 Fund revenues.
20 (6) Franchise taxes and sales tax are more stable forms of revenue.
21 (7) North Carolina's personal income tax rates and corporate income tax rates
22 are among the highest in our surrounding states.

23 **SECTION 1.(b)** It is the intent of this legislation to do the following:

- 24 (1) Eliminate the myriad of different State, county, and municipal privilege
25 taxes imposed on businesses.
26 (2) Simplify the process of tax preparation and tax administration.
27 (3) Replace the current franchise tax on corporations with a business privilege
28 tax on all forms of limited liability business entities.

29 **SECTION 1.(c)** It is the intent of the North Carolina General Assembly to do the
30 following:

- 31 (1) Implement comprehensive tax reform.
32 (2) Restructure North Carolina's General Fund tax revenues to rely more heavily
33 on stable sources of revenue.
34 (3) Phase out the State's reliance on income taxes.
35 (4) Increase the State's reliance on consumption taxes by expanding the sales tax
36 base to include services.



- (5) Exempt businesses that pay the franchise tax from the sales tax base expansion to business services.

PART II. SIMPLIFY BUSINESS TAXES BY REPEALING ARCHAIC STATE AND LOCAL PRIVILEGE TAXES

SECTION 2.(a) G.S. 105-33(b), 105-41, 105-83, 105-88, 105-102.3, 105-102.6, 105-103, 105-105, 105-106, 105-108, and 105-109 are repealed.

SECTION 2.(b) G.S. 153A-152 reads as rewritten:

"§ 153A-152. Privilege No general authority for privilege license taxes.

(a) Authority. ~~A county may levy privilege license taxes on trades, occupations, professions, businesses, and franchises to the extent authorized by 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:~~

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

(b) Telecommunications Restriction. ~~A county may not impose a license, franchise, or privilege tax on a company taxed under G.S. 105-164.4(a) (4c). A county may not levy a privilege license tax on a trade, occupation, profession, business, or franchise carried on within the county unless a statute or an act of the General Assembly authorizes the county to do so."~~

SECTION 2.(c) G.S. 160A-211 reads as rewritten:

"§ 160A-211. Privilege No general authority for 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:~~

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.

1	G.S. 105-54	Contractors and construction companies.
2	G.S. 105-55	Installing elevators and automatic sprinkler systems.
3	G.S. 105-61	Hotels, motels, tourist courts and tourist homes.
4	G.S. 105-62	Restaurants.
5	G.S. 105-65	Music machines.
6	G.S. 105-65.1	Merchandising dispensers and weighing machines.
7	G.S. 105-66.1	Electronic video games.
8	G.S. 105-74	Pressing clubs, dry cleaning plants, and hat blockers.
9	G.S. 105-77	Tobacco warehouses.
10	G.S. 105-80	Firearms dealers and dealers in other weapons.
11	G.S. 105-85	Laundries.
12	G.S. 105-86	Outdoor advertising.
13	G.S. 105-89	Automobiles, wholesale supply dealers, and service
14		stations.
15	G.S. 105-89.1	Motorecycle dealers.
16	G.S. 105-90	Emigrant and employment agents.
17	G.S. 105-91	Plumbers, heating contractors, and electricians.
18	G.S. 105-97	Manufacturers of ice cream.
19	G.S. 105-98	Branch or chain stores.
20	G.S. 105-99	Wholesale distributors of motor fuels.
21	G.S. 105-102.1	Certain cooperative associations.
22	G.S. 105-102.5	General business license.

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

27 ~~(c) Prohibition.—A city may not impose a license, franchise, or privilege tax on a~~
 28 ~~person engaged in any of the businesses listed in this subsection. These businesses are subject~~
 29 ~~to a State tax for which the city receives a share of the tax revenue.~~

30 ~~(1) Supplying piped natural gas taxed under Article 5E of Chapter 105 of the~~
 31 ~~General Statutes.~~

32 ~~(2) Providing telecommunications service taxed under G.S. 105-164.4(a)(4e).~~

33 ~~(3) Providing video programming taxed under G.S. 105-164.4(a)(6).~~

34 ~~(d) Repealed by Session Laws 2006-151, s. 12, effective January 1, 2007. A city may~~
 35 ~~not levy a privilege license tax on a trade, occupation, profession, business, or franchise carried~~
 36 ~~on within the city unless a statute or an act of the General Assembly authorizes the city to do~~
 37 ~~so."~~

38 **SECTION 2.(d)** This section becomes effective January 1, 2015. Subsections (b)
 39 and (c) of this section apply to taxes imposed for fiscal years beginning on or after that date.
 40 Subsection (a) of this section applies to taxes imposed under repealed Article 2 of Chapter 105
 41 of the General Statutes as follows:

42 (1) For taxes payable under G.S. 105-41, 105-88, or 105-102.3, the section
 43 applies to taxes imposed under those statutes for taxable years beginning on
 44 or after July 1, 2015.

45 (2) For taxes payable under G.S. 105-83, the section applies to obligations dealt
 46 in, bought, or discounted on or after January 1, 2015.

47
 48 **PART III. REPEAL FRANCHISE TAX AND REPLACE IT WITH A MORE**
 49 **SIMPLE BUSINESS PRIVILEGE TAX APPLICABLE TO ALL BUSINESSES WITH**
 50 **LIMITED LIABILITY.**

1 ownership rules for partnerships, estates, and trusts in section 318(a)(2)(A)
2 and (B) of the Code with the following modifications:

3 a. The term "capital interest" is substituted for "stock" each place it
4 appears.

5 b. A noncorporate limited liability company and any noncorporate
6 entity other than a partnership, estate, or trust is treated as a
7 partnership. A noncorporate entity does not include a human being.
8 A noncorporate limited liability company is a limited liability
9 company that does not elect to be taxed as a corporation under the
10 Code.

11 c. The operating rule of section 318(a)(5) of the Code applies without
12 regard to section 318(a)(5)(C).

13 (10) Parent. – A business entity that has ownership of another business entity.

14 (11) Secretary. – Defined in G.S. 105-228.90.

15 (12) Subsidiary. – A business entity under the ownership of another business
16 entity.

17 (13) Taxable year. – Defined in section 441(b) of the Code.

18 **"§ 105-114.3. Nature of tax.**

19 This Article imposes a privilege tax on a business entity for the privilege of doing business
20 in this State in an organizational form that confers limited liability on one or more owners of
21 the entity. The tax is an accrued tax and is imposed for the exercise of this privilege during the
22 period covered by a tax return. Payment of the tax imposed by this Article is a condition
23 precedent to the right to do business in this State and, for a business entity that is organized or
24 formed in this State, to the right to continue in the entity's organizational form. When a
25 noncorporate business entity is doing business in this State, each owner of the noncorporate
26 business entity is doing business in this State.

27 **"§ 105-114.4. Business privilege tax imposed.**

28 An annual privilege tax is imposed on a business entity doing business in this State at the
29 rate of one dollar and thirty-five cents (\$1.35) per one thousand dollars (\$1,000) of the business
30 entity's adjusted net worth tax base, determined in accordance with G.S. 105-114.5. The tax
31 payable by a business entity may not be less than five hundred dollars (\$500.00). The tax
32 payable by a business entity other than a corporation may not be more than five thousand
33 dollars (\$5,000). The tax payable by a holding company may not be more than seventy-five
34 thousand dollars (\$75,000). The tax imposed by this section does not apply to a company that is
35 subject to tax under G.S. 105-116 unless the tax imposed under G.S. 105-116 is less than the
36 tax imposed under this section.

37 After the end of the taxable year in which a business entity is dissolved, the entity is no
38 longer subject to the tax levied in this Article unless the Secretary finds that the entity has
39 engaged in business activities in this State not appropriate to winding up and liquidating its
40 business.

41 **"§ 105-114.5. Adjusted net worth tax base.**

42 The net worth of a business entity is the entity's total assets less its total liabilities,
43 computed in accordance with generally accepted accounting principles as of the end of the
44 entity's taxable year. If the entity does not maintain its books and records in accordance with
45 generally accepted accounting principles, then its net worth is computed in accordance with the
46 accounting method used by the entity for federal tax purposes so long as the method fairly
47 reflects the entity's net worth for purposes of the tax levied by this section. A business entity's
48 net worth is subject to the following adjustments:

49 (1) A deduction for accumulated depreciation and amortization is determined in
50 accordance with the method used for federal tax purposes.

1 (2) An addition for indebtedness the business entity owes to a parent, a
2 subsidiary, or an affiliate. The amount added back to the business entity's net
3 worth may be further adjusted as follows:

4 a. If part of the capital of the creditor business entity is capital
5 borrowed from a source other than a parent, a subsidiary, or an
6 affiliate, the debtor business entity may deduct a proportionate part
7 of the indebtedness based on the ratio of the borrowed capital of the
8 creditor business entity to the total assets of the creditor business
9 entity.

10 b. If part of the capital of the creditor business entity consists of
11 indebtedness owed to a parent, a subsidiary, or an affiliate that is
12 directly traceable to capital borrowed from a source other than a
13 parent, a subsidiary, or an affiliate, the debtor business entity may
14 deduct a proportionate part of the indebtedness based on the ratio of
15 the borrowed capital of the creditor business entity to the total assets
16 of the creditor business entity.

17 c. If the creditor business entity is taxable under this Article, the
18 creditor business entity may deduct the indebtedness from its net
19 worth to the extent the debtor business entity was not allowed to
20 deduct the indebtedness.

21 (3) A corporation may deduct the cost of treasury stock.

22 **"§ 105-114.6. Exclusions in calculating tax.**

23 (a) Disregarded LLC. – A single member limited liability company whose single
24 member is a corporation is disregarded under this Article if it is disregarded for federal income
25 tax purposes. The corporation that is the single member of the disregarded limited liability
26 company must include the net worth and property of the disregarded limited liability company
27 in the corporation's tax base.

28 (b) No Tax Tiering. – A noncorporate business entity's ownership interest in another
29 noncorporate business entity that is taxable under this Article is excluded in determining the
30 owner's net worth under G.S. 105-114.5.

31 (c) Investment Companies. – The following exclusions apply to investment companies
32 in determining their tax liability under this Article:

33 (1) A regulated investment company may deduct the value of its investments in
34 stocks, bonds, debentures, or other securities or evidences of debt. A
35 regulated investment company is an entity that qualifies as a regulated
36 investment company under section 851 of the Code.

37 (2) A REIT may deduct the value of its investments in real property, unless the
38 REIT is a captive REIT. The terms "REIT" and "captive REIT" have the
39 same meanings as defined in G.S. 105-130.12.

40 (3) A venture capital company may deduct the value of its capital under
41 management. A venture capital company is an entity whose purpose is to
42 provide financing for start-up businesses and that obtains the capital it uses
43 to provide financing only from investors who are accredited investors under
44 17 C.F.R. § 230.215 or are institutional investors.

45 (d) Short Year Adjustment. – A business entity that changes its taxable year and files a
46 "short period" income tax return may deduct from its tax liability computed on an annual basis
47 the amount of tax previously paid that is applicable to the period subsequent to the beginning of
48 the new taxable year.

49 **"§ 105-114.7. Determination of ownership after certain transfers.**

50 (a) Transfers by Corporations. – Ownership of the capital interests in a noncorporate
51 business entity is determined as of the last day of the business entity's taxable year. If a

1 noncorporate business entity and a corporation or an affiliated group have engaged in a pattern
2 of transferring assets between them with the result that each did not own the capital interest on
3 the last day of its taxable year, the ownership of the capital interests in the noncorporate
4 business entity must be determined as of the last day of the corporation's or group of
5 corporations' taxable year.

6 (b) Tax-Free Distribution. – If a noncorporate business entity receives from a person a
7 tax-free contribution of assets under section 721 of the Code within 120 days after making a
8 tax-free distribution of assets to that person under section 732 of the Code with the result that
9 the business entity did not own the capital interests on the last day of its taxable year, the assets
10 that were distributed tax-free are considered owned by the business entity as of the last day of
11 its taxable year.

12 **"§ 105-114.8. Apportionment by multistate business entities.**

13 A business entity that is doing business in this State and in one or more other states must
14 apportion its net worth to this State. A corporation that is subject to income tax under Article 4
15 of this Chapter must use the fraction it applies in apportioning its income under that Article. A
16 business entity that is not subject to income tax under Article 4 of this Chapter must apportion
17 its net worth by using the fraction it would be required to apply in apportioning its income if it
18 were subject to that Article. A business entity that believes this apportionment method subjects
19 a greater portion of its net worth to tax under this section than is attributable to its business in
20 this State may make a written request to the Secretary for permission to use an alternative
21 method of apportionment, in the same manner as provided in G.S. 105-130.4(t1).

22 **"§ 105-114.9. Return and payment.**

23 The tax imposed by G.S. 105-114.4 is due when a return is due. A return is due on or before
24 the fifteenth day of the fourth month following the end of the business entity's income year. A
25 taxpayer may ask the Secretary for an extension of time to file a return under G.S. 105-263. A
26 business entity must file a return under affirmation with the Secretary at the place and in the
27 manner prescribed by the Secretary. The return must be signed by the president, vice president,
28 treasurer, or chief financial officer of the business entity.

29 ...

30 **"§ 105-125.1. Exempt business entities.**

31 A business entity listed in this section is exempt from the privilege tax imposed by this
32 Article unless it has unrelated business income. A business entity that is listed in this section
33 and has unrelated business income is subject to the tax imposed by this Article on its adjusted
34 net worth or property attributable to its unrelated business income. Upon request of the
35 Secretary, an exempt business entity must establish its claim for exemption in writing. The
36 exempt entities are:

- 37 (1) A business entity exempt from federal income tax under the Code.
- 38 (2) An insurance company subject to tax under Article 8B of this Chapter.
- 39 (3) A single member limited liability company that is disregarded for federal
40 income tax purposes if the single member is a corporation and the
41 disregarded limited liability company's net worth is included in that of its
42 single member.
- 43 (4) A real estate mortgage investment conduit as defined in section 860D of the
44 Code."

45 **SECTION 3.(d)** This act is effective for taxable years beginning on or after
46 January 1, 2015, and for which taxes are due on or after that date.

47
48 **PART IV. REDUCE ANNUAL REPORT FILING FEES FOR UNINCORPORATED**
49 **BUSINESSES WITH LIMITED LIABILITY**

50 **SECTION 4.(a)** G.S. 57C-1-22(a)(25) reads as rewritten:

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

<u>Document</u>	<u>Fee</u>
...	
(25) Annual report (paper)	200.00 25.00
(25a) Annual report (electronic)	18.00

SECTION 4.(b) G.S. 59-35.2(a)(18) reads as rewritten:

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

<u>Document</u>	<u>Fee</u>
...	
(18) Annual report (paper)	200.00 25.00
(18a) Annual report (electronic)	18.00

SECTION 4.(c) G.S. 59-1106(a)(22) reads as rewritten:

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

<u>Document</u>	<u>Fee</u>
...	
(22) Annual report for a limited liability limited partnership (paper)	200.00 25.00
(22a) Annual report for a limited liability limited partnership (electronic)	18.00

SECTION 4.(d) G.S. 105-122.1 is repealed.

SECTION 4.(e) This section becomes effective January 1, 2015, and applies to annual reports due on or after January 1, 2015.

PART V. PRIVILEGE TAX CONFORMING CHANGES

SECTION 5.(a) G.S. 93-12(12) and G.S. 105-259(b)(4) are repealed.

SECTION 5.(b) G.S. 53-165 reads as rewritten:

"§ 53-165. Definitions.

The following definitions apply in this Article:

- (a)(1) ~~"Amount of the loan" shall mean the~~ Amount of the loan. – The aggregate of the cash advance and the charges authorized by G.S. 53-173 and G.S. 53-176.
- (b)(2) ~~"Borrower" shall mean any~~ Borrower. – A person who borrows money from any licensee or who pays or obligates himself to pay any money from, pays or is obligated to pay money to, or otherwise furnishes any valuable consideration to any licensee for any act of the licensee as a licensee.
- (c)(3) ~~"Cash advance" shall mean the~~ Cash advance. – The amount of cash or its equivalent that the a borrower actually receives or is paid out at his discretion or on his behalf. the discretion of the borrower or on behalf of the borrower.
- (d)(4) ~~"Commission" shall mean the~~ Commission. – The State Banking Commission.
- (e)(5) ~~"Commissioner" shall mean the~~ Commissioner. – The Commissioner of Banks.
- (f)(6) ~~"Deputy commissioner" shall mean the~~ Deputy commissioner. – The deputy commissioner of banks.

(7) Installment paper dealer. – A person who buys or discounts notes or other evidences of debt secured, at the time the debt is incurred, by personal property located in this State.

~~(g)(8) "License" shall mean the License. – The certificate issued by the Commissioner under the authority of this Article to conduct a consumer finance business.~~

~~(h)(9) "Licensee" shall mean a Licensee. – A person to whom one or more licenses have been issued.~~

~~(i)(10) "Loanable assets" shall mean cash or bank deposits or installment loans made as a licensee pursuant to this Article or installment loans made as a licensee pursuant to the Article which this Article supersedes or such other loans payable on an installment basis as the Commissioner of Banks may approve, or any combination of two or more thereof. Loanable assets. – Cash, bank deposits, installment loans, or any combination of these.~~

~~(j)(11) "Person" shall include any person, Person. – An individual, a firm, a partnership, association or corporation, an association, a limited liability company, a corporation, or another group acting as a unit."~~

SECTION 5.(c) G.S. 53-172(a) reads as rewritten:

"(a) No licensee shall conduct the business of making loans under this Article within any office, suite, room, or place of business in which any other business is solicited or transacted. The business of making loans includes acting as an installment paper dealer and collecting a loan made by a government regulated lender.

~~Installment paper dealers as defined in G.S. 105-83, and the collection by a licensee of loans legally made in North Carolina, or another state by another government regulated lender or lending agency, shall not be considered as being any other business within the meaning of this section."~~

SECTION 5.(d) G.S. 53-191 reads as rewritten:

"§ 53-191. Businesses exempted.

~~Nothing in this This Article shall be construed to does not apply to any person, firm or corporation person doing business under the authority of any law of this State or of the United States relating to banks, trust companies, savings and loan associations, cooperative credit unions, agricultural credit corporations or associations organized under the laws of North Carolina, production credit associations organized under the act of Congress known as the federal Farm Credit Act of 1933, pawnbrokers lending or advancing money on specific articles of personal property, industrial banks, the business of negotiating businesses that negotiate or solicit loans on real estate as defined in G.S. 105-41, agent for another for compensation, nor to or installment paper dealers as defined in G.S. 105-83 other than persons, firms and corporations other than persons engaged in the business of accepting fees for endorsing or otherwise securing loans or contracts for the repayment of loans."~~

SECTION 5.(e) G.S. 95-47.2(d)(3)c. reads as rewritten:

"(d) Upon the receipt of an application for a license the Commissioner:

...

(3) Upon completion of the investigation, or 60 days after the application was received, whichever is later, but in no case more than 75 days after the application was received, shall determine whether or not a license should be issued. The license shall be denied for any of the following reasons:

...

c. If the employment agency will be operated on the same premises as a ~~loan agency (as defined in G.S. 105-88) or collection agency (as defined in G.S. 58-70-15),~~ any of the following:

- 1 1. A business that makes loans and takes as security for
- 2 repayment of the loans an assignment of wages or any other
- 3 type of security.
- 4 2. A check cashing business regulated under Article 22 of
- 5 Chapter 53 of the General Statutes.
- 6 3. A pawnbroker business regulated under Chapter 91A of the
- 7 General Statutes.
- 8 4. A collection agency as defined in G.S. 58-70-15."

9 **SECTION 5.(f)** G.S. 105-130.6A(a)(2) reads as rewritten:

10 "(a) Definitions. – The provisions of G.S. 105-130.6 govern the determination of
11 whether a corporation is a subsidiary or an affiliate of another corporation. In addition, the
12 following definitions apply in this section:

- 13 ...
- 14 (2) Bank holding company. – A holding company with an affiliate that is ~~subject~~
15 ~~to the privilege tax on banks levied in G.S. 105-102.3.~~engaged in the
16 business of banking.

17 "

18 **SECTION 5.(g)** This section becomes effective January 1, 2015.

19 **PART VI. FRANCHISE TAX CONFORMING CHANGES**

20 **SECTION 6.(a)** G.S. 105-116 reads as rewritten:

21 "**§ 105-116. ~~Franchise or privilege~~ Privilege tax on electric power, water, and sewerage**
22 **companies.**

- 23 (a) Tax. – An annual ~~franchise or privilege~~ tax is imposed on the following:
- 24 (1) An electric power company engaged in the business of furnishing electricity,
25 electric lights, current, or power.
 - 26 (2), (2a) Repealed by Session Laws 1998-22, s. 2, effective July 1, 1999.
 - 27 (3) A water company engaged in owning or operating a water system subject to
28 regulation by the North Carolina Utilities Commission.
 - 29 (4) A public sewerage company engaged in owning or operating a public
30 sewerage system.

31 (a1) Rate. – The tax on an electric power company is three and twenty-two hundredths
32 percent (3.22%) of the company's taxable gross receipts from the business of furnishing
33 electricity, electric lights, current, or power. The tax on a water company is four percent (4%)
34 of the company's taxable gross receipts from owning or operating a water system subject to
35 regulation by the North Carolina Utilities Commission. The tax on a public sewerage company
36 is six percent (6%) of the company's taxable gross receipts from owning or operating a public
37 sewerage company. A company's taxable gross receipts are its gross receipts from business
38 inside the State less the amount of gross receipts from sales reported under subdivision (b)(2).
39 A company that engages in more than one business taxed under this section shall pay tax on
40 each business.

41 (b) Report and Payment. – The tax imposed by this section is payable quarterly or
42 monthly as specified in this subsection. A return is due quarterly.

43 A water company or public sewerage company must pay tax quarterly when filing a return.
44 An electric power company must pay tax in accordance with the schedule and requirements that
45 apply to payments of sales and use tax under G.S. 105-164.16 and must file a return quarterly.

46 A quarterly return covers a calendar quarter and is due by the last day of the month that
47 follows the quarter covered by the return. A taxpayer must submit a return on a form provided
48 by the Secretary. The return must include the taxpayer's gross receipts from all property it
49 owned or operated during the reporting period in connection with its business taxed under this
50

1 section. A taxpayer must report its gross receipts on an accrual basis. A return must contain the
2 following information:

- 3 (1) The taxpayer's gross receipts for the reporting period from business inside
4 and outside this State, stated separately.
- 5 (2) The taxpayer's gross receipts from commodities or services described in
6 subsection (a) that are sold to a vendee subject to the tax levied by this
7 section or to a joint agency established under Chapter 159B of the General
8 Statutes or a city having an ownership share in a project established under
9 that Chapter.
- 10 (3) The amount of and price paid by the taxpayer for commodities or services
11 described in subsection (a) that are purchased from others engaged in
12 business in this State and the name of each vendor.
- 13 (4) For an electric power company the entity's gross receipts from the sale
14 within each city of the commodities and services described in ~~subsection~~
15 ~~(a)-subsection (a) of this section.~~
- 16 (c) Repealed by Session Laws 1998-22, s. 2, effective July 1, 1999.
- 17 (d) Distribution. – Part of the taxes imposed by this section on electric power
18 companies is distributed to cities under G.S. 105-116.1. If a taxpayer's return does not state the
19 taxpayer's taxable gross receipts derived within a city, the Secretary must determine a practical
20 method of allocating part of the taxpayer's taxable gross receipts to the city.
- 21 (e) Local Tax. – The following restrictions apply to local taxes on an electric power
22 company that is subject to tax under this section:

- 23 (1) So long as there is a distribution to cities from the tax imposed by this
24 section, no city shall impose or collect any greater franchise, privilege or
25 license taxes, in the aggregate, on the businesses taxed under this section,
26 than was imposed and collected on or before January 1, 1947.
- 27 ~~(e1)(2) An electric power company engaged in the business of furnishing electricity,~~
28 ~~electric lights, current, or power that collects the annual franchise or~~
29 ~~privilege tax pursuant to subsection (a) of this section and remits the tax~~
30 ~~collected to the Secretary shall not be~~ is not ~~subject to any additional~~
31 ~~franchise or privilege tax imposed upon it by any city or county.~~
- 32 (f) Repealed by Session Laws 1998-22, s. 2, effective July 1, 1999."

33 **SECTION 6.(b)** G.S. 105-120.2 reads as rewritten:

34 "**§ 105-120.2. Franchise or privilege Privilege tax on holding companies.**

- 35 ...
- 36 (b) ~~(1) — Every A corporation taxed under this section shall annually pay to the~~
37 ~~Secretary of Revenue, at the time the report and statement are due, a~~
38 ~~franchise or privilege tax, which is hereby levied, at tax at the rate of one~~
39 ~~dollar and fifty cents (\$1.50) one dollar and thirty-five cents (\$1.35) per one~~
40 ~~thousand dollars (\$1,000) of the amount determined under subsection (a) of~~
41 ~~this section, but in no case shall the tax be more than seventy-five thousand~~
42 ~~dollars (\$75,000) nor less than thirty five dollars (\$35.00); five hundred~~
43 ~~dollars (\$500.00).~~
- 44 ~~(2) — Notwithstanding the provisions of subdivision (1) of this subsection, if the~~
45 ~~tax produced pursuant to application of this paragraph (2) exceeds the tax~~
46 ~~produced pursuant to application of subdivision (1), then the tax shall be~~
47 ~~levied at the rate of one dollar and fifty cents (\$1.50) per one thousand~~
48 ~~dollars (\$1,000) on the greater of the amounts of~~
- 49 ~~a. — Fifty five percent (55%) of the appraised value as determined for ad~~
50 ~~valorem taxation of all the real and tangible personal property in this~~
51 ~~State of each such corporation plus the total appraised value of~~

1 intangible property returned for taxation of intangible personal
2 property as computed under G.S. 105-122(d); or
3 b. ~~The total actual investment in tangible property in this State of such~~
4 ~~corporation as computed under G.S. 105-122(d).~~

5"

6 **SECTION 6.(c)** G.S. 105-129.27(b) reads as rewritten:

7 "(b) Taxes Credited. – The credit provided in this section is allowed against the ~~franchise~~
8 privilege tax levied in Article 3 of this Chapter and the income tax levied in Part 1 of Article 4
9 of this Chapter. Any other nonrefundable credits allowed the owner are subtracted before the
10 credit allowed by this section."

11 **SECTION 6.(d)** G.S. 105-129.41(a1) reads as rewritten:

12 "(a1) Tax Election. – The credit allowed in this section is allowed against the ~~franchise~~
13 privilege tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of this
14 Chapter, or the gross premiums tax levied in Article 8B of this Chapter. The taxpayer must
15 elect the tax against which the credit will be claimed when filing the return on which the first
16 installment of the credit is claimed. This election is binding. Any carryforwards of the credit
17 must be claimed against the same tax."

18 **SECTION 6.(e)** G.S. 105-129.96(b) reads as rewritten:

19 "(b) Taxes Credited. – The credit provided in this section is allowed against the ~~franchise~~
20 privilege tax levied in Article 3 of this Chapter or the income taxes levied in Article 4 of this
21 Chapter. The taxpayer must elect the tax against which a credit will be claimed when filing the
22 return on which the first installment of the credit is claimed. This election is binding. The credit
23 may not exceed fifty percent (50%) of the tax against which it is applied. Any unused portion
24 of a credit may be carried forward for the succeeding 10 years. Any carryforwards of a credit
25 must be claimed against the same tax."

26 **SECTION 6.(f)** G.S. 105-130.6A(h) reads as rewritten:

27 "(h) Limitation on Credits. – The credits provided in this section are allowed against the
28 tax levied in this Part and the ~~franchise-privilege~~ tax levied in Article 3 of this Chapter. A
29 taxpayer may claim a credit against only one of the taxes against which it is allowed. Each
30 taxpayer must elect the tax against which the credit will be taken when filing the return on
31 which the first installment of the credit is claimed. This election is binding. All installments and
32 carryforwards of the credit must be taken against the same tax.

33 In order for a member of an affiliated group to take a credit, each member of the affiliated
34 group that is required to file a return under this Part or under Article 3 of this Chapter must
35 attach a schedule to its return that shows for every member of the group the amount of the
36 credit taken by it, the tax against which it is taken, and the amount of the resulting tax. In
37 addition, each member must provide any other documentation required by the Secretary.

38 A credit allowed in this section may not exceed the amount of tax against which it is taken
39 for the taxable year reduced by the sum of all credits allowable, except tax payments made by
40 or on behalf of the taxpayer. Any unused portion of the credit may be carried forward to
41 succeeding taxable years."

42 **SECTION 6.(g)** G.S. 105-230 reads as rewritten:

43 "**§ 105-230. Charter suspended for failure to report. Suspension of business entity's right**
44 **to do business for noncompliance.**

45 (a) ~~Suspension. If a corporation or a limited liability company fails to file any~~ Failure of
46 a business entity, as defined in G.S. 105-114.2, to file a report or return or to pay any a tax or
47 fee required by this Subchapter for 90 days after it is due, the Secretary shall inform the
48 Secretary of State of this failure. The Secretary of State shall due is grounds to suspend the
49 business entity's articles of incorporation, articles of organization, or certificate of authority, as
50 appropriate, of the corporation or limited liability company. The Secretary of State shall
51 immediately notify by mail every domestic or foreign corporation or limited liability company

1 ~~so suspended of its suspension.~~ or certificate of registration, as appropriate. The Secretary must
2 notify the Secretary of State when a business entity's authority to transact business is subject to
3 suspension. The Secretary of State must then immediately suspend the business entity's articles
4 of incorporation or other authority to transact business and must notify the business entity by
5 mail of the suspension. The powers, privileges, and franchises conferred upon the ~~corporation~~
6 ~~or limited liability company by the articles of incorporation, the articles of organization, or the~~
7 ~~certificate of authority~~ business entity by its articles of incorporation or other authority to
8 transact business terminate upon suspension.

9 (b) Effect. – Any act performed or attempted to be performed during the period of
10 suspension ~~the business entity's authority to transact business is suspended under this section is~~
11 ~~invalid and of no effect, unless the Secretary of State reinstates the corporation or limited~~
12 ~~liability company~~ business entity's authority pursuant to G.S. 105-232."

13 **SECTION 6.(h)** G.S. 105-232 reads as rewritten:

14 "**§ 105-232. Rights restored; receivership and liquidation.** **Procedure for reinstatement**
15 **after suspension of business entity's authority to do business for**
16 **noncompliance.**

17 (a) ~~Any corporation or limited liability company whose articles of incorporation,~~
18 ~~articles of organization, or certificate of authority to do business in this State has been~~
19 ~~suspended by the Secretary of State under G.S. 105-230, that complies with all the~~
20 ~~requirements of this Subchapter and pays all State taxes, fees, or penalties due from it (which~~
21 ~~total amount due may be computed, for years prior and subsequent to the suspension, in the~~
22 ~~same manner as if the suspension had not taken place), and pays to the Secretary of Revenue a~~
23 ~~fee of twenty five dollars (\$25.00) to cover the cost of reinstatement, is entitled to exercise~~
24 ~~again its rights, privileges, and franchises in this State. The Secretary of Revenue shall notify~~
25 ~~the Secretary of State of this compliance and the Secretary of State shall reinstate the~~
26 ~~corporation or limited liability company by appropriate entry upon the records of the office of~~
27 ~~the Secretary of State. Upon entry of reinstatement, it relates back to and takes effect as of the~~
28 ~~date of the suspension by the Secretary of State and the corporation or limited liability~~
29 ~~company resumes carrying on its business as if the suspension had never occurred, subject to~~
30 ~~the rights of any person who reasonably relied, to that person's prejudice, upon the suspension.~~
31 ~~The Secretary of State shall immediately notify by mail the corporation or limited liability~~
32 ~~company of the reinstatement.~~ The suspension under G.S. 105-230 of the authority of a business
33 entity to transact business terminates when the business entity resolves the noncompliance that
34 resulted in the suspension and pays a reinstatement fee of fifty dollars (\$50.00) to the Secretary
35 of Revenue. The Secretary of Revenue must notify the Secretary of State when a business
36 entity whose authority is suspended resolves the noncompliance. The Secretary of State must
37 then immediately reinstate the business entity's authority and must notify the business entity by
38 mail of the reinstatement. Reinstatement of a business entity's authority to do business relates
39 back to and takes effect as of the date of the suspension, subject to the rights of a person who
40 reasonably relied to that person's prejudice on the suspension.

41 (b) ~~When the articles of incorporation, articles of organization, or certificate of~~
42 ~~authority to do business in this State has been suspended by the Secretary of State under~~
43 ~~G.S. 105-230, and the corporation or limited liability company has ceased to operate as a going~~
44 ~~concern, if there remains property held in the name of the corporation or limited liability~~
45 ~~company or undisposed of at the time of the suspension, or there remain future interests that~~
46 ~~may accrue to the corporation, the limited liability company, or its successors, members, or~~
47 ~~stockholders, any interested party may apply to the superior court for the appointment of a~~
48 ~~receiver. Application for the receiver may be made in a civil action to which all stockholders,~~
49 ~~members, or their representatives or next of kin shall be made parties. Stockholders or members~~
50 ~~whose whereabouts are unknown, unknown stockholders or members, unknown heirs and next~~
51 ~~of kin of deceased stockholders, members, creditors, dealers, and other interested persons may~~

1 ~~be served by publication. A guardian ad litem may be appointed for any stockholders,~~
2 ~~members, or their representatives who are infants or incompetent. The receiver shall enter into~~
3 ~~a bond if the court requires one and shall give notice to creditors by publication or otherwise as~~
4 ~~the court may prescribe. Any creditor who fails to file a claim with the receiver within the time~~
5 ~~set shall be barred of the right to participate in the distribution of the assets. The receiver may~~
6 ~~(i) sell the property interests of the corporation or limited liability company upon such terms~~
7 ~~and in such manner as the court may order, (ii) apply the proceeds to the payment of any debts~~
8 ~~of the corporation or limited liability company, and (iii) distribute the remainder among the~~
9 ~~stockholders, the members, or their representatives in proportion to their interests in the~~
10 ~~property interests. Shares due to any stockholder or member who is unknown or whose~~
11 ~~whereabouts are unknown shall be paid into the office of the clerk of the superior court, to be~~
12 ~~disbursed according to law. In the event the records of the corporation or limited liability~~
13 ~~company are lost or do not reflect the owners of the property interests, the court shall determine~~
14 ~~the owners from the best evidence available, and the receiver shall be protected in acting in~~
15 ~~accordance with the court's finding. This proceeding is authorized for the sole purpose of~~
16 ~~providing a procedure for disposing of the assets of the corporation or limited liability company~~
17 ~~by the payment of its debts and by the transfer to its stockholders, its members, or their~~
18 ~~representatives their proportionate shares of its assets."~~

19 **SECTION 6.(i)** This section becomes effective for taxable years beginning on or
20 after January 1, 2014.

21 **PART VII. SAVINGS CLAUSE AND EFFECTIVE DATE**

22 **SECTION 7.(a)** This act does not affect the rights or liabilities of the State, a
23 taxpayer, or another person arising under a statute amended or repealed by this act before the
24 effective date of its amendment or repeal, nor does it affect the right to any refund or credit of a
25 tax that accrued under the amended or repealed statute before the effective date of its
26 amendment or repeal.

27 **SECTION 7.(b)** Except as otherwise provided, this act is effective when it
28 becomes law.
29